Summary of Public Comment

I. List of Respondents

Hospitals
The CT Hospital Association
Charlotte Hungerford Hospital
CT Children's Medical Center
Day Kimball Healthcare
Middlesex Hospital
Norwalk Hospital & Western CT Health Network
Stamford Hospital
St. Vincent's Medical Center
Trinity Health-New England
Yale New Haven Health Care System

Physicians
American Medical Association
CT State Medical Society
Dr. Lawrence Lazor, Starling Physicians
Dr. Christopher Leary, Bristol Hospital & Radiologic Associates
Dr. Maria Christina Mirth, CT Colon and Rectal Surgery, LLC
Starling Physicians

Miscellaneous
CT Association for Ambulatory Surgery Centers
Cary S. Shaw, The Connecticut Coalition of Reason, The Secular Coalition for Connecticut, and Humanists and Free Thinkers of Fairfield County
Radiological Society of Connecticut
Universal Health Care Foundation of Connecticut

CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF
THE CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO
THE CERTIFICATE OF NEED TASKFORCE
THURSDAY, DECEMBER 15, 2016

The Connecticut Hospital Association (CHA) appreciates this opportunity to present comments on the draft recommendations of the Certificate of Need (CON) Taskforce.

As the healthcare system undergoes significant transformation, hospitals continue to be focused on the health and well-being of every Connecticut citizen. The goals of this transformation are improved access to care, improved quality and safety, and reduced cost. The CON program plays an important role in achieving these goals.

CON safeguards the public's need for access to high quality health services, prevents unnecessary duplication of services, and sets a level playing field for deployment of healthcare resources in a financially responsible way.

Before commenting on the specific proposals as outlined in the December 5, 2016 document, it is important to emphasize several key principles that we urge the Taskforce to address as it considers changes to the CON program.

- The CON program must not discriminate against any specific type of provider or entity and must treat all providers and entities equally.
- The CON program must strive to ensure that all providers treat underserved populations, Medicaid recipients, and indigent persons.
- The CON program is not the regulatory vehicle to be used to analyze and investigate the cost of healthcare. The Lt. Governor's Healthcare Cabinet is the appropriate group to develop recommendations with respect to the cost of healthcare.

With respect to the specific proposals:

Actions Subject to Certificate of Need

Acquiring Equipment

- The CON program should maintain a review of all scanners, new technology, and non-hospital-based linear accelerators.

- The CON program should be modified to create an expedited procedure both in process and timeline for the review of the acquisition of new imaging equipment.
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- The CON program should review terminations of (1) Hospital Emergency Departments; (2) Select hospital Inpatient Services; and (3) Hospital Mental Health/Substance Abuse Services.
- With respect to the termination of hospital outpatient services, the CON program should be modified to allow for the termination of certain outpatient services without CON review, such as physical or occupational therapy, sleep labs, diagnostic services, and/or multiple locations.
- The CON program should also review the termination of mental health/substance abuse services being proposed by entities other than hospitals.

Reduction of Services

- The CON program should not be modified to require CON review for the reduction of services.

Relocation of Services

- The CON program should allow the relocation of services within a reasonable geographic area without a CON review but with notice to OHCA.
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- The CON program should not have an inherent bias against any type of provider. It must treat all providers equally, and require the review of the transfer of ownership of a healthcare facility or certain large practices by any acquirer (e.g., a hospital, a hospital system, insurer, investor, and any other entity seeking to acquire ownership or control of such healthcare facility or certain large group practice.)

Conversions

- The CON program should maintain its current requirements for hospital conversions**.**

CON Application Review Criteria (OHCA CON Guidelines and Principles)

Application Criteria for Acquiring Equipment

- The first application criteria should be modified to assess whether the proposed project will serve Medicaid patients**.**

Application for Reducing or Terminating Services

- The CON program should not be modified to require CON review for the reduction of services.

CON Decision-Making Process

Organization: Who Reviews Applications, Renders Decisions, and Provides Public Input – Opportunities for Consumer Participation in the CON Process

- With respect to the Subject Matter Experts Panel, the proposal needs to be more specific to ensure that the panel members are serving as consultants or advisors, and that their comments are advisory only. The proposal needs to be more specific as to how the expert for a specific application will be selected and clarify that the panel comprises a list of approved persons from whom OHCA may choose to seek expert advice, but that OHCA is not required to do so.
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- The proposal would require the applicant to state that it has made reasonable efforts to expand public notification. The proposal should be modified to indicate there will be no adverse impact on the applicant if the applicant is not able to carry out the expanded notification due to factors beyond its control (e.g., Town hall won't allow copies to be placed at a site or removes them).

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- The proposal for creating an expedited process should expand to cover mental health and substance abuse facilities if they commit to serving Medicaid and other underserved populations.
- The proposal should be modified to require that all applications for terminations be handled through an expedited process of no more than 60 days.
- The CON program should be modified to provide that if an application is not acted upon timely, within the statutory time frames, it will be deemed approved (this feature was part of prior iterations of the CON process).

CON Post-Approval Compliance Mechanism

- With respect to proposal 1, "willful" should not be removed from CGS 19a-653 (a) – lowering the threshold would unfairly punish healthcare facilities that are acting in good faith to comply.

CON Evaluation Methods

- The CON program should be expanded to allow OHCA the ability to consider the quality of services, provided such review is based on generally accepted, nationally recognized clinical best practices and guidelines.

We look forward to working with the Lieutenant Governor and members of the Taskforce.

Thank you for consideration of our position.

TESTIMONY OF
THE CHARLOTTE HUNGERFORD HOSPITAL
SUBMITTED TO THE

THE CERTIFICATE OF NEED TASK FORCE
December 15, 2016

The Charlotte Hungerford Hospital (CHH) of Torrington, CT appreciates this opportunity to submit comments on the draft recommendations of the Certificate of Need (CON) Task Force.

In 2016, CHH proudly marks its 100th year in serving the people of northwest Connecticut. Today our hospital, like all others, faces rising costs, reduced funding, and numerous clinical and care delivery challenges. Yet we remain thoroughly committed to achieving our original and steadfast Mission: *To provide quality, compassionate and affordable healthcare to the people of Northwest CT.*

As we navigate our course in this rapidly changing healthcare environment, we have keenly followed, embraced, and responded to the many public policy initiatives and reforms affecting health care, both at the state and federal levels. Observing the charge and work of the CON Task Force has been no exception to our keen interest in tracking policy direction. We appreciate the time and energy you have placed on assuring a well-purposed and high functioning CON process in this state, one that rightfully advances the goals of access, cost, and quality in our healthcare system.

Because we have directly participated in the Connecticut Hospital Association's review of the CON Task Force's draft recommendations, we fully endorse their comments and share their position on the specific proposals across each of the CON categories. Their testimony speaks for CHH and there is no reason for us to repeat these positions here.

Instead, we wish to offer additional comment on our experiences with CON in the state, and our hope for reframing the goals and expectations of the CON process going forward.

First, we believe that the CON process can and should be a necessary good. Government has always influenced the shaping of health care in our state and country, and the allocation of resources to its purpose. Because of this, the CON process can and should be an instrument to helping fulfill this important role of government, and in achieving important public policy goals for the greater good.

Although, relatively speaking, we are a limited "user" of CON, we have not found in our experiences that the requirements to justify changes, be transparent with our plans and intent, or accommodate conditions imposed by the state in connection with any CON approval to be onerous, irrelevant or retrograde. We have also found that it can effectively advance, or at least protect, access, cost and quality goals.

Notwithstanding the policy changes we are endorsing through CHA's testimony to the Task Force, we have a generally favorable view of the purpose and practices of the state' Office of Health Care Access. And, further, that our orientation is that a clear and vibrant CON process is both useful and productive.

With respect to revised purpose of the CON program contained in the draft recommendations, we appreciate that the CON Task Force is considering more than issues related to review scoping and process changes. It is our perception that the proposed revision to the CON's purpose emphasizes that the application of "perfect market theory" is the single best way to achieve the goals of access, cost, and quality.

Per the draft report, this belief is based on research findings which suggest that a competitive environment keeps costs down and can enhance quality. Like the report's findings, we believe there are many benefits to competition, particularly in health care. We also do not take any issue with the research findings that support this premise. We do however think that this "one silver bullet" approach is at best incomplete.

However, we also know that many externalities exist in the health care marketplace and access to care and the development of health services,

particularly for the poor, can go unaddressed, or even harmed, when decisions are left to market forces alone.

This last shortcoming regarding access is addressed in the report only by saying the CON review should focus on "…promoting health equity and improving access". Yet it is not clear how this goal would be blended with the conclusion that the CON process should protect against limiting competition. Because the draft set of recommendations does not go so far as to propose a statutory construct, it is unclear how the CON review process would judge applications and inform and protect providers and consumers.

The report's premise more specifically states that limiting competition is a "…primary driver in increasing health care costs". Whether or not this is correct, there are many other well-researched drivers of cost that deserve the attention of public policy (e.g. health care overhead, regulatory burdens, unfunded mandates, variation in practice, consumer expectations, drug prices, malpractice, lifestyle behaviors, etc.).

Moreover, the report seems to indicate that mergers and acquisitions should receive the highest scrutiny under this framework, as these transactions "reduce competition". Yet there is no discussion about under what circumstances a merger or acquisition could be viewed as in the public's interest. It appears in the report's concluding language that none should be viewed favorably.

As a provider with a pending transfer of ownership CON application, you would expect us to be particularly sensitive on this point. We think it would be useful for members of the Task Force to know, unlike many mergers and acquisitions of the past (we suspect those particularly the subject of the prevailing research cited in the report), among our motivating drivers were not just financial considerations, but more complex conditions, including:

- We can expect a growing difficulty in attracting and retaining physicians in both primary care and specialties for our underserved area.

- We can expect to continue to grow as a key access point for care for those covered by public insurance, which changes our ability to create positive operating margins at levels necessary for reinvesting in health care (dependency on Medicare and Medicaid is approaching 80% of our patient base, meaning we can't operate in a true free market anyway).

- We can expect a growing importance in being part of a clinically-integrated network and continuum of care in order to sustain the quality of, and access to services, and experience any meaningful gains in the health of the population we serve.

After careful deliberation and consideration of alternatives, our community, through our Board of Governors, determined that an affiliation was necessary not just for financial advantages. In fact, clinical and continuum advantages heavily factored into our thinking and into our strategy to preserve and enhance health services for our area.

Further, for similar reasons, with CHH serving as a critical access point for care, it was determined that an affiliation better positions CHH to properly respond to our changing demographic, payer mix, and to health care reforms.

The essential point is this: we would not want the extreme focus on competition to confine thinking about the broader reasons why mergers and acquisitions could be deemed appropriate. Nor do we think that in the name of preserving competition, the spirit of collaboration that should exist among providers is doused, or when market forces exceed demand, conflicts in the marketplace should not be managed through a responsible regulatory environment.

We conclude from our CON experiences, and in reaction to the proposed revision to the purpose of Connecticut's CON process, that Connecticut's CON is better tied to a thoughtful, functional state health care plan and an articulated standards for the optimal allocation of resource against which the three goals of access, cost and quality are considered.

We believe access (e.g. underserved areas and populations) and quality (e.g. positive correlation between volume and outcomes) are best advocated for through this model. And, cost is best understood as a function of the degree to which the goals of access and quality can reasonably be achieved.

Regardless of where the wisdom of the Task Force ends up, any CON system requires an adequacy of resources, widespread public confidence, and right-sized expectations in terms of its purpose and limitations. Unfortunately,

these requirements for system success in Connecticut have not always been secure. Therefore, any statutory reconstruction of the system must also be accompanied by adjustments in the attitudes and willingness to support from those relying upon the system, including providers, public officials, and consumer advocates.

Once again, thank you for this opportunity to comment.

Testimony of Connecticut Children's Medical Center
to the Certificate of Need Task Force
December 15, 2016

Thank you for the opportunity to share our thoughts on the draft recommendations of the Certificate of Need (CON) Taskforce. Connecticut Children's Medical Center is dedicated to improving the physical and emotional health of children through family-centered care, research, education and advocacy. We embrace discovery, teamwork, integrity and excellence in all that we do. Connecticut Children's is a nationally recognized, 187-bed not-for-profit children's hospital serving as the primary teaching hospital for the University of Connecticut School of Medicine Department of Pediatrics.

A comprehensive array of pediatric services is available at our hospitals in Hartford and Waterbury, with neonatal intensive care units in Hartford (Level 4) and the University of Connecticut Health Center (Level 3), along with a state-of-the-art ambulatory surgery center, five specialty care centers and 10 practices across the state and in Massachusetts. Our Level 1 Pediatric Trauma Center and Primary Care Center are the busiest between Boston and New York. Connecticut Children's has more than 2,400 employees with a medical staff of more than 700, practicing in more than 30 subspecialties.

As the healthcare system undergoes significant transformation, hospitals continue to be focused on the health and well-being of every Connecticut citizen. The goals of this transformation are improved access to care, improved quality and safety, and reduced cost. The CON program plays an important role in achieving these goals.

CON safeguards the public's need for access to high quality health services, prevents unnecessary duplication of services, and sets a level playing field for deployment of healthcare resources in a financially responsible way.

Before commenting on the specific proposals as outlined in the December 5, 2016 document, it is important to emphasize several key principles that we urge the Taskforce to address as it considers changes to the CON program.

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Conversions

- The CON program should maintain its current requirements for hospital conversions**.**

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CON Decision-Making Process

Organization: Who Reviews Applications, Renders Decisions, and Provides Public Input – Opportunities for Consumer Participation in the CON Process

- With respect to the Subject Matter Experts Panel, the proposal needs to be more specific to ensure that the panel members are serving as consultants or advisors, and that their comments are advisory only. The proposal needs to be more specific as to how the expert for a specific application will be selected and clarify that the panel comprises a list of approved persons from whom OHCA may choose to seek expert advice, but that OHCA is not required to do so.
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- With respect to proposal 1, "willful" should not be removed from CGS 19a-653 (a) – lowering the threshold would unfairly punish healthcare facilities that are acting in good faith to comply.

CON Evaluation Methods

- The CON program should be expanded to allow OHCA the ability to consider the quality of services, provided such review is based on generally accepted, nationally recognized clinical best practices and guidelines.

We look forward to working with the Lieutenant Governor and members of the Taskforce.

Thank you for consideration of our position.

DKH DAY KIMBALL HEALTHCARE

TESTIMONY OF JOSEPH ADILETTA, PRESIDENT & CEO, DAY KIMBALL HEALTHCARE
SUBMITTED TO THE CERTIFICATE OF NEED TASKFORCE
THURSDAY, DECEMBER 15, 2016

Day Kimball Healthcare appreciates the opportunity to submit comments and perspective on the draft recommendations made by the Certificate of Need (CON) Taskforce in its December 5, 2016 document. As an independent, nonprofit community hospital and healthcare system serving rural northeast Connecticut, Day Kimball Healthcare is acutely aware of the importance of ensuring access to high quality, safe and efficient healthcare services for all residents in our state.

The intention of the Certificate of Need process is to safeguard that access for the public while preventing unnecessary duplication of services and providing for the delivery of healthcare resources in a financially responsible manner. These are goals that Day Kimball Healthcare strives to fulfill within our own organization in the interest of the communities we serve and we support efforts that will strengthen fulfillment of those goals across the rest of our state as well.

Given our unique perspective as a small, independent community healthcare system, we ask that the Taskforce address the following key principles in evaluating any proposed changes to the CON process:

- The CON program must not discriminate against any specific type of provider and must treat all providers equally.
- The CON program must strive to ensure that all providers treat underserved populations, Medicaid recipients, and indigent persons.
- The CON program is not the regulatory vehicle to be used to analyze and investigate the cost of healthcare. The Lt. Governor's Healthcare Cabinet is the appropriate group to develop recommendations with respect to the cost of healthcare.

We also ask that the Taskforce give strong consideration to the following points regarding the specific proposals contained in its December 5, 2016 draft recommendations:

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- The CON program should maintain its current requirements for hospital conversions.

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CON Evaluation Methods

- The CON program should be expanded to allow OHCA the ability to consider the quality of services, provided such review is based on generally accepted, nationally recognized clinical best practices and guidelines.

We thank you again for the opportunity to provide insight into this important process and we look forward to working with the Lieutenant Governor and the rest of the Taskforce members. Thank you for your consideration.

TESTIMONY OF
MIDDLESEX HOSPITAL
SUBMITTED TO
THE CERTIFICATE OF NEED TASKFORCE
THURSDAY, DECEMBER 15, 2016

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- The proposal should be modified to require that all applications for terminations be handled through an expedited process of no more than 60 days.

CON Post-Approval Compliance Mechanism

- With respect to proposal 1, "willful" should not be removed from CGS 19a-653 (a) – lowering the threshold would unfairly punish healthcare facilities that are acting in good faith to comply.

CON Evaluation Methods

- The CON program should be expanded to allow OHCA the ability to consider the quality of services, provided such review is based on generally accepted, nationally recognized clinical best practices and guidelines.

Thank you for consideration of our position.

Sincerely,

Vincent G. Capece, Jr.
President/CEO

VGC:aac

Comments of Michael Daglio

President, Norwalk Hospital and Chief Strategy Officer, Western Connecticut Health Network, Inc.

(Danbury, New Milford and Norwalk Hospitals)

Submitted to the CON Task Force

Thursday, December 15, 2016

Western Connecticut Health Network, Inc. (WCHN) appreciates the opportunity to provide written comments relative to the Certificate of Need (CON) Task Force recommendations.

At WCHN, our goal is to transform the health of our communities so they are thriving and well, by providing care at the most appropriate care setting. In doing so, our work is aligned with the Triple Aim of reducing costs, while improving health outcomes and the patient experience. We are committed to this effort with much thoughtful and innovative work underway despite a challenging fiscal environment, burdensome hospital tax and the lowest Medicaid reimbursement rates in the country.

In the current rapidly evolving era of health care reform and the associated transformation, health care organizations are striving to address the health needs of their local communities with more innovative solutions. Collaboration and partnerships enable providers to improve and enhance the quality of care provided while addressing increasing demands of the health care environment. This approach aligns with the State's objectives outlined in the *Statewide Health Care Facilities and Services Plan* – improve health; increase access, continuity, and quality; prevent duplication; and provide financial stability and cost-containment. The CON program plays an important role in achieving these goals aimed at promoting health equity and fulfilling unmet needs. CONs also set a level playing field for deployment of healthcare resources in a financially responsible way.

As an organization, we acknowledge the Office of Health Care Access (OHCA) staff for their work in implementing CON regulations and standards but offer the viewpoint that the CON process today does not fully respond to the challenges of a contemporary healthcare market. In reviewing the recommendations brought forward, we appreciate the opportunity to express our perspective with respect to the specific proposals provided in the December 5, 2016 document:

Actions Subject to the Certificate of Need

<u>Acquiring Equipment</u>

- The CON program should maintain a review of advanced imaging equipment, including MRI, CT, and PET CT scanners, new technology and non-hospital located linear accelerators.
- The CON program should clarify and expand current exemptions applied to all equipment previously approved through CON, with notification only to OHCA.

Initiating Services/Increasing Capacity

- The CON process should review the establishment of new hospitals, specialty hospitals, free standing emergency departments, new outpatient surgical facilities, and the addition of two or more operating rooms in a three-year period.

Terminating Services

- CON review should not be required for the termination of specific inpatient and outpatient services, including physical therapy, occupational therapy, sleep laboratories, diagnostic services, and services where multiple locations are offered.
- OHCA's authority should be limited so that specific criteria in Agreed Settlements for reporting should not be contrary to this understanding.

Reduction of Services

- The CON program should remain as structured and not require a CON to reduce services.

Relocation of Services

- The CON program should permit a provider to relocate existing services without a CON to a new location within the providers existing service area and with notice to OHCA.

Transfers of Ownership

- The CON program should treat all providers equally, and require the review of the transfer of ownership of a healthcare facility or certain large practices by any acquirer. By way of example, for-profit entities have acquired large group practices without the same requirement, thereby creating an uneven playing field.

Conversions

- The CON program should maintain its current requirements for hospital conversions.

CON Application Review Criteria

- The twelve guidelines and principles reflected in §19a-639(a) should be modified to explicitly address the provision of services to Medicaid recipients.

CON Decision-Making Process

Organization

- The proposal for a Subject Matter Expert Panel needs to be more specific as to how the expert for a specific application will be selected, how the Applicant can have input into the selection of the expert, and clarify that the panel is acting in an advisory capacity only.

Public Input

- The CON program should maintain the existing administrative process which defines how consumers can participate in the OHCA CON process and who can be designated as an intervenor.

Appeals Process

- The CON program should not be modified to allow appeals of the CON decision by either an intervenor or consumer.

Transparency

- The CON program should recognize and accept the applicant's attestation that it has made reasonable efforts to provide public notification of its proposed CON and associated actions.

CON Application Process

- The CON program should create an expedited application and review process to cover mental health and substance abuse facilities if they commit to serving Medicaid and other underserved populations.
- The CON program should be modified to require all applications for terminations be determined within 60 days.

CON Post-Approval Compliance Mechanism and CON Evaluation Methods

- In setting post-approval requirements, the CON approval should establish time limits for reporting with a rationale for the frequency and duration of these reports and educate the health care community about how such reporting enhances OHCA's oversight of the goals of the CON process.

In closing, we urge the Taskforce to address the CON program with the following understanding as it evaluates potential changes:

- The CON program must strive to treat all providers equally.
- The CON program must ensure all providers are evaluated equally on their ability to address access and treat underserved populations, Medicaid recipients and indigent persons.
- A growing Medicare-eligible population and changing reimbursement models from CMS are pushing providers to take on more financial and utilization risk for the care that they deliver. The CON program must recognize the evolving health care delivery system and support innovative solutions by providers who seek to expand access, improve quality and reduce the cost of care in their respective communities.

Thank you for your consideration of our position. I welcome your questions at Michael.Daglio@wchn.org .

Michael Daglio

TESTIMONY OF

STAMFORD HOSPITAL

SUBMITTED TO

THE CERTIFICATE OF NEED TASKFORCE

THURSDAY, DECEMBER 15, 2016

Stamford Hospital (SH) appreciates this opportunity to present comments on the draft recommendations of the Certificate of Need (CON) Taskforce. As an acute care hospital in southwestern Fairfield County, we are committed to providing all of our patients with high quality, patient-focused health services including underserved populations, Medicaid recipients and the indigent in our communities.

As the healthcare delivery system is transformed more toward a value-based care model, the goals remain improved access to care, improved quality and safety, and reduced costs. The CON process is intended to safeguard the public, prevent unnecessary duplication of services and, importantly, set a level playing field for deployment of healthcare resources in a financially responsible way. The CON program should not discriminate against any specific type of provider and should ensure that all providers treat underserved populations, and Medicaid recipients. In so doing, the state would indeed provide more of a level playing field for hospitals.

Stamford Hospital concurs with the Connecticut Hospital Association's position as it pertains to actions subject to Certificate of Need, which includes acquiring equipment, initiating services/increasing capacity; terminating services, reduction and relocation of services; transfer of ownership and conversions that meet certain thresholds.

SH concurs with the CHA position on CON Application Review Criteria (OHCA CON Guidelines and Principles) as follows: The first application criteria should be modified to assess whether the proposed project will serve Medicaid patients.

SH concurs with the CHA position regarding Application for Reducing or Terminating Services, as the CON program should not be modified to require CON review for the reduction of services.

With respect to the CON Decision-Making Process, SH concurs with the position of CHA, specifically as it pertains to the Subject Matter Experts Panel, which needs to be more specific to ensure that the panel members are serving as consultants or advisors, and that their comments are advisory only. We agree with CHA in that the proposal should be modified to allow the applicant, upon request, to have input into the selection of the expert and to comment on the expert's review. Similarly, we agree with the CHA position that the appeals process should not be modified to allow intervenors to appeal a CON decision, as it would be a significant departure from existing administrative process and may be legally problematic.

Also, the CON program should not be modified to allow the public at large to appeal a CON decision. This would also be a significant departure from the existing administrative process and may be legally problematic.

SH concurs with CHA on transparency and methods of informing the public about pending applications and consumer access to information. The proposal should be modified to indicate there will be no adverse impact on the application due to factors beyond its control.

The CON application process should include a proposal to create an expedited process to cover the acquisition of imaging equipment; it should expand to cover mental health and substance abuse facilities if they commit to serving Medicaid and other underserved populations. The proposal should be modified to require that all applications for terminations be handled through an expedited process of no more than 60 days.

With respect to proposal 1 in the CON Post-Approval Compliance Mechanism, "willful" should not be removed from CGS 19-a653 (a) – lowering the threshold would unfairly punish healthcare facilities that are acting in good faith to comply.

With respect to the CON Evaluation Methods, the CON program should be expanded to allow OHCA the ability to consider the quality of services, provided such review is based on generally accepted, nationally recognized clinical best practices and guidelines.

Our understanding is that the Lt. Governor's Healthcare Cabinet will develop recommendations with respect to the cost of healthcare. We thank you for consideration of our position in this matter.

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St.Vincent's Medical Center

TESTIMONY OF
VINCENT C. CAPONI, PRESIDENT AND CEO
ST. VINCENT'S MEDICAL CENTER
SUBMITTED TO
THE CERTIFICATE OF NEED TASKFORCE
THURSDAY, DECEMBER 15, 2016

My name is Vincent Caponi, and I serve as the President and CEO of St. Vincent's Medical Center in Bridgeport.

On behalf of our patients, our associates, medical staff and the patients and families we serve, St. Vincent's Medical Center appreciates this opportunity to present comments on the draft recommendations of the Certificate of Need (CON) Taskforce.

For more than 113 years, St. Vincent's has served the Greater Bridgeport community. We are the largest employer in the City of Bridgeport with more than 3,000 associates, including our medical staff. In 2015, St. Vincent's total direct economic impact on our community was greater than $900 million.

As the healthcare system undergoes significant transformation, hospitals continue to be focused on the health and well-being of every Connecticut citizen. The goals of this transformation are improved access to care, improved quality and safety, and reduced cost. The CON program plays an important role in achieving these goals.

St. Vincent's Medical Center supports the efforts of the CON Taskforce to achieve these goals. We are also driving toward the healthcare reform objective of improving care quality and accountability, and the shift from payment for the volume of services provided to payment for value – focusing on the outcomes and quality of care people receive. Like all hospitals in Connecticut, we are also diligently exploring cost saving opportunities, including outsourcing of services, shared service centers, consolidation of services and possible changes in scope of services.

CON safeguards the public's need for access to high quality health services, prevents unnecessary duplication of services, and sets a level playing field for deployment of healthcare resources in a financially responsible way.

St.Vincent's Medical Center

Before commenting on the specific proposals as outlined in the December 5, 2016 document, we believe it is important to state that we endorse the principles urged by the Connecticut Hospital Association in its testimony, as follows, as the Taskforce considers changes to the CON program:

- The CON program must not discriminate against any specific type of provider and must treat all providers equally.
- The CON program must strive to ensure that all providers treat underserved populations, Medicaid recipients, and indigent persons.
- The CON program is not the regulatory vehicle to be used to analyze and investigate the cost of healthcare. The Lt. Governor's Healthcare Cabinet is the appropriate group to develop recommendations with respect to the cost of healthcare.

With respect to the specific proposals:

Actions Subject to Certificate of Need

Acquiring Equipment

- The CON program should maintain a review of all scanners, new technology, and non-hospital-based linear accelerators.
- The CON program should be modified to create an expedited procedure both in process and timeline for the review of the acquisition of new imaging equipment.
- The CON program should clarify that the current exemption applies to the replacement of equipment previously acquired through the CON process, including any scanner currently in operation that will be replaced by any other type of scanner.
- The CON program should expand the current exemption applied to the replacement of scanners to all equipment previously approved through CON, with notice to the Office of Health Care Access (OHCA).

Initiating Services/Increasing Capacity

- The CON program should maintain review of (1) New Hospitals; (2) New Specialty Hospitals; (3) New Freestanding Emergency Departments; (4) New Outpatient Surgical Facilities; (5) New cardiac services; and add (6) required review of two or more operating rooms in a three-year period.

Terminating Services

- The CON program should review terminations of (1) Hospital Emergency Departments; (2) Select hospital Inpatient Services; and (3) Hospital Mental Health/Substance Abuse Services.
- With respect to the termination of hospital outpatient services, the CON program should be modified to allow for the termination of certain outpatient services without CON review, such as physical or occupational therapy, sleep labs, diagnostic services, and/or multiple locations.
- The CON program should also review the termination of mental health/substance abuse services being proposed by entities other than hospitals.

Reduction of Services

- The CON program should not be modified to require CON review for the reduction of services.

Relocation of Services

- The CON program should allow the relocation of services within a reasonable geographic area without a CON review but with notice to OHCA.
- The CON program should allow for the relocation of services to an area with unmet needs through a state health planning process without a CON review but with notice to OHCA.

Transfer of Ownership

- The CON program should not have an inherent bias against any type of provider. It must treat all providers equally, and require the review of the transfer of ownership of a healthcare facility or certain large practices by any acquirer (e.g., a hospital, a hospital system, insurer, investor, and any other entity seeking to acquire ownership or control of such healthcare facility or certain large group practice.)

Conversions

- The CON program should maintain its current requirements for hospital conversions.

CON Application Review Criteria (OHCA CON Guidelines and Principles)

Application Criteria for Acquiring Equipment

- The first application criteria should be modified to assess whether the proposed project will serve Medicaid patients.

St.Vincent's Medical Center

Application for Reducing or Terminating Services

- The CON program should not be modified to require CON review for the reduction of services.

<u>CON Decision-Making Process</u>

Organization: Who Reviews Applications, Renders Decisions, and Provides Public Input – Opportunities for Consumer Participation in the CON Process

- With respect to the Subject Matter Experts Panel, the proposal needs to be more specific to ensure that the panel members are serving as consultants or advisors, and that their comments are advisory only. The proposal needs to be more specific as to how the expert for a specific application will be selected and clarify that the panel comprises a list of approved persons from whom OHCA may choose to seek expert advice, but that OHCA is not required to do so.
- The proposal should be modified to allow the applicant, upon request, to have input into the selection of the expert and to comment on the expert's review.

Appeals Process: Mechanism through Which the Public Can Appeal a CON Decision

- The CON program should not be modified to allow intervenors to appeal a CON decision. This would be a significant departure from the existing administrative process and may be legally problematic.
- The CON program should not be modified to allow the public at large to appeal a CON decision. This would be a significant departure from the existing administrative process and may be legally problematic.

Transparency: Methods of Informing the Public about Pending Applications and Consumer Access to Information

- The proposal would require the applicant to state that it has made reasonable efforts to expand public notification. The proposal should be modified to indicate there will be no adverse impact on the applicant if the applicant is not able to carry out the expanded notification due to factors beyond its control (e.g., Town hall won't allow copies to be placed at a site or removes them).

St. Vincent's Medical Center

CON Application Process

- The proposal for creating an expedited process should expand to cover the acquisition of imaging equipment.
- The proposal for creating an expedited process should expand to cover mental health and substance abuse facilities if they commit to serving Medicaid and other underserved populations.
- The proposal should be modified to require that all applications for terminations be handled through an expedited process of no more than 60 days.

CON Post-Approval Compliance Mechanism

- With respect to proposal 1, "willful" should not be removed from CGS 19a-653 (a) – lowering the threshold would unfairly punish healthcare facilities that are acting in good faith to comply.

CON Evaluation Methods

- The CON program should be expanded to allow OHCA the ability to consider the quality of services, provided such review is based on generally accepted, nationally recognized clinical best practices and guidelines.

St. Vincent's Medical Center appreciates the work of the CON Taskforce and looks forward to continuing to share our input with members of the taskforce, including sharing our own best practices and additional information about our efforts to transform our healthcare system and to work with them to do so within the State of Connecticut.

Thank you for this opportunity to share our thoughts on this important work.

TESTIMONY OF
Joseph Connolly
Regional Vice President
Marketing, Communications &
Connecticut Government Relations
Trinity Health-New England

SUBMITTED TO THE
CERTIFICATE OF NEED TASK FORCE
Thursday, December 15, 2016

Trinity Health-New England is honored to take this opportunity to submit written testimony on the Draft Recommendations of the Certificate of Need Task Force as presented today.

By way of background, Trinity Health-New England ("TH-NE") is a regional health ministry which includes both Saint Francis Hospital and Medical Center, Inc. and Mount Sinai Rehabilitation Hospital, Inc., in Hartford, Saint Mary's Hospital, Inc., in Waterbury, Johnson Memorial Hospital, Inc., in Stafford Springs and The Mercy Hospital, Inc., in Springfield, Massachusetts. In addition, our ministry includes physician practices, a behavioral health hospital in Massachusetts, home health and various post-acute care services. We are more than 13,000 health care providers committed to providing compassionate care and improving the health of our community. We are also part of Trinity Health, a nationwide ministry with more than 90 hospitals, making us one of the largest health care ministries in the United States.

We believe the Certificate of Need ("CON") process plays an important role in regulating healthcare services throughout this state. CONs safeguard the public's need for access to high quality health services, prevent unnecessary duplication of services and guide the deployment of healthcare resources in a financially responsible way. We believe that the CON process and our cooperative and mutually respectful partnership with OHCA have served our ministry and, therefore, our communities well.

As a result, we concur with a number of the Task Force's recommendations to support existing CON regulations currently in place. We feel that maintaining the current CON process on a number of recommendations is appropriate. This would apply to the acquisition of equipment, reduction of services, relocation of services and termination of services to name a few. The existing Twelve OHCA Guidelines and Principles - §19a-639(a) have worked successfully for us in the past as we became TH-NE and continue to guide our journey going forward. Making these processes more complex would provide no additional benefit and significantly may impair our ability to meet our community's needs.

We acknowledge that there are always opportunities for improving the process and expediting decision making. In today's healthcare market, rapid change and flexibility are becoming the new norm. During these times of limited resources, an expedited process could be of benefit to all concerned. For example, the development of an expedited CON process for the establishment of new facilities or services or increasing capacity if the service/facility is located in a "high need" area, and for the termination of services due to a loss of physicians is of great merit. In addition, TH-NE embraces those recommendations that the main intent is to expedite the CON process.

TH-NE believes that the current CON process has been of great value, but there are several areas that can be improved. The first is the termination of services of which TH-NE is in agreement that the current process can be further refined by identifying select inpatient/outpatient services. The second is expanding the transfer of ownership oversight beyond just a hospital as the acquirer. The recommendations listed in the CON decision-making process related to review of the application and rendering decisions are ones that TH-NE may be open to if we had a better understanding of each of these alternatives and how they may be an improvement to the process we have had confidence in. The recommendation for the CON post approval compliance mechanisms that TH-NE considers an improvement would be the alignment of the OHCA and DPH licensing division inspection and monitoring activities. We believe that this recommendation would help to expedite and better coordinate the process.

We at Trinity Health-New England believe that the recommendations aforementioned will maintain the elements of the current system that work well, while taking advantage of opportunities for improvement.

Thank you again for this opportunity and we trust that you will give our comments serious consideration.

TESTIMONY OF
Yale-New Haven Health System
SUBMITTED TO
THE CERTIFICATE OF NEED TASKFORCE
THURSDAY, DECEMBER 15, 2016

Yale New Haven Health (YNHHS) appreciates this opportunity to submit comments on the draft recommendations of the Certificate of Need (CON) Taskforce.

With the significant transformation of the health care system, YNHHS, and our affiliates, Bridgeport, Greenwich, Lawrence & Memorial, Yale-New Haven and Westerly Hospitals, along with our medical foundation, North East Medical Group, continue to focus on access to high quality health care and the well-being of every Connecticut citizen. Together with our nearly 25,000 employees, YNHHS provides care to 35 percent of the people insured by Medicaid.

In concurrence with the Connecticut Hospital Association, we urge the Taskforce to embrace the principles they have outlined in their testimony. They are:

- *The CON program must not discriminate against any specific type of provider or other organization in the healthcare industry and must treat all of these organizations equally.*
- *The CON program must strive to ensure that all providers treat underserved populations, Medicaid recipients, and medically indigent persons.*
- *The CON program is not the regulatory vehicle to be used to analyze and investigate the cost of healthcare. The Lt. Governor's Healthcare Cabinet is the appropriate group to develop recommendations with respect to the cost of healthcare.*

With respect to the specific proposals as outlined in the December 5, 2016 document, we respectfully urge the following:

Actions Subject to Certificate of Need

Acquiring Equipment

- The CON program should maintain a review of all scanners, new technology, and non-hospital-based linear accelerators.
- The CON program should be modified to create an expedited procedure both in process and timeline for the review of the acquisition of new imaging equipment.

- The CON program should clarify that the current exemption applies to the replacement of equipment previously acquired through the CON process, including any scanner currently in operation that will be replaced by any other type of scanner.
- The CON program should expand the current exemption applied to the replacement of scanners to all equipment previously approved through CON, with notice to the Office of Health Care Access (OHCA).

Initiating Services/Increasing Capacity

- The CON program should maintain review of (1) New Hospitals; (2) New Specialty Hospitals; (3) New Freestanding Emergency Departments; (4) New Outpatient Surgical Facilities; (5) New cardiac services; and add (6) required review of two or more operating rooms in a three-year period.

Terminating Services

- The CON program should review terminations of (1) Hospital Emergency Departments; (2) Select hospital Inpatient Services; and (3) Hospital Mental Health/Substance Abuse Services.
- With respect to the termination of hospital outpatient services, the CON program should be modified to allow for the termination of certain outpatient services without CON review, such as physical or occupational therapy, sleep labs, diagnostic services, and/or multiple locations.
- The CON program should also review the termination of mental health/substance abuse services being proposed by entities other than hospitals.
- The CON program should be expanded to allow closure of very low volume inpatient and outpatient services with notification of OHCA.

Reduction of Services

- The CON program should not be modified to require CON review for the reduction of services.

Relocation of Services

- The CON program should allow the relocation of services within one's primary service area without a CON review and with notice to OHCA.
- The CON program should allow for the relocation of services to an area with unmet needs through a state health planning process without a CON review and with notice to OHCA.

Transfer of Ownership

- The CON program should treat all health care providers and organizations equally, and require the review of the transfer of ownership of a healthcare facility or certain large practices by any acquirer (e.g., a hospital, a hospital system, insurer, investor, and any other entity seeking to acquire ownership or control of such healthcare facility or certain large group practice.)

Conversions

- The CON program should maintain its current requirements for hospital conversions.

CON Application Review Criteria (OHCA CON Guidelines and Principles)

Application Criteria for Acquiring Equipment

- The first application criteria should be modified to assess whether the proposed project will serve Medicaid patients.

Application for Reducing or Terminating Services

- The CON program should not be modified to require CON review for the reduction of services.

CON Decision-Making Process

Organization: Who Reviews Applications, Renders Decisions, and Provides Public Input – Opportunities for Consumer Participation in the CON Process

- With respect to the Subject Matter Experts Panel, the proposal needs to be more specific to ensure that the panel members are serving as consultants or advisors, and that their comments are advisory only. The proposal needs to be more specific as to how the expert for a specific application will be selected and clarify that the panel comprises a list of approved persons from whom OHCA may choose to seek expert advice, but that OHCA is not required to do so.
- The proposal should be modified to allow the applicant, upon request, to have input into the selection of the expert and to comment on the expert's review.

Appeals Process: Mechanism through Which the Public Can Appeal a CON Decision

- The CON program should not be modified to allow intervenors to appeal a CON decision. This would be a significant departure from the existing administrative process and may be legally problematic.

- The CON program should not be modified to allow the public at large to appeal a CON decision. This would be a significant departure from the existing administrative process and may be legally problematic.

Transparency: Methods of Informing the Public about Pending Applications and Consumer Access to Information

- The proposal would require the applicant to state that it has made reasonable efforts to expand public notification. The proposal should be modified to indicate there will be no adverse impact on the applicant if the applicant is not able to carry out the expanded notification due to factors beyond its control (e.g., Town Hall won't allow copies to be placed at a site or removes them).

CON Application Process

- The proposal for creating an expedited process should expand to cover the acquisition of imaging equipment.
- The proposal for creating an expedited process should expand to cover mental health and substance abuse facilities if they commit to serving Medicaid and other underserved populations.
- The proposal should be modified to require that all applications for terminations be handled through an expedited process of no more than 60 days.

CON Post-Approval Compliance Mechanism

- With respect to proposal 1, "willful" should not be removed from CGS 19a-653 (a) – lowering the threshold would unfairly punish healthcare facilities that are acting in good faith to comply.

CON Evaluation Methods

- The CON program should be expanded to allow OHCA the ability to consider the quality of services, provided such review is based on generally accepted, nationally recognized clinical best practices and guidelines.

Together with CHA, we look forward to working with Lieutenant Governor Wyman and members of the Taskforce. Thank you for your consideration of our position.

STATEMENT

of the

American Medical Association

to the

Connecticut Certificate of Need (CON) Task Force

RE: Certificate of Need (CON) Task Force Draft Recommendations, December 15, 2016

The American Medical Association (AMA) appreciates the opportunity to provide comments regarding the Certificate of Need (CON) Task Force Draft Recommendations. The AMA strongly supports and encourages competition between and among health care providers, facilities and insurers as a means of promoting the delivery of high quality, cost effective health care and providing patients with more choices for health care services and coverage that stimulates innovation and incentivizes improved care, lower costs and expanded access. Because CON programs restrict competition, the AMA consistently advocates for CON program repeal.

I. CON programs and their failure to achieve stated goals.

The advocates of CON program frequently claim that CON programs as necessary to control health care costs and/or improve health care quality and access. The great weight of the evidence shows that CON has failed to achieve these goals.

A. CON does not control health care costs, and, in fact, may increase health care costs.

There is a compelling body of peer-reviewed academic research spanning over many years, as well as numerous state legislative-commissioned CON studies, demonstrating that CON programs have failed to achieve their purported purpose—to restrain health care costs. In fact, some studies have concluded that CON programs have actually increased health care costs. Going only as far back as 1998, two noted public policy scholars from Duke University, Christopher Conover and Frank Sloan, published a study that examined the purported cost-control claims of CON over a twenty-year period and focused on whether CON repeal led to increased health care costs. The study concluded that "[t]here is no evidence of a surge in acquisition of facilities or in costs following removal of CON regulations."[1] Likewise, another review of CON research concluded that "[a]t a minimum, it seems fair to conclude that direct CON effects on costs are not negative."[2]

[1] Christopher J. Conover & Frank A. Sloan, *Does Removing Certificate-of-Need Regulations Lead to a Surge in Health Care Spending?* 23 Journal of Health Policy and Law 3, 455-81 (1998).
[2] David S. Salkever, Regulation of Prices and Investment in Hospitals in the United States, in Handbook of Health Economics 1527 (Culyer & Newhouse eds., Elsevier Science vol. 1B, 2000).

Similarly, in 2000 a noted CON economist, Michael Morrisey, PhD, stated that:

> [CON] has attracted many empirical studies. They find virtually no cost containment effects. However, they do show higher profits and restricted entry by for-profit hospitals, hospital systems, and contract management firms. The rather exhaustive literature on CON yields virtually no evidence that it has controlled health care costs.[3]

Dr. Morrisey's article also found that "[t]he [CON] mechanism serves to prevent or delay the entry of new sources of supply. The empirical evidence suggests that as a result of CON, hospital costs are no lower and may be higher. Prices are higher."[4] Another study by Dr. Morrisey, along with David Grabowski, PhD and Robert Ohsfeldt, PhD, stated that "[s]tate legislators have little to fear in the way of cost consequences from the repeal of CON laws. […] CON laws are not an effective means of limiting Medicaid expenditures."[5] Another article in 2007 found that "CON laws had a positive, statistically significant relationship to hospital costs per adjusted admission."[6] Still more recent researched, published in 2013, in Medical Care Research Review, concluded that:

> [S]tates that dropped CON experienced lower costs per patient for [certain cardiac procedures]. Average Medicare reimbursement was lower […] in states that dropped CON. The cost savings from removing CON regulations slightly exceed the total fixed costs of new [cardiac surgery] facilities that entered after deregulation.[7]

In addition to the findings of this peer-reviewed evidence, a litany of state CON studies demonstrates that CON not only does not control costs, but may actually increases costs. A 2007 report from the Lewin Group, entitled *An Evaluation of Illinois' Certificate of Need Program*, concluded that "review of the evidence indicates that CONs rarely reduce health care costs, and on occasion, increase costs in some states."[8] In 2006, Georgia State University provided a report to the Georgia Commission on the "Efficacy of the Certificate of Need Program" pursuant to a request from the state legislature, which created the commission. This report stated that "[a]cross all markets, states ranked as having the most rigorous CON regulation have statistically significantly less competition than non-CON states" and that "[l]ower levels of competition are associated with higher

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[3] Michael A. Morrisey, *State Health Care Reform: Protecting the Provider*, *in* American Health Care: Government, Market Processes, and the Public Interest 243-66 (Roger D. Feldman ed., Transaction Publishers 2000).
[4] Id.
[5] David C. Grabowski, Robert L. Ohsfeldt, & Mark A. Morrisey, *The Effects of CON Repeal on Medicaid Nursing Home and Long-Term Expenditures*, 40 Inquiry 2, 146-57 (2003).
[6] Patrick A Rivers, Myron D. Fottler & Mustafa Z. Younis, Abstract, Does Certificate of Need Really Contain Hospital Costs in the United States? 66 Health Education Journal 3, 229-44 (Sept. 2007).
[7] Vivian Ho & Meei-Hsiang Ku-Goto, abstract, State Deregulation and Medicare Costs for Acute Cardiac Care, 70 Medical Care Research Review 2, 185-205 (Apr. 2013).
[8] The Lewin Group, An Evaluation of Illinois' Certificate of Need Program, State of Illinois, Commission on Government Forecasting and Accountability, February 2007.

costs."[9] It also found that "CON regulation is associated with higher private inpatient costs" and that "increased CON rigor is associated with higher costs."[10] Another 2006 study performed by the Missouri Senate Interim Committee on Certificate of Need stated that CON "acts as an artificial barrier to entry, stifling competition and innovation in the healthcare market" and "[n]ot only does this lead to higher healthcare costs but it also limits patient choice."[11] Further, a 2003 Michigan CON study found that "[t]here is little evidence that CON results in a reduction in costs and some evidence to suggest the opposite,"[12] while a 1999 Washington State CON study reached a similar conclusion, stating that "[t]he weight of the research evidence shows that CON has not restrained overall per capita health care spending."[13]

There are additional academic and peer reviewed sources that can be cited demonstrating that CON programs have either failed to control, or have actually increased, health care costs. However, an article published in the economics journal *Inquiry* in 2003 may have summed it up best when it stated that "[s]tate legislators have little to fear in the way of cost consequences from the repeal of CON laws."[14]

B. CON is not an effective quality improvement mechanism.

Because CON programs have utterly failed to control health care costs, some CON proponents have tried to support CON programs by claiming that CON can promote quality. However, these quality claims have also been closely examined, and the results are, *at best*, inconclusive. For example, the previously-cited Georgia CON study legislative study stated that while "[t]here is considerable variation on a number of dimensions of quality across markets […] there is no apparent pattern with respect to [CON] regulation and no statistical correlation."[15] The Lewin Group report similarly concluded that, concerning the ability of CON laws to increase the quality of care:

> [E]ven the strongest supporters of maintaining the program agree that the area where CON can directly influence quality is narrow […]. CON laws' impact on quality and care is limited.[16]

The Washington State Joint Legislative CON study discussed above likewise found that "[t]he evidence is weak regarding the ability of CON to improve quality by concentrating

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[9] Glenn M. Landers, Bernette Sherman, Mei Zhou, with William Custer and Pat Ketsche, *Report of Data Analyses to the Georgia Commission on the Efficacy of the Certificate of Need Program*, for the Georgia Commission on the Efficacy of the Certificate of Need Program, October 2006.
[10] Id.
[11] Report of the Senate Interim Committee on Certificate of Need, State of Missouri, Senate Interim Committee on Certificate of Need, December 2006.
[12] Christopher J. Conover and Frank A. Sloan, Evaluation of Certificate of Need in Michigan, Final Report, Duke University, Center for Health Policy, Law, and Management, March 2003.
[13] Effects of Certificate of Need and Its Possible Repeal, Washington State Joint Legislative Audit and Review Committee, January 1999.
[14] Supra, note 5.
[15] Supra, note 8.
[16] Supra, note 7.

volume of specialized services."[17] Similarly, the comprehensive 1998 Duke University CON study by Conover and Sloan stated that "[i]t is doubtful that CON regulations have had much effect on quality of care, positive or negative."[18] Another Conover and Sloan study, which was commissioned by the Michigan Department of Community Health in 2003 to evaluate Michigan's CON program, concluded that:

> Research findings are inconclusive regarding the ability of CON to improve quality by concentrating volume of specialized services at certain facilities. Evidence is mixed regarding CON's effect on the market share of for-profit providers and any resulting impacts on quality.[19]

This study added that "[i]t may make little sense to rely on CON to carry out quality assurance functions that might be better approached by more direct and cost effective means such as regulation and licensing and/or outcome reporting to the public."[20]

More recent studies continue to demonstrate that CON programs are not quality-effective. For example, the authors of a 2016 study of CON and cardiac care wrote: "[W]e find no evidence that cardiac CON regulations lower procedural mortality rates for [cardiac surgery] interventions."[21] A November 2016 study of CON and its relationship to all-cause mortality found that CON programs have no statistically significant effect on all-cause mortality. Point estimates indicate that if they have any effect, they are *more likely to increase mortality than decrease it*.[22] (Emphasis added).

C. CON does not improve access to care.

There is little evidence that CON positively affects access to care. For example, the 2003 Conover and Sloan Michigan CON study found that "CON has a limited ability to impact the overall cost of health care or to address issues raised by care for the uninsured and underinsured."[23] The Georgia legislative commission study found that CON's effect on access was no more than "mixed."[24] The Washington State CON study concluded that not only had Washington's CON law "had no effect on improving access," but "[i]n some instances, CON rules are used to restrict access by preventing the development of new facilities."[25]

CON programs can also impair patient access by reducing the availability of medical providers, according to January 2016 study, published by the George Mason University.

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[17] Supra, note 12.
[18] Supra, note 1.
[19] Evaluation of Certificate of Need in Michigan, A Report to the Michigan Community Department of Health, Christopher J. Conover, Pd.D., and Frank A. Sloan, Pd.D. (2003).
[20] Id.
[21] Vivian Ho, Meei-Hsiang Ku-Goto, & James G. Jollis, *Certificate of Need (CON) for Cardiac Care: Controversy over the Contributions of CON*, 44 Health Services Research 2, 483-500 (Apr. 2009).
[22] James Bailey, The Effect of Certificate of Need Laws on All-Cause Mortality, Health Services Research (Nov. 2016).
[23] Supra, note 18.
[24] Supra, note 8.
[25] Supra, note 12.

This study found that CON laws reduce the overall number of medical providers, suggesting less availability of imaging services in CON states, and that residents of CON states are more likely to travel out of state to obtain imaging services than are residents of non-CON states.[26] Also, by delaying facilities from offering the most advanced equipment to patients and staff (because obtaining CONs for new technology may take upward to 18 months), CON "reportedly affect[s] providers' ability in some states to recruit top-tiered specialist physicians."[27]

II. Competition, not CON, is the right prescription to controlling costs, improving health care quality and access.

Competition, not CON programs, is the right prescription for lowering health care costs, improving health care quality, increasing patient access to health care physicians, providers and services and fostering the development and implementation of innovative alternatives to integrated delivery systems (IDS)—alternatives that will benefit patients. In addition to their failure to control costs, increase quality and improve patient access, CON programs can stifle competition by protecting incumbent hospitals and IDS from competition. One state study found that:

> CON acts as an artificial barrier to entry stifling competition and innovation in the healthcare market. The onerous cost and process of undergoing CON review has a distinct chilling effect on those seeking to undertake modernization, specialization and efficiency in healthcare.[28]

Recent research has also noted that while "hospitals initially had mixed views about the benefits of CON, but banded together to support the process after realizing it was a valuable tool to block new physician-owned facilities."[29] This research is supported by a 2016 finding that "CON laws are negatively associated with services provided by nonhospital providers, but not with services by hospital providers."[30]

CON's effect of insulating hospitals and integrated delivery systems from competition reduces the incentive of hospitals to compete on cost and quality factors such as the hospital's level of investment in modernizing and maintaining its physical plant and equipment, the quality and experience of the nurses and other professionals who practice there and the resources it makes available to physicians.

Protecting hospitals and IDS from competition reduces the incentive of hospitals to compete on these factors, allowing incumbent hospitals and IDS to provide potentially sub-optimal care for patients. By restricting the entry of competitors, such as physician-

[26] Thomas Stratmann & Matthew Baker, Are Certificate-of-Need Laws Barriers to Entry? How They Affect Access to MRI, CT, and PET Scans, working paper, Mercatus Center, George Mason University (Jan. 2016).
[27] Tracy Yee et al., *Health Care Certificate-of-Need Laws: Policy or Politics?* Research Brief 4, National Institute for Health Care Reform (May 2011).
[28] Supra, note 11.
[29] Supra, note 27.
[30] Supra, note 26.

owned facilities, CON laws have weakened the market's ability to contain health care costs, undercut consumer choice and stifled innovation. Facilitating competitive entry into hospital and IDS markets is the best means of ensuring that patients reap the many benefits of competition.

One crucial means of facilitating entry is to eliminate, or at least restrict, CON, which is a significant barrier to entry into hospital markets. According to the National Conference of State Legislatures, the existing CON programs concentrate activities on outpatient facilities because these tend to be freestanding, physician-owned facilities that constitute an increasing segment of the health care market.[31] Many of these physician-owned facilities are ambulatory surgical centers (ASC) that, as a class of provider, have been found in numerous studies of quality to have complication rates that are low and patient satisfaction rates that are high.[32] For example, a recent study published in *Health Affairs* concluded that ASC "provide a lower-cost alternative to hospitals as venues for outpatient surgeries."[33] Instead, CON has taken on particular importance as a way to claim territory and to restrict the entry of new competitors. It should go without saying that competition requires competitors. By restricting the entry of competitors, such as physician-owned facilities and services, including but not limited to ASCs, CON laws have weakened the market's ability to contain health care costs, undercut consumer choice and stifled innovation, such as the creation of value-based payment initiatives.

There is another strong overriding policy reason for eliminating or restricting CON so as to encourage the entry and development of competitive alternatives to IDS. One of the most important ways to reduce healthcare costs is to prevent the need for hospitalizations through more effective prevention programs, early detection, improved chronic disease management and other proactive measures. These programs are achieved primarily or exclusively through the actions of physician practices, not by hospitals themselves. Moreover, to the extent that these initiatives are successful, they will not only reduce the hospitals' revenues, but they may have a negative impact on the hospital's margins, assuming hospital revenues decline more than their costs can be reduced. Thus, when CON protects hospital owned IDS from competition, the hospital may be more likely to resist physician efforts to reduce the need for hospitalizations.

III. Conclusion.

The AMA greatly appreciates the opportunity to provide comments regarding the Certificate of Need (CON) Task Force Draft Recommendations. A wealth of studies show that CON has failed to achieve its goals, whether those goals pertain to cost control, quality of care or patient access to care. In fact, by insulating incumbent hospitals and IDS from competition by physician-led and other initiatives, CON has fostered price increases, limited patient choice and stifled innovation at a time when it is universally

[31] See National Conference of State Legislatures, Certificate of Need: State Health Laws and Programs (July 2014), available at: http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx.
[32] *See* L. Casalino et al., "Focused Factories? Physician-owned Specialty Facilities", *Health Affairs* (Millwood) 2003; 22(6): 56-67.
[33] See Munnich and Parente, "Procedures Take Less Time at Ambulatory Surgery Centers, Keeping Costs Down and Ability to Meet Demand Up," Health Affairs (Millwood) 2014, 33(5): 764-769.

recognized the swift development of innovations, such as value-based purchasing initiatives, is imperative. Further, even if there were a time when CON had effectively addressed excess supply issues, the shift to value-based purchasing now obviates CON, particularly given CON's anticompetitive effects. The AMA therefore urges that any Connecticut CON program be structured so that it does not inhibit in any way entry by physician-led and other potential hospital competitors into hospital or IDS markets.

Connecticut State Medical Society
FOUNDED IN 1792

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Comments on Recommendation of the Certificate of Need Task Force
December 15, 2016

Lieutenant Governor Wyman and members of the Certificate of Need Task Force, on behalf of the physicians and physicians in training of the Connecticut State Medical Society (CSMS) and the members of the undersigned organizations, we submit these comments to you today in response to draft recommendations of the Task Force.

We must first express our strong opposition to the Certificate of Need (CON) process as a whole. In a day and age when most states have dropped the use of CON, and even the Federal Trade Commission (FTC) has expressed its concern with CON processes and their anti-competitive nature, we are baffled that Connecticut continues to cling to this outdated concept. CSMS continues to oppose the CON for any reason and believes it should be eliminated, for all services, including the acquisition of imaging equipment, and especially for the delivery of office based procedures. The CON stifles competition, hinders the natural progression of healthcare services and has been a significant factor in our inability to recruit and retain physicians. This is further supported in comments contained within the recommendations under the section ***Proposed Goals of the Certificate of Need Program.*** Among other statements identifying the ineffectiveness of CON programs, the report clearly states that "there is also a lack of evidence to show that CON programs, as they are currently implemented, improve quality or access to health care services." With that said, we have reviewed the proposed recommendations of the Task Force and comment on them specifically.

Regarding the acquisition of equipment several options are proposed. Again, we must be very clear that we do not support the need for a CON for acquisition or transfer of any imaging equipment at any cost. However, the closest recommendation to this position would be Option 2. Alternative 2a, "Eliminate CON review of equipment acquisitions (no restricting of self-referrals)." We see no need for language limiting self-referrals for two reasons. First, referrals within the healthcare system would continue to be regulated by federal "Stark Laws." Second, the recommendation would have a significant impact on smaller practices from "referring" for services to entities under their control. In many situations, these services are more efficient and cost-effective than those provided by larger entities. Limiting of the providers of these services has a significant potential to increase costs. Furthermore, in a situation where several large health care institutions have now vertically integrated from the primary care level to the most complex tertiary care and control health care markets in regional monopsonies, the definition of self-referral becomes very difficult to apply.

As for initiating services/increasing capacity, we again oppose the need for any CON. However, should the Task Force continue to recommend keeping its use, Option 1b would be most acceptable as it would remove the need for a CON for Outpatient Surgical Facilities. CSMS advocated strongly against the establishment of a CON for these facilities. Unfortunately, the legislature decided in 2003 to establish such a requirement. This has resulted in an increased difficulty for physicians to remain independent, as well as the proliferation of costly facility fees burdening patients.

As for the termination, reduction of services, and relocation of services, we once again question the need for a CON. There is no doubt that the aforementioned large healthcare institutions can have a significant impact on communities when the decision to terminate, reduce or relocate is made. We agree that some form or state oversight is necessary to ensure a continuity of care is afforded to patients.

However, a process that could force entities to remain in situations in which there is no viability would exacerbate the problem. Rather than the heavy-handed use of the CON, the state should continue efforts to identify the causes of access problems.

The entire section related to the decision making process raises significant concern for us. Our understanding at the onset of the establishment by the Governor of this Task Force was that the charge was to review current CON laws and offer recommendations regarding efficiency, effectiveness, and cost implications. Yet several proposals, particularly those in this section, seem contrary to this charge. The establishment of "expert panels" to review CON proposals at cost to the applicant opens an unlimited universe of those who may challenge a CON, and with unfettered ability to do so, will guarantee that the CON process continues to stifle progress.

Finally, we are significantly concerned that discussion regarding the Certificate of Need has extended into the realm of evaluating "quality." This clearly shows that members of the Task Force have extended its intent in an attempt to address issues clearly outside its purview. Quality has proven to be a term in medicine that defies definition in a practical sense. Yet it is an area in which multiple efforts at regulation and oversight of "quality" have been made by various agencies. Attempts to regulate in this area have thus far been major sources of inefficiency and frustration for those attempting to care for our citizens and have undermined the credibility of the agencies involved.

Unfortunately, while this task force was established to promote a system to encourage competition, the majority of the proposed recommendations will do exactly the opposite.

CT Chapter of the American College of Surgeons
CT ENT Society
CT Orthopaedic Society
CT Society of Dermatology and Dermatologic Surgery
CT Society of Eye Physicians
CT Society of Urology

From: Lawrence Lazor [mailto:llazor@starlingphysicians.com]
Sent: Monday, December 12, 2016 1:51 PM
To: CONTaskForce <CONTaskForce@ct.gov>
Subject: Surgery Centers

The healthcare field is changing quickly. Costs are too expensive (20% of the GDP) and this is influencing where people want to work and what discretionary money they have left for their families. Outpatient surgery is an important part of healthcare costs. Private companies that manage outpatient surgery centers and physicians that manage centers themselves have done so at a much lower cost, higher patient satisfaction and lower risks. Please do not take away the ability of physicians to take charge of centers. Insurance companies are already noticing these benefits and making incentives for physicians and patients to stay out of hospital based systems and into free standing surgery centers. This will keep CT competitive and health care costs down. If you have questions, my cell is 860-833-4113, LLazor@Starlingphysicians.com. Best Dr Lawrence Lazor

12/15/2016

CON Task Force
State of Connecticut

Re: Certificate of Need Program

Dear Task Force members:

I write to you in support of the current CON process regarding the purchase and installation of new, advanced imaging equipment. The underlying premise of the CON process is to ensure the highest quality of service while maintaining or improving access to care with cost containment. The current process has achieved these goals, and eliminating this process will undoubtedly result in a decrease in the quality of care. This will indirectly lead to an increase in healthcare costs.

The current process restricts the number of advanced imaging scanners based on current utilization and the need, if any, to improve access to imaging. The effect of this process has limited such capital purchases almost entirely to hospitals and to board certified radiologists, either in the private setting or in conjunction with a hospital system. As such, these scanners are maintained and utilized according to the standards of the American College of Radiology (ACR). The ACR certification process is required for all advanced imaging equipment and ensures the highest quality and safety standards for patients. Additionally, radiologists, trained specialists in imaging, must also demonstrate continued education and training as part of the accreditation process. Radiologists not only provide expert interpretation of these studies but also supervise the quality of the scanners, technologists, and exam protocols. We also function as gatekeepers for this technology, ensuring the appropriate exam is selected for any given clinical situation.

Without the CON law, the floodgates will be opened, allowing anyone to purchase and install advanced imaging equipment in the state of Connecticut. While this may seem to be a benefit due to increased competition, it will actually result in a greater potential for harm to the residents of our state. Without barriers to the purchase and installation of advanced imaging equipment, new machines will be purchased by non-radiologists, leading to self-referral. Self-referral will result in inappropriate utilization. Unnecessary or inappropriate studies will be ordered and performed leading to a waste of healthcare dollars. Additionally, these new systems will not need to undergo the rigorous accreditation process implemented by the ACR. The result of this will be a decrease in image and exam quality, potentially resulting in misdiagnosis. This in turn could result in additional, unnecessary testing or treatment, further wasting critical healthcare dollars.

Furthermore, in our practice area, there is no limitation to access of care. The patients we serve have no issue in scheduling an exam within an acceptable time frame. There is availability in our

schedules to accommodate many more patients, also with the option for weekend appointments that has not been necessary to this point in our practice. I cannot confirm if this is true throughout all radiology practices within the state but I suspect, if surveyed, this may hold true almost universally. I suspect that access to care is currently a non-issue.

Competition in business and medicine can enhance quality as long as this competition occurs between similar competitors, each adhering to the same rules. If one competitor is not required to follow certain regulations, such as those provided by the ACR, then quality can and likely will decrease. If one competitor is allowed to order exams that may be unnecessary or inappropriate, cost containment measures will no longer apply. The current CON process has worked to ensure high quality, cost-effective care. The loss of the program will have deleterious effects for our patients.

Sincerely,

Christopher Leary, MD
Chairman, Dept. of Diagnostic Imaging
Bristol Hospital, Bristol, CT
President
Radiologic Associates, P.C.

From: Maria Mirth [mailto:maria.mirth@sbcglobal.net]

Sent: Thursday, December 15, 2016 10:44 AM

To: CONTaskForce <CONTaskForce@ct.gov>

Subject: CON Task force comments

To Whom It May Concern,

As a physician who has been in practice for 26 years, and practiced in South Carolina for 13 years before returning to the northeast in 2005, I was surprised at the lack of Ambulatory Endoscopy and Surgery Centers. In addition, only a few actually charge ambulatory fee schedules, which saves money for the patients and state of CT employees. This is due to the difficult CON process. Now there is a 6% tax which further hinders any consideration of building these needed healthcare facilities. A group of private practice physicians recently looked at a business proposal to build such a center in central CT but the tax, CON process, and growing number of Medicaid patients put an end to the plan. I currently do not own any shares, and never had, in such centers. I simply want to give my patient a good financial option without compromising quality or safety, in the age of large deductible insurance plans.

Respectfully,

Maria Christina Mirth MD

RSC RADIOLOGICAL SOCIETY OF CONNECTICUT, INC.
A CHAPTER OF THE AMERICAN COLLEGE OF RADIOLOGY

53 Russ Street, 2nd Floor
Hartford, CT 06106
December 15, 2016

To Whom It May Concern:

My name is Thomas Farquhar. I am on the Executive Committee of the Radiological Society of Connecticut (RSC), whose membership includes over 300 radiologist physicians. Our members work in a variety of settings, from hospital radiology departments to physician-owned private practice outpatient offices, in communities across the state. I would like to offer public comment on the Certificate of Need (CON) Task Force's draft recommendations with specific attention to the acquisition of imaging equipment including review of scanners and new technology. My comments have the unanimous endorsement of the RSC Executive Committee, which met on Wednesday evening, December 14, 2016.

We support the goal of the Task Force to review the existing CON program and identify areas of improvement in efficiency, effectiveness, and alignment with state and federal health care reform efforts. At the same time, we believe the existing CON process for imaging ensures safeguards for quality and safety, controlling imaging costs, and serving the public need that should be maintained regardless of any modifications.

Through years of work, the existing CON process mandates patient protections that ensure medical personnel will be prepared in the event of a medical emergency or adverse reaction during a scan and to assure the safest use of radiation and radioactive materials. The citizens of the state of Connecticut benefit from these requirements and deserve to see them continue.

The existing CON process serves to control health care costs and elimination of CON requirements will lead to increasing costs. It is a misconception to assume that the market forces of supply and demand apply to health care (i.e. health care demand is fairly inelastic). Instead, competition in health care does not usually lead to lower costs because health care providers control supply and determine most demand, while patients lack adequate information to "shop" for health care based on price and quality. Moreover, patients do not pay, or even realize, the true cost of health care as it is paid by third-party payers. Although new health care reimbursement methodologies are moving from volume and "cost-based" systems to payment models based on value and quality, these new payment models are untested. They account for a very small minority of health plans, and we are years if not decades away from a health care system that has eliminated the incentives for health care providers to expand services regardless of demand. Until such time, the existing CON process serves to limit increasing health care costs.

One of the most specific ways the existing CON process limits health care costs from advanced imaging is by limiting self-referral – the practice of health care providers referring patients to imaging facilities in which they have an ownership interest. In following the proceedings of the CON Task Force, we know that Dr. Kaye has presented extensive documentation of that self-referral increases utilization, increases cost to consumers, limits access to the uninsured and underinsured, reduces quality of care, and restricts competition among providers in the market area. For example, one study showed that doctors who owned machines ordered 4 – 4.5 time more imaging tests than doctors who did not. Another study showed self-referring physicians employed diagnostic tests 1.7 to 7.7 times more frequently than physicians referring to radiologists, with charges being 1.6 to 6.2 times greater. Most recently, in 2012, The United States General Accounting Office released a Congressionally mandated report showing that self-referral of advanced imaging results in markedly increased volumes of scans and costs the Medicare and Medicaid programs billions of dollars. As a direct response to that report and the many similar studies over the years, President Obama called for passage of a law removing legal loopholes that permit self-referral. The Office of Management and Budget estimated that this measure would save the Medicare and Medicaid program $6 Billion over 10 years.

The CON Task Force has also been presented evidence that when states remove existing CON curbs on imaging equipment, the number of machines in service explodes. As health care dollars become increasingly scarce, we cannot afford to weaken one of the few limits on wasteful expansion of services. In fact, now may be the absolute right time to strengthen the CON laws with respect to acquisition of imaging equipment.

For these reasons, as physician experts in medical imaging, the Radiological Society of Connecticut opposes elimination of the CON process for advanced imaging acquisition and strongly advocates that any changes to the process strengthen protection against self-referral and maintain the existing guarantees for quality and safety.

Sincerely,

T Farquhar, MD, PhD

Thomas Farquhar, MD, PhD

Member, Executive Committee
Co-Chair, Legislative Committee
Radiological Society of Connecticut

Starling PHYSICIANS
Healthcare the way it should be

To: CONTaskForce@ct.gov

From: Starling Physicians, PC
Michael G. Genovesi, MD, President

Date: December 15, 2016

Subject: CON Task Force Draft Recommendations

Starling Physicians appreciates the opportunity to share our ideas about the CON Task Force Draft Recommendations. Starling Physicians is a 200+ member multispecialty physician group headquartered in Rocky Hill, created on January 1, 2016 as a result of the merger of the former Grove Hill Medical Centers and Connecticut Multispecialty Group. The two groups came together because their physician partners share a common interest in putting the patient – provider relationship first, both in terms of quality of care and value, and believed that their collective efforts would help them achieve that goal.

As we survey the landscape in our north/central CT service area, it's increasingly clear that facilities for outpatient procedural care (gastroenterology, ophthalmology, gynecology, imaging, etc.) are mostly owned by hospitals. That ownership structure leads to higher facility costs, because hospitals must, by necessity, spread the overhead costs of running a complex organization over all owned entities. In our experience, physician -owned outpatient facilities and diagnostic imaging centers are better positioned to deliver high quality care at much lower costs to payors and patients. Starling Physicians would appreciate the option to create outpatient procedural centers where we could provide care to our patients at much lower costs than we can now. Within that context, Starling Physicians offers the following observations on the sections of the Draft Recommendations addressing Initiating Service and Transfer of Ownership:

- We recommend lowering thresholds for new outpatient services initiated by non-hospitals, especially when local payors testify to anticipating lower costs to patients, employers and health plans.
- We believe that physicians groups like ours can create non-hospital owned facilities that deliver care of equivalent or enhanced quality to patients in settings that are more cost-effective and delivery better value to patients, employers and health plans. There are working examples of non-hospital-owned outpatient facilities in our community that already deliver high value, and more such facilities are needed to ensure that value is present in more cases.
- We support creating a level playing field for non-hospital entities that wish to acquire health care facilities and practices. Recent experience in our community has demonstrated that hospital acquisitions of outpatient facilities lead to increased prices while locking private investors out of the marketplace, thus preventing competition.
- Starling welcomes the state's support in scrutinizing acquisitions of outpatient facilities in order to create a more level playing field for physician practices organizations like ours to establishing facilities that deliver much better value for the healthcare dollar.

We would welcome the opportunity to discuss or elaborate upon any of the ideas we raise in this letter. We applaud the task force's efforts to revisit the CON legislation with the objective of providing high quality and more cost-effective options for patients and payors alike.

THE CONNECTICUT ASSOCIATION OF AMBULATORY SURGERY CENTERS' TESTIMONY ON DRAFT CERTIFICATE OF NEED RECOMMENDATIONS

The Connecticut Association of Ambulatory Surgery Centers ("CAASC" or "Association") appreciates this opportunity to comment on the draft Certificate of Need ("CON") recommendations that have been issued by the CON Task Force. We also wish to thank its members for the collaborative manner in which they are addressing this important aspect of health care regulation. The CAASC has had the privilege of working with the Connecticut Department of Public Health and other constituent groups on similar issues in the past, and we truly believe that open dialog is the best way to bring about positive change.

The members of our Association, which are defined under state statute as "outpatient surgical facilities", are proud to add to the fabric of the diverse health care delivery system in Connecticut by providing a high quality, lower cost alternative for same-day surgery and other procedures. In this rapidly changing and uncertain time for health care as a whole, Ambulatory Surgery Centers ("ASCs") remain committed to improving the experience of care for our patients as technological improvements and the need to control health spending shift increasingly more services to the outpatient setting.

While our industry can cite data which, for example, shows that the Medicare program and its beneficiaries share in more than $2.3 billion in savings each year when procedures are performed at ASCs as opposed to other outpatient surgical facilities such as hospital outpatient departments ("HOPDs"), it is important to point out that this is accomplished, in significant part, by the lower reimbursement paid to our facilities. Like other providers, we too are feeling constant downward pressure as we struggle to reconcile what we are paid from government-sponsored and private insurance plans, and the continually escalating costs associated with meeting consumer expectations, maintaining regulatory compliance, staffing, training and other operational expenses. Like acute care hospitals, ASCs in Connecticut also pay a significant provider tax, but unlike non-profit hospitals, our members also pay real estate, personal property and sales taxes as well.

It is through this perspective – as vital components of the modern-day delivery system that are also dealing with its challenges – that we offer our comments on the recommendations most directly affecting ASCs.

With respect to the recommendations concerning initiating services, we do not think rolling back CON to cover only the establishment of new hospitals, specialty hospitals and freestanding EDs

is the right path to take for ensuring that a high quality and stable health system is in place for Connecticut residents. Therefore, we would favor an approach that would subject not only those facilities to CON review, but maintain CON oversight for establishing new outpatient surgical facilities and the other key providers categories listed in Option 3 of the draft recommendations in this area. However, we do favor eliminating the CON requirement for adding two or more new operating rooms, to an existing facility, within a 3-year period as we think that this determination should ultimately be decided by patient choice and left to the purview of the individual providers who incur the financial risk of increasing their capacity in this manner.

As for continuing to require CON review for the termination of services at outpatient surgical facilities, this has not been a source of significant regulatory activity since the CON laws were amended a few years ago to include this provision. Accordingly, we see no reason why a more streamlined approach dispensing with this requirement should not be adopted. As for relocation of services or facilities, we favor adopting "notification only" requirements for relocations that occur within a reasonable geographic distance from the current location. The CAASC would also favor the same sort of notice only requirement for relocations to areas of unmet need that is determined through the state planning process.

With respect to the recommendations for transfers of ownership, we believe that CON regulation in this area is unnecessarily confusing and burdensome, so we do not support maintaining the status quo. If the Task Force is going to pursue Option 2 of the proposed recommendations in this area, the CAASC would favor changes that would clarify that notification to the Office of Health Care Access and possible CON approval for transfers of ownership in outpatient surgical facilities should only be required where a "change of control" as commonly defined (i.e., any change of ownership of more than 50% of the voting capital stock or interests changes hands) takes place. Transfers of minority interests in outpatient surgical facilities should be exempt from this requirement. Additionally, we also support expedited review of transfers of ownership in existing facilities.

The CAASC would not favor mechanisms that would allow intervenors to appeal a CON decision for many reasons, including that it could add years to an already prolonged regulatory process. As for the other proposed recommendations regarding CON application review criteria and the decision-making process, we stand ready to work with Task Force members to make improvements and achieve efficiencies in these areas as well.

Thank you again for this opportunity to address the draft Task Force recommendations.

COMMENT ON DRAFT RECOMMENDATIONS OF
THE GOVERNOR'S CERTIFICATE OF NEED (CON) TASKFORCE
December 14, 2016

Testimony of Cary S. Shaw,
Board Member of the Connecticut Coalition of Reason (CT CoR);
Patient's Right to Know Act Lead for the Secular Coalition for Connecticut (SC-CT); and
President of Humanists and Freethinkers of Fairfield County;

Who We Are

The Gallup Poll found, in its February 2016 report, that 39% of Connecticut's population describes themselves as non-religious (1). Some researchers would put that number significantly higher, as many people are afraid or shamed into not admitting their non-belief. CT CoR and SC-CT are the voices of this constituency, with organizations and independent individuals throughout the state.

The component organizations of the Connecticut Coalition of Reason have over 8,000 adherents, and include The Humanist Association of Connecticut; Connecticut Valley Atheists; the Congregation for Humanistic Judaism of Fairfield County; Hartford Area Humanists; Humanists and Freethinkers of Fairfield County; Atheist Humanist Society of Connecticut and Rhode Island; and the Yale Humanist Community.

We believe in a progressive life stance that, without supernaturalism, affirms our ability and responsibility to lead meaningful, ethical lives capable of adding to the greater good of humanity.

In my professional life, I developed a mathematical model for Yale Medical School and Yale-New Haven Hospital for use in surgically treating primary hyperparathyroidism. It tells the endocrine surgeon in real time when cure is achieved. This work is published in the peer-reviewed World Journal of Surgery (World J Surg (2014) 38:525-533). I add this so that you will know that I care about the proper use of evidence-based science to help patients.

Disclosure – Patient's Right to Know

We commend the Governor's CON Taskforce in taking the time and energy to develop recommendations to improve healthcare in Connecticut.

Improving competition in the healthcare environment, providing access to care for the underserved, and creating superior patient outcomes, are goals that are clearly enunciated by the CON Task Force, and which we support.

A meaningful component of any competitive environment is the provision of information to consumers, in this case the patients, in advance of the decision to purchase. Today a "health care provider" may choose, by policy, to refuse to provide "standard of care" medical procedures, claiming religious reasons, and to avoid informing potential and actual patients, not only that it does not provide these treatments, but even the fact that these treatments exist and are medically appropriate.

For example, a thorough examination of the websites of Connecticut's major religious hospitals reveals that none of them mention under the category of Services, or elsewhere, that there are medical services they will not allow to be performed.

We agree with the 2016 statement by the organization of ObGyn doctors, the American College of Obstetricians and Gynecologists (ACOG):
"ACOG is concerned that a growing number of U.S. health care systems and hospitals limit the scope of reproductive health care services that they provide.
…Women should have access to scientifically based health care. Prohibitions on essential care that are based on religious or other non-scientific grounds can jeopardize women's health and safety.
Restrictive hospital policies can damage the patient-physician relationship. In some instances, physicians are prohibited from informing patients about treatment options that are not permitted at the hospital, depriving patients of valuable information and the option of going elsewhere for treatment (if alternatives exist in the community)."

Some problems extend uniquely to men's health, such as removal of diseased reproductive tissue. And, in geographic areas where patients are especially vulnerable for financial and educational reasons, the impact is especially serious.

We recommend that a regulation be adopted to assure full disclosure, described as "Patient's Right to Know"; Model wording attached. This regulation does not in any way restrict a healthcare entity or cause it any material expense; it merely requires clear and upfront disclosure.

Precarious Position of Doctors

In the popular mind the term "healthcare provider" means a doctor or other medical person. Perniciously, the term may refer to an institution, controlled by an out-of-state healthcare conglomerate, which forbids its trained medical personnel from providing necessary and appropriate medical services.

As Dr. Amy Breakstone testified on the Emergency Contraception bill, which CT then passed into law:
"My concern is also for the medical provider….(Don't) continue to place those providers in the untenable position where following what they know to be correct medical protocol is to place their jobs in jeopardy. Too often emergency facilities must find 'a work

around' or a 'creative solution' in order to do what is medically right. Please provide these conscientious medical providers your support."

Transfers of Ownership

In Connecticut there not only is merger activity among hospital institutions, but the consolidation activity of larger institutions taking over smaller ones, such as surgical centers and doctor's practices. We fully support the Recommendation under "Actions: Transfers of Ownership: Option 1, bullet points 2,3,and 4:
-- Applying expanded CON review to hospital acquisitions of health care facilities and large group practices (cost and market impact review, mandatory public hearing, stronger application criteria, post-transfer compliance monitoring)
-- Applying expanded CON review to all hospital mergers and acquisitions (not only those involving for-profit entities and larger hospital systems, as under current law)
-- Imposing consequences for non-compliance with post-transfer conditions

And we request that such review specifically include examining any resultant termination, reduction or relocation of services, for non-medical reasons.

Other Recommendations

The Draft Recommendations of the Certificate of Need (CON) Taskforce contains many recommendations and alternatives. Among additional ones we especially support or wish to comment upon are:

--Under "Terminating Services" we recommend keeping in the Status Quo language "CON review of…surgical services at an outpatient surgical facility." If it is too onerous for OHCA (Office of Health Care Access) to monitor all such facilities, then the proper solution in our opinion is to add the caveat "terminating services for religious reasons."

--Actions: Reduction of Services: Support Option 2: apply to a hospital

--Actions: Transfers of Ownership (discussed above)

--Organization: Support 1b: include front-line caregivers…to serve…(as) experts.

--Public Input: Support Option 1, (not alternative 1a):
----- Requiring that the subject matter panel of experts includes consumer representation
----- Requiring that hospital acquisitions of other health care facilities and large group practices receive a mandatory public hearing

--Transparency: Support Option 1: Expand …methods of informing the public…

--CON Post-Approval Compliance Mechanisms: Support the strengthening (Options 1,2,4,5)

--CON Evaluation Methods: Option 2, Support that Plan tracks access to and cost of services across the state.

Summing Up

As Denise Merrill, now Secretary of the State, testified as an elected state Representative, "The women of Connecticut should expect that when they enter a hospital they are being provided with all legal healthcare options."

We ask that the Taskforce and Governor implement these ideas fully and clearly, without delay.

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Footnote:
(1) http://www.gallup.com/poll/125066/State-States.aspx

Attached:
Patient's Right to Know Model Act

Introduction

In the United States, religious hospitals account for more than 17 percent of all hospital beds, and religiously based hospitals, physicians, and other health care entities treat more than 1 in 6 Americans each year.

Current law allows these health care providers to opt out of providing medical services such as abortions, birth control, tubal ligation, hormone replacement therapy, and nearly any other treatment that conflicts with the provider's religious beliefs or the religious doctrine of the affiliated religious group. There are no state or federal laws or regulations that require health care providers to inform patients of services or treatments a provider will not provide because of the provider's religious beliefs.

The Patient's Right to Know Act, a proposed piece of legislation drafted by American Atheists, seeks to ensure that patients are able to make completely informed medical decisions about their health by requiring health care providers to disclose to patients and prospective patients exactly which types of medical care they do not provide because of their religious beliefs.

"This is about disclosure, not about forcing providers to do anything they have a religious objection to. If a religiously affiliated hospital or health care provider has some objection to a specific treatment, they can continue to opt out of providing those services. What they can't do is pull a bait and switch on patients and potential patients," said Amanda Knief, National Legal and Public Policy Director of American Atheists.

Model Patient's Right to Know Act Summary:

Reconciling patients' rights to know all their health care options with the desire of some health care providers to not provide certain care based on religious or philosophical beliefs.

This model act balances the religious liberty of health care providers with the basic health care rights of their patients.

This act requires that any health care provider who uses **religious beliefs** to determine patient care instead of standard medical guidelines and practices,

subsequently resulting s in any health care options being omitted or favored based on these religious beliefs, **to inform patients in writing** of health care services that are not available to the patients through this particular provider; **patients must provide signed consent acknowledging they have received this information.** Additionally, this act requires health care providers who use religious beliefs to determine patient care to inform health insurance companies of specific health care options that are not provided; health insurance companies will share that information with their enrollees and insured participants.

Section 1. (Title) This Act may be cited as the "Patient's Right to Know Act".

Section 2. (Definitions)

1. The term "clinical privileges" includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

2. The term "health care entity" means— a. A hospital that is licensed to provide health care services by the State in which it is located. b. An entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care. c. A licensed health care practitioner such as a doctor, physician, nurse, nurse practitioner, or other practitioner licensed to provide health care services by the State in which the practitioner is located.

3. The term "health care services" means inpatient hospital services, inpatient critical access hospital services, or extended care services; outpatient nursing services, outpatient diagnostic or therapeutic items or services, outpatient surgical or medical services, with a physician who has clinical privileges; any services provided by a physician or licensed health care practitioner; or private-duty nursing or other privateduty attendant duties.

4. The term "hospital" means an entity that is primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled,

or sick persons; maintains clinical records on all patients; and has bylaws in effect with respect to its staff of physicians.

5. The terms "licensed health care practitioner" and "practitioner" mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

6. The term "physician" means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

7. The term "State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

8. The term "religious beliefs" means any set of philosophical or religious beliefs, guidelines, decrees, directives, or other instructions determining patient care that is not based on legal, peer-reviewed, or scientifically accepted standards of health care, and may be imposed on health care entities through employment or clinical privileges.

Section 3.

Not later than 12 months after the effective date of this Act, a health care entity which does not provide certain health care services based on the religious beliefs of the entity shall adopt a policy that provides a complete list of health care services that will not be provided to patients of the health care entity, based on the entity's religious beliefs.

Prior to initiation of treatment or in the case of an emergency as soon as the patient is able or patient's representative is available, the health care entity which adopted such a policy shall provide a written notice to every patient that includes the list of services that will not be provided by the entity based on the entity's religious beliefs and requires the patient or patient's representative to acknowledge receipt of the notice and the list of services that will not be provided.

Section 4.

Not later than 12 months after the effective date of this Act, health care entities shall provide a complete list of any health care services the health care entity will not provide based on religious beliefs to all group health plan providers and health insurance issuers offering group or individual health insurance coverage from whom the health care entity seeks and accepts payments.

The health care entities shall prominently list on the entities' websites the health care services that will not be provided to patients based on the entities' religious beliefs and shall provide the list of health care services not provided based on the entities' religious beliefs upon request to any person.

Section 5.

Not later than 18 months after the effective date of this Act, group health plan providers and health insurance issuers offering group or individual health insurance coverage shall provide enrollees with a list of any health care entities within their network of health care providers that do not provide certain health care services based on religious beliefs and provide a list of health care services that will not be provided by each health care entity listed. Such information shall also be available on the providers' and issuers' websites.

Section 6.

Not later than 12 months after the effective date of this Act, a health care entity that does not provide health care services based on religious beliefs shall inform any State or Federal agency that licenses the health care entity of all health care services that are not provided. State and Federal agencies that enroll or otherwise oversee the application of health care entities into state or federal health care reimbursement programs shall amend the application process to include a requirement that health care entities disclose any health care services the entity does not provide based on the entity's religious beliefs.

Section 7.

Health care entities shall provide information about health care services that are not provided by the health care entities based on religious beliefs when applying for any State or Federal grant related to providing any kind of health care services. Written by Amanda Knief, Esq., August 2015.

UNIVERSAL HEALTH CARE
FOUNDATION OF CONNECTICUT

Public Comment on Draft Recommendations of the Certificate of Need Task Force

Lynne Ide, Director of Program and Policy
Universal Health Care Foundation of Connecticut
December 15, 2016

Universal Health Care Foundation of Connecticut appreciates the opportunity to comment on the Draft Recommendation of the Certificate of Need (CON) Task Force, released on December 5, 2016.

We offer comments to address core issues in our statewide health system by thinking outside the confines of the CON box. We also address hospital and health system transactions under the CON program.

We speak from experience of participating in at least five recent CON processes and public hearings, the experience of communities and stakeholders affected by past CON approvals of hospital transactions, and the process of the Health Care Cabinet Cost Containment Study and Recommendations.

Consider Recommendations Outside of the CON Program

The CON Task Force's charge from the Governor is broad, and the Task Force should consider bold, creative ideas for the challenges our state's health care system faces. We want to specifically point out that the Task Force has been asked to "deliver recommendations on how to improve the existing CON programs and *address any identified challenges or gaps in the state's regulation of health care services and facilities*" (emphasis added, see page 2 of Draft Recommendations).

One of the major limitations of the CON program is that it only influences the state health care landscape at the point of a transaction. While recent changes to the CON program have strengthened the Office of Health Care Access' (OHCA) oversight of hospital transactions, there is no way to apply new statutes that address the present and future challenges of the health care system to past CON approvals of hospital transactions.

The proposed goals of the CON program are to improve access, improve quality and contain cost, by utilizing planning to address health equity, unmet need, and underserved populations (page 2, Drafted Recommendations).

We urge the CON Task Force to consider how "gaps in the state's regulation of health care services and facilities" impact the proposed goals of the CON, as well as how those gaps impact access, quality, and prices (so in turn affordability, which deeply impacts access) at the state level. We offer a perspective of "out of the box" thinking, or rather, outside of the CON program thinking. We believe that the Governor's charge is broad enough to welcome recommendations that ultimately accomplish the same goals, with or without the existence of a CON transaction.

Ideas for consideration:

- State-level standards for:
    - Community Health Needs Assessments and subsequent Implementation Plans that bring community members to the table in meaningful engagement, with hospital and health system accountability to the Plan.
    - How community benefit dollars are spent, including directing a percentage to community building activities that invest in social determinants of health.

- A way to monitor hospital price increases and price variations in the state, across payers, with triggers for limiting both.
    - Note that the recent *Recommended Health Care Cost Containment Strategies: Health Care Cabinet Report in Response to PA 15-146* recommends the creation of an Office of Health Strategy (OHS) that could work with OHCA on this, or take the lead on this work. OHS is also tasked with studying provider rate setting, which could be informed by this information on hospital price increases and price variation.
- Requiring health system boards to have a certain percentage of voting community representation.
- Stronger penalties for violations of statutes and CON conditions, including fines that are significant enough to prompt corrective action by the hospital or health system.
- Leverage the existing Consumer Advisory Board (CAB, under the State Innovation Model – SIM) to also serve as an advisory board to the Department of Public Health and OHCA. The CAB can raise issues with access, quality, and affordability in real-time. DPH and OHCA should also have the power to correct these issues.

Recent experience informs these additional recommendations:

- Ensure that statutes and orders are applied consistently to all entities seeking approval under the CON program. It is important that all hospitals play by the same rules, are held to the same standards, and have to follow the same process in any dealings with the state.
    - Our concerns stem from the recent approval of the CON for Yale New Haven Health Systems Corporation's acquisition of L+M Corporation, despite a moratorium in place for hospital transactions meeting a certain threshold.
- Place a moratorium of at least five years on non-profit to for-profit hospital conversions, in light of three such conversions taking place in the state this year, to have the opportunity to see the impact these conversions have on access to critical services, quality and affordability (cost and price) of services.
    - We further suggest that after the three-year monitoring period put in place by OHCA's CON conditions, a public report be produced to assess the performance of these converted hospital. Ideally, this report would have a follow up conducted a year or two after the monitoring period end, which would provide important information on whether to continue or lift such a moratorium.
- Hospitals and health systems should be held accountable to demonstrated robust public consultation and input.
- The public, particularly communities and other stakeholders of the affected hospital, should have the ability to challenge CON Determinations.
    - Our suggestion comes from the fact that, despite community outcry, the change from a Critical Care Unit to a Progressive Care Unit at Windham Memorial Community Hospital was determined to not require a CON.

Ensuring a high-quality, accessible, affordable, and accountable health care system in the state requires planning, coordination and creative solutions.

Universal Health Care Foundation of Connecticut (UHCF) is an independent, nonprofit foundation working to shape our state's health care system to provide quality, accessible, affordable care and promote good health for all state residents. We work with a diverse array of partner organizations, as well as with individual consumers from throughout Connecticut.