

Recommendation Options

CERTIFICATE OF NEED TASK FORCE – DECEMBER 19, 2016

1. TRANSFERS OF OWNERSHIP – Choose One Option

Status Quo: CON review of transfers of ownership of all health care facilities and certain transfers of large group practices and expanded CON review (cost and market impact review, mandatory public hearing, stronger application criteria, post-transfer compliance monitoring) of certain hospital transfers of ownership

- A. Strengthen CON review of hospital mergers and consolidations by:
- i. Applying CON review only to hospital acquisition of health care facilities and large group practices
 - ii. 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)
 - iii. 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)
 - iv. Imposing consequences for non-compliance with post-transfer conditions
- B. Ensure all health care providers are treated equally by requiring review of transfer of ownership of healthcare facilities and large group practices by any acquirer including a hospital, a hospital system, an insurer, investor and any other entity seeking to acquire such facility or large group practice

2. CONVERSION – Choose one Option

Status Quo: Expanded CON review and enhanced role of AG in protecting charitable assets

A. Maintain status quo

3. ACQUIRING EQUIPMENT – Choose One Option

Status Quo: CON review of scanners, new technology, and non-hospital based linear accelerators

- A. Maintain status quo
- B. Maintain status quo and clarify that the current exemption applied to the replacement of scanners previously acquired through the CON process includes any scanner currently in operation being replaced by any other type of scanner
- C. Maintain status quo and expand the current exemption applied to the replacement of scanners previously acquired through the CON process to the replacement of all equipment previously approved through the CON process, with notification to OHCA
- D. Eliminate CON review of equipment acquisitions and propose legislative remedy to restrict scanner self-referrals
- E. Eliminate CON review of equipment acquisitions (no restricting of self-referrals)
- F. Apply CON review to advanced imaging acquisitions only
- G. Apply CON review to advanced imaging acquisitions and new technology

4. INITIATING SERVICES/INCREASING CAPACITY – Choose One Option

Status Quo: CON review of (1) New hospitals, specialty hospitals, freestanding emergency departments, outpatient surgical facilities, mental health facilities, substance abuse treatment facilities, cardiac services, and central service facilities; (2) Increased licensed bed capacity; and (3) establishment of 2 or more operating rooms in a 3-year period

- A. Apply CON review to the establishment of new hospitals, specialty hospitals, and freestanding emergency departments
- B. Apply CON review to the establishment of new hospitals, specialty hospitals, freestanding emergency departments, **outpatient surgical facilities, and cardiac services**
- C. Apply CON review to the establishment of new hospitals, specialty hospitals, freestanding emergency departments, **outpatient surgical facilities, cardiac services, mental health facilities, and substance abuse treatment facilities**
- D. Apply CON review to the establishment of new hospitals, specialty hospitals, freestanding emergency departments, **outpatient surgical facilities, cardiac services, and for-profit inpatient behavioral health services**
- E. Apply CON review to the establishment of new hospitals, specialty hospitals, freestanding emergency departments, **outpatient surgical facilities, cardiac services, mental health facilities, substance abuse treatment facilities, and adding two or more operating rooms in a three-year period**

5. TERMINATING SERVICES - Choose One Option

Status Quo: CON review of terminating hospital emergency departments, hospital inpatient/outpatient services, hospital mental health and substance abuse treatment services, and surgical services at an outpatient surgical facility

- A. Apply CON review when terminating hospital emergency departments, hospital inpatient/outpatient services, and hospital mental health/substance abuse treatment services
- B. Apply CON review when terminating hospital emergency departments, select inpatient/outpatient services, and hospital mental health/substance abuse treatment services
- C. Apply CON review when terminating hospital emergency departments, select inpatient/outpatient services, and mental health/substance abuse treatment services of hospitals and other entities

6. REDUCTION OF SERVICES – Choose One Option

Status Quo: No CON review required

A. Maintain status quo

B. Apply CON review to the reduction of services by a hospital

C. Apply CON review to the reduction of services by a hospital, and define “reduction of services” as a purposeful and planned reduction of 25% or more of volume (utilization) in inpatient or outpatient departments as defined in the Medicare hospital/institutional cost report

7. RELOCATION OF SERVICES – Choose One Option

Status Quo: CON review required if the population and payer mix served by the health care facility will substantially change as a result of the proposed relocation

A. Apply CON review to the relocation of services

B. Apply CON review to the relocation of services, but require notification only for those applications that propose to relocate within a reasonable geographic area

C. Apply CON review to the relocation of services, but require notification only for those applications that propose to relocate to an area identified as having unmet needs through a state health planning process

8. ACTIONS SUBJECT TO DSS CON PROCESS – Choose One Option

Status Quo: Applies to nursing homes, residential care homes, and intermediate care facilities for individuals with intellectual disability and includes, but is not limited to, review of certain capital expenditures, acquisitions of major medical equipment in excess of \$400,000, new or expansion of services or function, terminations of health services, facility closures, substantial decreases in total bed capacity, and transfers of ownership

A.

- i. Maintain CON review for all actions other than the establishment of new continuing care retirement facilities (CCRCs);
- ii. conduct periodic reviews of the nursing home moratorium;
- iii. amend the current moratorium by allowing nursing homes to apply for CON review for a relocation or establishment of a new facility without adding beds

B.

- i. Maintain CON review for all actions other than the establishment of new continuing care retirement facilities (CCRCs); and
- ii. conduct periodic reviews of the nursing home moratorium

C.

- i. Eliminate CON review for the establishment of CCRCs only if the number of beds added by the new CCRC are not more than the estimated future need of the residents living in the CCRS;
- ii. conduct periodic reviews of the nursing home moratorium;
- iii. amend the current moratorium by allowing nursing homes to apply for CON review for a relocation or establishment of a new facility without adding beds

9. APPLICATION REVIEW CRITERIA – Choose One Option

ACQUIRING EQUIPMENT AND INITIATING SERVICES/INCREASING CAPACITY

Status Quo: OHCA consideration of twelve guidelines and principles

- A. Revise guidelines to reflect the updated CON program goals including:
 - i. focusing on protecting access to underserved areas; ensuring provision of services to Medicaid recipients; increasing the role of state health planning; and limiting actions that adversely impact the health care market
 - ii. removing barriers to market entry that affect the ability of the competitive environment to increase quality and decrease costs, including removing references to requiring a demonstration of “need” in order to enter the market
- B. Maintain guidelines that reflect the demonstration of need, information on the population served, and the review of financial feasibility or ability to afford the proposed project

10. APPLICATION REVIEW CRITERIA – Choose One Option

TERMINATING SERVICES

Status Quo: OHCA consideration of twelve guidelines and principles

- A. Revise guidelines to reflect the updated CON program goals including focusing on protecting access to underserved areas, and whether a proposed termination will affect the provision of Medicaid services and if patients have access to alternative locations to obtain the service

11. APPLICATION REVIEW CRITERIA – Choose One Option

TRANSFERS OF OWNERSHIP

Status Quo: OHCA consideration of twelve guidelines and principles and expanded review for certain hospital applications

- A. Revise guidelines to reflect the updated CON program goals including:
 - i. focusing on protecting access to underserved areas; ensuring provision of services to Medicaid recipients; increasing the role of state health planning; and limiting actions that adversely impact the health care market
 - ii. 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)
- B. Maintain guidelines requiring the demonstration of impact on the financial health of the health care system

12. ORGANIZATION

Who reviews applications and renders decisions

Status Quo: OHCA staff review health care facility CON applications and DSS staff review LTC facility applications; final decisions rendered by the Deputy Commissioner of DPH and the Commissioner of DSS; AG has limited role in CON process in reviewing charitable assets in hospital conversion applications and providing legal guidance to OHCA as needed

- A. Establish a panel of advisory subject matter experts to assist OHCA in application review with costs being covered by applicant
 - i. Include reasonable limits and specify that expert review will be included as deemed appropriate by OHCA
- B. Include front-line caregivers from relevant fields to serve as subject matter experts
- C. Allow the applicant to participate in selection of panel members and allow input into the expert's review

13. PUBLIC INPUT

Opportunities for consumer participation in the OHCA CON process

Status Quo: For OHCA applications, there are requirements dictating when public hearings are held, and specifications on who can be designated as intervenors.

- A. Expand current options of soliciting and accepting public input on pending OHCA CON applications, including requiring that the subject matter panel of experts includes consumer representation
- B. Requiring that hospital acquisitions of other health care facilities and large group practices receive a mandatory public hearing
- C. Establish a process for accepting public comment prior to decision being rendered by OHCA

14. APPEALS PROCESS

Mechanisms through which the public can appeal an OHCA CON decision

Status Quo: For OHCA applications, there are requirements dictating when public hearings are held, and specifications on who can be designated as intervenors. Members of the public and intervenors cannot appeal a CON decision.

A. Allow intervenors to appeal a CON decision

B. Allow the public at large to appeal OHCA decisions and allow intervenors, or those who would have qualified as intervenors, to appeal OHCA decision to Superior Court

15. TRANSPARENCY

Methods of informing the public about pending OHCA applications and consumer access to information

Status Quo: For OHCA applications, there are requirements dictating when public hearings are held, and specifications on who can be designated as intervenors. Members of the public and intervenors cannot appeal a CON decision.

- A. Expand current methods of informing the public about the status of CON applications, public hearings, decisions and appeals including:
 - i. requiring applicants to provide a physical copy of the application/determination/appeals at local sites within the affected community (libraries, community centers, Town Halls) and on additional web sites (local health departments, municipal web sites)
 - ii. continually researching and implementing new innovative ways to reach the public and solicit participation in the CON process; and
 - iii. developing methods to regularly evaluate the effectiveness of public outreach strategies.
- B. Require applicant to attest that reasonable efforts to expand public notification were made and do not penalize applicant if public input was solicited in accordance with requirements

16. CON APPLICATION PROCESS

Status Quo: OHCA must render a final decision within 90 days (or 60 days for a group practice or following a hearing).

A. Create an expedited CON application process for

- i. the establishment of new facilities or services or increasing capacity if the service/facility is located in a “high need” area
- ii. for the termination of services due to the loss of physicians
- iii. for the review of the acquisition of new imaging equipment
- iv. programs and services that have inadequate volumes to support the effective delivery of care
- v. transfers of ownership that do not result in a change of service, payer mix, or location
- vi. mental health and substance abuse facilities if they commit to serving a certain threshold of Medicaid and other underserved populations

B. Require a single CON application and cost and market impact review for the sale of all assets for hospital conversions and acquisitions

C. Require all applications for terminations to be handled through an expedited process no longer than sixty days

17. CON POST-APPROVAL COMPLIANCE MECHANISMS

Status Quo: Under current law, OHCA may: (1) place conditions on the approval of a CON application involving a transfer of a hospital; (2) implement a performance approval plan should the applicant breach a condition and continue the reporting period for up to one year or until issue is resolved; and (3) require up to a \$1,000/day civil penalty for entities that willfully fail to seek a CON as required for each day information is missing, incomplete or inaccurate.

A. Modify the threshold needed to enforce penalties on CON applicants who do not conform with current laws from “willful” to “negligent”

B. Increase enforcement authority by allowing OHCA to impose civil penalties on applicants who fail to comply with any provision or condition of a CON decision or agreed settlement

C. Allow OHCA to exact remedies in the case where commitments involving prices were not met, including refunding to the original bill payer (insurer, patient) of amount in excess of the “promised” price and loss of part or all of the “approvals” granted in association with the CON application

D. Align OHCA and DPH licensing division inspection and monitoring activities

E. Require an independent entity to conduct non-compliance monitoring for transfer of ownership applications

F. Fund additional inspection staff at OHCA to better conduct inspection, monitoring, and enforcement

18. CON EVALUATION METHODS

Status Quo: There is currently no formal evaluation of the effectiveness of the OHCA CON program.

A. Expand OHCA's role in quality monitoring to ensure alignment with clinical best practices and guidelines for quality and efficiency and align with licensure requirements when possible

B. Ensure that the Statewide Health Care Plan tracks access to and cost of services across the state.

C. Implement evaluation mechanisms beyond a point in time snapshot when an entity enters and exits the market to include factors that allow the state to determine CON impact on quality, access and cost