

**Certificate of Need Task Force
Minutes
September 19, 2016**

Members Present: Lieutenant Governor Nancy Wyman (Chair); John Canham-Clyne (Unite Here Union); Tekisha Everette (Health Equity Solutions); Anne Foley (Office of Policy and Management); Alan Kaye (Radiological Society of CT); Susan Martin (Middlesex Hospital); Margaret Morelli (Leading Age); Gary Price (Center for Aesthetic Surgery); Jennifer Smith (SEIU District 1199); Jeff Walter (Formerly of the CT Non-profit Alliance); and David Whitehead (Hartford Health Care)

Members Absent: Commissioner Roderick Bremby (Department of Social Services); Fred Hyde (Columbia Business School/ Consultant); Robert Patricelli (Women's Health USA); Commissioner Raul Pino (Department of Public Health); Keith Stover (CT Association of Health Plans); and Joseph Wankerl (ConnectiCare)

Alternates Present: Deputy Commissioner Yvonne Addo for Commissioner Raul Pino (Department of Public Health) and Christopher Lavigne for Commissioner Roderick Bremby (Department of Social Services)

Meeting called to order at 1:05 p.m. by Chair, Lt. Governor Nancy Wyman

- I. **Welcome and Introductions:** The Chair introduced new member Susan Martin, Vice President of Finance for Middlesex Hospital. Susan Martin replaced Gary Havican as the representative for acute care hospitals in a municipality with less than 80,000 residents. Members introduced themselves.
- II. **Public Comment:** Supriyo B. Chatterjee provided [public comment](#). [Written comment](#) was submitted by Arvind Shaw, CEO of Generations Family Center and distributed to members at the meeting.
- III. **Approve August 15, 2016 Meeting Minutes.** Approval of the August 15, 2016 meeting [minutes](#) was moved by Anne Foley and seconded by Jennifer Smith. Minutes were approved unanimously on a voice vote.
- IV. **Review of Executive Order 51A:** Anne Foley, Under Secretary, Office of Policy and Management, informed the Task Force that Governor Malloy signed an amendment to Executive Order 51 on September 7, 2016. [Executive Order 51A](#) makes three changes to the original order:
 - (1) Extends the timeframe for the Task Force to submit a final report to the Governor from December 1, 2016 to January 15, 2017.
 - (2) Extends the provisions pertaining to OHCA's decision-making authority from January 15, 2017 to June 30, 2017.
 - (3) Provides enhanced discretion and flexibility to the Office of Health Care Access (OHCA) by preserving OHCA's authority to deny an application based on market share but does not make denial mandatory based on the singular factor of market share.
- V. **Update on the Health Care Cabinet:** Victoria Veltri, Senior Health Policy Advisor to the Lieutenant Governor, provided an [update](#) on the work of the Health Care Cabinet (HCC). The presentation included:
 - A summary of Public Act 15-146 charging the HCC with conducting a cost containment study and the study of successful cost containment practices in other states;
 - An overview of factors that must be included in the HCC recommendations; and
 - The process of identifying successful practices already underway in Connecticut.

VI. Presentation: Attorney General's Office Role in CON: Robert Clark, Special Counsel to the Attorney General, and Gary Hawes, Assistant Attorneys General, Office of the Attorney General (OAG) provided an overview of the role of the Attorney General's (AG) their office in the CON process. The OAG's role in the CON process is limited to two distinct categories:

- **Hospital Conversions:** Any applicant that is seeking to transfer non-profit assets to a for-profit entity, resulting in a material amount of assets being transferred, must be reviewed by OAG. OAG participates in the hospital conversion process in the following ways:
 1. Data gathering. This review includes working with the applicant to gather data, hiring experts to conduct site visits, interviewing board members, and pursuing other actions as necessary.
 2. Conducting a joint public hearing with OHCA.
 3. Rendering a final decision on the conversion by reviewing procedural and financial fairness and ensuring the protection of charitable assets.
- **Cost and Market Impact Review (CMIR):** Effective December 1, 2015, OHCA must conduct a CMIR for certain hospital transfer of ownership applications. The requirements are modeled after similar laws in the state of Massachusetts. If certain preliminary findings are made during the CMIR, OAG is notified and is authorized to conduct an investigation to determine whether the transacting parties are expected to engage in unfair methods of competition and take action as appropriate to protect consumers in the health care market.

Several questions from Task Force members were addressed by presenters.

VII. Discussion of DSS Actions Subject to CON: Anne Foley, Under Secretary, Office of Policy and Management, facilitated Task Force discussion regarding the DSS CON process and asked members to consider whether the state should maintain, modify, or eliminate the current process. Anne Foley highlighted that unlike the actions regulated by OHCA, DSS CON decisions initiate an approval process that is directly linked to the amount of state funding entities will receive (e.g. state grant funding or Medicaid reimbursement). The entities subject to DSS CON review also serve a much higher proportion of Medicaid clients, which the state has a vested interest in controlling the costs of, since their rates are often based on the capital expenditures they incur, as well as the services they provide. Discussion for modification to the DSS CON review process included:

- Rationale for subjecting nursing home closures to CON review
- Addition of a periodic review of the nursing home moratorium
- Allowing the relocation or replacement of existing facilities
- Removal of continuing care facilities from CON review
- Focusing on not only the availability of beds, but also the quality of services provided and the ability of existing facilities to meet both family and resident needs.

Anne Foley informed members that staff would begin drafting recommendations on the DSS CON review for the Task Force's review and feedback based on the discussion.

VIII. Discussion of CON Task Force Survey Results Regarding Services and Actions Subject to CON: Lieutenant Governor Wyman thanked Task Force members who completed the survey and stated that their participation yielded valuable information and is greatly appreciated. Anne Foley, Under Secretary, OPM reviewed the [results of an electronic survey](#) in which members were asked to consider

the twenty-six actions currently subject to CON, and opine whether the state should maintain, modify, or eliminate CON oversight. Thirteen member responses were included in the final [data analysis](#).

Discussion was focused on the services that the majority of members felt should continue to be subject to CON review but modified in some way. Options for modifications were explored and member feedback will be utilized to develop draft recommendations that can be presented at the October Task Force meeting.

- **Initiating Services/Increasing Capacity: *New Hospitals, Freestanding Emergency Departments, Outpatient Surgical Facilities, Mental Health Facilities, and Substance Abuse Treatment Facilities.*** Members discussed requiring new health care facilities through the CON process to serve Medicaid or other underserved populations and expediting application that served “high-need” areas. The importance of defining terminology such as “high-need” was reiterated by several members. Deputy Commissioner Addo informed members about other strategies states have used to expedite applications such as batching or including less requirements. Members also discussed the possibility of creating a moratorium on new freestanding emergency departments, and the utility of a CON review on this action when a similar review is not required for urgent care centers. The rationale for regulating outpatient surgical facilities through CON was explored, with members discussing the lower costs of services at these types of facilities compared to hospitals and the ability for those with Medicaid to have access to the services. Additionally, members considered the unique process already in existence for mental health and substance abuse services noting that the CON process can be waived if the services are being provided for the State of Connecticut, Department of Mental Health and Addiction Services (DHMAS). Members discussed allowing an expedited review for providers who are not DHMAS contractors and do not serve Medicaid clients. There was some discussion of the rationale of applying CON to Sober Houses since they are not a medical model and whether alternate regulatory mechanisms may be more appropriate.
- **Terminating Services: *Hospital Mental Health/Substance Abuse Services, Inpatient/Outpatient Services, and Emergency Departments.*** Members discussed the importance of maintaining access to services in all parts of the state, while also recognizing the genuine need for hospitals to terminate services if there is insufficient patient volume to continue providing the service. Members also discussed the need to require a CON for the reduction of services and whether this level of regulatory oversight is justified for such an action. Additionally, members discussed the need for analysis, evaluation, and public input for any action affecting critical community services such as the termination or reduction of emergency department beds and the importance of looking at an entire health care system when reviewing CON applications. The need for health care systems to maintain fiscal health and be allowed the flexibility to adjust to market changes without a CON was also noted.
- **Transfers of Ownership: *Large Group Practices, Freestanding Emergency Departments, Outpatient Surgical Facilities, Mental Health Facilities, and Substance Abuse Treatment Facilities:*** Members discussed the need to retain CON for transfer of ownership if there is no reduction or addition of services and how the public can be assured that that services identified as a need will maintained in the absence of a CON process. There was also discussion regarding whether CON is the correct oversight mechanism for transfer of ownership if the goals are to prevent a negative impact to access and cost or if another regulatory mechanism is more appropriate. Through the survey members expressed the need for CON to include a deeper financial impact assessment, guarantee of services to underserved populations, and post approval sanctions for non-compliance.

Anne Foley noted that Task Force member Bob Patricelli could not be at the meeting but submitted comments that were included in member packets.

Alan Kaye, Radiological Society of Connecticut, shared research on the effects of self-referral for advanced imaging procedures on health care costs. He expressed his view that, in the absence of a legislative mandate prohibiting the practice of self-referral by physician practices, the CON process for scanning equipment should be maintained to serve as a curb on overutilization, high costs, and anticompetitive practices.

IX. Next Steps:

- Anne Foley provided an overview of Task Force expectations over the next month: (1) members will be asked to complete a brief survey on the CON decision-making process; and (2) the October meeting will be used to examine CON decision-making authority and review draft recommendations for services and actions subject to CON and revisions to CON guidelines and principles.
- The group was informed that the October 17, 2016 meeting has been extended by one hour and a meeting has been added on January 9, 2017 from 1:00-3:00 in room 1D of the Legislative Office Building.

X. Adjournment: Margaret Morelli motioned to adjourn, which was seconded by Alan Kaye. The meeting adjourned at 4:08 P.M.