



STATE OF CONNECTICUT
OFFICE OF HEALTH CARE ACCESS

M. JODI RELL
GOVERNOR

CRISTINE A. VOGEL
COMMISSIONER

Declaratory Ruling

Final Decision

Docket Number: 05-30498-DCR

Project Title: **Declaratory Ruling to answer the following question:**

“Whether the term “imaging center” as used in Conn. Gen. Stat. § 19a-630 means a facility, institution, provider or persons that purchases, leases or accepts donation of any imaging, scanning or other similar equipment utilizing such technology”

Statutory Reference: Section 4-176, et seq, Connecticut General Statutes

Hearing Date: August 30, 2005

Hearing Officers: Commissioner Cristine A. Vogel

Decision Date: November 10, 2005

Staff: Susan Cole
Karen Roberts

Intervenors Connecticut Hospital Association
Connecticut State Dental Association
Connecticut State Medical Society
Fairfield County Imaging, LLC
Mandell & Blau, M.D.’s, P.C.
Radiological Society of Connecticut, Inc.
Robert D. Russo, M.D. and Associates Radiology, P.C.

Informal Participants Alicia Zalka, M.D. Dermatologist
Ms. Debbie Osborne, Executive Director of the
Connecticut Ear, Nose & Throat Society
Thomas Takoudes, M.D., Otolaryngologist

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Introduction

Public Act (“P.A.”) 94-3 of the May Special Session of 1994 General Assembly amended Section 19a-630(1) of the Connecticut General Statutes (“C.G.S.”) statutes by adding “*free standing outpatient surgical facility [and] imaging center*” to the definition of health care facility or institution. However, the term “imaging center” was not defined in the Act, nor does the legislative history shed any light on the legislative intent.

Since the implementation of P.A. 94-3 in 1994, the Office of Health Care Access (“OHCA”) has received numerous Certificate of Need (“CON”) determination requests from various persons, including hospitals, physicians, including radiologists, and other types of providers who were establishing imaging services through the acquisition of imaging equipment, such as Magnetic Resonance Imaging (“MRI”) units, Computed Tomography (“CT”) scanners, Positron Emission Tomography (“PET”) scanners and other types of imaging equipment. Such acquisitions of imaging equipment by physicians or physician groups have only been reviewed as a matter under Section 19a-639(c) of the Connecticut General Statutes and not Section 19a-638, C.G.S., as a new or additional health care service by a health care facility or institution. Thus, the term “imaging center” has been left undefined.

However, the legislature has placed in Section 19a-630 of the Connecticut General Statutes the term “imaging center” and the assumption can only be that the Connecticut General Assembly intended for the agency to regulate “imaging centers”. In order to perform its statutory function, OHCA needs to define the term in question and apply such definition in review of new or additional services for any and all “imaging centers”.

The legislature delegated this authority to the agency without specifically instructing the agency on the meaning of the term “imaging center”. This type of delegation of authority is not unusual. The legislature regularly delegates such discretionary power to agencies having expertise in implementing an intended regulatory scheme. In such circumstances, the agency is charged with defining such terms through authorized administrative proceedings which include case by case adjudication or promulgation of regulations.

Based on the above, OHCA initiated the declaratory ruling proceeding. The declaratory ruling process under the Uniform Administrative Procedure Act (UAPA) is considered as if it were a contested case. OHCA initiated the proceeding to elicit information from affected parties. The intent was to use this information to determine an appropriate definition for the term “imaging center” and how it should be applied in OHCA’s review of Certificate of Need determination requests and Certificate of Need applications.

Rationale and Decision

In recent years, the delivery of imaging services has migrated from the hospital settings into outpatient settings. Advances in medical research and technology increased the safety and quality of delivering such services in the non-hospital environment. As a result, there has been a significant increase in the number of acquisitions for imaging equipment in Connecticut as well as nationally. Utilization of imaging services has been steadily increasing and according to The Advisory Board of Washington, D.C.¹ from 2003 to 2008 the percentage of outpatient growth for higher end modalities such as CT scanning, MRI, and PET scanning is predicted to be 9% to 18% depending on the modality.

Evidence presented at the hearing indicates there are approximately 400 attending radiologists practicing in Connecticut with varying relationships with hospitals. Radiologists with private practice offices typically offer various modalities of imaging services within a single office location. Many testified to having multiple office locations within multiple towns and some employ as many as 200 individuals. They also testified to the fact that traditionally they receive their patients via referrals from other physicians rather than having their own patient population base.

The Connecticut radiology industry generates approximately \$500,000,000 in gross revenue per year. The imaging services business is a large and critical component of our overall health care system delivery. A core responsibility of OHCA is to ensure the viability of our overall health care delivery system. In response to some of the aforementioned facts OHCA finds it unacceptable to continue to have the term “*imaging center*” undefined.

The question legally noticed for this Declaratory Ruling matter was:

“Whether the term “ imaging center” as used in Conn. Gen. Stat. § 19a-630 means a facility, institution, provider or persons that purchases, leases or accepts donation of any imaging, scanning or other similar equipment utilizing such technology”

OHCA sought to answer this question in this proceeding. OHCA has formulated the question above in order to create statutory fairness and equity in terms of the types of persons (both institutional and professional) intending to acquire imaging equipment and intending to seek authorization through the Certificate of Need process and also to create consistency between Certificate of Need review pursuant to Section 19a-638 of the Connecticut General Statutes and Section 19a-639 of the Connecticut General Statutes, as recently amended by the provisions of Public Act 05-93.

¹ Page 8 of *Recent Trends in Radiology Services*, Original Inquiry Brief, August 10, 2004, The Advisory Board Company, Washington, D.C. (Administratively Noticed Item #7)

OHCA concludes that this formulation of the meaning of “imaging center” will not be declared by the Office through this declaratory ruling proceeding. The lack of sufficient evidence gathered by and presented to the agency leaves the agency with no other alternative except to proceed by case by case adjudication based on a set of specified facts as they arise in the context of performing its duty in each specific case as presented to it under Chapter 368z of the General Statutes. The Office may also consider promulgation of regulations or a statutory amendment. The Office has the authority to define the term and shall fulfill its obligation.

All of the foregoing constitutes the final ruling of the Office of Health Care Access in this matter.

By Order of the
Office of Health Care Access

*Signed by Commissioner Cristine A. Vogal
on November 10, 2005*

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