



JENNIFER L. GROVES, ESQ.
Updike, Kelly & Spellacy, P.C.
One Century Tower, 265 Church Street
New Haven, CT 06510
P 203.786.8316
F 203.772.2037
jgroves@uks.com

SIGNIFICANT CHANGES TO CONNECTICUT CERTIFICATE OF NEED STATUTES

The Legislative Session came to a close in early June, without the passage of a budget but with the passage of Public Act 09-232. P.A. 09-232 is an omnibus act concerning revisions to the Department of Public Health licensing statutes, which includes significant changes to the Certificates of Need laws administered by the Office of Health Care Access. These changes, which were effective July 1, 2009, appear aimed at reducing the number of CON applications before the agency while allowing providers greater flexibility in expanding and upgrading healthcare services.

The following is a brief summary of the changes:

Transfers of Ownership or Control

CON approval is required when a healthcare facility transfers its ownership or control, which is now defined to include only those transfers that impact or change the governance or controlling body of the facility. This includes, but is not limited to, affiliations, mergers or any sale or transfer of net assets. This change was proposed by OHCA in response to the recent growth in physician ownership of outpatient surgical facilities where transfers of shares of ownership are common and do not affect governance or control of the facility.

Acquisition of Cineangiography Equipment

CON approval is no longer required for the acquisition of cineangiography equipment provided, however, that if the equipment is being acquired by a healthcare facility, the total capital expenditure cannot exceed \$3 million. If a healthcare facility proposes to acquire cineangiography equipment and the total capital expenditure associated with the acquisition exceeds \$3 million, CON approval is required pursuant to Section 19a-639(a)(1) of the General Statutes.

Department of Children & Families Licensed/Funded Programs

Programs that are licensed or funded by DCF are now exempt from CON requirements, unless the program is a psychiatric residential treatment facility, as defined in 42 CFR 483.352. All programs that are exempted under P.A. 09-232 must comply with the exempt facility registration requirements set forth in Section 19a-639a(b) of the General Statutes.

CONTINUED >

 MERITAS LAW FIRMS WORLDWIDE

Hospital Outpatient Services

CON approval is no longer required for a short-term acute care general or children's hospital, a chronic disease hospital or a hospital for mentally ill persons to expand or relocate outpatient services within its primary service area. The requirements for exemption include the following:

- * The hospital must have been providing the outpatient service that it proposes to expand/relocate as of July 1, 2009; and
- * The proposed location for the outpatient services must be within the hospital's primary service area.

Note that while P.A. 09-232 enumerates certain outpatient services that are covered by this exemption (physical therapy, occupational therapy, speech therapy, cardiac rehabilitation, occupational injury management, occupational disease management and company contracted services), OHCA has issued determinations recently that appear to extend applicability of the exemption to services such as physician services and sleep lab programs. A CON determination from OHCA is required in order for a hospital to avail itself of this exemption.

Imaging Equipment Upgrades

P.A. 09-232 broadens the circumstances under which a healthcare facility or provider can obtain a waiver of CON requirements in order to upgrade certain imaging equipment (MRI, CT, PET or PET/CT). Under the previous law, a healthcare facility or provider was only eligible for a waiver if it had obtained CON approval for the equipment that it was seeking permission to replace. Now, a healthcare facility or provider can upgrade via waiver if it received a determination from OHCA that CON approval was not required for acquisition of the original piece of equipment. According to OHCA-issued guidance on the new law, the original equipment must have been purchased for less than \$400,000 prior to July 1, 2005, and placed in operation prior to July 1, 2006. The waiver law further requires that the value or expenditure of the replacement equipment be less than \$3 million dollars. Healthcare facilities or providers requesting a waiver of CON requirements to upgrade imaging equipment must submit a Form 2040 to OHCA.

Please contact members of our Health Care & Human Services Practice Group, Jennifer L. Groves at (203) 786.8316 or jgroves@uks.com or Dawn E. Alderucci at (860) 548.2621 or dalderucci@uks.com, if you have any questions or concerns with respect to the implications of P.A. 09-232 on your business.