



June 2014

## Governor Malloy Signs Bill Making Significant Health Law Changes

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### **STATE OF CONNECTICUT PUBLIC ACT 14-168: AN ACT CONCERNING NOTICE OF ACQUISITIONS, JOINT VENTURES, AFFILIATIONS OF GROUP MEDICAL PRACTICES AND HOSPITAL ADMISSIONS, MEDICAL FOUNDATIONS AND CERTIFICATES OF NEED**

This legislation makes changes to a number of Connecticut laws associated with hospital conversions, organization, operation of medical foundations, and certificate of need (CON) requirements, as well as promulgating new physician practice acquisition reporting requirements and a new personal physician notification requirement. The changes implemented by this legislation facilitate the entry of for-profit hospitals and health systems into Connecticut and significantly increase regulatory oversight of physician practice acquisitions. This bill was signed into law by Governor Dannel P. Malloy on June 3, 2014.

#### **Medical Foundation Law Changes—Effective From Passage**

Previously, nonprofit hospitals, nonprofit health systems, and medical schools were able to organize and operate one or more medical foundations, and hospitals and health systems that operate for profit were prohibited from organizing or operating a medical foundation.

This legislation allows for-profit hospitals or health systems to organize and operate medical foundations associated with those organizations. It also implements a new restriction limiting hospitals, health systems, and medical schools, whether nonprofit or for-profit, to ownership or membership in only one medical foundation. This legislation retains the medical foundation law's requirement that all medical foundations are required to be organized and operated as nonprofit entities. As a result, a for-profit hospital, for-profit health system, or for-profit medical school can establish a medical foundation, but is required to organize and operate the medical foundation as a nonprofit entity.

This legislation modifies the medical foundation law to restrict outside influence on medical foundations by prohibiting a medical foundation from granting non-members the authority to appoint board members of the medical foundation. The legislation also prohibits (1) employees or representatives of for-profit hospitals, for-profit health systems, or for-profit medical schools from acting as board members of medical foundations operated by nonprofit hospitals, nonprofit health systems, or nonprofit medical schools; (2) employees or representatives of nonprofit hospitals, nonprofit health systems, or nonprofit medical schools from acting as board members of medical foundations operated by for-profit hospitals, for-profit health systems, or for-profit medical schools; and (3) a person from serving on the board of directors of a medical foundation organized by a for-profit hospital, for-profit health system, or for-profit medical school while simultaneously serving on the board of directors of a medical foundation organized by a nonprofit hospital, nonprofit health system, or nonprofit medical school.

This legislation also revises Office of Health Care Access (OHCA) reporting requirements for medical foundations. Previously, medical foundations were required to report certain information to OHCA upon request, but this legislation requires medical foundations to provide OHCA with the following information annually: a mission statement; a description of services provided, including any significant changes to such services since the last report; and financial information reported on the medical foundation's most recently filed Internal Revenue Service (IRS) return for organizations exempt from income taxes. Medical foundations that do not file such a form with the IRS are required to submit substantially similar information to that required by such form in their annual OHCA report. OHCA will make such forms and information available to members of the public and accessible on OHCA's website.

#### **Connecticut Hospital Conversion Law Changes—Effective From Passage**

Connecticut's law governing hospital conversions requires the Attorney General (AG) and the Connecticut Department of Public Health (DPH) to review applications for the sale of nonprofit hospitals to a person or persons organized or operated for profit (a Conversion Application). This legislation strengthens the regulatory powers of the AG and DPH to enable either party to place "any conditions on approval" of a Conversion Application.

This legislation adds an additional public hearing requirement to the Conversion Application review process, which must be conducted in the hospital's municipality by the parties to the Conversion Application within 30 days of submission of a CON determination letter with DPH and the AG (the first step in the formal conversion process). This hearing requirement is in addition to the public hearing that DPH and the AG are already entitled to hold under current law.

Previously, DPH was required to deny a Conversion Application unless it found that the affected community would be assured of continued access to affordable health care. This legislation revises that provision to now require DPH to find that the affected community will be assured of continued access to "high quality" and affordable health care "after accounting for any proposed change impacting hospital staffing."

#### **Certificate of Need Requirement Changes—Effective July 1, 2014**

This legislation revises Connecticut's CON laws to include new requirements for CONs related to the sale or acquisition of a group practice. For the purposes of the revised CON laws, a group practice is defined as an organization of eight or more full-time physicians legally organized to render professional medical services. After July 1, 2014, a CON will be required for a transfer of ownership of a group practice to any entity other than a physician or group of physicians, except when the parties have signed a sale agreement to transfer such ownership on or before September 1, 2014. If the physician practice being sold has less than eight full-time physicians, the practice does not qualify as a "group practice" under the new CON law, and a CON will not be required.

This legislation adds a presumption in favor of approving CON applications *for group practice acquisitions entered into in response to a request for proposal or similar voluntary offer for sale*. OHCA's review of a CON application concerning such an acquisition must be completed within 60 days of the date on which OHCA posts notice on its website. This legislation also revises the public hearing process related to such acquisitions to require that 25 people (instead of three people as currently required for standard CON applications) or an organization representing 25 or more people must request such a hearing. However, this legislation does not curb OHCA's right under current CON law to hold a public hearing with respect to any CON application, whether or not a request is made by members of the public.

Current law requires OHCA to consider and make written findings concerning specific principles and guidelines when reviewing a CON application. This legislation adds the following principles and guidelines: (1) whether the applicant has satisfactorily demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the geographic region; and (2) whether the applicant has satisfactorily demonstrated that any consolidation resulting from the proposal will not adversely affect health care costs or accessibility to care.

#### **New Group Practice Acquisition Reporting Requirements—Effective October 1, 2014**

This legislation introduces a new reporting requirement for certain transactions that materially change the business or corporate structure of a group practice. For the purposes of this provision, a “group practice” is defined as two or more physicians legally organized to provide professional medical services. A material change is defined as any merger, consolidation, affiliation, stock or asset acquisition, formation of partnership, employment of all members, or other change in corporate structure that involves another group practice or a hospital, hospital system, captive PC, medical foundation, or other similar entity and which results in a group practice of eight or more physicians. The parties to such a transaction must notify the AG no less than 30 days prior to the transaction’s proposed effective date. The notification to the AG must include the names and specialties of each physician practicing medicine in the group practice, the names of the business entities providing services as part of the group practice, the addresses at which the business entities are providing such services, a description of services provided at each location, and the primary service area served by each group practice location.

This legislation adds a new requirement for notification to the AG by the parties to any merger or acquisition where a hospital, health system, or other health care provider is a party to the merger or acquisition and the transaction is subject to antitrust review by either the Federal Trade Commission or the Department of Justice. This legislation allows the AG to maintain and use such information in the same manner as provided in Connecticut’s antitrust act.

This legislation also introduces new reporting requirements for hospitals and hospital systems with affiliated group practices, and independent group practices of 30 or more physicians. Starting December 31, 2014, such entities will be required to file annual written reports with DPH and the AG containing the same information as that required by the material change reporting requirement discussed above.

**New Physician Notification Requirement Upon Patient’s Admission—Effective October 1, 2014**

This legislation introduces a new requirement that hospital personnel, upon admitting a patient to the hospital, notify the patient’s personal physician within 24 hours of such admission if requested by the patient.

**Public Act 14-168 Implementation Timeline**

Bill Provision(s)	Effective Date
Medical Foundation Law Revisions (allowing for-profit operation of medical foundations and limiting hospitals/health systems to membership in one medical foundation) (§2-3)	From Passage (June 3, 2014)
Hospital Conversion Act Revisions (including new public hearing requirement and allowing AG and DPH Commissioner to place “any” conditions on approval of an application for conversion of a hospital from nonprofit to for-profit) (§9-11)	From Passage (June 3, 2014)
CON Law Revisions (including CON requirement for transfers of ownership of group practices w/ eight or more physicians to any entity other than a physician or group of physicians) (§5-8)	July 1, 2014 (except for transfers of group practices where the parties have a signed sale agreement by September 1, 2014)
Personal Physician Hospital Admission Notification (§4)	October 1, 2014

Physician Practice Acquisition Reporting Requirements (requiring notice to AG of “material changes” involving group practices of two or more physicians resulting in group practices of eight or more physicians) (§1)

October 1, 2014

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Please contact any member of the [Health Law Group](#) at Robinson+Cole if you have questions about Public Act 14-168:

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