



Health Law Diagnosis

Monitoring the Pulse of Health Care and Life Sciences

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[Connecticut Governor's Health Care Bill Makes Important Changes to the Certificate of Need Process](#)

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On June 7, 2023, the Connecticut Legislature passed [HB6669](#), "An Act Protecting Patients and Prohibiting Unnecessary Health Care Costs" ("the Act"). The Act implements legislative initiatives [announced](#) earlier this week that are the product of collaboration between Connecticut Governor Ned Lamont and the Connecticut Hospital Association, as well as other health care stakeholders. Governor Lamont is expected to sign the Act but has not done so as of this publication.

Of particular note, the Act makes changes to Connecticut's certificate of need (CON) process that are summarized below, including new notice requirements for applicants, and new deadlines for the Office of Health Strategy (OHS). Importantly, all of the following changes will take effect **October 1, 2023**, absent an unexpected veto of the Act by the Governor.

New OHS Deadlines:

- The Act newly establishes a 30-day deadline for OHS to respond to CON determination requests, and implements a parallel 30-day deadline for OHS to respond to facility relocation determination requests;
- The Act newly requires OHS to "make reasonable efforts to limit" so-called CON completeness requests to two, and to "cease" making such requests no later than six months after receiving a CON Application;
- OHS is now required to notify CON applicants within five days of deeming an application complete, in addition to being required to post its deemed complete letter on the OHS CON portal;
- The Act clarifies that OHS is required to issue a decision on a CON where no public hearing is held within 90 days of deeming the application complete.

New CON Public Notice Requirements:

- The Act expands the current requirement for CON applicants to publish notice of forthcoming applications in a local newspaper to newly require applicants to:
 - Publish notice on the applicant's website at least 20 days prior to filing of the application (which notice must remain on the website for the pendency of the application); and
 - Request publication of the notice (i) in two locations within the affected community, such as a town hall or library, and (ii) on the website of the municipal or local health department, which postings must remain until a decision on the CON application is rendered, provided that OHS will not invalidate an applicant's notice if it is changed or removed outside of applicant's control; and
 - Provide the notice to OHS for posting on its website.
- The Act implements similar notice requirements for notices of CON public hearings, newly requiring applicants to (i) post OHS hearing notices on the applicant's website in a clear, conspicuous, and easily accessible location, and (ii) request publication of the hearing notice in two locations with the community such as a town hall or library, and on the website of the municipal or local health department.

Expanded OHS Oversight and Enforcement Authorities:

- The Act newly permits OHS – for applications submitted on and after October 1, 2023 – to retain an independent consultant with subject matter expertise to review CON applications that “cannot reasonably be conducted” by OHS without expert consultation. The applicant will be responsible for paying for such consultant, which must be limited to a “reasonable amount per application”;
- The Act lowers the threshold at which, and expands the circumstances in which, OHS may impose civil monetary penalties under the CON laws, providing that a person or facility that “negligently” (formerly this standard was “willfully”) fails to seek CON approval when required shall be subject to civil penalties of up to \$1,000 per day, and newly providing that such penalty shall also be available for OHS to impose on any person or facility that negligently fails to comply with an agreed settlement;
- The Act also provides that in response to a proposed imposition of a civil penalty, the alleged violator may opt to comply with the enumerated conditions of the agreed settlement within 15 business days as an alternative to requesting (i) a hearing or (ii) an extension to file required data during such time period; however, it is unclear based on the text whether such compliance will be sufficient to avoid imposition of the proposed civil penalty;
- The Act newly permits OHS to issue notices when OHS “has a reasonable belief” of a CON law violation, which notice includes a reference to the basis of the alleged violations, a short and plain statement of the claims and description of the alleged violation(s), and a statement allowing the recipient to request a hearing within ten business days. If a hearing is requested, it will be conducted consistent with other CON public hearings under the Connecticut Administrative Procedure Act, with a preponderance of evidence standard for finding CON violations, and with OHS authorized to issue a cease and desist order (enforceable by the Connecticut Attorney General) upon a finding of a violation or in the event an alleged violator does not request a hearing.

Clarifying When CON Applications are Required:

- The Act modifies the CON law concerning replacement of “imaging equipment” to specify that a CON is not required when replacing CT and MRI scanners that were previously acquired through a CON, including when the replacement has dual modalities or functionalities as long as the applicant already offers similar imaging services, and to no longer merely reference “imaging equipment”;
- The Act adds a carveout to the current CON requirement for acquisition of a nonhospital-based linear accelerator, stating that a CON is not required when replacing nonhospital-based linear accelerators that were previously acquired through a CON.

The Act also makes various changes to other Connecticut health care laws. Those changes will be discussed in detail in future Health Law Diagnosis posts.

If you have any questions, please contact any member of Robinson+Cole’s [Health Law Group](#).

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