

**Certificate of Need Task Force  
Minutes  
April 12, 2016**

**Members Present:** Lieutenant Governor, Nancy Wyman (Chair); Commissioner Raul Pino (Department of Public Health ); Commissioner Roderick Bremby (Department of Social Services); John Canham-Clyne (Unite Here Union); Tekisha Everette (Health Equity Solutions); Anne Foley (Office of Policy and Management); Fred Hyde (Columbia Business School/ Consultant); Alan Kaye (Radiological Society of CT); Margaret Morelli (Leading Age); Robert Patricelli (Women’s Health USA), Gary Price (Center for Aesthetic Surgery); Jennifer Smith (SEIU District 1199); Keith Stover (CT Association of Health Plans); Jeff Walter (CT Non-profit Alliance); Joseph Wankerl (ConnectiCare); and David Whitehead (Hartford Health Care)

**Members on the Phone:** Gary Havican (Middlesex Hospital)

**Members Absent:** None

**Meeting called to order at 1:01 p.m.** by Chair, Lt. Governor Nancy Wyman

I. **Welcome and Introduction of Members:** Members introduced themselves and their interest in the Certificate of Need (CON) process.

II. **Overview of Executive Order No. 51:** Anne Foley, Under Secretary at the Office of Policy and Management (OPM) provided an overview of Governor Malloy’s [Executive Order No. 51](#).  
a. The purpose of the Executive order is to ensure that the state’s regulatory oversight of the health care delivery system aligns with health care reform transformation efforts and to examine if the current CON process is effectively serving the state by supporting quality, access and cost containment. The Task Force is required to make recommendations to the Governor regarding the CON process by December 1, 2016.

III. **Department of Social Services (DSS) and Office of Health Care Access (OHCA) CON Overview Presentation**

- a. [OHCA CON Process Overview](#), Kimberly Martone, Director, OHCA
- Ms. Martone provided an overview of all responsibilities that fall under OHCA including: (1) The development of a Statewide Health Care Facilities and Services Plan every 2 years; (2) Collection and publication of hospital utilization and financial data that is widely utilized by media and other entities; and (3) The administration of the CON Process for health care facilities. The CON process is the largest portion of OHCA’s focus.
  - Ms. Martone explained the following: (1) “Health care facility” as it relates to CON; (2) What action do and do not require a CON; (3) Types of CONs; (4) CON volume 2005 to 2015; (5) The definition of hospital conversions and hospital acquisitions and the 5 themes seen in hospital acquisitions; (6) The CON vs. 486 process (486 process refers to statutory provision 19a-486 detailing hospital conversions. OHCA concurrently conducts a CON review based on the criteria found in 19a-639 in addition to the criteria found in 19a-486. The deadlines and timeframes found in 19a-486 are what are applied to hospital conversions); (7) 2014 hospital market concentration data; (8) The types and timing of hospital financial reporting; 8) Hospital 3 Year Total Margin

- Trend; and (9) Results from an independent consultant evaluation of recommendations for improving CT's CON process.
- Among the 2010 changes to the CON process was no longer requiring CONs for facility development projects, new services except for cardiac and for-profit mental health and substance abuse (ex. outpatient clinics) and termination of services. In 2011, termination of service by hospital was added back into the CON requirements. As a result of the 2010 revisions, the number of CONs decreased by 50%, however the complexity of CONs being submitted increased requiring significant staff resources to conduct timely reviews.
- Ms. Martone encouraged all Task Force members to read the CON Assessment included in the packets issued today and available on OHCA's web site: <http://www.ct.gov/dph/cwp/view.asp?a=3902&q=564018&dphNav=1>
- According to the OHCA *Financial Status of Connecticut's Short Term Acute Care Hospitals* report, Milford Hospital has had a three-year negative total margin and therefore at this time is the only hospital to meet criteria #6 as defined in the Executive Order which would allow OHCA to approve a CON for a merger before January 2017.
- Ms. Martone reviewed the 64 recommendations for CON Process improvement that an independent consultant made after evaluating CT's CON process in February 2014. She reviewed the recommendations and status of implementation at OHCA. Members were provided a copy of the full assessment.

**Discussion:**

Kimberly Martone responded to several clarifying questions regarding her [presentation](#):

Clarification regarding CON Process, Timeline and Volume:

- Ms. Martone clarified that the most likely reason for no CON application denials in 2015 is that the majority of applications are approved because providers are putting forth applications that meet all of the CON application criteria.
- Ms. Martone noted that OHCA does not regulate urgent care facilities. They are mostly operated by physician practices which OHCA does not regulate.
- Ms. Martone clarified that Hartford Health submitted a CON determination for Windham Hospital and it was determined a CON was not needed because they were reducing, not terminating services. A CON is not required for service reduction.
- She explained that from start to finish the CON process typically takes 6-9 months. However, because the complexity of the applications has increased so much it can sometimes take a year or more.

Clarification Regarding Interveners, Market Analysis, Physician Groups and Quality Assurance:

- Ms. Martone explained that when an entity requests intervener status they must supply information that OHCA would not normally be privileged to and therefore they do have a higher standard to prove

their intervener status. Status is not automatically granted. She went on to explain that OHCA does not track or monitor how often an entity has intervened.

- Ms. Martone explained that when OHCA evaluates the acquisition of group practices it does not know the concentration of specialties by region.
- Ms. Martone clarified during further questioning that the OHCA Hospital Financial Stability Report published in September will have 2015 data and track trends related to clinic and outpatient physician practices where there has been a consolidation.

#### Clarification Regarding Data Collection and Need

- Fred Hyde raised a concern regarding the impact of monopoly behavior on consumer prices.
  - Ms. Martone explained that OHCA does not collect cost data. OHCA collects pricemaster data.
- Fred Hyde noted the need to examine what actually occurs after a CON is granted as compared to what was promised by the applicant particularly in regard to measuring quality, community need and cost.
- Ms. Martone clarified that the information submitted to OHCA is public and subject to the Freedom of information Act, including price or charge data.

#### Clarification Regarding the 2014 OHCA CON Assessment

- Ms. Martone explained that OHCA assesses the acute care hospitals on a quarterly basis to cover the personnel and operating expenses associated with running the office (OHCA salaries and expenses). All CON applicants are charged a \$500 application fee.
- Alan Kaye raised a concern that OHCA staffing has not kept up with the demands. Part of the issue is where the funds are coming from. He noted that Task Force members raised several questions about the need for data and it may be a lack of resources available to do the types of reviews that is at issue here.
- Ms. Martone clarified how criteria such as "demonstrate that it will not result in unnecessary duplication of services" are defined by OHCA. She explained that OHCA is currently drafting definitions for the review criteria in regulation, but they do not have definitions at this time. She gave examples of questions that staff ask during the application process.
  - Keith Stover noted that any definition of "demonstrate that it will not result in unnecessary duplication of services" should include cost of services. Mr. Stover felt it is problematic that there is no definition. Ms. Martone agreed, but noted that OHCA does not have the cost data to be able to analyze or evaluate.
- Ms. Martone explained that OHCA staff conduct independent research to challenge assertions made by applicants and do not solely rely on the contested case process. OHCA conducts qualitative and quantitative analyses on all applications. They ask the applicant to submit articles but staff also search for and check articles themselves to make sure that the applicant did not only select certain ones.

- Bob Patricelli noted the health landscape has changed since CON started. He stated that from his perspective neither utilization nor supply of health care is problematic, but the cost is a significant concern.
- Gary Price said that he hasn't seen a big change in practice and there continues to be a reliance on fee-for-service and providers use fee-for-service to capitalize on the consolidation. He expressed that CON policy needs to evolve on an evidence-based basis and that there needs to be an examination of what has been promised as a result of CON and what has actually happened.
- Lt. Governor Wyman, Chair, asked in a hospital (non-profit or for-profit) acquisition what criteria is used to ensure that services are not terminated?
  - Ms. Martone informed the Task Force that whenever a hospital is going to terminate a service it must go through a separate CON process for termination of service.
- Lt. Governor Wyman asked if hospitals disclose that they plan to terminate a service when they file a CON to purchase another hospital. She asked how OHCA determines that services will be accessible.
  - Ms. Martone clarified that applicants typically tell OHCA they will maintain services for a period of three years. Through statute OHCA can ask for a three-year service plan requiring hospitals to report back each of the years on what they are doing with services at the purchased hospital.
  - Lt. Governor Wyman asked a follow-up question regarding how OHCA determines that a service is not needed in that area.
  - Ms. Martone explained that OHCA asks all of the questions that they would typically ask in a CON termination application. OHCA wants to be sure the community will still be served. Due to legislation enacted last year, OHCA can require purchasers to fund an independent monitor to report back to OHCA quarterly on: 1) The services being provided; and 2) Compliance with OHCA's conditions.
  - Fred Hyde asked if the three-year rule is in statute. He stated a concern that if hospitals know an unprofitable service can be discarded in three years they are not likely to put resources into it and make sure that people are aware of its availability.
  - Ms. Martone noted that OHCA can require an applicant to hold a service open longer than 3 years as part of the purchase conditions, as long as the applicant agrees to it via an Agreed Settlement.
- Gary Price stated that there is a tension between charges of maintaining competition as a key element of the CON process and yet making sure there are not duplicative services when the inherent nature of competition is providing a similar serve in a better way.
- Ms. Martone clarified that the consultant's assessment concluded that health care is different than any other field as consumers are unlikely to review price to determine where to receive service. They often go where their primary care physician sends them. The consultant believes the CON program needs to be linked to planning, focus on unmet need for at-risk populations and promote population health. The consultant assessment did not find competition to be a driver of service delivery.
- Gary Price informed the group that while the consultant's report stated that competition has no place in health care, maintaining competition is one of the goals of the CON process. He went on to share that he has direct experience with a segment of health care that is very competitive. Dr. Price said that he would like to share his data at some point. He noted that he strongly disagrees with the consultant's position.

**b. DSS CON Process Presentation, Chris Lavigne, Director of Rate Setting and CON, Department of Social Services (DSS)**

- Mr. Lavigne provided an [overview of the CON process at DSS](#). DSS administers the CON process for nursing homes, residential care homes and intermediate care facilities for individuals with intellectual disabilities.
- Mr. Lavigne explained the reason for DSS overseeing the CON program for long term care (LTC) services. 1) LTC providers have a narrow focus and are largely state funded so the state has a tremendous interest in them; 2) The facilities use cost based rates and DSS does annual cost reports, desk reviews and field audits on the cost reports. Therefore DSS knows the financial position of facilities and has an understanding of which facilities are doing well; and 3) The state's LTC rebalancing initiatives are housed at DSS.
- Mr. Lavigne presented on the following (1) DSS CON process; (2) When a CON is needed; (3) CON approval/denial timeline; (4) Factors that are analyzed when reviewing a CON application; (5) An overview of the DSS CON web page; and (6) An overview of DSS CON decisions 2014-2016.

**Discussion:**

Mr. Lavigne answered clarifying questions regarding the DSS CON Process.

- Fred Hyde requested information on Medicaid and hospitals. Specifically, how much it costs for the same service at various facilities.
  - Commissioner Bremby said DSS can provide information on DRGs.
- Mr. Lavigne explained that APR/DRGs started January 1, 2015 and began implementation with hospital specific base rates but will transition to statewide base rates (single rates) over the next four years.
- Mr. Lavigne clarified that the state is over-bedded and running 230 nursing homes. Historically, reductions are in the form of reductions to beds and nursing home closures. DSS is more concerned when they see closure of an entire wing because it calls into question whether the facility can remain financially viable while maintaining a structure with no revenue associated with it. He said that DSS must approve bed reductions.
- Mr. Lavigne explained how the DSS CON process is funded. He explained that DSS receives a modest fee from facilities ranging from a couple hundred to a couple thousand dollars. A cost analysis would need to be done to know if it fully covers the full cost of the CON program.
- Mr. Lavigne noted that the 2 pending CON applications are 1) the closure of Smith House but DSS expects it to be withdrawn; and 2) a facility improvement.

**IV. OHCA Briefing on Pending CON Applications, [Presentation](#), Kimberly Martone, OHCA**

- a. Ms. Martone presented on Hospital Conversions: For-profit entities & purchases
- Prospect purchase of ECHN: A hearing was held March 29<sup>th</sup> and 30<sup>th</sup> with OHCA's decision to be released on June 10<sup>th</sup>. They worked with the AG's office on this and they will release their separate decision.
  - Prospect purchase of Waterbury Health Network: Hearing scheduled for May 3<sup>rd</sup>.
- b. Ms. Martone presented on Hospital Acquisitions
- Yale New Haven Health purchase of Lawrence & Memorial: Completeness response was received March 30<sup>th</sup> and OHCA has until April 30<sup>th</sup> (30 days) to determine if they have additional questions or deem the application complete.

- Trinity Health New England purchase of St. Mary's Health System: OHCA deemed application complete on April 5<sup>th</sup> and will be scheduling a hearing in May.
  - c. Ms. Martone presented on other CON applications that consisted of transfers of ownership of other facilities that are part of the above purchases and acquisitions. There are 5 separate Prospect/ECHN CON applications. A decision on each of these applications related to the overall Prospect/ECHN purchase must also be released on June 10<sup>th</sup>.
  - d. Ms. Martone gave the status of all other pending CON applications mainly consisting of the purchases of new equipment and termination of hospital services.

**Discussion:**

In response to clarifying questions, Kimberly Martone provided the following information:

- Ms. Martone noted that the Department of Public Health's Health Care Quality and Safety branch and OHCA work together when health care quality issues are seen in an application.
- Ms. Martone mentioned that OHCA uses a consultant to review for-profit conversions because of limited resources (also permitted in statute).
- Ms. Martone informed the group that OHCA looks at quality and management of services in other states. For example, OHCA requests past Statement of Deficiencies and Plans of Correction from existing hospitals/facilities operated by the purchaser in other states.
- Ms. Martone clarified that OHCA has the power to disapprove/deny an application based on past behavior in another state but there are multiple criteria and there is no weight given to one item over the other. The application has to be looked at in total so OHCA looks at the evidence presented and if there is significant evidence that negates one of their criteria they have to consider it. The Department of Public Health Deputy Commissioner makes the final decision but OHCA supplies her with all of the evidence she needs to make a decision.
- Lt. Governor Wyman informed the Task Force that there will be opportunities at future meetings to ask additional questions.

**V. Proposed Work Plan and Meeting Schedule**

- Anne Foley explained to the group:
  - a. The first few meetings will focus on information gathering and sharing and allowing Task Force members to ask questions about the current system. Next month the Task Force will review other states CON processes and whatever information can be gathered on results. Cost and price data that can be found will be provided at the next meeting.
  - b. The middle few meetings will focus on the Task Force's vision of the purpose and primary goals for the CON regulatory process.
  - c. The remaining meetings will be used to develop recommendations. Once the Task Force has agreement on what are its highest priorities there needs to be a determination on the recommended changes that need to be implemented, both legislatively and administratively.
- Ms. Foley informed the group that packets distributed at the meeting have additional data and all information will be posted on [Governor Malloy's web site](#). She informed the Task Force that an

assessment was conducted regarding the OHCA CON process, none has been conducted on the DSS process. Anne encouraged Task Force members to look at the OHCA CON assessment report.

**VI. Next Steps**

- Lt. Governor Wyman announced that the next CON Task Force meeting will be May 16<sup>th</sup>, 3:00 p.m. – 5:00 p.m. at the Legislative Office Building. She thanked Task Force members for participating in this process and informed the group that she wants to get all issues out on the table so that the Task Force can develop a plan that addresses the needs of the state. She told Task Force members that they may e-mail questions or requests for information to her or Anne Foley.
- John Canham-Clyne requested the status of the All Payer Claims Database (APCD) and if it will be live January 2017 and an update from the Health Care cabinet so that Task Force members are clear about what they are doing and where the Task Force fits into that.

**VII. Adjournment**

**Motion: to adjourn – Jennifer Smith**

**Seconded by John Canham-Clyne.**

**Voice Vote: All in favor.**

**Meeting adjourned at 2:01p.m.**