

CONNECTICUT DEPARTMENT OF PUBLIC HEALTH

Certificate of Need

Section 1. The Regulations of Connecticut State Agencies are amended by adding sections 19a-613-1 to 19a-613-4, inclusive, as follows:

Sec. 19a-613-1. Description

The Office of Health Care Access (OHCA) division of the Department of Public Health derives its authority primarily from Chapter 368z of the Connecticut General Statutes. The powers of the Office are vested in and exercised by a deputy commissioner of Public Health, appointed as provided in section 19a-612d of the Connecticut General Statutes.

Sec. 19a-613-2. Function

The Office of Health Care Access is generally empowered to exercise specified grants of authority over the establishment and operation of health care facilities as defined in section 19a-630 of the Connecticut General Statutes. The Office is responsible for preparing the Statewide Health Care Facilities and Services Plan, administering the certificate of need process and collecting inpatient discharge data and financial data from hospitals.

Sec. 19a-613-3. Official address and hours

The principal office of the Office of Health Care Access is located at and all communications should be addressed to the Office of Health Care Access, 410 Capitol Avenue, MS#13HCA, P. O. Box 340308, Hartford, CT 06134-0308. The office is open from 8:30 a.m. to 4:30 p.m. Monday through Friday except legal holidays.

Sec. 19a-613-4. Public information

The public may inspect the regulations, decisions and all public records of the Office of Health Care Access at its office. Written requests for public information shall be filed on the Freedom of Information request forms available on the Office's website.

Sec. 2. The Regulations of Connecticut State Agencies are amended by adding sections 19a-630-1 and 19a-630-2 as follows:

Sec. 19a-630-1. Certificate of need

Definitions. As used in sections 19a-630-1 to 19a-653-4, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Acquisition" means the acquisition through purchase, lease, donation or other comparable arrangement of a computed tomography scanner, magnetic resonance imaging scanner, positron emission tomography scanner, positron emission tomography-computed tomography scanner, linear accelerator or equipment that utilizes technology that has not previously been utilized in the state;

(2) "Central Service Facility" means a health care facility or institution, person or entity engaged primarily in providing services for the prevention, diagnosis or treatment of human health conditions, serving one or more health care facilities, practitioners or institutions and satisfying the criteria for a central service facility as discussed in section 19a-630-2 of the Regulations of Connecticut State Agencies;

(3) "Day", unless specified otherwise in statute or regulation, means a calendar day;

(4) "Freestanding Emergency Department" means an emergency department that is not located on the main campus of a hospital and is held out to the public (by name, posted signs, advertising or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment;

(5) "Interventional cardiology" means non-surgical procedures used in the treatment of coronary artery and peripheral vascular disease and performed in the cardiac catheterization laboratory. Procedures include, but are not limited to, angioplasty, valvuloplasty, cardiac ablation, coronary thrombectomy, and congenital heart defect correction;

(6) "Office" or "OHCA" means the Office of Health Care Access division of the Department of Public Health, as established by section 19a-612 of the Connecticut General Statutes;

(7) "Provider" means any person or entity that provides health care services;

(8) "Psychiatric residential treatment facility" means a psychiatric residential treatment facility as defined in 42 CFR 483.352.

Sec. 19a-630-2. Criteria for determining if an entity is a central service facility

(a) An entity shall be a central service facility if it meets one or more of the following criteria:

(1) The entity is institutional in nature and practice;

(2) Patient care is or may be the responsibility of the entity rather than of the individual physicians or practitioners;

(3) Nonmedical personnel, owners or managers can or may be able to influence the operation of the entity to a significant degree;

(4) With the exception of practicing physician groups, the entity that is or may be providing services for the prevention, diagnosis or treatment of human health conditions to two or more providers;

(5) The owner, partner or manager of an entity as described in subdivision (4) of this subsection is a physician who is not practicing medicine at the entity; or

(6) A partnership with general and managing partners exists.

(b) In determining whether a particular entity meets any of the criteria in subsection (a) of this section, the commissioner, commissioner's designee or deputy commissioner may consider the following:

(1) Whether the entity is or may be licensed or designated as any type of health care facility or institution by the department;

(2) Whether the patients have any prior familiarity with the physician or practitioner or any ongoing relationship with the physician or practitioner;

(3) Whether services such as laboratory, pharmacy, x-ray, linear accelerator and imaging, are or may be available with no free choice of the provider of such services by the patient;

(4) Whether the entity can continue to function even if the license of its physician or physicians has, have been or may be suspended or revoked, since the entity can simply retain another physician or practitioner;

(5) Whether bills and charges are or may be determined by the entity rather than the individual physicians or practitioners who provide the care or the service;

(6) Whether income distribution is or may be determined by the entity rather than entirely by the individual physicians or practitioners who provide the care of service;

(7) Whether there are present interlocking relationships, corporate relationships or entities with other health related corporate relationships, entities or properties;

(8) Whether the location and services provided are a small part of a larger entity; and

(9) Any other information the commissioner, commissioner's designee or deputy commissioner deems relevant or pertinent.

Sec 3. The Regulations of Connecticut State Agencies are amended by adding sections 19a-638-1 to 19a-638-4, inclusive, as follows:

Sec. 19a-638-1. Increase in operating rooms

Any outpatient surgical facility that increases the number of its operating rooms on and after October 1, 2010, shall file a notification with the Office indicating the date on which the operating rooms were added, the number of its operating rooms added and the total number of operating rooms including the new operating room or operating rooms.

Sec. 19a-638-2. Establishment of cardiac services

Interventional cardiology procedures that are authorized pursuant to a certificate of need may be performed by a health care facility or provider and several procedures may be authorized under one certificate of need. A facility that is authorized to provide open heart surgery is authorized to provide all of the interventional cardiology procedures listed in section 19a-630-1(5) of the Regulations of Connecticut State Agencies.

Sec. 19a-638-3. Replacement of imaging equipment

Any health care facility, person or provider that replaces equipment shall notify the Office of the date on which the equipment was replaced and the disposition of the replaced equipment pursuant to section 19a-638 of the Connecticut General Statutes. The notification shall also include the docket number of the certificate of need or certificate of need determination. The Office shall place the notification in the original file for the corresponding docket number.

Sec. 19a-638-4. Determinations

All requests for determinations as to whether a certificate of need is required shall be submitted to the Office on a Determination Form, which is available on the Office's website. The Office shall not review a request for determination until a complete form has been submitted and all required information has been provided

to the Office. Requests for determination may be submitted electronically in PDF format or via facsimile.

Sec. 4. The Regulations of Connecticut State Agencies are amended by adding sections 19a-639a-1 to 19a-639a-6, inclusive, as follows:

Sec. 19a-639a-1. Public notification of certificate of need application

Pursuant to section 19a-639a of the Connecticut General Statutes, not later than twenty days prior to the submission of a certificate of need application, the applicant shall publish notice that an application is to be submitted in a newspaper having substantial circulation in the area where the project is to be located. An applicant shall file the application not later than ninety days after publishing notice. The notice shall contain the following information:

- (1) A statement that the applicant is applying for a certificate of need pursuant to section 19a-638 of the Connecticut General Statutes;
- (2) A description of the scope and nature of the project;
- (3) The street address where the project is to be located; and
- (4) The total capital expenditure for the project.

Sec. 19a-639a-2. Newspapers with substantial circulation in town where project is to be located

A list of towns in Connecticut and the corresponding newspapers of substantial circulation in each town are available on the Office's website. The Office will update the list as necessary.

Sec. 19a-639a-3. Certificate of need application

(a) The application shall consist of the following:

- (1) The appropriate application form which should be filled out in its entirety and all supporting documents should be attached to the application and referenced as either an attachment or exhibit in the order in which they appear in the application for the specific type of proposal, as follows, which are available and may be downloaded from the Office's website:
 - (A) Establishment of a new health care facility as defined in section 19a-630 of the Connecticut General Statutes;
 - (B) Establishment of an outpatient surgical facility;
 - (C) Establishment of a freestanding emergency department;
 - (D) Transfer of ownership of a health care facility;
 - (E) Termination of inpatient or outpatient services by a short-term acute care general hospital or children's hospital;
 - (F) Termination of surgical services by an outpatient surgical facility or a facility that provides outpatient surgical services as part of the outpatient surgery department of a hospital pursuant to section 19a-638 of the Connecticut General Statutes;
 - (G) Termination of an emergency department by a short-term acute care general hospital;
 - (H) Establishment of cardiac services;
 - (I) Acquisition of any of the equipment enumerated in section 19a-638 of the Connecticut General Statutes;
 - (J) Increase in licensed bed capacity; and
 - (K) Increase in operating rooms by an outpatient surgical facility pursuant to section 19a-638 of the Connecticut General Statutes.
- (2) A copy of the notice of the certificate of need application demonstrating that such notice was published for at least three consecutive days in a newspaper having substantial circulation in the town in which the project is going to be located pursuant to section 19a-639a of the Connecticut General Statutes;

(3) A description of the project setting forth the proposal in as much detail as possible. The description shall reference the applicable requirement for a certificate of need under section 19a-638 of the Connecticut General Statutes;

(4) The specific location of the facility, service or equipment;

(5) A detailed description of how the proposal relates to each of the guidelines and principles enumerated in section 19a-639 of the Connecticut General Statutes and any supporting documentation; and

(6) All other information as required by the specific application form, which is available on the Office's website.

(b) One original and four copies of the application shall be submitted to the Office at 410 Capitol Avenue, MS#13HCA, Hartford, CT 06134. The application shall be accompanied by the five hundred dollar filing fee pursuant to section 19a-639a of the Connecticut General Statutes. If the application including attachments or exhibits does not exceed fifty pages, it may be filed electronically in accordance with subsection (c) of this section.

(c) Applications not exceeding fifty pages may be filed electronically in PDF format. All applications exceeding fifty pages must be filed in accordance with subsection (b) of this section.

(d) Applications shall be deemed received on the date and time at which the Office receives the document or the complete electronic version of the document. Any documents received after normal business hours shall be deemed received on the following business day.

Sec. 19a-639a-4. Certificate of need - completeness review

(a) Pursuant to section 19a-639a of the Connecticut General Statutes, the Office shall have thirty days to review the application and request additional information as necessary to complete the application. The applicant shall have sixty days from the date of the request to provide responses to the request for additional information and said responses may be filed electronically in PDF format or via facsimile. If the applicant fails to respond within the sixty day time frame, the application shall be deemed withdrawn in accordance with section 19a-639a of the Connecticut General Statutes.

(b) Upon receipt of the responses, the Office shall have thirty days to review the responses and make a determination with respect to whether the application is complete or if further information is needed. If additional information is sought, the applicant shall have another sixty days to respond. If the applicant fails to respond within the sixty day time frame, the application shall be deemed withdrawn in accordance with section 19a-639a of the Connecticut General Statutes.

(c) The review cycle described above shall continue until the Office deems an application complete.

Sec. 19a-639a-5. Certificate of need review period

(a) Pursuant to section 19a-639a of the Connecticut General Statutes, the ninety day review period for a completed application shall begin on the date the Office posts notice of the completed application on its website. No later than seven days after the thirty day review period for completeness has expired, the Office shall post notice of the completed application on its website. The Office shall also provide notice to the applicant that its application is complete via first class mail, facsimile or electronic mail and this notice shall include the date on which the ninety day review period expires. The posting on the Office website shall serve as notice to any interested members of the public.

(b) **Extensions of the Review Period**

(1) The Office may extend the review period for good cause for a total of sixty days in accordance with section 19a-639a of the Connecticut General Statutes. If the Office extends the review period, the Office shall provide notice to the applicant that review has been extended via first class mail, facsimile or electronic mail and this notice shall include the date on which the review period expires.

(2) Where a public hearing is held pursuant to section 19a-639a of the Connecticut General Statutes, the review period shall be extended for another sixty days after the date on which the public hearing record is closed. The Office shall notify the applicant of the date on which the public hearing record is closed via first class mail, facsimile or electronic mail and this notice shall include the date on which the review period expires.

Sec. 19a-639a-6. Notice of public hearing

The Office shall provide notice of the date, time and place of the public hearing in a newspaper having substantial circulation in the town in which the project is to be located not less than two weeks prior to the date of the hearing pursuant to section 19a-639a of the Connecticut General Statutes. The Office shall also provide a copy of the notice via first class mail, facsimile or electronic mail to the applicant and any individuals or entities that have requested a hearing pursuant to section 19a-639a of the Connecticut General Statutes. Additionally, the Office shall post the notice of public hearing on its website.

Sec. 5. The Regulations of Connecticut State Agencies are amended by adding sections 19a-639b-1 and 19a-639b-2, as follows:

Sec. 19a-639b-1. Expiration and extension of certificate of need

(a) A certificate of need shall expire two years from the date of issuance by the Office unless the applicant has requested an extension of the certificate of need at least thirty days in advance of the expiration of the certificate of need pursuant to section 19a-639b of the Connecticut General Statutes.

(b) At a minimum, a request for an extension of a certificate of need shall contain the following:

(1) A detailed description of any change in the cost, configuration, services or scope of the project;

(2) A detailed description and documentation of any progress on the project including preparation of construction drawings, securing of necessary funds and building permits and commencement of any construction;

(3) An estimated timetable for commencement and completion of all remaining components of the project; and

(4) Documentation of an extenuating circumstance, including, but not limited to, delays occasioned by negotiations with vendors or contractors, beyond the control of the applicant that prevented the applicant from completing the project by the expiration date.

(c) The following criteria shall be used to determine whether an extension will be granted to the applicant:

(1) Site procurement: The applicant shall have made progress toward permanent acquisition of the intended site for the project.

(2) Financial status: The applicant shall be able to provide documentation regarding finalizing any necessary loans or lease purchase arrangements.

(3) The applicant shall provide reasonable assurance that the project will be under construction or implemented within the requested extension time frame.

Sec. 19a-639b-2. Non-transferability of the certificate of need

A certificate of need is non-transferable. A certificate of need or rights thereunder may not be sold, assigned, leased, transferred, mortgaged, or pledged. Any attempt to transfer a certificate of need shall result in the immediate voiding of the certificate of need.

Sec. 6. The Regulations of Connecticut State Agencies are amended by adding sections 19a-639c-1 and 19a-639c-2, as follows:

Sec. 19a-639c-1. Relocation of a health care facility

(a) Pursuant to section 19a-639c of the Connecticut General Statutes, any health care facility that proposes to relocate its facility, shall submit a letter requesting that the Office make a determination as to whether a certificate of need is required. A form for the relocation of a health care facility, which shall be submitted with such letter, is available on the Office's website.

(b) Based upon the information submitted by the applicant, the Office shall determine whether there has been substantial change in the payer mix or the population served by the health care facility that proposes to relocate. The applicant shall provide the percentages of total patient volume by payer source prior to the relocation and following the relocation.

Sec. 19a-639c-2. Certificate of need for relocation

Any health care facility that proposes to relocate its facility and is unable to demonstrate to the satisfaction of the Office that the relocation will not result in a substantial change in the payer mix or population served shall file a certificate of need for the establishment of a new health care facility pursuant to section 19a-638 of the Connecticut General Statutes.

Sec. 7. The Regulations of Connecticut State Agencies are amended by adding sections 19a-639e-1 and 19a-639e-2, as follows:

Sec. 19a-639e-1. Termination of a health care facility

(a) Any health care facility that was authorized through a certificate of need shall provide notice that it is terminating services not later than sixty days prior to the termination. The notification shall contain the following:

- (1) The name and location of the health care facility;
- (2) Reason for closing the facility;
- (3) Other facilities where patients may be able to obtain the services that are currently provided by the facility that intends to close; and
- (4) Date on which the facility will be closed.

(b) Any health care facility that was not authorized through a certificate of need and intends to close the facility shall notify the Office not later than sixty days prior to the termination of the facility. The notification shall contain the following:

- (1) The name and location of the health care facility;
- (2) Reason for closing the facility that intends to close;
- (3) Other facilities where patients may obtain the services that are currently provided by the facility that intends to close; and
- (4) Date on which the services will no longer be provided or on which the facility will be closed.

Sec. 19a-639e-2. Termination of services provided by a health care facility

(a) Unless otherwise required to file a certificate of need application pursuant to the provisions of section 19a-638 of the Connecticut General Statutes, any health care facility that intends to terminate a service or services which were authorized

pursuant to a certificate of need shall file a modification of the original certificate of need on the forms available on the Office's website. The applicant shall provide the following information to the Office:

- (1) The service or services that the facility will no longer provide;
- (2) The reasons that the facility will no longer provide the service or services;
- (3) Other facilities where the patients may obtain the service or services which the facility will no longer provide; and
- (4) The date on which the service or services will be terminated.

(b) Any health care facility that intends to terminate a service or services which were not authorized pursuant to a certificate of need shall notify the Office not later than sixty days prior to the termination of the service or services. The notification shall contain the following:

- (1) The service or services that the facility will no longer provide;
- (2) The reason that the facility will no longer provide the service or services;
- (3) Other facilities where the patients may obtain the service or services which the facility will no longer provide; and
- (4) The date on which the service or services will be terminated.

Sec. 8. The Regulations of Connecticut State Agencies are amended by adding sections 19a-643-207 to 19a-643-209, inclusive, as follows:

Sec. 19a-643-207. Rules of practice

The Office of Health Care Access division of the Department of Public Health shall follow the Rules of Practice under section 19a-9-1, et seq., of the Regulations of Connecticut State Agencies.

Sec. 19a-643-208. Consolidation of proceedings

Proceedings involving related questions of law or fact may be consolidated at the direction of the commissioner, the commissioner's designee or a presiding officer.

Sec. 9. The Regulations of Connecticut State Agencies are amended by adding sections 19a-653-1 to 19a-653-4, inclusive, as follows:

Sec. 19a-653-1. Notification of a civil penalty

The commissioner or the commissioner's designee, prior to the imposition of any civil penalty under section 19a-653 of the Connecticut General Statutes, shall notify any facility, institution or person subject to such civil penalty in accordance with section 19a-653 of the Connecticut General Statutes.

Sec. 19a-653-2. Civil penalty – request for hearing

Pursuant to section 19a-653 of the Connecticut General Statutes, any health care facility or person to whom the notice of civil penalty was addressed may request a hearing to contest the imposition of the civil penalty. The Office shall notify the health care facility or person of the date, time and place of the hearing, not later than ten days after the Office's receipt of the request.

Sec. 19a-653-3. Civil penalty – request for extension of time

(a) A request for an extension of time within which to file required data or information shall contain the following:

- (1) The reason why the health care facility or person was unable to comply with the original due date; and
- (2) The date on which the information or data will be filed.

(b) In reviewing the request for an extension of time, the Office shall consider the following:

- (1) Any extenuating circumstances that prevented compliance with the original due date;
 - (2) Demonstration of a good faith effort to comply with the appropriate statute, act, order, or regulations;
 - (3) Past history of compliance with the submission of data or information requirements;
 - (4) The length of the delay in filing;
 - (5) The degree of incompleteness or inaccuracy; and
 - (6) Any other relevant criteria.
- (c) If the request for an extension of time is granted, it shall be granted to a date certain. Failure to submit the required data or information by that extended date may result in the imposition of a civil penalty beginning on the day after the extended due date. The civil penalty shall become effective upon the expiration of the time extension and OHCA shall provide notice of the same to the person or health care facility.

Sec. 19a-653-4. Rescission of civil penalty

Upon receipt of the data or information or the filing of a certificate of need, the Office may rescind the civil penalty in whole or in part.

Sec. 10. Section 19a-643-201(b)(23) of the Regulations of Connecticut State Agencies is amended to read as follows:

(23) "Fiscal year" means:

(A) For each acute care general and children's hospital, the fiscal year consisting of a twelve month period commencing on October 1st and ending the following September 30th; or

(B) For John Dempsey Hospital of the University of Connecticut Health Center, the hospital may elect to report on the basis of the hospital fiscal year defined in subparagraph (a), or may elect to operate and report to the office based on the state fiscal year consisting of a twelve month period commencing July 1st and ending the following June 30th. If John Dempsey Hospital chooses to operate and report to the office on a state fiscal year basis, the hospital shall comply with the provisions of section 19a-643-206 of the Regulations of Connecticut State Agencies as a continuing condition for qualifying to select or maintain the option of operating and reporting on a state fiscal year basis;

Sec. 11. Sections 19a-643-1 to 19a-643-110, inclusive, of the Regulations of Connecticut State Agencies are repealed.

Sec. 12. Section 19a-643-205 of the Regulations of Connecticut State Agencies is repealed.

Statement of purpose: (A) The purpose of the regulations is to implement the new certificate of need ("CON") process under Public Act 10-179 §§ 83-93. (B) The regulations define certain terms used in Public Act 10-179, and establish policies regarding the increase in operating rooms, replacement of imaging equipment, determinations, relocations and terminations. The regulations also establish procedures for CON applications, including public notice, the contents of the application, the review period and public hearings regarding CON applications. Finally, the regulations establish the process for assessment of civil penalties. (C) The proposed regulations repeal §§ 19a-643-1 through 19a-643-110 and 19a-643-205. Sections 19a-643-1 through 19a-643-110 are the existing administrative regulations and rules of practice and the majority of them no longer apply under Public Act 10-179.

Section 19a-643-205 concerns the filing of budgets by hospitals, which is no longer required under Public Act 10-179.

Be it known that the foregoing regulations are adopted and repealed by the aforesaid agency pursuant to Secs. 19a-638(d), 19a-639a(g), 19a-639b(e), 19-639c(b), 19a-639e(d) and 19a-643 of the General Statutes, after publication in the Connecticut Law Journal on December 28, 2010, of the notice of the proposal to adopt and repeal such regulations.

Wherefore, the foregoing regulations are hereby adopted and repealed, effective when filed with the Secretary of the State.

In Witness Whereof: December 18, 2012, Jewel Mullen, Commissioner.

Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, Connecticut General Statutes: January 14, 2013.

Approved by the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes: March 26, 2013.

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Sec. 4-172, as amended, of the General Statutes, Secretary of the State: April 9, 2013.
