

CONNECTICUT
SECRETARY OF THE STATE
CAPITOL OFFICE
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STATE OF CONNECTICUT

BY HIS EXCELLENCY

DANNEL P. MALLOY

EXECUTIVE ORDER NO. 51A

WHEREAS, it is a priority goal of the State of Connecticut to provide affordable, accessible, high quality health care across the state;

WHEREAS, a financially stable health care system – that includes both hospitals and freestanding medical service providers – requires thorough state health care planning and regulation to achieve this goal;

WHEREAS, Connecticut currently has twenty-eight acute care hospitals located in the state, including one exclusively for children, that annually provide services for almost two million patient days and over 400,000 discharges;

WHEREAS, Connecticut currently has nineteen corporate hospital systems in the state, and four of these corporate systems have affiliations with twelve of our state's acute care hospitals, while another four of our acute care hospitals have affiliations with corporate systems outside of the state;

WHEREAS, Connecticut has two long established Certificate of Need (CON) processes – one such process is completed through the Office of Health Care Access within the Department of Public Health and the other process is done through the Department of Social Services;

WHEREAS, the CON process currently is intended to regulate the ability of hospitals, nursing homes, certain physician groups, and other healthcare facilities seeking to establish new facilities or provide new services, change ownership, purchase and acquire certain equipment, and terminate certain services;

WHEREAS, Connecticut's hospitals increasingly are applying for regulatory approval through the CON process to become members of these larger umbrella corporate health care systems for reasons other than significant financial distress;

WHEREAS, in light of the evolving health care industry and changing market conditions, it is crucial that Connecticut's CON programs align with state and federal health care reform efforts, encourage transparency and competition, protect consumers, provide accessible and affordable health care delivery, contribute to economic development, and promote community benefits;

WHEREAS, I am committed to ensuring that we coordinate the state's regulatory oversight of its health care delivery systems with the broader goals of maintaining open, transparent, and competitive health care markets in the state that enhance access and quality of care and improve affordability without losing sight of the economic development impact of the hospital systems;

WHEREAS, Executive Order 51 was originally issued on February 25, 2016 and it has become apparent that certain modifications and revisions to the original text of the Executive Order to provide additional flexibility in the analysis are deemed appropriate.

NOW, THEREFORE, I, DANNEL P. MALLOY, Governor of the State of Connecticut, by virtue of the power and authority vested in me by the Constitution and by the Statutes of the State of Connecticut do hereby **ORDER AND DIRECT**:


1. There is established a Certificate of Need Taskforce (the Taskforce) to review and analyze the CON programs and process. The Taskforce shall be composed of the following members:
 - i. The Lieutenant Governor, who shall serve as Chair;
 - ii. The Secretary of the Office of Policy and Management, or the Secretary's designee, ex-officio;
 - iii. The Commissioner of Public Health, or the Commissioner's designee, ex-officio;
 - iv. The Commissioner of Social Services, or the Commissioner's designee, ex-officio;
 - v. Two members representing acute care hospitals, one in a city with greater than 80,000 residents and one in municipality with less than 80,000 residents, currently regulated by the CON process;
 - vi. One member that represents physician practice groups;
 - vii. One member that represents a nursing home;
 - viii. One member that represents a free standing out-patient provider of health care services not currently affiliated with a hospital system or physician practice group;
 - ix. One member that represents a qualified health plan sold through the Connecticut Health Insurance Exchange;
 - x. One member that represents the health care insurance industry;
 - xi. Two members that represent health care labor interests;
 - xii. One member with expertise and knowledge in the field of health economics;
 - xiii. One member that represents consumer interests; and
 - xiv. Two members that represent entities currently regulated by the CON process, to be appointed by the Commissioner of Public Health.
2. The Office of Policy and Management and the Department of Public Health will administer and provide staffing support for the Taskforce.
3. The Taskforce shall undertake a review and analysis of the state's CON process and programs and determine if changes are necessary to ensure quality of care and access for all state residents and the preservation of an open and competitive health care market. Such examination shall include, but not be limited to the following:
 - a. Perform a comprehensive review of the state's CON programs, including an analysis of the scope, existing authority, and structure of the current agencies having oversight, to determine if any changes should be made to improve efficiency, effectiveness, and alignment with state and federal health care reform efforts;
 - b. Identify any challenges and gaps in the state's efforts to regulate health care services and facilities to promote affordability, equitable access, and high quality care, including the state's ability to maintain fair, open, and competitive health care market conditions;
 - c. Deliver recommendations on how to improve the existing CON programs and address any identified challenges or gaps in the state's regulation of health care services and facilities to the Governor no later than January 15, 2017.
4. The Department of Public Health shall provide the Task Force with a briefing of the pending applications currently before it on or before April 1, 2016.
5. To provide the necessary time for a fair and thorough evaluation of the CON process, the Department of Public Health and the Department of Social Services are directed not to make any final decisions on any CON application – including those previously received and currently under review – until June 30, 2017, insofar as permitted by law, if the application meets the following conditions:
 - a. It involves (1) a nonprofit hospital transferring a material amount of its assets or operations to a for-profit entity or a change of control of its operation to a for-profit entity filed pursuant to section 19a-486a of the Connecticut General Statutes, or (2) the acquisition of a nonprofit hospital by another entity in which the hospital will remain a nonprofit pursuant to section 19a-638 of the general statutes; and
 - b. Such proposed transfer of assets, change in control of operations, or acquisition will result, when combining the total hospital health system operating revenue in the most recent annual short term acute care hospital financial status report from the Office of

Health Care Access of the hospital systems in the application, in an amount greater than twenty percent of Connecticut's total hospital health system operating revenue.

6. The Commissioner of Public Health may make a final decision on an application that otherwise meets the criteria set forth in paragraph 5a and 5b of this Executive Order if the nonprofit hospital transferring a material amount of its assets, changing control of its operations, or proposing to be acquired has had a negative total margin in each of the three prior fiscal years, as indicated in the most recent Annual Report on the Financial Status of Connecticut's Short Term Acute Care Hospitals, prepared by the Office of Health Care Access.
7. In so far as it becomes necessary for the Department of Public Health to act on an application that meets the criteria set forth in paragraph 5 of this Order prior to the completion of the work of the Task Force, the Department of Public Health may:
 - a. for the purposes of subdivision (5) subsection (a) of section 19a-639 of the Connecticut General Statutes, find that accessibility and cost effectiveness of health care delivery in the region will not be improved if the total hospital health system operating revenue of the hospital systems in the application, when combined, result in an amount greater than twenty percent of Connecticut's total hospital health system operating revenue, as stated in the most recent annual short term acute care hospital financial status report from the Office of Health Care Access;
 - b. for the purposes of subdivision (11) of subsection (a) of section 19a-639 of the Connecticut General Statutes, find the diversity of health care providers and patient choice in the geographic region will be negatively impacted if the total hospital health system operating revenue of the hospital systems in the application, when combined, result in an amount greater than twenty percent of Connecticut's total hospital health system operating revenue, as stated in the most recent annual short term acute care hospital financial status report from the Office of Health Care Access; and
 - c. for the purposes of subdivision (12) subsection (a) of section 19a-639 of the Connecticut General Statutes, find that health care costs or accessibility to care will be adversely affected due to the consolidation included in the application if the total hospital health system operating revenue of the hospital systems in the application, when combined, result in an amount greater than twenty percent of Connecticut's total hospital health system operating revenue, as stated in the most recent annual short term acute care hospital financial status report from the Office of Health Care Access.
8. The Taskforce shall terminate January 15, 2017 or upon the submission of its recommendations, whichever is later.

This Order shall take effect immediately.

Dated at Hartford, Connecticut this 7th day of September, 2016.


Dannel P. Malloy
Governor

By His Excellency's Order


Denise W. Merrill
Secretary of the State

