



Office of Health Strategy – Certificate of Need (CON) Guidance for COVID-19 Response

The Connecticut Office of Health Strategy (“OHS”) has issued guidance intended to relax Certificate of Need (“CON”) requirements and allow healthcare providers the flexibility to take actions necessary to manage COVID-19 and support the State’s response to the pandemic. This guidance is summarized below, along with links to the various Executive Orders, Guidance Documents and required Waiver Request and Notification Forms.

- On March 14, 2020, Governor Lamont Signed Executive Order No. 7B, which among other things modified Sections 19a-610 through 19a-689 of the Connecticut General Statutes to allow the Executive Director of OHS to waive statutes as she deems necessary to ensure that adequate healthcare resources and facilities are available to respond to the COVID-19 pandemic. <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7B.pdf?la=en>
- On March 16, 2020, OHS issued Guidance Regarding the Certificate of Need Process and the State’s Response to COVID-19 Outbreak (OHS_HSP Guidance 20-001) (“Initial CON Guidance”). https://portal.ct.gov/-/media/OHS/CONfolder/OHS-COVID-19-CON-Guidance_.pdf?la=en The Initial CON Guidance states that OHS will waive certain statutory and regulatory requirements for transactions covered under Chapter 368z of the Connecticut General Statutes in order to increase access to critical healthcare services for management of the public health emergency. It outlines the standards for obtaining such a waiver, which include identifying the gaps in services that the proposal will fill and how it will support the State’s ability to manage COVID-19, among other information. Per the Initial CON Guidance, waivers are to be requested in writing on a form provided by OHS and, if approved, will be effective only for the duration of the public health emergency.
- The Initial CON Guidance also states that until further notice all OHS public hearings will be held remotely, with adequate notice to and access by participants and the public. All public hearings are on hold for the time being as OHS works through how to provide the necessary notice and access. In addition, the Governor’s Executive Order 7M gives OHS the ability to extend statutory or regulatory time requirements, decision-making requirements, hearing, or other limitations or deadlines by 90 days, as necessary. OHS indicates that it intends to continue honoring CON deadlines as best possible, however the potential does exist for CON proceedings to be extended beyond their normal timeframes. <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7M.pdf>

- On March 20, 2020, OHS issued Guidance Regarding How to Request a Temporary Waiver for the Provision of Healthcare Services during the COVID-19 Public Health Emergency (Second CON Guidance”) (OHS_HSP Guidance 20-002). <https://portal.ct.gov/-/media/OHS/CONfolder/OHS-COVID-19-CON-Guidance-Document-2---3-20-2020.pdf?la=en> The Second CON Guidance provides that an Applicant seeking a temporary waiver of CON requirements to assist with the COVID-19 response must complete a COVID-19 Waiver Form and upload it to the CON Portal as a Determination, with an electronic copy to OHS staff counsel. The CON Covid-19 Waiver Form can be found on the OHS website. <https://portal.ct.gov/OHS/Pages/Certificate-of-Need>
- On March 25, 2020, OHS Issued Guidance Regarding the Temporary Waiver of CON Requirements for approval of Increased Licensed Bed Capacity and the Temporary Suspension of Services at Connecticut Hospitals during the COVID-19 Public Health Emergency (“Third CON Guidance”) (OHS_HSP Guidance 20-003). <https://portal.ct.gov/-/media/OHS/CONfolder/OHS-COVID19-CON-Guidance-Document-No-3.pdf?la=en> The Third CON Guidance provides that Connecticut hospitals licensed under Chapters 368v of the Connecticut General Statutes (including acute-care general, children’s and specialty hospitals) no longer need to submit a COVID-19 Waiver Form to request a temporary increase in licensed bed capacity or to temporarily suspend inpatient or outpatient services in order to diagnose and treat COVID-19 patients. The hospital need only complete and submit a COVID-19 Notification for a Temporary Increase in Licensed Bed Capacity or Temporary Suspension of Services by a Hospital Form (“COVID-19 Notification Form”) and email that form to OHS. Again, waivers are only effective while the public health emergency is pending. Once the public health emergency is lifted, hospitals would need to file for CON approval to retain additional licensed beds or to terminate a suspended hospital service. The COVID-19 Notification Form can be found on the OHS website. <https://portal.ct.gov/OHS/Pages/Certificate-of-Need>
- On March 31, 2020, OHS issued Revised Guidance Regarding the Temporary Waiver of CON Requirements for Approval of Increased Licensed Bed Capacity and the Temporary Suspension of Services at Connecticut Hospitals and Outpatient Surgical Facilities during the COVID-19 Public Health Emergency (OHS_HSP 20-003b) (“Fourth CON Guidance”). <https://portal.ct.gov/-/media/Coronavirus/20200331-OHS-COVID19-Revised-CON-Guidance.pdf?la=en> The Fourth CON Guidance extends the COVID-19 Notification Form process described above to Outpatient Surgical Facilities looking to suspend services temporarily in order to assist with the diagnosis and treatment of COVID-19 patients. This allows OSFs to suspend operations altogether if they deem it necessary to do so and to re-open when appropriate without CON review. All OHS guidance facilitating the temporary suspension of services by hospitals and other licensed healthcare facilities encourages social distancing and the preservation of PPE, which is still in short supply.

If you have any questions or need assistance with OHS or other healthcare-related issues, contact Jennifer Groves Fusco at (203) 786-8316 or jfusco@uks.com.

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