



STATE OF CONNECTICUT
OFFICE OF HEALTH CARE ACCESS

M. JODI RELL
GOVERNOR

CRISTINE A. VOGEL
COMMISSIONER

December 13, 2005

John D. Newman, Esq.
Reid and Riege, P.C.
One Financial Plaza
Hartford, CT 06103

RE: Orthopedic Associates of Hartford, P.C.
CON Determination Report 05-30576-DTR

Dear Attorney Newman:

On September 27, 2005 the Office of Health Care Access (OHCA) received a follow up determination request concerning CON Determination 05-30576 for the addition of two operating rooms to the outpatient surgical facility operated by Orthopedic Associates of Hartford, P.C. (OAH) located in Rocky Hill, Connecticut. In 05-30576 OHCA determined that the expansion proposal of OAH required a Certificate of Need (CON). The applicant has provided additional information for OHCA to consider and the agency has reviewed this information.

The agency recognizes that the Connecticut General Assembly delegated additional authority to OHCA through Public Act 03-274 "An Act Concerning Outpatient Surgical Facilities" and Public Act 04- 249 "An Act Concerning Regulation of Outpatient Surgical Facilities." These two acts reflect a legislative intent that OHCA apply the CON process to determine the need for additional or expanded services provided in outpatient surgical facilities. In particular, the provisions of Public Act 04-249 indicate that the addition of one operating room or surgical area would require a CON:

*Section (a)... An outpatient surgical facility shall not include a medical office owned and operated exclusively by a person or persons licensed pursuant to section 20-13, provided such medical office; (1) **Has no operating room or designated surgical area...***

*Section 2 (a) ...Said Commissioner shall consider for as possible criteria for eligibility for such expedited process that an outpatient surgical facility...(2) **have only one operating room...***

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OHCA concludes that the legislature has expressed its intention in Public Act 04-249 that the addition of one or more operating rooms or designated surgical areas by an outpatient surgical facility be subject to CON review. This conclusion is further supported by the legislative history of Public Act 04-249, in which the legislature identified a concern it has with the migration of surgical procedures out of the hospitals to outpatient settings, with the resulting impact on hospitals' finances and the state budget.

The September 27, 2005 follow up determination request submitted on behalf of OAH included references to certain OHCA determinations made in 2002 and 2003 relative to outpatient surgical facilities. OHCA notes in the first instance that these determinations were made prior to the enactment of the public acts referenced above. Additionally, to the extent that these determinations reflect a policy whereby the addition of beds or operating rooms by a facility was not considered to be an "additional function or service" under Conn. Gen. Stat. § 19a-638, OHCA believes such a policy is contrary to earlier policy of this agency and its predecessor and inconsistent with the clear and specific provisions of its own regulations.

Section 19a-643-79 of the Regulations of Connecticut State Agencies, which has been in effect since 1989, requires each CON applicant to submit a "letter of intent" prior to the submission of its CON application. Each letter of intent must include, among other things, "[a] *statement describing whether the application is for...the expansion...of an existing facility...[or]any new or additional beds, and their type....*" Section 19a-643-79 (a)(3). It is readily apparent that the addition of two operating rooms by an outpatient surgical facility is one of the circumstances required to be identified to OHCA in a CON letter of intent.

Under the above stated authorities, the agency deems it appropriate and correct to follow its previous policy of requiring certificate of need review in cases involving the expansion of operating rooms in any existing facility. It would appear inconsistent under the statutes and regulations governing OHCA to allow existing surgical facilities to expand their operations without any oversight.

Therefore, the determination that a certificate of need is required for the addition of two additional operating rooms for Orthopedic Associates of Hartford is upheld.

Sincerely,

Signed by Cristine A. Vogel
Commissioner

cc: Timothy Taylor, Administrator, OAH
cc: Karen Roberts, Compliance Officer