Report to the Public Health Committee of the Connecticut General Assembly

January 2005

Public Act 04-249

A Study of the Feasibility of an Expedited Process by which Outpatient Surgical Facilities may Obtain a Certificate of Need

Cristine A. Vogel, MPH
Commissioner

OFFICE of
HEALTH
CARE
ACCESS

Introduction

The Office of Health Care Access (OHCA) was requested to study the feasibility of an expedited process by which certain outpatient surgical facilities may obtain a Certificate of Need (CON). This report is presented to the Public Health Committee in fulfillment of the requirements of Public Act 04-249, "An Act Concerning Regulation of Outpatient Surgical Facilities."

Public Act 04-249 has established that outpatient surgical facilities are defined in terms of the level of anesthesia provided. Any provider, including physician office-based surgical practices, using moderate or deep sedation, moderate or deep analgesia or general anesthesia, is included in the definition of an outpatient surgical facility. Since more surgical procedures are being performed in the outpatient setting, this definition was developed to ensure all outpatient surgical facilities became subject to the same regulatory oversight as hospital-owned surgical facilities and was considered a critical implementation in protecting the safety of patients in all surgical settings. The CON process enables OHCA to review a proposal and determine not only the need for the proposal but how it addresses quality of service and patient safety.

However, with the passage of P.A. 04-249, there exists an exemption from the CON process if the provider can demonstrate to OHCA that they meet certain criterion. According to the Public Act, an outpatient surgical facility does not include a medical office owned and operated exclusively by a person or persons licensed pursuant to C.G.S. Section 20-13, provided that the medical office:

- has no operating room or designated surgical area;
- bills no facility fees to third party payers;
- administers no deep sedation or general anesthesia;
- performs only minor surgical procedures incidental to the work performed in said medical office; and
- only uses light or moderate sedation or analgesia in connection with such incidental minor surgical procedures.

This report will focus on the physician practice that does not meet the above criterion; does utilize the level of anesthesia that would require the provider to

comply with the CON statutes, but due to certain practice characteristics may be eligible for an alternative to the entire CON process. OHCA has been requested to consider and make recommendations to the feasibility of the establishment of an expedited CON process. Possible criteria provided in the Public Act for eligibility of such an expedited process include:

- be required to obtain a certificate of need solely because of the establishment of such facility;
- have only one operating room;
- perform surgeries in only one medical specialty;
- accept no facility fees for its services;
- demonstrate in a business plan that such facility shall be a low volume outpatient surgical facility and shall have nominal adverse economic effect on other providers of similar surgical services in proximity to such facility; and
- provide services to patients insured by Medicaid or state-administered general assistance.

Findings

A review of the current CON and hearing processes was conducted as well as a review of the proposed criteria included in the Public Act. As background, in 1999 OHCA streamlined the CON process, creating a more efficient, concise and issue-specific application while protecting the interests of consumers and meeting statutory mandates. This streamlined process improvement resulted in a decreased average time for a decision to be rendered once an application was deemed complete. The average time to a final decision has declined from 58 days in 2000 to 31 days in 2004.

Currently, the information requested by OHCA is typical of the information developed by an entity as part of a business plan. Applicants are expected to perform their due diligence, perform feasibility studies, and make analyses prior to the submission of their Letter of Intent/CON Application. The application contains questions to make written findings based on the principles and guidelines according to state statute.

Some examples of the principles and guidelines include:

- the financial feasibility of the proposal;
- the impact of the proposal on the interests of consumers and payers;
- the contribution of the proposal to the quality, accessibility, and cost-effectiveness of healthcare delivery in the region;
- whether there is a clear public need for the proposal;
- whether the applicant is competent to provide efficient and adequate service to the public, and is technically, financially and managerially expert and efficient;
- the relationship of the proposal to the applicant's current utilization statistics; and
- any other factors which may be relevant.

In addition to the changes made to the definition of an outpatient surgical facility, legislation was passed that revised OHCA's notification to the public of proposals and the hearing process. Public Act 03-17, "An Act Concerning Certificates of Need," amended Sections 19a-638 and 19a-639, by requiring that each complete Letter of Intent be noticed in a newspaper having a substantial circulation in the area served or to be served by the applicant. This new legislation has brought more public involvement to the CON process. It has enabled health care providers, patients, and payers to have a more active role in the development and disbursement of health care services throughout Connecticut.

Upon review of the proposed criterion provided in P.A. 04-249 for an "expedited" process, there are several terms that are subjective and no general definitions exist. For instance, "low volume outpatient surgical facility"; "nominal adverse economic effect"; and "other provider in proximity." These terms vary depending on the provider, the type of service, and the location of the service. Each medical specialty has its own unique aspects that prevent making a generalized definition of the term "low volume." The same problem exists when trying to determine whether or not an applicant's proposal would have an adverse economic effect on another provider and what is meant by proximity. If the appropriate information is not received, it becomes difficult to assess current volumes, potential capacity and feasibility within a particular market.

Conclusion

In summary, after reviewing the information provided in P.A. 04-249 and the current CON process, OHCA offers the following recommendations:

1) All outpatient surgical facilities that do not meet the stated criterion for an exemption must complete the CON process. The agency has streamlined the current process to focus on key elements. Passage of P.A. 03-17 demonstrates the commitment to encourage the public to participate in the hearing process. Development of an "expedited" process would result in these critical elements being disregarded.

2) Consider the implementation of a demonstration project to evaluate the effectiveness of an alternative CON process. The demonstration project would be restricted to a limited number of physician office-based surgical facilities that meet specific criteria developed by OHCA that includes but is not limited to, size of practice, ownership structure and number of procedures performed.

STATE OF CONNECTICUT

OFFICE OF HEALTH CARE ACCESS

M. Jodi Rell
Governor

Cristine A. Vogel, MPH
Commissioner

Planning tomorrow's health care system today.

410 Capitol Avenue
MS#13HCA
PO Box 340308
Hartford, CT 06134
(860) 418-7001
(800) 797-9688

WWW.CT.GOV/OHCA