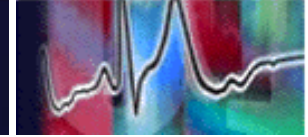




ROBINSON & COLE LLP

Health Law **Pulse**



OHCA Ratchets Up Regulation of Health Care Providers

PUBLIC ACT 05-93 ELIMINATES CAPITAL EXPENDITURE THRESHOLD UNDER CON LAWS

Effective July 1, 2005, any purchase, lease or acceptance as a donation of imaging equipment and linear accelerators by health care facilities, institutions, and providers, except for replacement equipment which satisfies a limited exception, will require a certificate of need (CON) in Connecticut. The \$400,000 threshold for imaging equipment and linear accelerators has been removed.

Acquisitions of CT scanners, PET scanners, PET/CT scanners, MRI scanners, cineangiography equipment, linear accelerators, and other similar equipment with technology which is new or newly introduced in Connecticut will now require CON approval by the Office of Health Care Access (OHCA), regardless of the cost of such equipment. The \$400,000 threshold for CON approval of all other major medical equipment remains unchanged. CON approval may be waived for replacements of existing imaging equipment and linear accelerators if :

- a CON was previously obtained for the equipment,
- the value or expenditure for the replacement equipment is not more than the original cost of the equipment being replaced, increased by 10% for each year that it was owned, and
- the value or expenditure for the replacement equipment does not exceed \$2 million.

Imaging equipment or linear accelerators already owned or leased are not affected by the Public Act as long as the health care facility, institution or provider: (1) provides OHCA with satisfactory evidence that the equipment was purchased, leased or accepted as a donation for under \$400,000 on or before July 1, 2005 or (2) obtained from OHCA, on or before July 1, 2005, a CON or a determination that a CON was not required.

RELATED PUBLIC ACT SUGGESTS ADDITIONAL SMALL CHANGES AND MORE OBLIGATIONS

Public Act 05-75 redefines “affiliate” for purposes of the CON laws to include not just licensed providers of direct patient care services but also unlicensed corporate holding companies, affiliates, or subsidiaries of a health care facility or institution. Previously, the lack of a health care license excluded such entities from the CON requirements. However, effective October 1, 2005, unlicensed people, entities or organizations controlling, controlled by or under common control with a health care facility or institution will fall within the affiliate definition and are, therefore, subject to all applicable CON requirements.

PROPOSED DECLARATORY RULING REGARDING IMAGING CENTERS COULD HAVE BROAD IMPLICATIONS

On May 17, 2005, OHCA published a notice of Declaratory Ruling related to the definition of an imaging center under the Connecticut CON laws. Specifically, the Declaratory Ruling is intended to answer the following question: Whether the term “imaging center” as used in Connecticut General Statute Section 19a-630 means a facility, institution, provider

or person that purchases, leases or accepts a donation of any imaging, scanning or other similar equipment utilizing such technology.

The Declaratory Ruling significantly increases regulation of several providers, including but not limited to, physicians, dentists, radiologists, cardiologists, ophthalmologists or other health care providers who purchase, lease or accept a donation of any imaging equipment, such as an x-ray or ultrasound machine. Based upon the language in the notice of Declaratory Ruling, OHCA appears to consider any provider or person that has imaging equipment to be an “imaging center.”

The term imaging center is included in the definition of a “health care facility or institution” under Connecticut law. Accordingly, based upon the broad definition set forth in the Declaratory Ruling, any entity, individual, provider or person with imaging equipment must seek OHCA approval before he, she or it could:

- transfer all or part of its ownership or control,
- introduce any additional function or service,
- terminate a health care service,
- make a capital expenditure in excess of \$1 million, or
- acquire major medical equipment (other than imaging equipment and linear accelerators) requiring a capital expenditure in excess of \$400,000, including the leasing or donation of equipment or a facility.

If the final Declaratory Ruling contains the same definition of an imaging center set forth in the notice, there will be far reaching implications for individual providers and considerably more activity at OHCA.

PUBLIC HEARING

There will be a public hearing regarding OHCA’s proposal. If you wish to obtain status in the proceeding as a party, intervenor or informal participant, you may file a petition with OHCA by 4:30 P.M. on July 1, 2005.

Robinson & Cole's Health Law Group has extensive experience in the CON approval process. For assistance with filing a petition or if you have any questions regarding the Declaratory Ruling, please feel free to contact us.

This is an archive of past issues. As a result, it may contain information that is not current.

The logo for Robinson & Cole LLP is displayed on a dark blue, curved banner. The text "ROBINSON & COLE" is in a white, serif font, with "LLP" in a smaller font to the right.

ROBINSON & COLE^{LLP}

