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Connecticut Governor Dannel P. Malloy Establishes Certificate of Need Task Force and Places Temporary Moratorium on Certain Hospital CON Decisions

On February 25, 2016, Connecticut Governor Dannel P. Malloy issued [Executive Order No. 51](#) (Executive Order), which establishes a taskforce (Taskforce) to study and provide recommendations on the state's certificate of need (CON) process. The Executive Order also directs the Department of Public Health (DPH) to refrain from making any decision before January 15, 2017, as permitted by law, regarding CON applications that (1) involve a nonprofit hospital transferring its assets to a for-profit entity or a change of control to a for-profit entity, or involve the acquisition of a nonprofit hospital where the hospital will retain its nonprofit status **and** (2) will result in an entity with total hospital health system operating revenue of greater than 20 percent of Connecticut's total hospital health system operating revenue. This restriction applies to CON applications currently under review as well as any that may be received before January 15, 2017.

The time frame for DPH to issue a decision on a CON application is set by statute, and if DPH is required to act on an application meeting the above criteria before January 15, 2017, the Executive Order directs DPH to find that the proposed transaction will adversely affect the cost and accessibility of health care, as well as patient choice. These findings would effectively lead DPH to reject the CON application. An exception in the Executive Order permits DPH to issue a decision on a CON application that meets the criteria above as long as the nonprofit hospital transferring its assets or control of its operations had negative margins in each of the previous three fiscal years, as reported to the Office of Health Care Access.

The Taskforce will be led by Lieutenant Governor Nancy Wyman and composed of 17 members, including representatives from state government, health care providers, the health care insurance industry, and the health care labor force. One member will represent the interests of consumers, and another member will be an expert in health economics. Governor Malloy directed the Taskforce to determine whether changes to the CON process are necessary to maintain a "fair, open and competitive" health care market in Connecticut. The Taskforce must report its findings to the Governor by December 1, 2016.

If you have any questions, please contact a member of Robinson+Cole's [Health Law Group](#):

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