

Washington Amends Certificate of Need Rules, Broadens Arrangements Subject to CoN Review

Legal Alert
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Garvey Schubert Barer Legal Update, January 29, 2014.

Hospitals contemplating transactions that will result in a change in control are now subject to Certificate of Need (CoN) review regardless of the structure of the transaction. The Washington Department of Health (DOH) has amended Washington's CoN Rules to expand the requirement for a CoN review to any type of transaction leading to a change in control. Effective January 23, 2014, the amended Rules mandate that change in control of a hospital, whether by sale, purchase lease, affiliation, corporate membership restructuring, merger or other arrangement, is subject to CoN review. Prior to amendment of the Rules, a CoN was required only for the sale, purchase, or lease of part or all of any existing hospital and was not required in the case of certain transactions, such as a restructuring, merger, or affiliation.

This change in the CoN Rules pertaining to affiliations goes against decades of precedent and determinations by the DOH that transactions involving corporate reorganizations and changes in ownership and/or control of a hospital are not subject to CoN review. The amendment was proposed in response to a directive from the governor requesting that the DOH consider "how the structure of affiliations, corporate restructuring, mergers and other arrangements among health care facilities results in outcomes similar to the traditional methods of sales, purchasing, and leasing of hospitals, particularly when control of part or all of an existing hospital changes from one party to another." Recent trends in transactions involving hospitals and other healthcare providers frequently lead to less traditional changes in ownership or governance structures or to affiliations where interests expand to include new entities while existing ownership and governance interests remain. The amended Rules seek to capture these transactions as well as the more traditional transactions where 100% of control and ownership is transferred from one entity to another.

Finally, a second amendment to the CoN Rules requires hospital to submit their admission, non-discrimination, end of life care, and reproductive health care policies to the department for posting on the department's website. Hospitals are also required to post these same policies on their websites to facilitate public access. The CoN review process is intended to help the State ensure that facilities and new services proposed by healthcare providers are necessary to provide quality patient care within a particular region or community. This includes a review of the reduction or loss of services and the community's access to alternatives if there is a reduction or loss. Existing statutes required hospitals to have policies on admission,

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nondiscrimination, and end of life care, but did not address reproductive health care. Hospitals are required to submit the required information no later than March 24, 2014.

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