

## Puerto Rico Department of Health Adopts New Certificates of Need Regulation

### ATTORNEYS

- Adrián P. Goyco-Vera
- James D. Noël
- Francisco J. Pavía
- Lizzie M. Portela-Fernández

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### An McV Health Care Practice Team Alert

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On May 16, 2019, the Puerto Rico Department of Health approved the “Regulation of the Secretary of Health to Regulate the Concession of Certificates of Need and Convenience” (the “CON Regulation”), which substitutes Regulation No. 112 of the Secretary of Health (“Regulation No. 112”). The new CON Regulation aims to simplify the application of certificates of need procedures and encourages the development of healthcare services in Puerto Rico.

Under Regulation No. 112, parties affected by a CON proposal were allowed to participate in an adversarial administrative proceeding to oppose such proposal. However, new rules adopted under the CON Regulation replace the adversarial administrative proceeding with a non-adversarial public hearing. These public hearings are governed by Chapter V of the Uniform Administrative Procedures Act, Act No. 38-2017, as amended (“LPAU”, for its Spanish acronym) and allow parties to submit written or oral arguments, or documentary evidence, when opposing a CON application. Any determination issued by the Department of Health resulting from the public hearing may be challenged before said agency by any affected party in a subsequent adjudicative hearing governed by Chapter III of LPAU. The CON Regulation fails to establish a time period for the filing of such challenge.

The CON Regulation also requires that any completion of actions authorized by the Department of Health be notified to the CON Division of the Department of Health within 30 days from the date of completion.

A new chapter on fines and penalties was also included in the CON Regulation. The Secretary of Health is expressly authorized under the CON Regulation to impose sanctions in cases when a health facility, *e.g.*, operates without a valid CON, offers health services not authorized by a CON or has not updated name or address information in the current CON.

The CON Regulation becomes effective on June 17, 2019.

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