



# House of Representatives

General Assembly

**File No. 402**

January Session, 2003

Substitute House Bill No. 6464

*House of Representatives, April 16, 2003*

The Committee on Public Health reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE SALE OF NONPROFIT HOSPITALS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-486 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 For purposes of sections 19a-486 to 19a-486h, inclusive:

4 (1) "Nonprofit hospital" means a nonprofit entity licensed as a  
5 hospital pursuant to this chapter and any entity affiliated with such a  
6 hospital through governance or membership, including, but not  
7 limited to, a holding company or subsidiary.

8 (2) "Purchaser" means a person acquiring any assets of a nonprofit  
9 hospital through a transfer.

10 (3) "Person" means any individual, firm, partnership, corporation,  
11 limited liability company, association or other entity.

12 (4) "Transfer" means to sell, transfer, lease, exchange, option,  
13 convey, give or otherwise dispose of or transfer control over,  
14 including, but not limited to, transfer by way of merger or joint  
15 venture not in the ordinary course of business.

16 (5) "Control" has the meaning assigned to it in section 36b-41.

17 (6) "Commissioner" means the Commissioner of Health Care Access.

18 Sec. 2. Section 19a-486a of the general statutes is repealed and the  
19 following is substituted in lieu thereof (*Effective October 1, 2003*):

20 (a) No nonprofit hospital shall enter into an agreement to transfer a  
21 material amount of its assets or operations or a change in control of  
22 operations to a person that is organized or operated for profit without  
23 first having [notified and, if applicable,] received approval of the  
24 agreement by the [Commissioner of Health Care Access] commissioner  
25 and the Attorney General pursuant to sections 19a-486 to 19a-486h,  
26 inclusive, as amended by this act, and [his] pursuant to the Attorney  
27 General's authority under section 3-125. Any such agreement without  
28 the approval required by sections 19a-486 to 19a-486h, inclusive, as  
29 amended by this act, shall be void.

30 (b) Prior to any transaction described in subsection (a) of this  
31 section, the nonprofit hospital and the purchaser shall [give notice]  
32 concurrently submit a letter of intent to the commissioner and the  
33 Attorney General by serving it on them by certified mail, return receipt  
34 requested, or delivering it by hand to each office. Such [notice] letter of  
35 intent shall contain: (1) The name and address of the nonprofit  
36 hospital; (2) the name and address of the purchaser; (3) a brief  
37 description of the terms of the proposed agreement; [(4) copies of all  
38 contracts, agreements and memoranda of understanding relating to  
39 the proposed agreement; and (5) a fairness evaluation by an  
40 independent person who is an expert in such agreements, that includes  
41 an analysis of each of the criteria set forth in section 19a-486c] and (4)  
42 the estimated capital expenditure, cost or value associated with the  
43 proposed agreement. The [notice] letter of intent shall be subject to

44 disclosure pursuant to section 1-210.

45 [(c) Not later than ten days after receipt of a notice under this  
46 section, the commissioner shall publish a summary of such agreement  
47 in a newspaper of general circulation where the nonprofit hospital is  
48 located.

49 (d) Any person may seek to intervene in the proceedings under  
50 sections 19a-486 to 19a-486h, inclusive, pursuant to section 4-177a.]

51 (c) The commissioner and the Attorney General shall review the  
52 letter of intent. The Attorney General shall determine whether the  
53 agreement requires approval pursuant to this chapter. If such approval  
54 is required, the commissioner and the Attorney General shall transmit  
55 to the purchaser and the nonprofit hospital an application form for  
56 approval pursuant to this chapter, unless the commissioner refuses to  
57 accept a filed or submitted letter of intent as provided in section 19a-  
58 639e. Such application form shall require the following information: (1)  
59 The name and address of the nonprofit hospital; (2) the name and  
60 address of the purchaser; (3) a description of the terms of the proposed  
61 agreement; (4) copies of all contracts, agreements and memoranda of  
62 understanding relating to the proposed agreement; (5) a fairness  
63 evaluation by an independent person who is an expert in such  
64 agreements, that includes an analysis of each of the criteria set forth in  
65 section 19a-486c, as amended by this act; (6) documentation that the  
66 nonprofit hospital exercised the due diligence required by subdivision  
67 (2) of subsection (a) of section 19a-486c, as amended by this act,  
68 including disclosure of the terms of any other offers to transfer assets  
69 or operations or change control of operations received by the nonprofit  
70 hospital and the reason for rejection of such offers; and (7) such other  
71 information as the commissioner or the Attorney General deem  
72 necessary to their review pursuant to the provisions of sections 19a-486  
73 to 19a-486f, inclusive, as amended by this act, and sections 19a-637 to  
74 19a-639, inclusive. The application shall be subject to disclosure  
75 pursuant to section 1-210.

76 (d) No later than sixty days after the date of mailing of the

77 application form, the nonprofit hospital and the purchaser shall  
78 concurrently file an application with the commissioner and the  
79 Attorney General containing all the required information. The  
80 commissioner and the Attorney General shall review the application  
81 and determine whether the application is complete. The commissioner  
82 and the Attorney General shall, no later than twenty days after the  
83 date of their receipt of the application, provide written notice to the  
84 nonprofit hospital and the purchaser of any deficiencies in the  
85 application. Such application shall not be deemed complete until such  
86 deficiencies are corrected.

87 (e) No later than twenty-five days after the date of their receipt of  
88 the completed application under this section, the commissioner and  
89 the Attorney General shall jointly publish a summary of such  
90 agreement in a newspaper of general circulation where the nonprofit  
91 hospital is located.

92 (f) Any person may seek to intervene in the proceedings under  
93 section 19a-486e, as amended by this act, in the same manner as  
94 provided in section 4-177a.

95 Sec. 3. Section 19a-486b of the general statutes is repealed and the  
96 following is substituted in lieu thereof (*Effective October 1, 2003*):

97 [(a) Not later than twenty days after receipt of a notice of a  
98 proposed agreement under section 19a-486a, the Attorney General  
99 shall determine whether the agreement involves a material amount of  
100 the assets or operations or a change in control of operations of the  
101 nonprofit hospital and shall notify the Commissioner of Health Care  
102 Access of such determination. If he determines that the agreement  
103 involves a change in control of operations or the amount of assets or  
104 operations involved is material, then he shall conduct a review of the  
105 proposed agreement.

106 (b) Not later than one hundred twenty days after receipt of the  
107 notice required by section 19a-486a, the Attorney General shall review  
108 the agreement and shall approve the agreement, with or without

109 modifications, or disapprove the agreement. The one hundred twenty  
110 days may be extended by agreement of the Attorney General, the  
111 nonprofit hospital and the purchaser. If the Attorney General initiates  
112 a proceeding pursuant to section 19a-486c to enforce a subpoena, the  
113 one hundred twenty days shall be tolled until the final court decision  
114 on the enforcement proceeding, including any appeal or time for the  
115 filing of such appeal. Unless extended pursuant to this subsection,  
116 failure to take action on an agreement within one hundred twenty  
117 days shall be deemed approval.]

118 Not later than one hundred twenty days after the date of receipt of  
119 the completed application pursuant to subsection (d) of section 19a-  
120 486a, as amended by this act, the Attorney General and the  
121 commissioner shall approve the application, with or without  
122 modification, or deny the application. The commissioner shall also  
123 determine, in accordance with the provisions of chapter 368z, whether  
124 to approve, with or without modification, or deny the application for a  
125 certificate of need that is part of the completed application.  
126 Notwithstanding the provisions of sections 19a-638 and 19a-639, the  
127 commissioner shall complete the decision on the application for a  
128 certificate of need within the same time period as the completed  
129 application. Such one-hundred-twenty day period may be extended by  
130 agreement of the Attorney General, the commissioner, the nonprofit  
131 hospital and the purchaser. If the Attorney General initiates a  
132 proceeding to enforce a subpoena pursuant to section 19a-486c or 19a-  
133 486d, as amended by this act, the one-hundred-twenty-day period  
134 shall be tolled until the final court decision on the last pending  
135 enforcement proceeding, including any appeal or time for the filing of  
136 such appeal. Unless the one-hundred-twenty-day period is extended  
137 pursuant to this section, if the commissioner and Attorney General fail  
138 to take action on an agreement prior to the one hundred twenty-first  
139 day after the date of the filing of the completed application, the  
140 application shall be deemed approved.

141 Sec. 4. Section 19a-486c of the general statutes is repealed and the  
142 following is substituted in lieu thereof (*Effective October 1, 2003*):

143 (a) The Attorney General shall [disapprove a proposed agreement  
144 requiring notice under section 19a-486a] deny an application as not in  
145 the public interest if the Attorney General determines that one or more  
146 of the following conditions exist: (1) The transaction is prohibited by  
147 Connecticut statutory or common law governing nonprofit entities,  
148 trusts or charities; (2) the nonprofit hospital failed to exercise due  
149 diligence in (A) deciding to transfer, (B) selecting the purchaser, (C)  
150 obtaining a fairness evaluation from an independent person expert in  
151 such agreements, or (D) negotiating the terms and conditions of the  
152 transfer; (3) the nonprofit hospital failed to disclose any conflict of  
153 interest, including, but not limited to, conflicts of interest pertaining to  
154 board members, officers, key employees and experts of the hospital,  
155 the purchaser or any other party to the transaction; (4) the nonprofit  
156 hospital will not receive fair market value for its assets, which, for  
157 purposes of this subsection, means the most likely price that the assets  
158 would bring in a sale in a competitive and open market under all  
159 conditions requisite to a fair sale, with the buyer and seller each acting  
160 prudently, knowledgeably and in their own best interest, and with a  
161 reasonable time being allowed for exposure in the open market; (5) the  
162 fair market value of the assets has been manipulated by any person in  
163 a manner that causes the value of the assets to decrease; (6) the  
164 financing of the transaction by the nonprofit hospital will place the  
165 nonprofit hospital's assets at an unreasonable risk; (7) any  
166 management contract contemplated under the transaction is not for  
167 reasonable fair value; (8) a sum equal to the fair market value of the  
168 nonprofit hospital's assets (A) is not being transferred to one or more  
169 persons to be selected by the superior court for the judicial district  
170 where the nonprofit hospital is located who are not affiliated through  
171 corporate structure, governance or membership with either the  
172 nonprofit hospital or the purchaser, and (B) is not being used for one of  
173 the following purposes: (i) For appropriate charitable health care  
174 purposes consistent with the nonprofit hospital's original purpose, (ii)  
175 for the support and promotion of health care generally in the affected  
176 community, or (iii) with respect to any assets held by the nonprofit  
177 hospital that are subject to a use restriction imposed by a donor, for a

178 purpose consistent with the intent of said donor; or (9) the nonprofit  
179 hospital or the purchaser has failed to provide the Attorney General  
180 with information and data sufficient to evaluate the proposed  
181 agreement adequately, provided the Attorney General has notified the  
182 nonprofit hospital or the purchaser of the inadequacy of the  
183 information or data and has provided a reasonable opportunity to  
184 remedy such inadequacy.

185 (b) The Attorney General may, during the course of a review  
186 required by section 19a-486b: (1) Issue in writing and cause to be  
187 served upon any person, by subpoena, a demand that such person  
188 appear before [him] the Attorney General and give testimony or  
189 produce documents as to any matters relevant to the scope of the  
190 review; or (2) issue written interrogatories, to be answered under oath,  
191 as to any matters relevant to the scope of the review and prescribing a  
192 return date that would allow a reasonable time to respond. If any  
193 person fails to comply with the provisions of this subsection, the  
194 Attorney General may apply to the superior court for the judicial  
195 district of Hartford seeking enforcement of the subpoena. The  
196 [Superior Court] superior court may, upon notice to such person, issue  
197 and cause to be served an order requiring compliance. Service of  
198 subpoenas ad testificandum, subpoenas duces tecum, notices of  
199 deposition and written interrogatories as provided in this subsection  
200 may be made by personal service at the usual place of abode or by  
201 certified mail, return receipt requested, addressed to the person to be  
202 served at [his] such person's principal place of business within or  
203 without this state or [his] such person's residence.

204 (c) The Attorney General may contract with experts or consultants  
205 to assist in reviewing the proposed agreement, including, but not  
206 limited to, assistance in independently determining the fair market  
207 value of the nonprofit hospital's assets. The Attorney General may  
208 appoint, or contract with, another person to conduct the review  
209 required by this section and make recommendations to the Attorney  
210 General. The Attorney General shall submit any bills for such contracts  
211 to the purchaser. The purchaser shall pay such bills within thirty days

212 of receipt. Such bills shall not exceed [one hundred fifty] three  
213 hundred thousand dollars.

214 Sec. 5. Section 19a-486d of the general statutes is repealed and the  
215 following is substituted in lieu thereof (*Effective October 1, 2003*):

216 [(a) If the Attorney General determines, pursuant to section 19a-  
217 486b, that the proposed agreement involves a material amount of the  
218 assets or operations or a change in control of operations of the  
219 nonprofit hospital, then not later than one hundred twenty days after  
220 receipt of a notice of a proposed agreement under section 19a-486a, the  
221 Commissioner of Health Care Access shall review the agreement and  
222 shall approve the agreement, with or without modifications, or  
223 disapprove the agreement. The one-hundred-twenty-day period may  
224 be extended by agreement of the commissioner, the nonprofit hospital  
225 and the purchaser. If the Attorney General, on behalf of the  
226 commissioner, initiates a proceeding pursuant to subsection (c) of this  
227 section to enforce a subpoena, the one-hundred-twenty-day period  
228 shall be tolled until the final court decision on the proceeding,  
229 including any appeal or any time for filing such appeal. Unless  
230 extended pursuant to this subsection, failure to take action on an  
231 agreement within one hundred twenty days shall be deemed approval.

232 (b) The commissioner shall not approve the agreement unless he  
233 finds that: (1) The affected community will be assured of continued  
234 access to affordable health care; (2) the purchaser has made a  
235 commitment to provide health care to the uninsured and the  
236 underinsured; and (3) safeguard procedures are in place to avoid a  
237 conflict of interest in patient referral if health care providers or insurers  
238 will be offered the opportunity to invest or own an interest in the  
239 purchaser or an entity related to the purchaser.]

240 (a) The commissioner shall deny an application filed pursuant to  
241 subsection (d) of section 19a-486a, as amended by this act, unless the  
242 commissioner finds that: (1) The affected community will be assured of  
243 continued access to affordable health care; (2) the purchaser has made  
244 a commitment to provide health care to the uninsured and the

245 underinsured; (3) in a situation where health care providers or insurers  
246 will be offered the opportunity to invest or own an interest in the  
247 purchaser or an entity related to the purchaser safeguard procedures  
248 are in place to avoid a conflict of interest in patient referral; and (4)  
249 certificate of need authorization is justified in accordance with sections  
250 19a-637 to 19a-639, inclusive. The commissioner may contract with any  
251 person, including, but not limited to, financial or actuarial experts or  
252 consultants, or legal experts with the approval of the Attorney General,  
253 to assist in reviewing the completed application. The commissioner  
254 shall submit any bills for such contracts to the purchaser. Such bills  
255 shall not exceed one hundred fifty thousand dollars. The purchaser  
256 shall pay such bills no later than thirty days after the date of receipt of  
257 such bills.

258 [(c)] (b) The commissioner may, during the course of a review  
259 required by this section: (1) Issue in writing and cause to be served  
260 upon any person, by subpoena, a demand that such person appear  
261 before [him] the commissioner and give testimony or produce  
262 documents as to any matters relevant to the scope of the review; and  
263 (2) issue written interrogatories, to be answered under oath, as to any  
264 matters relevant to the scope of the review and prescribing a return  
265 date that would allow a reasonable time to respond. If any person fails  
266 to comply with the provisions of this subsection, the commissioner,  
267 through the Attorney General, may apply to the superior court for the  
268 judicial district of Hartford seeking enforcement of such subpoena. The  
269 Superior Court may, upon notice to such person, issue and cause to be  
270 served an order requiring compliance. Service of subpoenas ad  
271 testificandum, subpoenas duces tecum, notices of deposition and  
272 written interrogatories as provided in this subsection may be made by  
273 personal service at the usual place of abode or by certified mail, return  
274 receipt requested, addressed to the person to be served at [his] such  
275 person's principal place of business within or without this state or [his]  
276 such person's residence.

277 Sec. 6. Section 19a-486e of the general statutes is repealed and the  
278 following is substituted in lieu thereof (*Effective October 1, 2003*):

279 Prior to making any decision to approve, [or disapprove a proposed  
 280 agreement requiring notice under section 19a-486a] with or without  
 281 modification, or deny any application filed pursuant to subsection (d)  
 282 of section 19a-486a, as amended by this act, the Attorney General and  
 283 the [Commissioner of Health Care Access] commissioner shall jointly  
 284 conduct one or more public hearings, one of which shall be in the  
 285 primary service area of the nonprofit hospital. At least [ten] fourteen  
 286 days before conducting the public hearing, the Attorney General and  
 287 the commissioner shall provide notice of the time and place of the  
 288 hearing through publication in one or more newspapers of general  
 289 circulation in the affected community.

290 Sec. 7. Section 19a-486f of the general statutes is repealed and the  
 291 following is substituted in lieu thereof (*Effective October 1, 2003*):

292 [If the Commissioner of Health Care Access or the Attorney General  
 293 disapproves a proposed agreement requiring notice under section 19a-  
 294 486a, or approves it with modifications, the nonprofit hospital or the  
 295 purchaser may appeal such decision pursuant to chapter 54.]

296 If the commissioner or the Attorney General denies an application  
 297 filed pursuant to subsection (d) of section 19a-486a, as amended by this  
 298 act, or approves it with modification, the nonprofit hospital or the  
 299 purchaser may appeal such decision in the same manner as provided  
 300 in section 4-183, provided that nothing in sections 19a-486 to 19a-486f,  
 301 inclusive, as amended by this act, shall be construed to apply the  
 302 provisions of chapter 54 to the proceedings of the Attorney General.

|  |                        |
|--|------------------------|
| This act shall take effect as follows: |                        |
| Section 1                              | <i>October 1, 2003</i> |
| Sec. 2                                 | <i>October 1, 2003</i> |
| Sec. 3                                 | <i>October 1, 2003</i> |
| Sec. 4                                 | <i>October 1, 2003</i> |
| Sec. 5                                 | <i>October 1, 2003</i> |
| Sec. 6                                 | <i>October 1, 2003</i> |
| Sec. 7                                 | <i>October 1, 2003</i> |

**PH**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill modifies procedures that must be followed by the Attorney General and the Commissioner of Health Care Access when reviewing any proposed sale of a nonprofit hospital to a for profit entity. Its provisions do not substantially alter the process by which each office currently would review such a proposal, and therefore no fiscal impact results. It also increases from \$150,000 to \$300,000 the maximum amount that the Attorney General may bill to a prospective purchaser of a hospital for costs associated with expert review.

Finally, the bill authorizes the Office of Health Care Access (OHCA) to retain experts or consultants to assist in reviewing proposed purchase agreements involving hospitals and for profit entities and to submit bills for the same (not to exceed \$150,000 in the aggregate) to the prospective purchaser for payment .

**OLR Bill Analysis**

sHB 6464

**AN ACT CONCERNING THE SALE OF NONPROFIT HOSPITALS****SUMMARY:**

This bill modifies the process for the sale of nonprofit hospitals to for-profit entities by:

1. requiring the hospital and the purchaser to submit a joint application for approval and for any certificate of need (CON), instead of separate applications;
2. appearing to adopt the CON application process in which the applicant files a letter of intent with basic information on the proposed purchase and then a formal application;
3. ensuring that any extension of the statutory deadlines for issuing a decision is made jointly by the Office of Health Care Access (OHCA) and the attorney general;
4. allowing both agencies to contract with experts to help review the application and requiring the purchaser to pay for up to \$300,000 for the attorney general's experts and up to \$150,000 for OHCA's;
5. increasing the time for public notice of a hearing on the proposal; and
6. specifying that the attorney general's review procedure is not conducted under the Uniform Administrative Procedure Act (UAPA).

EFFECTIVE DATE: October 1, 2003

**SALE OF NONPROFIT HOSPITAL TO A FOR-PROFIT PURCHASER*****Letter of Intent***

Current law prohibits a nonprofit hospital from entering into an

agreement to transfer a material amount of its assets or operations or to a change in control of operations to a for-profit entity without first notifying the attorney general and OHCA commissioner by certified mail and receiving their approval.

This bill instead requires the purchaser as well as the nonprofit hospital, to submit a letter of intent (it appears that “letter of intent” is meant to have the same meaning as under OHCA’s certificate of need process) instead of a notice, to OHCA and the attorney general. The letter of intent can be sent by certified mail or hand delivered to each office. It must contain the estimated capital expenditure, cost or value associated with the proposed agreement, in addition to current requirements for the notice.

### ***Application Form and Required Information***

The OHCA commissioner and attorney general must review the letter of intent, with the attorney general determining whether the proposed agreement requires their approval under the nonprofit conversion law. If it does, they must give the hospital and the purchaser an application, unless OHCA refuses to accept the letter of intent because it is incomplete.

The application must include:

1. the name and address of the hospital and the purchaser;
2. a description of proposed agreement terms;
3. copies of all contracts, agreements, and memoranda of understanding relating to the proposed agreement;
4. a fairness evaluation by an independent person expert in these agreements that applies the criteria established in current law;
5. documentation that the hospital exercised due diligence in deciding to transfer, selecting the purchaser, obtaining the fairness evaluation, or negotiating the terms and conditions of the transfer;
6. disclosure of the terms of any other offers the hospital

rejected and why; and

7. other necessary information the attorney general and OHCA require.

Except for the disclosure of rejected offers, these application requirements are similar to those currently required when the hospital notifies the commissioner and OHCA about the proposed agreement with the for-profit entity.

The bill specifies that the application is subject to public disclosure, as is the notice under current law.

### ***Filing of Application***

Under current law, the attorney general must determine, within 20 days of receiving notice of a proposed agreement between the hospital and purchaser, whether the agreement involves a material amount of the hospital's assets or operations or change in control of the hospital's operations and notify OHCA of his decision. If he determines that it does, he must review the proposal.

The bill instead requires the purchaser and hospital to concurrently file the application with OHCA and the attorney general within 60 days after receiving the form in the mail. The OHCA commissioner and the attorney general must review the application and determine if it is complete. They must, within 20 days of receiving it, give written notice to the purchaser and the hospital of any deficiencies. The application is not deemed complete until these deficiencies are fixed.

Within 25 days after getting the complete application, OHCA and the attorney general must jointly publish a summary of it in a newspaper in the hospital's area.

### ***Review of Application***

Current law gives the attorney general 120 days to complete the review after receiving notice from the hospital. He may approve the agreement, with or without modifications, or disapprove it. He, the hospital, and the purchaser can agree to extend the 120-day period, and if he takes legal action to enforce a subpoena, the time period is tolled until enforcement is complete. Unless extended, if the attorney

general does not take action on the agreement within 120 days, it is deemed approved.

Current law requires the OHCA commissioner to review the proposal following the attorney general's determination that the agreement is subject to review. OHCA must also make its decision within 120 days, which can be extended by separate agreement among OHCA, the hospital, and purchasers.

The bill instead requires the attorney general and the OHCA commissioner to approve the completed application, with or without modification, or deny it within 120 days of receiving it. The commissioner must also determine whether to approve, with or without modification, or deny an application for a certificate of need (CON) that is part of the application. He must make the CON decision within the same time period as the completed application. The deadline can be extended if the attorney general, OHCA, the hospital, and the purchaser all agree. The deadline is tolled for legal action taken by the attorney general as described above. The application is deemed approved if the commissioner and the attorney general do not act within the 120 period, unless extended.

Under current law, the attorney general can contract with experts or consultants in reviewing the proposal. This bill allows him to appoint or contract with another person to review the application and make recommendations to him. It also increases from \$150,000 to \$300,000 the amount the purchaser can be billed for these experts' services.

### ***Standards for Approval***

By law, the attorney general must disapprove the proposal as not in the public interest if (1) it is prohibited by statutory or common law on nonprofits, trusts, or charities; (2) the hospital did not exercise due diligence; (3) the hospital did not disclose conflicts of interest; (4) the hospital will not receive fair market value for its assets; (5) the assets' fair market value was manipulated, causing their value to decrease; (6) the transition's financing by the hospital will put the assets at unreasonable risk; (7) any management contract considered is not for reasonable fair value; (8) a sum equal to the fair market value of the hospital's assets is not being transferred to one or more people selected by the Superior Court; or (9) the hospital or purchaser has not provided sufficient information to adequately evaluate the proposal.

The bill applies these same standards to the denial of an application by the attorney general.

Under current law, the OHCA commissioner must also approve the proposal if the attorney general determines it is subject to the law's approval process. Under current law, OHCA must find that (1) the affected community is assured of continued access to affordable care, (2) the purchaser has committed to providing health care to the uninsured and under-insured, and (3) safeguards are in place to avoid a conflict of interest in patient referral if health care providers or insurers are offered investment or ownership opportunities in the purchaser or related entity.

This bill retains these same standards for OHCA review and additionally requires OHCA to find that the certificate of need authorization is justified. The bill also allows the OHCA commissioner to contract with financial or actuarial experts or consultants, or legal experts, with the attorney general's approval, to assist with the application review. The commissioner can bill the purchaser up to \$150,000 for such contracts, which he must pay within 30 days of receiving the bills.

### ***Public Hearings***

By law, OHCA and the attorney general must hold at least one public hearing before any decision on the proposal is made. The bill requires 14, rather than 10 days, notice of the hearing's time and place through publication in one or more newspapers in the affected area.

### ***Appeals***

After exhausting administrative remedies, the hospital or purchaser can, under current law, appeal the attorney general's or OHCA commissioner's decision to disapprove the proposed agreement or approve it with modifications to the Superior Court according to the UAPA. The bill allows appeal of an application denial or approval with modification in the same manner, but specifies that the bill must not be construed as applying the UAPA to the attorney general's proceedings.

## **BACKGROUND**

**Certificate of Need**

Certificate of need (CON) is a regulatory process, administered by OHCA, for review of certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service charge is needed.

**Related Bill**

sHB 6452 (File 102), reported favorably by the Public health Committee, amends the state’s CON process by (1) requiring OHCA to give public notice of completed letters of intent for CON applications, (2) making all OHCA public hearings on CON optional unless requested by the public, and (3) establishing criteria for determining whether to hold a hearing.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute  
Yea 21 Nay 0