



General Assembly

January Session, 2003

**Raised Bill No. 6464**

LCO No. 3373

Referred to Committee on Public Health

Introduced by:  
(PH)

**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 Section 19a-486 of the general statutes is repealed and the  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 the Office of Health  
18 Care Access.

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 Section 19a-486a of the general statutes is repealed and the  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

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

31 (b) Prior to any transaction described in subsection (a) of this  
32 section, the nonprofit hospital and the purchaser shall [give notice]  
33 concurrently submit a letter of intent to the commissioner and the  
34 Attorney General by serving it on them by certified mail, return receipt  
35 requested, or delivering it by hand to each office. Such [notice] letter of  
36 intent shall contain: (1) The name and address of the nonprofit  
37 hospital; (2) the name and address of the purchaser; (3) a brief  
38 description of the terms of the proposed agreement; [(4) copies of all  
39 contracts, agreements and memoranda of understanding relating to  
40 the proposed agreement; and (5) a fairness evaluation by an  
41 independent person who is an expert in such agreements, that includes  
42 an analysis of each of the criteria set forth in section 19a-486c] and (4)  
43 the estimated capital expenditure, cost or value associated with the  
44 proposed agreement. The [notice] letter of intent shall be subject to  
45 disclosure pursuant to section 1-210.

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

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

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

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

87 (e) No later than twenty-five days after their receipt of the  
88 completed application under this section, the commissioner and the  
89 Attorney General shall jointly publish a summary of such agreement in  
90 a newspaper of general circulation where the nonprofit hospital is  
91 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 receipt of the  
119 completed application, the Attorney General and the commissioner  
120 shall approve the application, with or without modification, or deny  
121 the application. The commissioner shall also determine, in accordance  
122 with the provisions of chapter 368z, whether to approve, with or  
123 without modification, or deny the application for a certificate of need  
124 that is part of the completed application. Notwithstanding the  
125 provisions of sections 19a-638 and 19a-639, the commissioner shall  
126 complete the decision on the application for a certificate of need within  
127 the same time period as the completed application. The one hundred  
128 twenty days may be extended by agreement of the Attorney General,  
129 the commissioner, the nonprofit hospital and the purchaser. If the  
130 Attorney General initiates a proceeding to enforce a subpoena  
131 pursuant to section 19a-486c or 19a-486d, as amended by this act, the  
132 one-hundred-twenty-day period shall be tolled until the final court  
133 decision on the last pending enforcement proceeding, including any  
134 appeal or time for the filing of such appeal. Unless extended pursuant  
135 to this section, failure to take action on an agreement no later than one  
136 hundred twenty days after the filing of the completed application shall  
137 be deemed approval of the application.

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

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

174 hospital that are subject to a use restriction imposed by a donor, for a  
175 purpose consistent with the intent of said donor; or (9) the nonprofit  
176 hospital or the purchaser has failed to provide the Attorney General  
177 with information and data sufficient to evaluate the proposed  
178 agreement adequately, provided the Attorney General has notified the  
179 nonprofit hospital or the purchaser of the inadequacy of the  
180 information or data and has provided a reasonable opportunity to  
181 remedy such inadequacy.

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

201 (c) The Attorney General may contract with experts or consultants  
202 to assist in reviewing the proposed agreement, including, but not  
203 limited to, assistance in independently determining the fair market  
204 value of the nonprofit hospital's assets. The Attorney General may  
205 appoint, or contract with, another person to conduct the review  
206 required by this section and make recommendations to the Attorney

207 General. The Attorney General shall submit any bills for such contracts  
208 to the purchaser. The purchaser shall pay such bills within thirty days  
209 of receipt. Such bills shall not exceed [one hundred fifty] three  
210 hundred thousand dollars.

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

213 [(a) If the Attorney General determines, pursuant to section 19a-  
214 486b, that the proposed agreement involves a material amount of the  
215 assets or operations or a change in control of operations of the  
216 nonprofit hospital, then not later than one hundred twenty days after  
217 receipt of a notice of a proposed agreement under section 19a-486a, the  
218 Commissioner of Health Care Access shall review the agreement and  
219 shall approve the agreement, with or without modifications, or  
220 disapprove the agreement. The one-hundred-twenty-day period may  
221 be extended by agreement of the commissioner, the nonprofit hospital  
222 and the purchaser. If the Attorney General, on behalf of the  
223 commissioner, initiates a proceeding pursuant to subsection (c) of this  
224 section to enforce a subpoena, the one-hundred-twenty-day period  
225 shall be tolled until the final court decision on the proceeding,  
226 including any appeal or any time for filing such appeal. Unless  
227 extended pursuant to this subsection, failure to take action on an  
228 agreement within one hundred twenty days shall be deemed approval.

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

237 (a) The commissioner shall deny the application unless the  
238 commissioner finds that: (1) The affected community will be assured of

239 continued access to affordable health care; (2) the purchaser has made  
240 a commitment to provide health care to the uninsured and the  
241 underinsured; (3) safeguard procedures are in place to avoid a conflict  
242 of interest in patient referral if health care providers or insurers will be  
243 offered the opportunity to invest or own an interest in the purchaser or  
244 an entity related to the purchaser; and (4) certificate of need  
245 authorization is justified in accordance with sections 19a-637 to 19a-  
246 639, inclusive. The commissioner may contract with any person,  
247 including, but not limited to, financial or actuarial experts or  
248 consultants, or legal experts with the approval of the Attorney General,  
249 to assist in reviewing the completed application. The commissioner  
250 shall submit any bills for such contracts to the purchaser. Such bills  
251 shall not exceed one hundred fifty thousand dollars. The purchaser  
252 shall pay such bills within thirty days of receipt of such bills.

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

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

274 Prior to making any decision to approve, [or disapprove a proposed  
275 agreement requiring notice under section 19a-486a] with or without  
276 modification, or deny any application, the Attorney General and the  
277 [Commissioner of Health Care Access] commissioner shall jointly  
278 conduct one or more public hearings, one of which shall be in the  
279 primary service area of the nonprofit hospital. At least [ten] fourteen  
280 days before conducting the public hearing, the Attorney General and  
281 the commissioner shall provide notice of the time and place of the  
282 hearing through publication in one or more newspapers of general  
283 circulation in the affected community.

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

286 [If the Commissioner of Health Care Access or the Attorney General  
287 disapproves a proposed agreement requiring notice under section 19a-  
288 486a, or approves it with modifications, the nonprofit hospital or the  
289 purchaser may appeal such decision pursuant to chapter 54.]

290 If the commissioner or the Attorney General denies an application,  
291 or approves it with modification, the nonprofit hospital or the  
292 purchaser may appeal such decision in the same manner as provided  
293 in section 4-183, provided that nothing in sections 19a-486 to 19a-486f,  
294 inclusive, as amended by this act, shall be construed to apply the  
295 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

October 1, 2003

**Statement of Purpose:**

To modify and streamline certificate of need and application procedures used by the Commissioner of the Office of Health Care Access and the Attorney General in reviewing the sale of nonprofit hospitals.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*