



Substitute House Bill No. 5639

Public Act No. 07-209

AN ACT CONCERNING THE CLOSING OF A LONG-TERM CARE FACILITY.

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

Section 1. Section 17b-353 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(a) Any facility, as defined in subsection (a) of section 17b-352, which proposes (1) a capital expenditure exceeding one million dollars, which increases facility square footage by more than five thousand square feet or five per cent of the existing square footage, whichever is greater, (2) a capital expenditure exceeding two million dollars, or (3) the acquisition of major medical equipment requiring a capital expenditure in excess of four hundred thousand dollars, including the leasing of equipment or space, shall submit a request for approval of such expenditure, with such information as the department requires, to the Department of Social Services. Any such facility which proposes to acquire imaging equipment requiring a capital expenditure in excess of four hundred thousand dollars, including the leasing of such equipment, shall obtain the approval of the Office of Health Care Access in accordance with section 19a-639, subsequent to obtaining the approval of the Commissioner of Social Services. Prior to the facility's obtaining the imaging equipment, the

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Commissioner of the Office of Health Care Access, after consultation with the Commissioner of Social Services, may elect to perform a joint or simultaneous review with the Department of Social Services.

(b) An applicant, prior to submitting a certificate of need application, shall request, in writing, application forms and instructions from the department. The request shall include: (1) The name of the applicant or applicants; (2) a statement indicating whether the application is for (A) a new, additional, expanded or replacement facility, service or function, (B) a termination or reduction in a presently authorized service or bed capacity or (C) any new, additional or terminated beds and their type; (3) the estimated capital cost; (4) the town where the project is or will be located; and (5) a brief description of the proposed project. Such request shall be deemed a letter of intent. No certificate of need application shall be considered submitted to the department unless a current letter of intent, specific to the proposal and in accordance with the provisions of this subsection, has been on file with the department for not less than ten business days. For purposes of this subsection, "a current letter of intent" means a letter of intent on file with the department for not more than one hundred eighty days. A certificate of need application shall be deemed withdrawn by the department if a department completeness letter is not responded to within one hundred eighty days.

(c) In conducting its activities pursuant to this section, section 17b-352 or both, except as provided for in subsection (d) of this section, the [commissioner] the Commissioner of Social Services or said commissioner's designee may hold a public hearing on an application or on more than one application, if such applications are of a similar nature with respect to the request. At least two weeks' notice of the hearing shall be given to the facility by certified mail and to the public by publication in a newspaper having a substantial circulation in the area served by the facility. Such hearing shall be held at the discretion

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of the commissioner in Hartford or in the area so served. The commissioner or [said] the commissioner's designee shall consider such request in relation to the community or regional need for such capital program or purchase of land, the possible effect on the operating costs of the facility and such other relevant factors as the commissioner or [said] the commissioner's designee deems necessary. In approving or modifying such request, the commissioner or [said] the commissioner's designee may not prescribe any condition, such as, but not limited to, any condition or limitation on the indebtedness of the facility in connection with a bond issued, the principal amount of any bond issued or any other details or particulars related to the financing of such capital expenditure, not directly related to the scope of such capital program and within the control of the facility. If the hearing is conducted by a designee of the commissioner, the designee shall submit any findings and recommendations to the commissioner. The commissioner shall grant, modify or deny such request within ninety days, except as provided for in this section. Upon the request of the applicant, the review period may be extended for an additional fifteen days if the commissioner or [said] the commissioner's designee has requested additional information subsequent to the commencement of the review period. The commissioner or [said] the commissioner's designee may extend the review period for a maximum of thirty days if the applicant has not filed in a timely manner information deemed necessary by the commissioner or [said] the commissioner's designee.

(d) No facility shall be allowed to close or decrease substantially its total bed capacity until such time as a public hearing has been held in accordance with the provisions of this subsection and the Commissioner of Social Services has approved the facility's request unless such decrease is associated with a census reduction. The commissioner may impose a civil penalty of not more than five thousand dollars on any facility that fails to comply with the

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provisions of this subsection. Penalty payments received by the commissioner pursuant to this subsection shall be deposited in the special fund established by the department pursuant to subsection (c) of section 17b-357 and used for the purposes specified in said subsection (c). The commissioner or the commissioner's designee shall hold a public hearing upon the earliest occurrence of: (1) Receipt of any letter of intent submitted by a facility to the department, or (2) receipt of any certificate of need application. Such hearing shall be held at the facility for which the letter of intent or certificate of need application was submitted not later than thirty days after the date on which such letter or application was received by the commissioner. The commissioner or the commissioner's designee shall provide both the facility and the public with notice of the date of the hearing not less than fourteen days in advance of such date. Notice to the facility shall be by certified mail and notice to the public shall be by publication in a newspaper having a substantial circulation in the area served by the facility.

[(d)] (e) The Commissioner of Social Services shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section. The commissioner shall implement the standards and procedures of the Office of Health Care Access concerning certificates of need established pursuant to section 19a-643, as appropriate for the purposes of this section, until the time final regulations are adopted in accordance with said chapter 54.

Sec. 2. Subsection (a) of section 17b-354 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Except for applications deemed complete as of August 9, 1991, the Department of Social Services shall not accept or approve any requests for additional nursing home beds or modify the capital cost of any prior approval for the period from September 4, 1991, through

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June 30, [2007] 2012, except (1) beds restricted to use by patients with acquired immune deficiency syndrome or traumatic brain injury; (2) beds associated with a continuing care facility which guarantees life care for its residents; (3) Medicaid certified beds to be relocated from one licensed nursing facility to another licensed nursing facility, provided (A) the availability of beds in an area of need will not be adversely affected; (B) no such relocation shall result in an increase in state expenditures; and (C) the relocation results in a reduction in the number of nursing facility beds in the state; (4) a request for no more than twenty beds submitted by a licensed nursing facility that participates in neither the Medicaid program nor the Medicare program, admits residents and provides health care to such residents without regard to their income or assets and demonstrates its financial ability to provide lifetime nursing home services to such residents without participating in the Medicaid program to the satisfaction of the department, provided the department does not accept or approve more than one request pursuant to this subdivision; and (5) a request for no more than twenty beds associated with a free standing facility dedicated to providing hospice care services for terminally ill persons operated by an organization previously authorized by the Department of Public Health to provide hospice services in accordance with section 19a-122b. Notwithstanding the provisions of this subsection, any provision of the general statutes or any decision of the Office of Health Care Access, (i) the date by which construction shall begin for each nursing home certificate of need in effect August 1, 1991, shall be December 31, 1992, (ii) the date by which a nursing home shall be licensed under each such certificate of need shall be October 1, 1995, and (iii) the imposition of such dates shall not require action by the Commissioner of Social Services. Except as provided in subsection (c) of this section, a nursing home certificate of need in effect August 1, 1991, shall expire if construction has not begun or licensure has not been obtained in compliance with the dates set forth in subparagraphs (i) and (ii) of this subsection.

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Sec. 3. Subsection (b) of section 19a-545 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(b) Not later than ninety days after appointment as a receiver, such receiver shall take all necessary steps to stabilize the operation of the facility in order to ensure the health, safety and welfare of the residents of such facility. In addition, within a reasonable time period after the date of appointment, not to exceed six months, the receiver shall: (1) Determine whether the facility can continue to operate and provide adequate care to residents in substantial compliance with applicable federal and state law within the facility's state payments as established by the Commissioner of Social Services pursuant to subsection (f) of section 17b-340, together with income from self-pay residents, Medicare payments and other current income and shall report such determination to the court; and (2) seek facility purchase proposals. If the receiver determines that the facility will be unable to continue to operate in compliance with said requirements, the receiver shall promptly request an [immediate] order of the court to close the facility and make arrangements for the orderly transfer of residents pursuant to subsection (a) of this section unless the receiver determines that a transfer of the facility to a qualified purchaser is expected [within ninety days] during the six-month period commencing on the date of the receiver's appointment. If a transfer is not completed within [one hundred eighty days of the appointment of the receiver] such period and all purchase and sale proposal efforts have been exhausted, the receiver shall request an immediate order of the court to close the facility and make arrangements for the orderly transfer of residents pursuant to subsection (a) of this section.

Sec. 4. Subdivision (16) of subsection (f) of section 17b-340 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

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(16) The interim rate established to become effective upon sale of any licensed chronic and convalescent home or rest home with nursing supervision for which a receivership has been imposed pursuant to sections 19a-541 to 19a-549, inclusive, shall not exceed the rate in effect for the facility at the time of the imposition of the receivership, subject to any annual increases permitted by this section; provided [if such rate is less than the median rate for the facility's peer grouping, as defined in subdivision (2) of this subsection,] the Commissioner of Social Services may, in the commissioner's discretion, and after consultation with the receiver, establish an increased rate for the facility [not to exceed such median rate unless the Secretary of the Office of Policy and Management, after review of area nursing facility bed availability and other pertinent factors, authorizes the Commissioner of Social Services to establish a rate higher than the median rate. In the event the rate in effect for the facility at the time of imposition of the receivership is greater than the median rate for the facility's peer grouping, as defined in subdivision (2) of this subsection, the Secretary of the Office of Policy and Management, after review of area nursing facility bed availability and other pertinent factors, may authorize the Commissioner of Social Services to establish an increased interim rate] if the commissioner with approval of the Secretary of the Office of Policy and Management determines that such higher rate is needed to keep the facility open and to ensure the health, safety and welfare of the residents at such facility.

Approved July 10, 2007