



General Assembly

January Session, 2015

Committee Bill No. 811

LCO No. 5737



Referred to Committee on PUBLIC HEALTH

Introduced by:
(PH)

AN ACT CONCERNING PARITY IN HOSPITAL SALES OVERSIGHT.

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 Section 19a-486 of the general statutes is repealed and the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, 2015*):

3 For purposes of sections 19a-486 to 19a-486h, inclusive, as amended
4 by this act:

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

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

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

13 (4) "Transfer" means to sell, transfer, lease, exchange, option,
14 convey, give or otherwise dispose of or transfer control over,

15 including, but not limited to, transfer by way of merger or joint
16 venture not in the ordinary course of business.

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

18 (6) "Commissioner" means the Commissioner of Public Health or
19 the commissioner's designee.

20 (7) "Department" means the Department of Public Health.

21 (8) "Affected community" means a municipality where the hospital
22 is physically located or a municipality whose inhabitants are regularly
23 served by the hospital.

24 (9) "Transacting party" means a person that is a party to a proposed
25 agreement who submits an application to the commissioner and the
26 Attorney General pursuant to section 19a-486a, as amended by this act.

27 (10) "New hospital" means a hospital as it exists after the approval
28 of an agreement pursuant to section 19a-486b, as amended by this act.

29 Sec. 2. Section 19a-486a of the general statutes is repealed and the
30 following is substituted in lieu thereof (*Effective October 1, 2015*):

31 (a) No [nonprofit] hospital shall enter into an agreement to transfer
32 a material amount of its assets or operations or a change in control of
33 operations to [a person that is organized or operated for profit] any
34 person without first having received approval of the agreement by the
35 commissioner and the Attorney General pursuant to sections 19a-486
36 to 19a-486h, inclusive, as amended by this act, and pursuant to the
37 Attorney General's authority under section 3-125. Any such agreement
38 without the approval required by sections 19a-486 to 19a-486h,
39 inclusive, as amended by this act, shall be void.

40 (b) Prior to any transaction described in subsection (a) of this
41 section, the [nonprofit hospital and the purchaser] transacting parties
42 shall concurrently submit a certificate of need determination letter as

43 described in subsection (c) of section 19a-638 to the commissioner and
44 the Attorney General by serving it on them by certified mail, return
45 receipt requested, or delivering it by hand to each department or
46 office. The certificate of need determination letter shall contain: (1) The
47 name and address of the [nonprofit] hospital that is proposed to be
48 acquired; (2) the name and address of the purchaser; (3) a brief
49 description of the terms of the proposed agreement; and (4) the
50 estimated capital expenditure, cost or value associated with the
51 proposed agreement. The certificate of need determination letter shall
52 be subject to disclosure pursuant to section 1-210.

53 (c) Not later than thirty days after receipt of the certificate of need
54 determination letter by the commissioner and the Attorney General,
55 the purchaser and the [nonprofit] hospital that is proposed to be
56 acquired shall hold a hearing on the contents of the certificate of need
57 determination letter in the municipality in which the new hospital is
58 proposed to be located. The [nonprofit] hospital that is proposed to be
59 acquired shall provide not less than two weeks' advance notice of the
60 hearing to the public by publication in a newspaper having a
61 substantial circulation in the affected community for not less than
62 three consecutive days. Such notice shall contain substantially the
63 same information as in the certificate of need determination letter. The
64 purchaser and the [nonprofit] hospital that is proposed to be acquired
65 shall record and transcribe the hearing and make such recording or
66 transcription available to the commissioner, the Attorney General or
67 members of the public upon request.

68 (d) The commissioner and the Attorney General shall review the
69 certificate of need determination letter. The Attorney General shall
70 determine whether the agreement requires approval pursuant to this
71 chapter. If such approval is required, the commissioner and the
72 Attorney General shall transmit to the [purchaser and the nonprofit
73 hospital] transacting parties an application form for approval pursuant
74 to this chapter, unless the commissioner refuses to accept a filed or
75 submitted certificate of need determination letter.

76 (e) Such application form shall require the following information:
77 (1) The name and address of the [nonprofit] hospital that is proposed
78 to be acquired; (2) the name and address of the purchaser; (3) a
79 description of the terms of the proposed agreement; (4) copies of all
80 contracts, agreements and memoranda of understanding relating to
81 the proposed agreement; (5) a fairness evaluation by an independent
82 person who is an expert in such agreements, that includes an analysis
83 of each of the criteria set forth in section 19a-486c, as amended by this
84 act; (6) documentation that the [nonprofit] hospital that is proposed to
85 be acquired exercised the due diligence required by subdivision (2) of
86 subsection (a) of section 19a-486c, as amended by this act, including
87 disclosure of the terms of any other offers to transfer assets or
88 operations or change control of operations received by [the nonprofit]
89 such hospital and the reason for rejection of such offers; and (7) such
90 other information as the commissioner or the Attorney General deem
91 necessary to their review pursuant to the provisions of sections 19a-486
92 to 19a-486f, inclusive, as amended by this act, and chapter 368z. The
93 application shall be subject to disclosure pursuant to section 1-210.

94 [(e) No] (f) Not later than sixty days after the date of mailing of the
95 application form, the [nonprofit] hospital that is proposed to be
96 acquired and the purchaser shall concurrently file an application with
97 the commissioner and the Attorney General containing all the required
98 information. The commissioner and the Attorney General shall review
99 the application and determine whether the application is complete.
100 The commissioner and the Attorney General shall, [no] not later than
101 twenty days after the date of their receipt of the application, provide
102 written notice to the [nonprofit] hospital that is proposed to be
103 acquired and the purchaser of any deficiencies in the application. Such
104 application shall not be deemed complete until such deficiencies are
105 corrected.

106 [(f) No] (g) Not later than twenty-five days after the date of their
107 receipt of the completed application under this section, the
108 commissioner and the Attorney General shall jointly publish a

109 summary of such agreement in a newspaper of general circulation
110 where the [nonprofit] hospital that is proposed to be acquired is
111 located.

112 [(g)] (h) Any person may seek to intervene in the proceedings under
113 section 19a-486e, as amended by this act, in the same manner as
114 provided in section 4-177a.

115 Sec. 3. Section 19a-486b of the general statutes is repealed and the
116 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

140 (b) The commissioner and the Attorney General may place any

141 conditions on the approval of an application that relate to the purposes
142 of sections 19a-486a to 19a-486h, inclusive, as amended by this act. In
143 determining the conditions to be placed on the approval of an
144 application, the commissioner and the Attorney General shall weigh
145 the value of such conditions against the potential negative impact that
146 such conditions may have, including the failure of the proposed sale to
147 proceed, on (1) the affected community's continued access to high
148 quality and affordable health care after accounting for likely changes
149 in staffing levels, and (2) the provision of services to uninsured and
150 underinsured persons.

151 Sec. 4. Section 19a-486c of the general statutes is repealed and the
152 following is substituted in lieu thereof (*Effective October 1, 2015*):

153 (a) The Attorney General shall deny an application as not in the
154 public interest if the Attorney General determines that one or more of
155 the following conditions exist: (1) The transaction is prohibited by
156 Connecticut statutory or common law governing nonprofit entities,
157 trusts or charities; (2) the [nonprofit] hospital that is proposed to be
158 acquired failed to exercise due diligence in (A) deciding to transfer, (B)
159 selecting the purchaser, (C) obtaining a fairness evaluation from an
160 independent person expert in such agreements, or (D) negotiating the
161 terms and conditions of the transfer; (3) the [nonprofit] hospital that is
162 proposed to be acquired failed to disclose any conflict of interest,
163 including, but not limited to, conflicts of interest pertaining to board
164 members, officers, key employees and experts of the hospital, the
165 purchaser or any other [party to the transaction] transacting party; (4)
166 the [nonprofit] hospital that is proposed to be acquired will not receive
167 fair market value for its assets, which, for purposes of this subsection,
168 means the most likely price that the assets would bring in a sale in a
169 competitive and open market under all conditions requisite to a fair
170 sale, with the buyer and seller each acting prudently, knowledgeably
171 and in their own best interest, and with a reasonable time being
172 allowed for exposure in the open market; (5) the fair market value of
173 the assets has been manipulated by any person in a manner that causes

174 the value of the assets to decrease; (6) the financing of the transaction
175 by the [nonprofit] hospital that is proposed to be acquired will place
176 [the nonprofit] such hospital's assets at an unreasonable risk; (7) any
177 management contract contemplated under the transaction is not for
178 reasonable fair value; (8) if the hospital that is proposed to be
179 purchased operates on a nonprofit basis, a sum equal to the fair market
180 value of [the] such nonprofit hospital's assets (A) is not being
181 transferred to one or more persons to be selected by the superior court
182 for the judicial district where [the] such nonprofit hospital is located
183 who are not affiliated through corporate structure, governance or
184 membership with either [the] such nonprofit hospital or the purchaser,
185 unless [the] such nonprofit hospital continues to operate on a nonprofit
186 basis after the transaction and such sum is transferred to [the] such
187 nonprofit hospital to provide health care services, and (B) is not being
188 used for one of the following purposes: (i) For appropriate charitable
189 health care purposes consistent with [the] such nonprofit hospital's
190 original purpose, (ii) for the support and promotion of health care
191 generally in the affected community, or (iii) with respect to any assets
192 held by [the] such nonprofit hospital that are subject to a use restriction
193 imposed by a donor, for a purpose consistent with the intent of said
194 donor; or (9) the [nonprofit] hospital that is proposed to be acquired or
195 the purchaser has failed to provide the Attorney General with
196 information and data sufficient to evaluate the proposed agreement
197 adequately, provided the Attorney General has notified [the nonprofit]
198 such hospital or the purchaser of the inadequacy of the information or
199 data and has provided a reasonable opportunity to remedy such
200 inadequacy.

201 (b) The Attorney General may, during the course of a review
202 required by section 19a-486b: (1) Issue in writing and cause to be
203 served upon any person, by subpoena, a demand that such person
204 appear before the Attorney General and give testimony or produce
205 documents as to any matters relevant to the scope of the review; or (2)
206 issue written interrogatories, to be answered under oath, as to any
207 matters relevant to the scope of the review and prescribing a return

208 date that would allow a reasonable time to respond. If any person fails
209 to comply with the provisions of this subsection, the Attorney General
210 may apply to the superior court for the judicial district of Hartford
211 seeking enforcement of the subpoena. The superior court may, upon
212 notice to such person, issue and cause to be served an order requiring
213 compliance. Service of subpoenas ad testificandum, subpoenas duces
214 tecum, notices of deposition and written interrogatories as provided in
215 this subsection may be made by personal service at the usual place of
216 abode or by certified mail, return receipt requested, addressed to the
217 person to be served at such person's principal place of business within
218 or without this state or such person's residence.

219 (c) The Attorney General may contract with experts or consultants
220 to assist in reviewing the proposed agreement, including, but not
221 limited to, assistance in independently determining the fair market
222 value of the [nonprofit hospital's] assets of the hospital that is
223 proposed to be acquired. The Attorney General may appoint, or
224 contract with, another person to conduct the review required by this
225 section and make recommendations to the Attorney General. The
226 Attorney General shall submit any bills for such contracts to the
227 purchaser. The purchaser shall pay such bills not later than thirty days
228 after receipt. Such bills shall not exceed five hundred thousand dollars.

229 Sec. 5. Section 19a-486e of the general statutes is repealed and the
230 following is substituted in lieu thereof (*Effective October 1, 2015*):

231 Prior to making any decision to approve, with or without
232 modification, or deny any application filed pursuant to subsection (d)
233 of section 19a-486a, as amended by this act, the Attorney General and
234 the commissioner shall jointly conduct one or more public hearings,
235 one of which shall be in the primary service area of the [nonprofit]
236 hospital that is proposed to be acquired. At least fourteen days before
237 conducting the public hearing, the Attorney General and the
238 commissioner shall provide notice of the time and place of the hearing
239 through publication in one or more newspapers of general circulation
240 in the affected community.

241 Sec. 6. Section 19a-486f of the general statutes is repealed and the
242 following is substituted in lieu thereof (*Effective October 1, 2015*):

243 If the commissioner or the Attorney General denies an application
244 filed pursuant to subsection (d) of section 19a-486a, as amended by this
245 act, or approves it with modification, the [nonprofit] hospital that is
246 proposed to be acquired or the purchaser may appeal such decision in
247 the same manner as provided in section 4-183, provided that nothing
248 in sections 19a-486 to [19a-486f] 19a-486e, inclusive, as amended by
249 this act, shall be construed to apply the provisions of chapter 54 to the
250 proceedings of the Attorney General.

251 Sec. 7. Section 19a-486g of the general statutes is repealed and the
252 following is substituted in lieu thereof (*Effective October 1, 2015*):

253 The Commissioner of Public Health shall refuse to issue a license to,
254 or if issued shall suspend or revoke the license of, a hospital if the
255 commissioner finds, after a hearing and opportunity to be heard, that:

256 (1) There was a transaction described in section 19a-486a, as
257 amended by this act, that occurred without the approval of the
258 commissioner, if such approval was required by sections 19a-486 to
259 19a-486h, inclusive, as amended by this act;

260 (2) There was a transaction described in section 19a-486a, as
261 amended by this act, without the approval of the Attorney General, if
262 such approval was required by sections 19a-486 to 19a-486h, inclusive,
263 as amended by this act, and the Attorney General certifies to the
264 Commissioner of Public Health that such transaction involved a
265 material amount of [the nonprofit hospital's] assets or operations or a
266 change in control of operations of the hospital that is proposed to be
267 acquired; or

268 (3) The hospital is not complying with the terms of an agreement
269 approved by the Attorney General and commissioner pursuant to
270 sections 19a-486 to 19a-486h, inclusive, as amended by this act.

271 Sec. 8. Subsection (a) of section 19a-644 of the general statutes is
 272 repealed and the following is substituted in lieu thereof (*Effective*
 273 *October 1, 2015*):

274 (a) On or before February twenty-eighth annually, for the fiscal year
 275 ending on September thirtieth of the immediately preceding year, each
 276 short-term acute care general, [or] children's hospital and health
 277 system shall report to the office with respect to its operations in such
 278 fiscal year, in such form as the office may by regulation require. Such
 279 report shall include: (1) Salaries and fringe benefits for the ten highest
 280 paid positions; (2) the name of each joint venture, partnership,
 281 subsidiary and corporation related to the hospital; and (3) the salaries
 282 paid to hospital and health system employees by each such joint
 283 venture, partnership, subsidiary and related corporation and by the
 284 hospital to the employees of related corporations. For purposes of this
 285 subsection, "health system" has the same meaning as provided in
 286 section 19a-508c.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	19a-486
Sec. 2	<i>October 1, 2015</i>	19a-486a
Sec. 3	<i>October 1, 2015</i>	19a-486b
Sec. 4	<i>October 1, 2015</i>	19a-486c
Sec. 5	<i>October 1, 2015</i>	19a-486e
Sec. 6	<i>October 1, 2015</i>	19a-486f
Sec. 7	<i>October 1, 2015</i>	19a-486g
Sec. 8	<i>October 1, 2015</i>	19a-644(a)

PH *Joint Favorable*