



Senate

General Assembly

File No. 553

January Session, 2021

Substitute Senate Bill No. 238

Senate, April 21, 2021

The Committee on Public Health reported through SEN. DAUGHERTY ABRAMS of the 13th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT INCREASING OVERSIGHT OF MERGERS AND ACQUISITIONS OF GROUP PRACTICES.

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

1 Section 1. Subsection (h) of section 19a-486i of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July 1,*
3 *2021*):

4 (h) Not later than [January 15, 2018] January 15, 2022, and annually
5 thereafter, each group practice [comprised of thirty or more physicians]
6 that is not the subject of a report filed under subsection (g) of this section
7 shall file with the Attorney General and the executive director of the
8 Office of Health Strategy a written report concerning the group practice.
9 Such report shall include, for each such group practice: (1) The names
10 and specialties of each physician practicing medicine with the group
11 practice; (2) the names of the business entities that provide services as
12 part of the group practice and the address for each location where such
13 services are provided; (3) a description of the services provided at each

14 such location; and (4) the primary service area served by each such
15 location.

16 Sec. 2. Section 19a-639 of the general statutes is repealed and the
17 following is substituted in lieu thereof (*Effective July 1, 2021*):

18 (a) In any deliberations involving a certificate of need application
19 filed pursuant to section 19a-638, as amended by this act, the unit shall
20 take into consideration and make written findings concerning each of
21 the following guidelines and principles:

22 (1) Whether the proposed project is consistent with any applicable
23 policies and standards adopted in regulations by the Office of Health
24 Strategy;

25 (2) The relationship of the proposed project to the state-wide health
26 care facilities and services plan;

27 (3) Whether there is a clear public need for the health care facility or
28 services proposed by the applicant;

29 (4) Whether the applicant has satisfactorily demonstrated how the
30 proposal will impact the financial strength of the health care system in
31 the state or that the proposal is financially feasible for the applicant;

32 (5) Whether the applicant has satisfactorily demonstrated how the
33 proposal will improve quality, accessibility and cost effectiveness of
34 health care delivery in the region, including, but not limited to,
35 provision of or any change in the access to services for Medicaid
36 recipients and indigent persons;

37 (6) The applicant's past and proposed provision of health care
38 services to relevant patient populations and payer mix, including, but
39 not limited to, access to services by Medicaid recipients and indigent
40 persons;

41 (7) Whether the applicant has satisfactorily identified the population
42 to be served by the proposed project and satisfactorily demonstrated

43 that the identified population has a need for the proposed services;

44 (8) The utilization of existing health care facilities and health care
45 services in the service area of the applicant;

46 (9) Whether the applicant has satisfactorily demonstrated that the
47 proposed project shall not result in an unnecessary duplication of
48 existing or approved health care services or facilities;

49 (10) Whether an applicant, who has failed to provide or reduced
50 access to services by Medicaid recipients or indigent persons, has
51 demonstrated good cause for doing so, which shall not be demonstrated
52 solely on the basis of differences in reimbursement rates between
53 Medicaid and other health care payers;

54 (11) Whether the applicant has satisfactorily demonstrated that the
55 proposal will not negatively impact the diversity of health care
56 providers and patient choice in the geographic region; and

57 (12) Whether the applicant has satisfactorily demonstrated that any
58 consolidation resulting from the proposal will not adversely affect
59 health care costs or accessibility to care.

60 [(b) In deliberations as described in subsection (a) of this section,
61 there shall be a presumption in favor of approving the certificate of need
62 application for a transfer of ownership of a large group practice, as
63 described in subdivision (3) of subsection (a) of section 19a-638, when
64 an offer was made in response to a request for proposal or similar
65 voluntary offer for sale.]

66 [(c)] (b) The unit, as it deems necessary, may revise or supplement the
67 guidelines and principles, set forth in subsection (a) of this section,
68 through regulation.

69 [(d)] (c) (1) For purposes of this subsection and subsection [(e)] (d) of
70 this section:

71 (A) "Affected community" means a municipality where a hospital is

72 physically located or a municipality whose inhabitants are regularly
73 served by a hospital;

74 (B) "Hospital" has the same meaning as provided in section 19a-490;

75 (C) "New hospital" means a hospital as it exists after the approval of
76 an agreement pursuant to section 19a-486b, as amended by this act, or a
77 certificate of need application for a transfer of ownership of a hospital;

78 (D) "Purchaser" means a person who is acquiring, or has acquired,
79 any assets of a hospital through a transfer of ownership of a hospital;

80 (E) "Transacting party" means a purchaser and any person who is a
81 party to a proposed agreement for transfer of ownership of a hospital;

82 (F) "Transfer" means to sell, transfer, lease, exchange, option, convey,
83 give or otherwise dispose of or transfer control over, including, but not
84 limited to, transfer by way of merger or joint venture not in the ordinary
85 course of business; and

86 (G) "Transfer of ownership of a hospital" means a transfer that
87 impacts or changes the governance or controlling body of a hospital,
88 including, but not limited to, all affiliations, mergers or any sale or
89 transfer of net assets of a hospital and for which a certificate of need
90 application or a certificate of need determination letter is filed on or after
91 December 1, 2015.

92 (2) In any deliberations involving a certificate of need application
93 filed pursuant to section 19a-638, as amended by this act, that involves
94 the transfer of ownership of a hospital, the unit shall, in addition to the
95 guidelines and principles set forth in subsection (a) of this section and
96 those prescribed through regulation pursuant to subsection [(c)] (b) of
97 this section, take into consideration and make written findings
98 concerning each of the following guidelines and principles:

99 (A) Whether the applicant fairly considered alternative proposals or
100 offers in light of the purpose of maintaining health care provider
101 diversity and consumer choice in the health care market and access to

102 affordable quality health care for the affected community; and

103 (B) Whether the plan submitted pursuant to section 19a-639a, as
104 amended by this act, demonstrates, in a manner consistent with this
105 chapter, how health care services will be provided by the new hospital
106 for the first three years following the transfer of ownership of the
107 hospital, including any consolidation, reduction, elimination or
108 expansion of existing services or introduction of new services.

109 (3) The unit shall deny any certificate of need application involving a
110 transfer of ownership of a hospital unless the executive director finds
111 that the affected community will be assured of continued access to high
112 quality and affordable health care after accounting for any proposed
113 change impacting hospital staffing.

114 (4) The unit may deny any certificate of need application involving a
115 transfer of ownership of a hospital subject to a cost and market impact
116 review pursuant to section 19a-639f, as amended by this act, if the
117 executive director finds that (A) the affected community will not be
118 assured of continued access to high quality and affordable health care
119 after accounting for any consolidation in the hospital and health care
120 market that may lessen health care provider diversity, consumer choice
121 and access to care, and (B) any likely increases in the prices for health
122 care services or total health care spending in the state may negatively
123 impact the affordability of care.

124 (5) The unit may place any conditions on the approval of a certificate
125 of need application involving a transfer of ownership of a hospital
126 consistent with the provisions of this chapter. Before placing any such
127 conditions, the unit shall weigh the value of such conditions in
128 promoting the purposes of this chapter against the individual and
129 cumulative burden of such conditions on the transacting parties and the
130 new hospital. For each condition imposed, the unit shall include a
131 concise statement of the legal and factual basis for such condition and
132 the provision or provisions of this chapter that it is intended to promote.
133 Each condition shall be reasonably tailored in time and scope. The
134 transacting parties or the new hospital shall have the right to make a

135 request to the unit for an amendment to, or relief from, any condition
136 based on changed circumstances, hardship or for other good cause.

137 [(e)] (d) (1) If the certificate of need application (A) involves the
138 transfer of ownership of a hospital, (B) the purchaser is a hospital, as
139 defined in section 19a-490, whether located within or outside the state,
140 that had net patient revenue for fiscal year 2013 in an amount greater
141 than one billion five hundred million dollars or a hospital system, as
142 defined in section 19a-486i, as amended by this act, whether located
143 within or outside the state, that had net patient revenue for fiscal year
144 2013 in an amount greater than one billion five hundred million dollars,
145 or any person that is organized or operated for profit, and (C) such
146 application is approved, the unit shall hire an independent consultant
147 to serve as a post-transfer compliance reporter for a period of three years
148 after completion of the transfer of ownership of the hospital. Such
149 reporter shall, at a minimum: (i) Meet with representatives of the
150 purchaser, the new hospital and members of the affected community
151 served by the new hospital not less than quarterly; and (ii) report to the
152 unit not less than quarterly concerning (I) efforts the purchaser and
153 representatives of the new hospital have taken to comply with any
154 conditions the unit placed on the approval of the certificate of need
155 application and plans for future compliance, and (II) community
156 benefits and uncompensated care provided by the new hospital. The
157 purchaser shall give the reporter access to its records and facilities for
158 the purposes of carrying out the reporter's duties. The purchaser shall
159 hold a public hearing in the municipality in which the new hospital is
160 located not less than annually during the reporting period to provide
161 for public review and comment on the reporter's reports and findings.

162 (2) If the reporter finds that the purchaser has breached a condition
163 of the approval of the certificate of need application, the unit may, in
164 consultation with the purchaser, the reporter and any other interested
165 parties it deems appropriate, implement a performance improvement
166 plan designed to remedy the conditions identified by the reporter and
167 continue the reporting period for up to one year following a
168 determination by the unit that such conditions have been resolved.

169 (3) The purchaser shall provide funds, in an amount determined by
170 the unit not to exceed two hundred thousand dollars annually, for the
171 hiring of the post-transfer compliance reporter.

172 [(f)] (e) Nothing in subsection [(d)] (c) or [(e)] (d) of this section shall
173 apply to a transfer of ownership of a hospital in which either a certificate
174 of need application is filed on or before December 1, 2015, or where a
175 certificate of need determination letter is filed on or before December 1,
176 2015.

177 Sec. 3. Subdivision (9) of section 19a-630 of the general statutes is
178 repealed and the following is substituted in lieu thereof (*Effective July 1,*
179 *2021*):

180 (9) ["Large group practice"] "Group practice" means [eight] two or
181 more full-time equivalent physicians, legally organized in a partnership,
182 professional corporation, limited liability company formed to render
183 professional services, medical foundation, not-for-profit corporation,
184 faculty practice plan or other similar entity (A) in which each physician
185 who is a member of the group provides substantially the full range of
186 services that the physician routinely provides, including, but not limited
187 to, medical care, consultation, diagnosis or treatment, through the joint
188 use of shared office space, facilities, equipment or personnel; (B) for
189 which substantially all of the services of the physicians who are
190 members of the group are provided through the group and are billed in
191 the name of the group practice and amounts so received are treated as
192 receipts of the group; or (C) in which the overhead expenses of, and the
193 income from, the group are distributed in accordance with methods
194 previously determined by members of the group. An entity that
195 otherwise meets the definition of group practice under this section shall
196 be considered a group practice although its shareholders, partners or
197 owners of the group practice include single-physician professional
198 corporations, limited liability companies formed to render professional
199 services or other entities in which beneficial owners are individual
200 physicians.

201 Sec. 4. Subdivision (3) of subsection (a) of section 19a-638 of the

202 general statutes is repealed and the following is substituted in lieu
203 thereof (*Effective July 1, 2021*):

204 (3) A transfer of ownership of a [large] group practice to any entity
205 other than a (A) physician, or (B) group of two or more physicians,
206 legally organized in a partnership, professional corporation or limited
207 liability company formed to render professional services and not
208 employed by or an affiliate of any hospital, medical foundation,
209 insurance company or other similar entity;

210 Sec. 5. Subsections (d) and (e) of section 19a-639a of the general
211 statutes are repealed and the following is substituted in lieu thereof
212 (*Effective July 1, 2021*):

213 (d) Upon determining that an application is complete, the unit shall
214 provide notice of this determination to the applicant and to the public
215 in accordance with regulations adopted by the department. In addition,
216 the unit shall post such notice on its Internet web site. The date on which
217 the unit posts such notice on its Internet web site shall begin the review
218 period. Except as provided in this subsection, (1) the review period for
219 a completed application shall be ninety days from the date on which the
220 unit posts such notice on its Internet web site; and (2) the unit shall issue
221 a decision on a completed application prior to the expiration of the
222 ninety-day review period. The review period for a completed
223 application that involves a transfer of a [large] group practice, as
224 described in subdivision (3) of subsection (a) of section 19a-638, as
225 amended by this act, when the offer was made in response to a request
226 for proposal or similar voluntary offer for sale, shall be sixty days from
227 the date on which the unit posts notice on its Internet web site. Upon
228 request or for good cause shown, the unit may extend the review period
229 for a period of time not to exceed sixty days. If the review period is
230 extended, the unit shall issue a decision on the completed application
231 prior to the expiration of the extended review period. If the unit holds a
232 public hearing concerning a completed application in accordance with
233 subsection (e) or (f) of this section, the unit shall issue a decision on the
234 completed application not later than sixty days after the date the unit

235 closes the public hearing record.

236 (e) Except as provided in this subsection, the unit shall hold a public
237 hearing on a properly filed and completed certificate of need application
238 if three or more individuals or an individual representing an entity with
239 five or more people submits a request, in writing, that a public hearing
240 be held on the application. For a properly filed and completed certificate
241 of need application involving a transfer of ownership of a [large] group
242 practice, as described in subdivision (3) of subsection (a) of section 19a-
243 638, as amended by this act, when an offer was made in response to a
244 request for proposal or similar voluntary offer for sale, a public hearing
245 shall be held if twenty-five or more individuals or an individual
246 representing twenty-five or more people submits a request, in writing,
247 that a public hearing be held on the application. Any request for a public
248 hearing shall be made to the unit not later than thirty days after the date
249 the unit determines the application to be complete.

250 Sec. 6. Subsection (b) of section 19a-486b of the general statutes is
251 repealed and the following is substituted in lieu thereof (*Effective July 1,*
252 *2021*):

253 (b) The executive director and the Attorney General may place any
254 conditions on the approval of an application that relate to the purposes
255 of sections 19a-486a to 19a-486h, inclusive. In placing any such
256 conditions the executive director shall follow the guidelines and criteria
257 described in subdivision (4) of subsection [(d)] (c) of section 19a-639, as
258 amended by this act. Any such conditions may be in addition to any
259 conditions placed by the executive director pursuant to subdivision (4)
260 of subsection [(d)] (c) of section 19a-639, as amended by this act.

261 Sec. 7. Subsection (d) of section 19a-639f of the general statutes is
262 repealed and the following is substituted in lieu thereof (*Effective July 1,*
263 *2021*):

264 (d) The cost and market impact review conducted pursuant to this
265 section shall examine factors relating to the businesses and relative
266 market positions of the transacting parties as defined in subsection [(d)]

267 (c) of section 19a-639, as amended by this act, and may include, but need
268 not be limited to: (1) The transacting parties' size and market share
269 within its primary service area, by major service category and within its
270 dispersed service areas; (2) the transacting parties' prices for services,
271 including the transacting parties' relative prices compared to other
272 health care providers for the same services in the same market; (3) the
273 transacting parties' health status adjusted total medical expense,
274 including the transacting parties' health status adjusted total medical
275 expense compared to that of similar health care providers; (4) the quality
276 of the services provided by the transacting parties, including patient
277 experience; (5) the transacting parties' cost and cost trends in
278 comparison to total health care expenditures state wide; (6) the
279 availability and accessibility of services similar to those provided by
280 each transacting party, or proposed to be provided as a result of the
281 transfer of ownership of a hospital within each transacting party's
282 primary service areas and dispersed service areas; (7) the impact of the
283 proposed transfer of ownership of the hospital on competing options for
284 the delivery of health care services within each transacting party's
285 primary service area and dispersed service area including the impact on
286 existing service providers; (8) the methods used by the transacting
287 parties to attract patient volume and to recruit or acquire health care
288 professionals or facilities; (9) the role of each transacting party in serving
289 at-risk, underserved and government payer patient populations,
290 including those with behavioral, substance use disorder and mental
291 health conditions, within each transacting party's primary service area
292 and dispersed service area; (10) the role of each transacting party in
293 providing low margin or negative margin services within each
294 transacting party's primary service area and dispersed service area; (11)
295 consumer concerns, including, but not limited to, complaints or other
296 allegations that a transacting party has engaged in any unfair method of
297 competition or any unfair or deceptive act or practice; and (12) any other
298 factors that the unit determines to be in the public interest.

299 Sec. 8. Subsection (j) of section 19a-639f of the general statutes is
300 repealed and the following is substituted in lieu thereof (*Effective July 1,*
301 *2021*):

302 (j) The unit shall retain an independent consultant with expertise on
 303 the economic analysis of the health care market and health care costs
 304 and prices to conduct each cost and market impact review, as described
 305 in this section. The unit shall submit bills for such services to the
 306 purchaser, as defined in subsection [(d)] (c) of section 19a-639, as
 307 amended by this act. Such purchaser shall pay such bills not later than
 308 thirty days after receipt. Such bills shall not exceed two hundred
 309 thousand dollars per application. The provisions of chapter 57, sections
 310 4-212 to 4-219, inclusive, and section 4e-19 shall not apply to any
 311 agreement executed pursuant to this subsection.

312 Sec. 9. Subdivision (15) of section 19a-630 of the general statutes is
 313 repealed and the following is substituted in lieu thereof (*Effective July 1,*
 314 *2021*):

315 (15) "Transfer of ownership" means a transfer that impacts or changes
 316 the governance or controlling body of a health care facility, institution
 317 or [large] group practice, including, but not limited to, all affiliations,
 318 mergers or any sale or transfer of net assets of a health care facility.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2021	19a-486i(h)
Sec. 2	July 1, 2021	19a-639
Sec. 3	July 1, 2021	19a-630(9)
Sec. 4	July 1, 2021	19a-638(a)(3)
Sec. 5	July 1, 2021	19a-639a(d) and (e)
Sec. 6	July 1, 2021	19a-486b(b)
Sec. 7	July 1, 2021	19a-639f(d)
Sec. 8	July 1, 2021	19a-639f(j)
Sec. 9	July 1, 2021	19a-630(15)

PH Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
State Comptroller - Fringe Benefits ¹	GF - Cost	84,000	86,500
Office of Health Strategy	GF - Cost	203,500	209,605

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill makes various changes concerning physician group practices.

By law, certain health care entity transactions require a certificate of need (CON) approval from the Office of Health Strategy (OHS). The bill lowers the threshold, from eight physicians to two, for the minimum group practice size requiring CON approval for certain ownership transfers. It is estimated that OHS will need to hire two Health Care Analyst positions, at a combined \$135,500 in FY 22, to review CON applications as they are anticipated to increase by 10 per year.

The bill also requires group practices with two or more physicians, rather than just those with 30 or more, to annually report certain information to OHS. OHS will need one Research Analyst position, starting at \$68,000 in FY 22, to handle the increased workload associated

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.3% of payroll in FY 22 and FY 23.

with this provision.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 238*****AN ACT INCREASING OVERSIGHT OF MERGERS AND ACQUISITIONS OF GROUP PRACTICES.*****SUMMARY**

This bill makes various changes concerning physician group practices.

By law, certain health care entity transactions require certificate of need (CON) approval from the Office of Health Strategy's (OHS) Health Systems Planning Unit. The bill lowers the threshold, from eight physicians to two, for the minimum group practice size requiring CON approval for certain ownership transfers (§§ 3 & 4). As under current law, CON approval for these transfers is not required if the other transacting party is a (1) physician or (2) physician group not affiliated with a hospital, medical foundation, insurer, or similar entity.

The bill eliminates the current presumption in favor of CON approval for voluntary transfers of ownership of group practices with eight or more physicians (§ 2). It retains certain other existing variations from the standard CON process for physician group voluntary transfers of ownership, and applies them to group practices of any size, not just those with eight or more physicians as under current law (§ 5). These variations include:

1. a 60-day review period for the application (instead of the standard 90-day review period), subject to allowable extensions, and
2. a public hearing requirement if 25 or more people, or someone representing that many people, request it in writing (for other CON applications, these thresholds are lower).

The bill also requires group practices with two or more physicians, rather than just those with 30 or more, to annually report certain information to the attorney general and OHS (§ 1). As under current law, this requirement applies to group practices that are not affiliated with a hospital (hospitals must report separately on their affiliated practices). These group practice reports must include the:

1. name and specialties of each physician in the practice;
2. names of the business entities that provide services as part of the practice and the service locations; and
3. primary service area and service description for each location.

The bill also makes conforming changes.

EFFECTIVE DATE: July 1, 2021

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 21 Nay 12 (03/31/2021)