

# Public Health Committee JOINT FAVORABLE REPORT

**Bill No.:** SB-238

AN ACT INCREASING OVERSIGHT OF MERGERS AND ACQUISITIONS OF

**Title:** GROUP PRACTICES.

**Vote Date:** 3/31/2021

**Vote Action:** Joint Favorable Substitute

**PH Date:** 3/29/2021

**File No.:** 553

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## **SPONSORS OF BILL:**

The Public Health Committee

## **REASONS FOR BILL:**

This bill addresses certificates of need (CON) approval for certain ownership transfers of group practices from 8 or more physicians to a group practice of any size. However, CON approval is not required if both parties are physician groups not affiliated with a hospital, insurer, or similar entity as currently written in state law.

Additionally, this bill also requires group practices of any size instead of those with 30 or more physicians to report certain information on practice size, scope, location, etc., to the Office of the Attorney General and the Office of Health Strategy annually. This requirement will continue to apply to group practices not affiliated with a hospital. This bill also eliminates the current presumption in favor of approval for specific CON applications for group practice transfers.

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **Senator Martin Looney, Senate President Pro Tempore:**

I am in full support of SB 238, which would improve oversight of healthcare consolidation involving group practices. Connecticut's bipartisan healthcare reform efforts are consistent with recommendations of a recently published study on state efforts to regulate healthcare consolidation.

The passage of this bill would require all group practices to meet the following three filing requirements with both the state Attorney General's office and the Office of Health Strategy:

1. The names and specialties of each physician in said practice.
2. The practice locations and services provided at each location.
3. The names of the business entities that provide services as part of the group practice.

Currently, only group practices with 30 or more physicians and group practices owned by hospitals are required to file the information. This information will help the Attorney General and the Office of Health Strategy get a more accurate image of Connecticut's healthcare landscape.

SB 238 would also change the Certificate of Need approval threshold from an eight physician to a two-physician practice size subject to acquisitions and mergers requirements. It would eliminate the current presumption in favor of these transactions, which exist when the applications are related to group practices.

The Committee should add language to clarify that the Certificate of Need for group practices should be required at the discretion of the Office of Health Strategy based on the statutory criteria while also considering their staffing and budget realities. Also, I look forward to working with this Committee and the Office of Health Strategy on these issues.

**Victoria Veltri, Executive Director, Office of Health Strategy:**

The Office of Health Strategy (OHS) supports the proposed language in SB 238 to require group practices to file annual reports to the state's Attorney General Office and the OHS regardless of the practice size. This change will provide a cost-effective method to monitor anti-competitiveness issues and provide a better view of the healthcare market. Connecticut currently ranks sixth in the nation in healthcare spending, and it is our mission to monitor and develop policies ensuring access to cost-effective health care services.

There has been an increase in group practice acquisitions in Connecticut. According to the notice of material change reports sent to the Attorney General and OHS, there were 55 group practices acquisitions in the last six years. However, only three group practice acquisitions were subjected to Certificate of Need (CON) approval under OHS because current law did not require the other 52 to go through the process. The consequences of increased group practice acquisition without appropriate review could potentially result in increased market power.

Requiring CON approval of transfers of ownership of group practices consisting of 2 or more physicians may discourage smaller, independent primary care practices from combining and competing against larger practices. We have heard from independent providers concerned about the ongoing acquisitions of small group practices and their ability to compete with larger practices.

OHS would like to point out that additional staff is needed to review and analyze these reports and that the agency would require increased state resources. Discussions are underway with the Office of the Attorney General to utilize existing resources and to make recommendations to strengthen the CON criteria or otherwise amend the state statutes to ensure adequate resources to monitor the ongoing horizontal and vertical acquisition of physician practices by our offices.

## **NATURE AND SOURCES OF SUPPORT:**

None

## **NATURE AND SOURCES OF OPPOSITION:**

### **Connecticut State Medical Society (CSMS):**

Connecticut State Medical Society (CSMS) strong opposition to this bill as it is a textbook example of legislative overreach.

Senate Bill 238 proposes to reduce the current Certificate of Need (CON) requirement for transfer of ownership for all group practices from eight or more physicians to two or more physicians. This bill would require a CON for acquisitions of all group medical practices and proposes to remove the statutory presumption in favor of CON approval.

Many small group medical practices in Connecticut are barely surviving. The COVID-19 pandemic has only compounded the numerous financial difficulties they face. It is not the purview of the legislature to dictate under what circumstances physicians may decide to sell their practice. There is a plethora of reasons that a group of physicians may want to sell their medical practice to a hospital system or medical foundation, including, but not limited to:

- Financial assistance
- Freedom from running a small business
- Reduced working hours
- Semi-retirement
- Access to more comprehensive insurance networks

The CON process in Connecticut is already costly, cumbersome, and time-consuming without any guarantee of success. Removing the presumption in favor of the granting of the CON will only exacerbate this process. This action will inherently de-value the medical group given the financial investment in attorneys and other medical experts needed to help pursue the CON.

This change will strip a medical practice of the equity the physicians have worked to build. If this legislation passes, small group practices will abandon and dissolve their existing practices only to become employed by a hospital system or medical foundation. This bill will only result in fragmented and disjointed care for patients.

### **Connecticut Hospital Association (CHA):**

CHA opposes this bill. SB 238 would require hospitals, health systems, and other non-physician organizations (including insurers and practice management companies) to obtain a Certificate of Need (CON) to acquire a group practice of two or more physicians. Current law requires a CON for the acquisition of group practices of eight or more physicians.

This legislation would require small practices and individual physicians considering retirement or want to sell their practice to work for a hospital or another entity to get approval from the state before doing so. This change will create a disadvantage to the policies outlined in SB 1087, An Act Concerning the Recruitment and Retention of Health Care Providers in the State.

Eliminating the presumption in favor of approval of a CON when a hospital or other non-physician entity responds to a request for proposal or similar voluntary offer for sale will limit choices for physicians and physician groups. CHA is concerned that the execution of the CON rules would no longer be a reasonable check to ensure high quality and safe care but, instead, an unreasonable burden on physicians.

SB 238 would require all group practices, no longer just large group practices or practices affiliated with a hospital or health system, to submit an annual report to both the Office of the Attorney General and the Office of Health Strategy. The CON is an extensive report. It requires the names and specialties of each physician practicing medicine with the group practice; names of the business entities that provide services as part of the group practice and the address for each location where services are provided; a description of the services provided at each location; and the primary service area served by such location. This new requirement will increase the regulatory burden on medical practices in Connecticut, specifically the smaller practices.

Connecticut physician practices are struggling, as are countless others across the nation due to the pandemic. Now is not the time to place additional burdens on physician practices.

**Dr. Jeff Cohen, Colorectal Surgeon, Hartford Health Care:**

As a surgeon who formerly held a private practice for 23 years and now the head of clinical operations for Hartford HealthCare (HHC), I testify in opposition to SB 238. Passage of this bill will limit patient's access to physicians, especially primary care doctors.

HHC is not in the business of seeking out practices to acquire; rather, these practices approach us with a proposal. These are typically mid to late-career physicians faced with the financial and administrative burdens of maintaining a medical practice. There are three reasons physician practices seek a move to larger entities such as health systems and hospitals: increased costs of running a medical practice with little or no access to capital; curtailing of non-emergent medical procedures and the financial downturn due to COVID; and large organizations like HHC bring efficiencies that small practices can never achieve due to their size.

When small practices align with a larger organization, the benefits to quality and standards of care are greatly improved for patients. Access to capital allows for the purchase of electronic health records, real-time access to imaging, and care coordination services by nurses and pharmacists. Recruitment of physicians is essentially impossible for small practices as they lack the capital to pay young physicians right out of training. Today's medical school graduates are less interested in working for a small practice or dealing with running a business.

Increasing regulatory requirements of physician acquisition will not stop this process, as it is truly market-driven. Creating more obstacles for smaller practices to align with health systems could lead to less access to clinicians.

Reducing from eight to two the threshold that would trigger a Certificate of Need (CON) review would make many small practices simply close their offices as a CON review can typically take up to a year, and most small practices can't wait that long as their financial burden increases. If you're a physician in your late fifties, early sixties, retirement is more

financially sound than waiting a year while the practice goes further into debt.

Since the January 2018 CON statute went into effect, HHC has acquired 30 practices with less than eight physicians. There were only a few practice acquisitions with eight or more physicians, and the CON process incurred costs between \$60,000 to \$70,000 each. With only a few medical practices with eight doctors, changing the threshold will require increased state resources to conduct CON's. It will ultimately lead to fewer physicians in the community and less access for patients to care.

**Michael Aronow, MD, President, Connecticut Orthopaedic Society:**

I am testifying on behalf of the more than 200 members of the Connecticut Orthopaedic Society who oppose SB 238. The change in the definition of a group practice to two or more physicians will mandate just about every physician group practice in Connecticut to report specific data to the Attorney General and Office of Health Strategy.

Not only is this an extreme overreach by government agencies into small independent businesses, but it is solely targeting physicians without a defined need or clear and concise objectives. It is important to note that this overreach is currently not required for other professionals with small businesses, such as attorneys and smaller law firms.

This mandate places another unnecessary administrative burden on practices with two or more physicians who are already dealing with the constraints of the pandemic. Furthermore, there is no indication as to why the Attorney General's office and the Office of Health Strategy would mandate the collection of this information, how they will ensure the privacy of the data, and the general use of the data. The lack of information and clarification on the purpose of this expanded mandate on physician practices of two or more physicians, the infringements on the free marketplace, and the burden of reporting are among the many reasons we oppose this bill.

**Reported by: Beverley Henry**

**Date: April 27, 2021**