
OLR Bill Analysis

SB 440

AN ACT CONCERNING CERTIFICATES OF NEED.

SUMMARY

This bill modifies the state's Certificate of Need (CON) program for health care entities, administered by the Office of Health Strategy's (OHS) Health Systems Planning Unit (HSPU). Under the program, health care entities must generally receive CON approval when establishing new facilities or services, changing ownership, acquiring certain equipment, or terminating certain services.

It adds to the transactions that require CON approval (1) investments in health care facilities or large group practices of 10 or more physicians by private equity companies that acquire a direct or indirect controlling interest, (2) relocation of certain services outside the municipality where they are currently provided, and (3) those involving private equity companies that result in an increase or decrease in health care facilities' assets.

The bill eliminates CON requirements, temporarily until June 30, 2030, for (1) cardiac catheterization or cardiac surgery units, psychiatric units, substance use disorder units, and rural health services; (2) upgrades to radiology technology; and (3) increases in children's behavioral health beds, among other things.

It also permanently eliminates CON requirements for, among others, the (1) relocation of outpatient services within the same municipality or within 20 miles from where they are currently located and (2) increase or reduction in health care facilities' licensed bed capacity of up to 12 beds within a two-year period starting October 1, 2024.

Additionally, the bill does the following:

1. shortens the deadlines for several CON processes, including application reviews and determinations, public hearings, and related notifications (§ 2);
2. allows applicants to request HSPU to (a) meet with them before they submit an application or (b) expedite the timeline for an application review (§ 2);
3. transfers, from HSPU to the attorney general (AG), responsibility for conducting cost and market impact reviews for certain hospital ownership transfers (§ 4);
4. requires OHS to study the state's CON process and report the study results to the Public Health Committee by January 1, 2025 (§ 3); and
5. starting October 1, 2024, prohibits an insurance company that invests in any health care institution from exercising operational or managerial control or decision-making authority related to the institution's health care service delivery (§ 5).

Lastly, the bill makes various technical and conforming changes.

EFFECTIVE DATE: October 1, 2024, except the CON study provision takes effect upon passage.

§ 1 — CON TRANSACTIONS

Transactions Requiring a CON

The bill adds the following to the transactions requiring CON approval:

1. the relocation of outpatient, behavioral health care, substance use disorder, women's health care, or emergency medical services outside of the municipality where they are currently provided (for outpatient services, this applies only to those relocated more than 20 miles from their current location);
2. investments in a health care facility by a private equity company that (a) acquires a direct or indirect controlling interest in a health

- care facility or (b) has decision making authority over the facility or the ability to control its operations or management;
3. transactions in which a private equity company (a) acquires a direct or indirect controlling interest in a large group practice of 10 or more full-time equivalent physicians or (b) has decision making authority over the practice or the ability to control its operations or management; and
 4. transactions involving a private equity company in which a health care facility's assets would be increased or reduced (the bill does not specify by how much).

Transactions Exempt From CON Requirements

The bill temporarily exempts the following transactions from CON requirements until June 30, 2030:

1. the establishment or expansion of diagnostic or therapeutic cardiac catheterization or cardiac surgery units, psychiatric units, substance use disorder units, or rural health services (the bill does not define this term);
2. upgrades to radiologic technology (the bill does not define this term);
3. increases in children's behavioral health beds (the bill does not specify by how much);
4. increases in capacity for existing services offered by health care facilities (the bill does not define this); and
5. increases in the number of operating rooms at health care facilities existing on or before October 1, 2024 (the bill does not specify by how much).

The bill also permanently eliminates CON requirements for the following:

1. the relocation of outpatient services (a) within the municipality

where they are currently provided or (b) no more than 20 miles from the current location where they are provided and

2. increases or reductions in a health care facility's licensed bed capacity of up to 12 beds within any two-year period, starting October 1, 2024.

§ 2 — CON APPLICATION REVIEWS AND DETERMINATIONS

Pre-Application Informational Meeting

The bill permits applicants, before submitting a CON application, to request an informational meeting with HSPU to discuss application process requirements. The unit must hold the informational meeting within one week after the date it receives the applicant's request.

CON Deadlines

Existing law establishes a process for HSPU to review and make determinations on CON applications. The bill shortens deadlines for certain steps in this process as described below.

Application Review Period. By law, when HSPU determines it received a completed CON application, it must notify the applicant and post the notice on its website to begin the review process. For applications that do not have a public hearing (see below), the bill reduces the time within which HSPU must review and issue a decision after posting the notice as follows:

1. from 60 to 20 days, for applications to transfer ownership of a large group practice in response to a request for proposal (RFP) or other voluntary offer for sale, and
2. from 90 to 30 days, for all other applications.

Under the bill, if HSPU does not issue a decision within these deadlines, the application is deemed approved.

The bill also reduces, from 60 to 20 days, the time by which HSPU may extend the review period for a completed application when the applicant requests it or shows good cause.

Expedited Review Period. The bill permits an applicant to request an expedited timeline for a CON determination as HSPU prescribes. It requires HSPU to (1) develop a process for approving these requests and (2) after accepting a request, make a determination on the application no more than 14 days after the date the completed application is submitted.

Public Hearings. By law, HSPU may hold a public hearing on any CON application, and must do so for the following completed applications:

1. hospital ownership transfers;
2. voluntary large group practice ownership transfers, if 25 or more people, or a person representing 25 or more people, requests it in writing; and
3. any other applications, if three or more people, or someone representing an entity of five or more people, requests it in writing.

The bill reduces, from 30 to 10 days after HSPU deems an application complete, the time within which a public hearing request must be made. It also requires HSPU to provide at least five days' advanced notice of the hearing to the applicant and the public, instead of two weeks, as under current law.

After HSPU closes the public hearing record, the bill requires the unit to issue a decision on the application within 20 days, instead of 60 days as under current law. Under the bill, if HSPU does not issue a decision within 20 days, the application is deemed approved.

Independent Consultants

The bill authorizes HSPU to contract with independent consultants or others the OHS executive director deems necessary to help review and issue decisions on applications submitted starting October 1, 2024.

Starting by July 1, 2025, the bill requires the executive director to

begin posting quarterly on the OHS website all costs incurred from contracting with the independent consultants.

§ 3 — CON STUDY

The bill requires the OHS executive director to study the state's CON process, including the following:

1. examining the health care systems costs resulting from delays or inefficiencies in the CON process;
2. holding at least three public hearings that allow providers, insurers, the public, and other stakeholders to give testimony on the CON process; and
3. developing recommendations to improve the CON process by reducing delays; streamlining administrative processes; and hiring trained, experienced staff instead of contracting with third-party experts.

Under the bill, the executive director must report the study results to the Public Health Committee by January 1, 2025.

§ 4 — COST AND MARKET IMPACT REVIEWS

Existing law requires the state to conduct a cost and market impact review (CMIR) of CON applications that propose to transfer a hospital's ownership if the purchaser is (1) an in- or out-of-state hospital or a hospital system that had net patient revenue exceeding \$1.5 billion for fiscal year 2013 or (2) organized or operated for profit.

The bill transfers, from HSPU to the AG, responsibility for conducting the CMIR and requires the unit to notify the AG of the need for a review within 21 days after it receives a properly filed application for a hospital ownership transfer. To effectuate the transfer, the bill requires the AG to do the following:

1. initiate a CMIR by sending the transacting parties a written notice that includes a description of the basis for the CMIR and a request for information and documents;

2. conduct any inquiry, investigation, or hearing needed to complete the CMIR (e.g., issue subpoenas, take testimony under oath, or require the production of records or documents);
3. keep any nonpublic information and documents he obtains while conducting the CMIR confidential and only disclose them (a) with the consent of the person who produced them or (b) in a preliminary or final report if it is in the public interest, after taking into account privacy, trade secret, or anti-competitive considerations;
4. make factual findings and issue a preliminary CMIR report within 90 days after determining the transacting parties substantially complied with any request for information or documents, or on a later date mutually agreed to with the transacting parties;
5. issue a final CMIR report within 60 days after issuing the preliminary report;
6. hire an independent consultant to conduct the CMIR, which he must select from a pool of three applicants proposed by the transacting parties; and
7. submit the bills for the consultant's services to the hospital purchaser, who must pay the bills, up to \$200,000 per application, within 30 days after receiving them.

Under existing law, after the final CMIR report is issued, the AG may then investigate whether the transacting parties engaged in or, after the proposed ownership transfer, are expected to engage in (1) unfair methods of competition, (2) anti-competitive behavior, or (3) other conduct that violates the Connecticut Unfair Trade Practices Act or any other state or federal law.

By law, the attorney general may take appropriate legal action to protect consumers in the health care market and the final report may be evidence in any such action.

A hospital ownership transfer cannot be completed until at least 30 days after the AG issues the final CMIR report or while any of the above actions brought by the AG are pending.

BACKGROUND

Related Bills

sSB 9, favorably reported by the Public Health Committee, makes various changes to the CON program, such as adding to the types of transactions requiring CON approval and modifying criteria HSPU must use when reviewing CON applications.

HB 5316, favorably reported by the Public Health Committee, makes various changes to CON program requirements for large group practices.

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 36 Nay 1 (03/21/2024)