



Senate

General Assembly

File No. 314

February Session, 2024

Substitute Senate Bill No. 440

Senate, April 8, 2024

The Committee on Public Health reported through SEN. ANWAR of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CERTIFICATES OF NEED.

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

1 Section 1. Section 19a-638 of the 2024 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2024*):

4 (a) A certificate of need issued by the unit shall be required for:

5 (1) The establishment of a new health care facility;

6 (2) A transfer of ownership of a health care facility;

7 (3) A transfer of ownership of a large group practice to any entity
8 other than a (A) physician, or (B) group of two or more physicians,
9 legally organized in a partnership, professional corporation or limited
10 liability company formed to render professional services and not
11 employed by or an affiliate of any hospital, medical foundation,
12 insurance company or other similar entity;

- 13 (4) The establishment of a freestanding emergency department;
- 14 (5) The termination of inpatient or outpatient services offered by a
15 hospital, including, but not limited to, the termination by a short-term
16 acute care general hospital or children's hospital of inpatient and
17 outpatient mental health and substance abuse services;
- 18 (6) The establishment of an outpatient surgical facility, as defined in
19 section 19a-493b, or as established by a short-term acute care general
20 hospital;
- 21 (7) The termination of surgical services by an outpatient surgical
22 facility, as defined in section 19a-493b, or a facility that provides
23 outpatient surgical services as part of the outpatient surgery department
24 of a short-term acute care general hospital, provided termination of
25 outpatient surgical services due to (A) insufficient patient volume, or (B)
26 the termination of any subspecialty surgical service, shall not require
27 certificate of need approval;
- 28 (8) The termination of an emergency department by a short-term
29 acute care general hospital;
- 30 (9) The establishment of cardiac services, including inpatient and
31 outpatient cardiac catheterization, interventional cardiology and
32 cardiovascular surgery;
- 33 (10) The acquisition of computed tomography scanners, magnetic
34 resonance imaging scanners, positron emission tomography scanners or
35 positron emission tomography-computed tomography scanners, by any
36 person, physician, provider, short-term acute care general hospital or
37 children's hospital, except (A) as provided for in subdivision (22) of
38 subsection (b) of this section, and (B) a certificate of need issued by the
39 unit shall not be required where such scanner is a replacement for a
40 scanner that was previously acquired through certificate of need
41 approval or a certificate of need determination, including a replacement
42 scanner that has dual modalities or functionalities if the applicant
43 already offers similar imaging services for each of the scanner's

44 modalities or functionalities that will be utilized;

45 (11) The acquisition of nonhospital based linear accelerators, except a
46 certificate of need issued by the unit shall not be required where such
47 accelerator is a replacement for an accelerator that was previously
48 acquired through certificate of need approval or a certificate of need
49 determination;

50 (12) An increase in the licensed bed capacity of a health care facility,
51 except as provided in subdivision (23), subparagraph (C) of subdivision
52 (26) and subdivision (28) of subsection (b) of this section;

53 (13) The acquisition of equipment utilizing technology that has not
54 previously been utilized in the state;

55 (14) An increase of two or more operating rooms within any three-
56 year period, commencing on and after October 1, 2010, by an outpatient
57 surgical facility, as defined in section 19a-493b, or by a short-term acute
58 care general hospital; [and]

59 (15) The termination of inpatient or outpatient services offered by a
60 hospital or other facility or institution operated by the state that
61 provides services that are eligible for reimbursement under Title XVIII
62 or XIX of the federal Social Security Act, 42 USC 301, as amended from
63 time to time;

64 (16) The relocation of outpatient, behavioral health care, substance
65 use disorder, women's health care or emergency medical services
66 outside of the municipality in which such services are currently
67 provided, except as provided in subdivision (27) of subsection (b) of this
68 section;

69 (17) Any investment in a health care facility by a private equity
70 company in which the private equity company acquires a controlling
71 interest, either directly or indirectly, in a health care facility, or
72 otherwise obtains the ability to exercise operational control, managerial
73 control or decision-making authority over such facility;

74 (18) Any transaction in which a private equity company acquires a
75 controlling interest, either directly or indirectly, in a large group practice
76 of ten or more full-time equivalent physicians, or otherwise obtains the
77 ability to exercise operational control, managerial control or decision-
78 making authority over such large group practice; and

79 (19) Any transaction involving a private equity company in which a
80 health care facility's assets would be increased or reduced.

81 (b) A certificate of need shall not be required for:

82 (1) Health care facilities owned and operated by the federal
83 government;

84 (2) The establishment of offices by a licensed private practitioner,
85 whether for individual or group practice, except when a certificate of
86 need is required in accordance with the requirements of section 19a-
87 493b or subdivision (3), (10) or (11) of subsection (a) of this section;

88 (3) A health care facility operated by a religious group that
89 exclusively relies upon spiritual means through prayer for healing;

90 (4) Residential care homes, as defined in subsection (c) of section 19a-
91 490, and nursing homes and rest homes, as defined in subsection (o) of
92 section 19a-490;

93 (5) An assisted living services agency, as defined in section 19a-490;

94 (6) Home health agencies, as defined in section 19a-490;

95 (7) Hospice services, as described in section 19a-122b;

96 (8) Outpatient rehabilitation facilities;

97 (9) Outpatient chronic dialysis services;

98 (10) Transplant services;

99 (11) Free clinics, as defined in section 19a-630;

100 (12) School-based health centers and expanded school health sites, as
101 such terms are defined in section 19a-6r, community health centers, as
102 defined in section 19a-490a, not-for-profit outpatient clinics licensed in
103 accordance with the provisions of chapter 368v and federally qualified
104 health centers;

105 (13) A program licensed or funded by the Department of Children
106 and Families, provided such program is not a psychiatric residential
107 treatment facility;

108 (14) Any nonprofit facility, institution or provider that has a contract
109 with, or is certified or licensed to provide a service for, a state agency or
110 department for a service that would otherwise require a certificate of
111 need. The provisions of this subdivision shall not apply to a short-term
112 acute care general hospital or children's hospital, or a hospital or other
113 facility or institution operated by the state that provides services that are
114 eligible for reimbursement under Title XVIII or XIX of the federal Social
115 Security Act, 42 USC 301, as amended;

116 (15) A health care facility operated by a nonprofit educational
117 institution exclusively for students, faculty and staff of such institution
118 and their dependents;

119 (16) An outpatient clinic or program operated exclusively by or
120 contracted to be operated exclusively by a municipality, municipal
121 agency, municipal board of education or a health district, as described
122 in section 19a-241;

123 (17) A residential facility for persons with intellectual disability
124 licensed pursuant to section 17a-227 and certified to participate in the
125 Title XIX Medicaid program as an intermediate care facility for
126 individuals with intellectual disabilities;

127 (18) Replacement of existing computed tomography scanners,
128 magnetic resonance imaging scanners, positron emission tomography
129 scanners, positron emission tomography-computed tomography
130 scanners, or nonhospital based linear accelerators, if such equipment

131 was acquired through certificate of need approval or a certificate of need
132 determination, provided a health care facility, provider, physician or
133 person notifies the unit of the date on which the equipment is replaced
134 and the disposition of the replaced equipment, including if a
135 replacement scanner has dual modalities or functionalities and the
136 applicant already offers similar imaging services for each of the
137 equipment's modalities or functionalities that will be utilized;

138 (19) Acquisition of cone-beam dental imaging equipment that is to be
139 used exclusively by a dentist licensed pursuant to chapter 379;

140 (20) The partial or total elimination of services provided by an
141 outpatient surgical facility, as defined in section 19a-493b, except as
142 provided in subdivision (6) of subsection (a) of this section and section
143 19a-639e;

144 (21) The termination of services for which the Department of Public
145 Health has requested the facility to relinquish its license;

146 (22) Acquisition of any equipment by any person that is to be used
147 exclusively for scientific research that is not conducted on humans;

148 (23) On or before June 30, 2026, an increase in the licensed bed
149 capacity of a mental health facility, provided (A) the mental health
150 facility demonstrates to the unit, in a form and manner prescribed by
151 the unit, that it accepts reimbursement for any covered benefit provided
152 to a covered individual under: (i) An individual or group health
153 insurance policy providing coverage of the type specified in
154 subdivisions (1), (2), (4), (11) and (12) of section 38a-469; (ii) a self-
155 insured employee welfare benefit plan established pursuant to the
156 federal Employee Retirement Income Security Act of 1974, as amended
157 from time to time; or (iii) HUSKY Health, as defined in section 17b-290,
158 and (B) if the mental health facility does not accept or stops accepting
159 reimbursement for any covered benefit provided to a covered
160 individual under a policy, plan or program described in clause (i), (ii) or
161 (iii) of subparagraph (A) of this subdivision, a certificate of need for such
162 increase in the licensed bed capacity shall be required.

163 (24) The establishment at harm reduction centers through the pilot
164 program established pursuant to section 17a-673c; [or]

165 (25) On or before June 30, 2028, a birth center, as defined in section
166 19a-490, that is enrolled as a provider in the Connecticut medical
167 assistance program, as defined in section 17b-245g;

168 (26) On or before June 30, 2030, (A) the establishment or expansion of
169 diagnostic or therapeutic cardiac catheterization or cardiac surgery
170 units, psychiatric units, substance use disorder units or rural health
171 services, (B) upgrades to radiologic technology, (C) an increase of
172 behavioral health beds for children, (D) an increase in capacity for
173 existing services offered by a health care facility, and (E) an increase in
174 the number of operating rooms at a health care facility existing on or
175 before October 1, 2024;

176 (27) The relocation of outpatient services (A) within the municipality
177 in which such services are currently provided, or (B) not more than
178 twenty miles from the current location at which such services are
179 provided; or

180 (28) An increase or reduction in the licensed bed capacity of a health
181 care facility of not more than twelve beds within any two-year period,
182 commencing on and after October 1, 2024.

183 (c) (1) Any person, health care facility or institution that is unsure
184 whether a certificate of need is required under this section, or (2) any
185 health care facility that proposes to relocate pursuant to section 19a-
186 639c, shall send a letter to the unit that describes the project and requests
187 that the unit make a determination as to whether a certificate of need is
188 required. In the case of a relocation of a health care facility, the letter
189 shall include information described in section 19a-639c. A person, health
190 care facility or institution making such request shall provide the unit
191 with any information the unit requests as part of its determination
192 process. The unit shall provide a determination within thirty days of
193 receipt of such request.

194 (d) The executive director of the Office of Health Strategy may
195 implement policies and procedures necessary to administer the
196 provisions of this section while in the process of adopting such policies
197 and procedures as regulation, provided the executive director holds a
198 public hearing prior to implementing the policies and procedures and
199 posts notice of intent to adopt regulations on the office's Internet web
200 site and the eRegulations System not later than twenty days after the
201 date of implementation. Policies and procedures implemented pursuant
202 to this section shall be valid until the time final regulations are adopted.

203 (e) On or before June 30, 2026, a mental health facility seeking to
204 increase licensed bed capacity without applying for a certificate of need,
205 as permitted pursuant to subdivision (23) of subsection (b) of this
206 section, shall notify the Office of Health Strategy, in a form and manner
207 prescribed by the executive director of said office, regarding (1) such
208 facility's intent to increase licensed bed capacity, (2) the address of such
209 facility, and (3) a description of all services that are being or will be
210 provided at such facility.

211 (f) Not later than January 1, 2025, the executive director of the Office
212 of Health Strategy shall report to the Governor and, in accordance with
213 the provisions of section 11-4a, to the joint standing committee of the
214 General Assembly having cognizance of matters relating to public
215 health concerning the executive director's recommendations, if any,
216 regarding the establishment of an expedited certificate of need process
217 for mental health facilities.

218 Sec. 2. Section 19a-639a of the 2024 supplement to the general statutes
219 is repealed and the following is substituted in lieu thereof (*Effective*
220 *October 1, 2024*):

221 (a) An application for a certificate of need shall be filed with the unit
222 in accordance with the provisions of this section and any regulations
223 adopted by the Office of Health Strategy. The application shall address
224 the guidelines and principles set forth in (1) subsection (a) of section 19a-
225 639, and (2) regulations adopted by the department. The applicant shall
226 include with the application a nonrefundable application fee based on

227 the cost of the project. The amount of the fee shall be as follows: (A) One
228 thousand dollars for a project that will cost not greater than fifty
229 thousand dollars; (B) two thousand dollars for a project that will cost
230 greater than fifty thousand dollars but not greater than one hundred
231 thousand dollars; (C) three thousand dollars for a project that will cost
232 greater than one hundred thousand dollars but not greater than five
233 hundred thousand dollars; (D) four thousand dollars for a project that
234 will cost greater than five hundred thousand dollars but not greater than
235 one million dollars; (E) five thousand dollars for a project that will cost
236 greater than one million dollars but not greater than five million dollars;
237 (F) eight thousand dollars for a project that will cost greater than five
238 million dollars but not greater than ten million dollars; and (G) ten
239 thousand dollars for a project that will cost greater than ten million
240 dollars.

241 (b) Prior to the filing of a certificate of need application, the applicant
242 shall (1) publish notice that an application is to be submitted to the unit
243 (A) in a newspaper having a substantial circulation in the area where
244 the project is to be located, and (B) on the applicant's Internet web site
245 in a clear and conspicuous location that is easily accessible by members
246 of the public, (2) request the publication of notice (A) in at least two sites
247 within the affected community that are commonly accessed by the
248 public, such as a town hall or library, and (B) on any existing Internet
249 web site of the municipality or local health department, and (3) submit
250 such notice to the unit for posting on such unit's Internet web site. Such
251 newspaper notice shall be published for not less than three consecutive
252 days, with the final date of consecutive publication occurring not later
253 than twenty days prior to the date of filing of the certificate of need
254 application, and contain a brief description of the nature of the project
255 and the street address where the project is to be located. Postings in the
256 affected community and on the applicant's Internet web site shall
257 remain until the decision on the application is rendered. The unit shall
258 not invalidate any notice due to changes or removal of the notice from
259 a community Internet web site of which the applicant has no control. An
260 applicant shall file the certificate of need application with the unit not
261 later than ninety days after publishing notice of the application in a

262 newspaper in accordance with the provisions of this subsection. The
263 unit shall not accept the applicant's certificate of need application for
264 filing unless the application is accompanied by the application fee
265 prescribed in subsection (a) of this section and proof of compliance with
266 the publication requirements prescribed in this subsection. Prior to
267 submitting the certificate of need application, the applicant may request
268 an informational meeting with the unit to discuss the requirements of
269 the application process. The unit shall hold such informational meeting
270 with the applicant not later than one week after the date it receives the
271 applicant's request for an informational meeting.

272 (c) (1) Not later than five business days after receipt of a properly filed
273 certificate of need application, the unit shall publish notice of the
274 application on its Internet web site. Not later than thirty days after the
275 date of filing of the application, the unit may request such additional
276 information as the unit determines necessary to complete the
277 application. In addition to any information requested by the unit, if the
278 application involves the transfer of ownership of a hospital, as defined
279 in section 19a-639, the applicant shall submit to the unit (A) a plan
280 demonstrating how health care services will be provided by the new
281 hospital for the first three years following the transfer of ownership of
282 the hospital, including any consolidation, reduction, elimination or
283 expansion of existing services or introduction of new services, and (B)
284 the names of persons currently holding a position with the hospital to
285 be purchased or the purchaser, as defined in section 19a-639, as an
286 officer, director, board member or senior manager, whether or not such
287 person is expected to hold a position with the hospital after completion
288 of the transfer of ownership of the hospital and any salary, severance,
289 stock offering or any financial gain, current or deferred, such person is
290 expected to receive as a result of, or in relation to, the transfer of
291 ownership of the hospital.

292 (2) The applicant shall, not later than sixty days after the date of the
293 unit's request, submit any requested information and any information
294 required under this subsection to the unit. If an applicant fails to submit
295 such information to the unit within the sixty-day period, the unit shall

296 consider the application to have been withdrawn.

297 (3) The unit shall make reasonable efforts to limit the requests for
298 additional information to two such requests and, in all cases, cease all
299 requests for additional information not later than six months after
300 receiving the application.

301 (d) Upon deeming an application complete, the unit shall provide
302 notice of this determination to the applicant and to the public in
303 accordance with regulations adopted by the department. In addition,
304 the unit shall post such notice on its Internet web site and notify the
305 applicant not later than five days after deeming the application
306 complete. The date on which the unit posts such notice on its Internet
307 web site shall begin the review period. Except as provided in this
308 subsection, (1) the review period for an application deemed complete
309 shall be [~~ninety~~] thirty days from the date on which the unit posts such
310 notice on its Internet web site; and (2) the unit shall issue a decision on
311 an application deemed complete prior to the expiration of the [~~ninety-~~
312 ~~day~~] thirty-day review period in matters without a public hearing. If the
313 unit does not issue a decision on an application deemed complete prior
314 to the expiration of the thirty-day review period in matters without a
315 public hearing, such application shall be deemed approved. The review
316 period for an application deemed complete that involves a transfer of a
317 large group practice, as described in subdivision (3) of subsection (a) of
318 section 19a-638, when the offer was made in response to a request for
319 proposal or similar voluntary offer for sale, shall be [~~sixty~~] twenty days
320 from the date on which the unit posts notice on its Internet web site.
321 Upon request or for good cause shown, the unit may extend the review
322 period for a period of time not to exceed [~~sixty~~] twenty days. If the
323 review period is extended, the unit shall issue a decision on the
324 completed application prior to the expiration of the extended review
325 period. If the unit holds a public hearing concerning a completed
326 application in accordance with subsection (e) or (f) of this section, the
327 unit shall issue a decision on the completed application not later than
328 [~~sixty~~] twenty days after the date the unit closes the public hearing
329 record. If the unit does not issue a decision on the completed

330 application, not later than twenty days after such date, the application
331 shall be deemed approved.

332 (e) Except as provided in this subsection, the unit shall hold a public
333 hearing on a properly filed and completed certificate of need application
334 if three or more individuals or an individual representing an entity with
335 five or more people submits a request, in writing, that a public hearing
336 be held on the application. For a properly filed and completed certificate
337 of need application involving a transfer of ownership of a large group
338 practice, as described in subdivision (3) of subsection (a) of section 19a-
339 638, when an offer was made in response to a request for proposal or
340 similar voluntary offer for sale, a public hearing shall be held if twenty-
341 five or more individuals or an individual representing twenty-five or
342 more people submits a request, in writing, that a public hearing be held
343 on the application. Any request for a public hearing shall be made to the
344 unit not later than [thirty] ten days after the date the unit deems the
345 application to be complete.

346 (f) (1) The unit shall hold a public hearing with respect to each
347 certificate of need application filed pursuant to section 19a-638, as
348 amended by this act, after December 1, 2015, that concerns any transfer
349 of ownership involving a hospital. Such hearing shall be held in the
350 municipality in which the hospital that is the subject of the application
351 is located.

352 (2) The unit may hold a public hearing with respect to any certificate
353 of need application submitted under this chapter. The unit shall provide
354 not less than [two weeks'] five days' advance notice to the applicant, in
355 writing, and to the public by publication in a newspaper having a
356 substantial circulation in the area served by the health care facility or
357 provider. In conducting its activities under this chapter, the unit may
358 hold hearings with respect to applications of a similar nature at the same
359 time. The applicant shall post a copy of the unit's hearing notice on the
360 applicant's Internet web site in a clear and conspicuous location that is
361 easily accessible by members of the public. Such applicant shall request
362 the publication of notice in at least two sites within the affected

363 community that are commonly accessed by the public, such as a town
364 hall or library, as well as on any existing Internet web site of the
365 municipality or local health department. The unit shall not invalidate
366 any notice due to changes or removal of the notice from a community
367 Internet web site of which the applicant has no control.

368 (g) An applicant may request an expedited timeline for determination
369 on a certificate of need application in a form and manner prescribed by
370 the unit. The unit shall develop a process for approving a request for an
371 expedited timeline. Notwithstanding the provisions of this section, if the
372 unit accepts a request for an expedited timeline, a determination shall
373 be made on the application not more than fourteen days after the date
374 the completed application is submitted to the unit.

375 ~~[(g)]~~ (h) (1) For applications submitted on or after October 1, 2023, the
376 unit may retain an independent consultant with expertise in the specific
377 area of health care that is the subject of the application filed by an
378 applicant if the review and analysis of an application cannot reasonably
379 be conducted by the unit without the expertise of an industry analyst or
380 other actuarial consultant. The unit shall submit bills for independent
381 consultant services to the applicant. Such applicant shall pay such bills
382 not later than thirty days after receipt of such bills. Such bills shall be a
383 reasonable amount per application. The provisions of chapter 57 and
384 sections 4-212 to 4-219, inclusive, and 4e-19 shall not apply to any
385 retainer agreement executed pursuant to this subsection.

386 (2) For applications submitted on or after October 1, 2024, the unit
387 may contract with independent consultants or other persons, as deemed
388 necessary by the executive director of the Office of Health Strategy, to
389 assist in reviewing and issuing decisions on applications submitted
390 pursuant to the provisions of this section. Not later than July 1, 2025,
391 and quarterly thereafter, the executive director of the Office of Health
392 Strategy shall post all costs incurred as a result of contracts entered into
393 pursuant to the provisions of this subdivision on the Office of Health
394 Strategy's Internet web site.

395 ~~[(h)]~~ (i) The executive director of the Office of Health Strategy may

396 implement policies and procedures necessary to administer the
397 provisions of this section while in the process of adopting such policies
398 and procedures as regulation, provided the executive director holds a
399 public hearing prior to implementing the policies and procedures and
400 posts notice of intent to adopt regulations on the office's Internet web
401 site and the eRegulations System not later than twenty days after the
402 date of implementation. Policies and procedures implemented pursuant
403 to this section shall be valid until the time final regulations are adopted.

404 Sec. 3. (*Effective from passage*) The executive director of the Office of
405 Health Strategy shall conduct a study regarding the certificate of need
406 process in the state. Such study shall include, but need not be limited to,
407 (1) an examination of the cost to health care systems resulting from
408 delays or inefficiencies in the certificate of need process, (2) not less than
409 three public hearings convened by the executive director that allow
410 providers, insurers, the public and other stakeholders to provide
411 testimony regarding the certificate of need process, and (3) the
412 development of recommendations to improve the certificate of need
413 process by reducing delays, streamlining administrative processes and
414 hiring trained, experienced staff in lieu of contracting with third-party
415 experts. Not later than January 1, 2025, the executive director shall
416 report, in accordance with section 11-4a of the general statutes, to the
417 joint standing committee of the General Assembly having cognizance of
418 matters relating to public health regarding the results of such study.

419 Sec. 4. Section 19a-639f of the general statutes is repealed and the
420 following is substituted in lieu thereof (*Effective October 1, 2024*):

421 (a) The [Health Systems Planning Unit of the Office of Health
422 Strategy] office of the Attorney General shall conduct a cost and market
423 impact review in each case where (1) an application for a certificate of
424 need filed pursuant to section 19a-638, as amended by this act, involves
425 the transfer of ownership of a hospital, as defined in section 19a-639, and
426 (2) the purchaser is a hospital, as defined in section 19a-490, whether
427 located within or outside the state, that had net patient revenue for fiscal
428 year 2013 in an amount greater than one billion five hundred million

429 dollars, or a hospital system, as defined in section 19a-486i, whether
430 located within or outside the state, that had net patient revenue for fiscal
431 year 2013 in an amount greater than one billion five hundred million
432 dollars or any person that is organized or operated for profit.

433 (b) Not later than twenty-one days after receipt of a properly filed
434 certificate of need application involving the transfer of ownership of a
435 hospital filed on or after December 1, 2015, as described in subsection
436 (a) of this section, the unit shall notify the office of the Attorney General
437 of the need for the cost and market impact review. The Attorney General
438 shall initiate such cost and market impact review by sending the
439 transacting parties a written notice that shall contain a description of the
440 basis for the cost and market impact review as well as a request for
441 information and documents. Not later than thirty days after receipt of
442 such notice, the transacting parties shall submit to the [unit] Attorney
443 General a written response. Such response shall include, but need not
444 be limited to, any information or documents requested by the [unit]
445 Attorney General concerning the transfer of ownership of the hospital.
446 The [unit] Attorney General shall have the powers with respect to the
447 cost and market impact review as provided in section 19a-633.

448 (c) The [unit] Attorney General shall keep confidential all nonpublic
449 information and documents obtained pursuant to this section and shall
450 not disclose the information or documents to any person without the
451 consent of the person that produced the information or documents,
452 except in a preliminary report or final report issued in accordance with
453 this section if the [unit] Attorney General believes that such disclosure
454 should be made in the public interest after taking into account any
455 privacy, trade secret or anti-competitive considerations. Such
456 information and documents shall not be deemed a public record, under
457 section 1-210, and shall be exempt from disclosure.

458 (d) The cost and market impact review conducted pursuant to this
459 section shall examine factors relating to the businesses and relative
460 market positions of the transacting parties as defined in subsection (d)
461 of section 19a-639 and may include, but need not be limited to: (1) The

462 transacting parties' size and market share within its primary service
463 area, by major service category and within its dispersed service areas;
464 (2) the transacting parties' prices for services, including the transacting
465 parties' relative prices compared to other health care providers for the
466 same services in the same market; (3) the transacting parties' health
467 status adjusted total medical expense, including the transacting parties'
468 health status adjusted total medical expense compared to that of similar
469 health care providers; (4) the quality of the services provided by the
470 transacting parties, including patient experience; (5) the transacting
471 parties' cost and cost trends in comparison to total health care
472 expenditures state wide; (6) the availability and accessibility of services
473 similar to those provided by each transacting party, or proposed to be
474 provided as a result of the transfer of ownership of a hospital within
475 each transacting party's primary service areas and dispersed service
476 areas; (7) the impact of the proposed transfer of ownership of the
477 hospital on competing options for the delivery of health care services
478 within each transacting party's primary service area and dispersed
479 service area including the impact on existing service providers; (8) the
480 methods used by the transacting parties to attract patient volume and to
481 recruit or acquire health care professionals or facilities; (9) the role of
482 each transacting party in serving at-risk, underserved and government
483 payer patient populations, including those with behavioral, substance
484 use disorder and mental health conditions, within each transacting
485 party's primary service area and dispersed service area; (10) the role of
486 each transacting party in providing low margin or negative margin
487 services within each transacting party's primary service area and
488 dispersed service area; (11) consumer concerns, including, but not
489 limited to, complaints or other allegations that a transacting party has
490 engaged in any unfair method of competition or any unfair or deceptive
491 act or practice; and (12) any other factors that the [unit] Attorney
492 General determines to be in the public interest.

493 (e) Not later than ninety days after the [unit] Attorney General
494 determines that there is substantial compliance with any request for
495 documents or information issued by the [unit] Attorney General in
496 accordance with this section, or a later date set by mutual agreement of

497 the unit and the transacting parties, the [unit] Attorney General shall
498 make factual findings and issue a preliminary report on the cost and
499 market impact review. Such preliminary report shall include, but shall
500 not be limited to, an indication as to whether a transacting party meets
501 the following criteria: (1) Currently has or, following the proposed
502 transfer of operations of the hospital, is likely to have a dominant market
503 share for the services the transacting party provides; and (2) (A)
504 currently charges or, following the proposed transfer of operations of
505 the hospital, is likely to charge prices for services that are materially
506 higher than the median prices charged by all other health care providers
507 for the same services in the same market, or (B) currently has or,
508 following the proposed transfer of operations of a hospital, is likely to
509 have a health status adjusted total medical expense that is materially
510 higher than the median total medical expense for all other health care
511 providers for the same service in the same market.

512 (f) The transacting parties that are the subject of the cost and market
513 impact review may respond in writing to the findings in the preliminary
514 report issued in accordance with subsection (e) of this section not later
515 than thirty days after the issuance of the preliminary report. Not later
516 than sixty days after the issuance of the preliminary report, the [unit]
517 Attorney General shall issue a final report of the cost and market impact
518 review. [The unit shall refer to the Attorney General any final report on
519 any proposed transfer of ownership that meets the criteria described in
520 subsection (e) of this section.]

521 (g) Nothing in this section shall prohibit a transfer of ownership of a
522 hospital, provided any such proposed transfer shall not be completed
523 (1) less than thirty days after the [unit] Attorney General has issued a
524 final report on a cost and market impact review, if such review is
525 required, or (2) while any action brought by the Attorney General
526 pursuant to subsection (h) of this section is pending and before a final
527 judgment on such action is issued by a court of competent jurisdiction.

528 (h) After the [unit refers a final report on a transfer of ownership of a
529 hospital to the Attorney General under subsection (f) of this section]

530 Attorney General has issued a final report on the cost and market impact
531 review, the Attorney General may: (1) Conduct an investigation to
532 determine whether the transacting parties engaged, or, as a result of
533 completing the transfer of ownership of the hospital, are expected to
534 engage in unfair methods of competition, anti-competitive behavior or
535 other conduct in violation of chapter 624 or 735a or any other state or
536 federal law; and (2) if appropriate, take action under chapter 624 or 735a
537 or any other state law to protect consumers in the health care market.
538 The [unit's] final cost and market impact review report may be evidence
539 in any such action.

540 (i) For the purposes of this section, the provisions of chapter 735a may
541 be directly enforced by the Attorney General. Nothing in this section
542 shall be construed to modify, impair or supersede the operation of any
543 state antitrust law or otherwise limit the authority of the Attorney
544 General to (1) take any action against a transacting party as authorized
545 by any law, or (2) protect consumers in the health care market under any
546 law. Notwithstanding subdivision (1) of subsection (a) of section 42-
547 110c, the transacting parties shall be subject to chapter 735a.

548 (j) The [unit] Attorney General shall retain an independent consultant
549 with expertise on the economic analysis of the health care market and
550 health care costs and prices to conduct each cost and market impact
551 review, as described in this section. The [unit] transacting parties shall
552 submit three proposed independent consultants to the Attorney
553 General, who shall select one such independent consultant to conduct
554 the cost and market impact review. The Attorney General shall submit
555 bills for such services to the purchaser, as defined in subsection (d) of
556 section 19a-639. Such purchaser shall pay such bills not later than thirty
557 days after receipt. Such bills shall not exceed two hundred thousand
558 dollars per application. The provisions of chapter 57, sections 4-212 to 4-
559 219, inclusive, and section 4e-19 shall not apply to any agreement
560 executed pursuant to this subsection.

561 (k) Any employee of the unit who [directly oversees or] assists in
562 conducting a cost and market impact review shall not take part in factual

563 deliberations or the issuance of a preliminary or final decision on the
564 certificate of need application concerning the transfer of ownership of a
565 hospital that is the subject of such cost and market impact review.

566 (l) The executive director of the Office of Health Strategy shall adopt
567 regulations, in accordance with the provisions of chapter 54, concerning
568 cost and market impact reviews and to administer the provisions of this
569 section. Such regulations shall include definitions of the following
570 terms: "Dispersed service area", "health status adjusted total medical
571 expense", "major service category", "relative prices", "total health care
572 spending" and "health care services". The executive director may
573 implement policies and procedures necessary to administer the
574 provisions of this section while in the process of adopting such policies
575 and procedures in regulation form, provided the executive director
576 publishes notice of intention to adopt the regulations on the office's
577 Internet web site and the eRegulations System not later than twenty
578 days after implementing such policies and procedures. Policies and
579 procedures implemented pursuant to this subsection shall be valid until
580 the time such regulations are effective.

581 Sec. 5. (NEW) (*Effective October 1, 2024*) On and after October 1, 2024,
582 an insurance company that invests in any institution, as defined in
583 section 19a-490 of the general statutes, shall not exercise operational
584 control, managerial control or decision-making authority relating to the
585 institution's delivery of health care services.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2024</i>	19a-638
Sec. 2	<i>October 1, 2024</i>	19a-639a
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>October 1, 2024</i>	19a-639f
Sec. 5	<i>October 1, 2024</i>	New section

Statement of Legislative Commissioners:

In Section 1(a)(16), "except as provided in subdivision (27) of subsection (b) of this section" was added for clarity and consistency with other provisions of the section.

PH *Joint Favorable Subst. -LCO*

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 25 \$	FY 26 \$
Resources of the General Fund	GF - Revenue Loss	745,000	440,000
Office of Health Strategy	See Below - See Below	See Below	See Below
State Comptroller - Fringe Benefits ¹	See Below - See Below	See Below	See Below
Attorney General	GF - Cost	Significant	Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

The 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), increasing the total expenditure of HSPU by \$745,000 in FY 25, and \$440,000 annually beginning in FY 26. Costs related to HSPU are deducted from an assessment on the various state hospitals' revenue before any remaining funds are deposited in the General Fund, ultimately resulting in a revenue loss to the General Fund beginning in FY 25.

Section 1 of the bill makes changes to what transactions require CON approval, and Section 2 affects various deadlines related to the CON process. The bill may result in a fiscal impact to the state associated with

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 41.25% of payroll in FY 25.

eliminating the CON process for certain service categories, until 6/30/30. The extent of the impact depends on the increased utilization and associated Medicaid payments where new exclusions are granted.

OHS will incur costs of approximately \$440,000 in salary and fringe benefits beginning in FY 25 for two full-time positions and two consultants with external medical expertise. The staff will be needed to conduct CON application reviews on an annual basis.

Additionally, OHS will incur a one-time cost of \$100,000 in FY 25 to hire a consultant to assist the department in developing the expedited review process.

Section 3 requires OHS to conduct a study on the state's CON process and report to the Public Health Committee by January 1, 2025. OHS will incur a one-time cost of \$200,000 in FY 25 to contract with an outside consultant because the department does not have the existing staff or resources to complete the study within the timeframe established under the bill.

Section 4 moves the responsibility of conducting Cost and Market Impact Reviews (CMIRs) to the Attorney General's Office from HSPU. OHS is still required to adopt regulations regarding the CMIR and administer certain provisions. There is no fiscal impact to OHS from this section.

The bill's provision transferring responsibility for conducting cost and market impact reviews for certain hospital ownership transfers would result in a significant cost to the Office of the Attorney General (OAG), as it is outside the usual scope of its expertise. It is anticipated that contracted services as well as potentially additional personnel would be required in the OAG to conduct the mandatory reviews as ownership transfers are proposed.

The Out Years

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

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)