

Public Health Committee JOINT FAVORABLE REPORT

Bill No.: SB-440

Title: AN ACT CONCERNING CERTIFICATES OF NEED.

Vote Date: 3/20/2024

Vote Action: Joint Favorable

PH Date: 3/18/2024

File No.: 314

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SPONSORS OF BILL:

The Public Health Committee

REASONS FOR BILL:

This bill makes various changes to several areas of the Certificate of Need (CON) process administered by the Office of Health Care Strategy (OHS) regarding health care facilities. The following are included:

- Transactions requiring a CON.
- Actions that are exempt from CON.
- Changes to CON deadlines.
- CON impact on Cost Market Impact Reviews (CMIRs).
- A requirement for a study of the CON program which must include at least three public hearings. The study must include recommendations to improve the CON process and report these results to the Public Health Committee by January 1, 2025.
- Prohibits an insurance company that invests in a health care institution from having any operational or managerial control regarding decision making authority relative to any health care service delivery provided by the institution.

RESPONSE FROM ADMINISTRATION/AGENCY:

William Tong, Connecticut Attorney General (OAG):

Mr. Tong pointed out that in the last few years concerns related to private equity ownership of healthcare facilities were highlighted regarding the management of Waterbury, Manchester Memorial and Rockville hospitals in the Eastern CT Health Network (ECHN) by equity-backed Prospect Medical Holdings. The concerns that surfaced were significant and require our immediate attention as they threaten the well being of our citizens and their ability to access

safe quality healthcare services. This bill begins the work of examining our CON process and making the necessary changes for improvement. Mr. Tong included with his testimony several additional proposals to better scrutinize private equity and health care consolidations. Mr. Tong noted that in this bill, the Cost Market Impact Reviews (CMIRs) currently under the purview of OHS would be transferred to his office. One suggestion he respectfully recommends is rather than transferring the review of CMIR to the OAG, he believes the OAG would better capture these transactions by strengthening the Notice of Material Change (NOMC) statute which has not been updated since 2014 when the health care environment was very different. In the past 10 years, these transactions have become more complex with less outright purchases and more creative deal-making by for-profit and private equity-backed entities.

Dr. Dieder Gifford, Executive Director, Office of Health Strategy (OHS):

Dr. Gifford appreciates the effort to improve the efficiency and effectiveness of the CON process. In addressing SB 440, Dr. Gifford supports some aspects of the bill but has concerns in other areas. OHS agrees that recent trends regarding health care ownership by private equity groups are concerning and require transparency and close review. However, when addressing various private equity transactions that would require a CON, there is no clear definition in this bill as to the statute it amends. Also, regarding these types of transactions, Dr. Gifford would rather see the focus placed on key financial transactions for their impact on quality, access, affordability, and the financial stability of the health care system. This would ensure that regardless of corporate structure, such potentially harmful practices would receive a full CON review. In her testimony, Dr. Gifford explains in detail, OHS' position on each component of SB 440 regarding the areas of support and concern to the office. Finally, recognizing the shared goals regarding the proposals from the Governor, OHS and the Committee, Dr. Gifford looks forward to finding synergies in the proposals to address this complex issue.

Sean King, Office of the Healthcare Advocate (OHA):

Mr. King shared that there exists a growing body of research which indicates that private equity ownership results in worse health outcomes, reduced capital investment in facilities, and increased prices for services. According to a report from the Hartford Business Journal released on July 10, 2023, the presence of private equity firms in our state has increased dramatically resulting in consolidations and the acquisition of physician practices. These acquisitions serve the investors at the expense of the patient. His office has heard from several residents who, because of this acquisition practice, have seen an increase in the cost for the same annual service as well as issues regarding access to medical equipment. OHA supports this bill which will improve the CON process providing additional tools to address predatory private equity investment in our healthcare system.

Senator Martin Looney, 11th District CT General Assembly (CGA) President Pro Tempore:

Sen. Looney recalled legislation PA 15-146 that increased oversight of hospital mergers and physician practice acquisitions and created a task force that recommended the creation of the Office of Health Strategy (OHS). Clearly our health care environment has changed significantly in this last decade and oversight needs to be adjusted to adequately address these changes. One of the issues that has arisen is the increase in private equity and other corporate ownership of hospitals and physician practices. We must strive to ensure that these

transactions are transparent and do not escape state regulation. The language of this bill must ensure this.

NATURE AND SOURCES OF SUPPORT:

Connecticut Hospital Association, (CHA):

CHA supports this bill as it streamlines the CON process, has more efficient timelines, automatically approves CON if deadlines are not met and creates a more expedited review of applications. Regarding the exemptions from the CON process, CHA appreciates the Committee for recognizing that certain services and programs need immediate action and should be put into service as quickly as possible. However, CHA believes the need for immediate access to services is broader than outlined in the bill and looks forward to continued conversations with on Committee on this issue.

Connecticut Medical Society (CSMS):

CSMS fully supports the efforts put forth in this bill to enhance transparency in healthcare investments through the CON process. However, CSMS urges the Committee to reconsider the language in section (1)(16) of the bill which could result in unintended consequences. The current language poses significant challenges. If read literally, even minor relocations of healthcare facilities within proximity could trigger the need for a CON. This could negatively impact a healthcare providers' ability to respond to market and real estate challenges and could delay patient access to vital healthcare services.

Connecticut Children's Hospital:

The unprecedented challenges faced during the COVID-19 pandemic have underscored the need for our health care systems to be flexible and adaptable. Children's is supportive of efforts to streamline the CON process, reduce administrative burdens and eliminate barriers that prevent our ability to grow and innovate in response to the ever-changing needs of our patients.

Vincent Capece, Jr., President and CEO, Middlesex Health:

Mr. Capece provides testimony in support of this bill which significantly improves the current CON process. CON should be a patient-centered process that supports healthcare and economic competitiveness in our state. The current CON process with its delays and excessive administrative burdens creates obstacles to healthcare access and affordability and hampers economic growth.

Deborah Weymouth, President, and CEO of Eastern CT Health Network (ECHN):

Ms. Weymouth shares that ECHN has experienced delays and excessive administrative burdens with the current CON process creating a significant negative impact on ECHN. In her testimony, Ms. Weymouth cites three examples of CON applications and the inordinate length of time it took for the issues to be address. However, she supports SB 440 as this bill will make significant improvements to the CON process going forward.

The following Healthcare Systems provided comments in support of this legislation like those expressed in the above testimony:

- Hartford Healthcare
- Nuvance Health
- UCONN Health
- Yale New Haven Health
- Trinity Health of New England

NATURE AND SOURCES OF OPPOSITION:

Kathleen Silard, Stamford Health:

Ms. Silard believes that the CON process should be patient-centered and support the best possible quality health care and economic competitiveness for the residents of our state. Stamford Health is supportive of most of the improvements in SB 440 as it would make the CON process timelier and more efficient. However, it urges rejection of the provisions concerning relocating services within a municipality, and strongly opposes exempting cardiac catheterization and cardiac surgery from the CON process.

Dr. Dinesh Kapur, Eastern CT Hematology & Oncology Associates (ECHO):

Dr. Kapur is concerned about the strict requirements in this and other CON bills. These requirements incorrectly assume that medical practices accessing capital, business, and operational support through partnerships with management service organizations (MSO), that are often private and equity-backed, is harmful to health care delivery in our state. He shares that his practice could not have survived the pandemic had it not been for its partnership with OneOncology an MSO that helped his practice secure vital supplies and support throughout the pandemic. Cancer treatment could not stop during the pandemic, and it did not stop because of this partnership. During the pandemic, we were able to offer care for our patients from Dana-Faber Cancer Institute in Boston due to our efficiency in opening these personalized trails faster than big health systems. This partnership has helped us to continue providing life-saving and curative chemotherapies despite a recent national shortage of certain medications. Finally, Dr. Kapur emphasized that all clinical decisions remain exclusively with him and the other physicians in his practice. They have full clinical autonomy and their decisions have never been questioned by their MSO partners. Dr. Kapur urges the Committee to the study the issue through a bill like HB 5319 **AAC Private Equity Firms Acquiring or Holding an Ownership Interest in Private Health Care Facilities** and not rush to change laws based on assumptions that are not true in Connecticut.

Dante Brittis, President of the CT Orthopedic Society:

Dr. Brittis pointed out that orthopedic surgeons own and operate Ambulatory Surgery Centers (ASCs). As business owners they invest in and develop their practices locally and bear the fiscal responsibility at great personal risk. Patient care is a critical component when weighing any business decision. He believes that this current CON process is onerous and antiquated creating access issues and barriers to care. Although this bill offers some improvement to the process, it does not address the burdensome time and costs associated with the CON application process. These requirements negatively impact the quality and efficient care our surgeons can provide in the ever-changing health care environment. Dr. Brittis shared that

since 2021, twelve states have repealed their CON process claiming this process offers little evidence of controlling health care costs. We urge the Committee to consider repealing this process that is anticompetitive and hampers patient choice.

Ct Association of Ambulatory Surgery Center (CAASC):

CAASC is concerned that any significant investment or relationship between private equity and a health care facility would be subject to CON review. This would present a significant challenge while trying to respond to a fast-paced health services environment, a tightened credit market, and high interest rates. Issues like these could potentially benefit from private equity support. A reasonable balance must be struck between all the parties impacted by private equity investment. and not dismantle services or hinder the health care system while keeping in mind the best interests of the physicians and the patients they serve.

The following provided comments opposing this legislation like those expressed in the above testimony:

- David Hergan, Orthopedic & Neurosurgery Specialists:
- Dr. Joe Cappa, Gastroenterologist and Chairman of his practice
- Jeffry Nestler, President, and Chairman of the Board CT Independent Physician Practice Association

Reported by: Kathleen Panazza

Date: March 22,2024