File No. 576

Substitute House Bill No. 5403

House of Representatives, April 17, 1998. The Committee on Human Services reported through REP. KEELEY, 125th DIST., Chairman of the Committee on the part of the House, 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-630 of the general
2 statutes is repealed and the following is
3 substituted in lieu thereof:
4 [(a)] As used in this chapter:
5 (1) "Health care facility or institution"
6 means any facility or institution engaged
7 primarily in providing services for the
8 prevention, diagnosis or treatment of human health
9 conditions, including, but not limited to,
10 outpatient clinics, free standing outpatient
11 surgical facilities, imaging centers, home health
12 [care] agencies, [homemaker-home health aide
13 agencies,] as defined in section 19a-490; clinical
14 laboratory or central service facilities serving
15 one or more health care facilities, practitioners
16 or institutions; hospitals; [personal] RESIDENTIAL
17 care homes; nursing homes; REST HOMES; nonprofit
18 health centers; diagnostic and treatment
19 facilities; rehabilitation facilities, and mental
20 health facilities; health care facility or
21 institution includes any parent company,
22 subsidiary, affiliate, or joint venture or any
23 combination thereof of a health care facility or

24 institution; but not including [any outpatient
25 clinic operated by a town, city or borough or any
26 state-operated hospital or any rehabilitation
27 center referred to in section 17b-243, or] any
28 health care facility operated by a nonprofit
29 educational institution solely for the students,
30 faculty and staff of such institution and their
31 dependents, or any Christian Science sanatorium
32 operated, or listed and certified, by the First
33 Church of Christ, Scientist, Boston,
34 Massachusetts. [;]
35 (2) ["state] "STATE health care facility or
36 institution" means a hospital or other such
37 facility or institution operated by the state
38 providing services which are eligible for
39 reimbursement under Title XVIII or XIX of the
40 federal Social Security Act, 42 USC Section 301 et
41 seq., as amended. [;]
42 (3) ["office"] "OFFICE" means the Office of
43 Health Care Access. [; and]
44 (4) ["commissioner"] "COMMISSIONER" means the
45 Commissioner of Health Care Access.
46 (5) "AFFILIATE" MEANS ANY PERSON THAT
47 DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE
48 INTERMEDIARIES, CONTROLS OR IS CONTROLLED BY OR IS
49 UNDER COMMON CONTROL WITH, ANOTHER PERSON,
50 INCLUDING, BUT NOT LIMITED TO, ANY CORPORATION,
51 GENERAL OR LIMITED PARTNERSHIP OR LIMITED
52 LIABILITY COMPANY CONTROLLED, DIRECTLY OR
53 INDIRECTLY, BY SUCH OTHER PERSON OR THE
54 CORPORATION, PROVIDED, IN ADDITION TO OTHER MEANS
55 OF BEING CONTROLLED, A GENERAL OR LIMITED
56 PARTNERSHIP OR LIMITED LIABILITY COMPANY SHALL BE
57 DEEMED TO BE CONTROLLED BY THE CORPORATION IF THE
58 CORPORATION OR ONE OF ITS AFFILIATES ACTS AS A
59 GENERAL PARTNER OR A MANAGER OF SUCH GENERAL OR
60 LIMITED PARTNERSHIP OR LIMITED LIABILITY COMPANY.
61 [(b) As used in this chapter for the purpose
62 of certificate of need, "clinical laboratory"
63 includes any clinical laboratory as defined in
64 section 19a-30, requiring a separate clinical
65 laboratory license from the Department of Public
66 Health, except laboratories designated as
67 laboratories performing waived tests, as defined
68 in 42 CFR 493.15 as from time to time amended, and
69 laboratories performing tests of moderate
70 complexity, as defined in 42 CFR 493.20 as from
71 time to time amended.]

72 Sec. 2. Section 19a-638 of the general
73 statutes is repealed and the following is
74 substituted in lieu thereof:
75 (a) (1) [Any] EACH health care facility or
76 institution, [as defined in subsection (a) of
77 section 19a-490, which intends to transfer all or
78 part of its ownership or control prior to being
79 initially licensed, except a home health agency,
80 nursing home, residential care home, rest home or
81 residential facility for the mentally retarded
82 licensed pursuant to section 17a-227 and certified
83 to participate in the Title XIX Medicaid program
84 as an intermediate care facility for the mentally
85 retarded] THAT INTENDS TO (A) TRANSFER ALL OR PART
86 OF ITS OWNERSHIP OR CONTROL, (B) CHANGE THE POWERS
87 OF THE BOARD OF A PARENT COMPANY OR AN AFFILIATE,
88 WHATEVER ITS DESIGNATION, OR (C) CHANGE OR
89 TRANSFER THE POWERS OR CONTROL OF A GOVERNING OR
90 CONTROLLING BODY OF AN AFFILIATE, shall submit to
91 the office, prior to the proposed date of such
92 transfer [and in accordance with any schedule
93 established by the office pursuant to subsection
94 (c) of this section] OR CHANGE, a request for
95 permission to undertake such transfer OR CHANGE.
96 (2) [Any] EACH health care facility or
97 institution or [any] state health care facility or
98 institution, including any inpatient
99 rehabilitation facility, [affiliated with the
100 Easter Seal Society of Connecticut, Inc., but
101 excluding a home health agency, nursing home,
102 residential care home, rest home or residential
103 facility for the mentally retarded licensed
104 pursuant to section 17a-227 and certified to
105 participate in the Title XIX Medicaid program as
106 an intermediate care facility for the mentally
107 retarded,] which intends to introduce any
108 additional function or service into its program of
109 health care [, except a program of ambulatory
110 services established and conducted by a health
111 maintenance organization or any outpatient
112 rehabilitation facility affiliated with the Easter
113 Seal Society of Connecticut, Inc.,] shall submit
114 to the office, prior to the proposed date of the
115 institution of such function or service, [or
116 increase in staff and in accordance with any
117 schedule established by the office pursuant to
118 subsection (c) of this section,] a request for

119 permission to undertake such function or service.
120 [or increase its staff.]
121 (3) [Any] EACH health care facility or
122 institution or [any] state health care facility or
123 institution [except a home health agency, nursing
124 home, residential care home, rest home or
125 residential facility for the mentally retarded
126 licensed pursuant to section 17a-227 and certified
127 to participate in the Title XIX Medicaid program
128 as an intermediate care facility for the mentally
129 retarded,] which intends to terminate a health
130 service offered by such facility or institution or
131 decrease substantially its total bed capacity,
132 shall submit to the office, prior to the proposed
133 date of such termination or decrease, [and in
134 accordance with any schedule established by the
135 office pursuant to subsection (c) of this
136 section,] a request to undertake such termination
137 or decrease.
138 (4) [An] EACH applicant, prior to submitting
139 a certificate of need application UNDER THIS
140 SECTION OR SECTION 19a-639, AS AMENDED BY THIS
141 ACT, shall SUBMIT A request, in writing, FOR
142 application forms and instructions [from] TO the
143 office. The request shall be known as a letter of
144 intent. A letter of intent shall include: (A) The
145 name of the applicant or applicants; (B) a
146 statement indicating whether the application is
147 for a new, REPLACEMENT OR ADDITIONAL facility,
148 service or function, THE expansion OR RELOCATION
149 of an existing facility, service or function,
150 [and] A CHANGE IN OWNERSHIP OR CONTROL, A
151 TERMINATION OF A SERVICE OR A REDUCTION IN
152 LICENSED BED CAPACITY AND THE BED TYPE, any new or
153 additional beds and their type, A CAPITAL
154 EXPENDITURE OVER ONE MILLION DOLLARS, THE
155 ACQUISITION OF MAJOR MEDICAL EQUIPMENT, IMAGING
156 EQUIPMENT OR A LINEAR ACCELERATOR COSTING OVER
157 FOUR HUNDRED THOUSAND DOLLARS, OR ANY COMBINATION
158 THEREOF; (C) the estimated capital cost OR
159 EXPENDITURE; (D) the town where the project IS OR
160 will be located; and (E) a brief description of
161 the proposed project. No certificate of need
162 application will be considered [filed with]
163 SUBMITTED TO the office unless a current letter of
164 intent, specific to the proposal and in
165 [accordance] COMPLIANCE with this subsection, has
166 been on file with the office at least [ninety]

167 SIXTY days. A current letter of intent is a letter
168 of intent which has been on file at the office no
169 more than one hundred twenty days.
170 (b) The office shall make such review of a
171 request made pursuant to subdivision (1), (2) or
172 (3) of subsection (a) of this section as it deems
173 necessary. [, including, in] IN the case of a
174 proposed transfer of ownership or control, [prior
175 to initial licensure, such factors as, but not
176 limited to] THE REVIEW SHALL INCLUDE, BUT NOT BE
177 LIMITED TO, the financial responsibility and
178 business interests of the transferee and the
179 ability of the institution to continue to provide
180 needed services [,] or, in the case of the
181 introduction of [an] A NEW OR additional function
182 or service OR THE TERMINATION OF A SERVICE OR
183 FUNCTION, ascertaining the availability of such
184 service or function at other inpatient
185 rehabilitation facilities, health care facilities
186 or institutions or state health care facilities or
187 institutions OR OTHER PROVIDERS within the area to
188 be served, the need for such service or function
189 within such area and any other factors which the
190 office deems relevant to a determination of
191 whether the facility or institution is justified
192 in introducing OR TERMINATING such [additional]
193 functions or services into OR FROM its program.
194 [or increasing its staff.] The office shall grant,
195 modify or deny such request within ninety days of
196 the receipt [thereof] OF A COMPLETE APPLICATION,
197 except as provided for in this section. Upon the
198 request of the applicant, the review period may be
199 extended for an additional fifteen days if the
200 office has requested additional information
201 subsequent to the commencement of the review
202 period. The commissioner may extend the review
203 period for a maximum of thirty days if the
204 applicant has not filed in a timely manner
205 information deemed necessary by the office.
206 Failure of the office to act on such request
207 within such review period shall be deemed approval
208 thereof. The ninety-day review period, pursuant to
209 this subsection, for an application filed by a
210 hospital, as defined in section 19a-490, and
211 licensed as a short-term acute-care general
212 hospital or children's hospital by the Department
213 of Public Health, shall not apply if, in the
214 certificate of need application or request, the

215 hospital projects [that the implementation of such
216 application or request will require future budget
217 adjustments] EITHER (1) THAT, FOR THE FIRST THREE
218 YEARS OF OPERATION TAKEN TOGETHER, THE TOTAL
219 IMPACT OF THE PROPOSAL ON THE OPERATING BUDGET OF
220 THE HOSPITAL WILL EXCEED ONE PER CENT OF THE
221 ACTUAL OPERATING EXPENSES OF THE HOSPITAL FOR THE
222 MOST RECENTLY COMPLETED FISCAL YEAR AS FILED WITH
223 THE OFFICE, OR (2) THAT THE TOTAL CAPITAL
224 EXPENDITURE FOR THE PROJECT WILL EXCEED FIFTEEN
225 MILLION DOLLARS. IF THE OFFICE DETERMINES THAT AN
226 APPLICATION IS NOT SUBJECT TO THE NINETY-DAY
227 REVIEW PERIOD PURSUANT TO THIS SUBSECTION, IT
228 SHALL REMAIN SO EXCLUDED FOR THE ENTIRE REVIEW
229 PERIOD OF THAT APPLICATION, EVEN IF THE
230 APPLICATION OR CIRCUMSTANCES CHANGE AND THE
231 APPLICATION NO LONGER MEETS THE STATED TERMS OF
232 THE EXCLUSION. Upon a showing by such facility or
233 institution that the need for such function, [or]
234 service or [increase in staff] TERMINATION OR
235 CHANGE OF OWNERSHIP OR CONTROL is of an emergency
236 nature, in that the function, [or] service or
237 [increase in staff] TERMINATION OR CHANGE OF
238 OWNERSHIP OR CONTROL is necessary to comply with
239 requirements of any federal, state or local
240 health, fire, building or life safety code, the
241 commissioner may waive the letter of intent
242 requirement, [and the requirement that the request
243 for such permission be submitted, in accordance
244 with any schedule established by the office
245 pursuant to subsection (c) of this section,]
246 provided such request shall be submitted at least
247 ten business days before the proposed date of
248 institution of the function, [or] service OR
249 TERMINATION OR CHANGE OF OWNERSHIP OR CONTROL.
250 (c) In conducting its activities under this
251 section [and] OR section 19a-639, AS AMENDED BY
252 THIS ACT, the office may hold hearings on
253 applications of a similar nature at the same time.
254 [The office may adopt regulations in accordance
255 with the provisions of chapter 54, to establish a
256 schedule for the submission of such applications
257 which (1) requires applications to be submitted in
258 cycles that allow applications to be heard and
259 reviewed at times when hospital budget reviews are
260 not in progress, and (2) may provide for all
261 completed applications pertaining to similar types
262 of services, facilities or equipment affecting the

263 same health service area to be considered in
264 relation to each other and reviewed at least twice
265 a year.]
266 (d) For the purposes of this section OR
267 SECTION 19a-639, AS AMENDED BY THIS ACT,
268 construction shall be deemed to have begun if the
269 following have occurred and the office has been so
270 notified in writing within the thirty days prior
271 to the date by which construction is to begin: (1)
272 All necessary town, state and federal approvals
273 required to begin construction have been obtained,
274 including all zoning and wetlands approvals; (2)
275 all necessary town and state permits required to
276 begin construction or site work have been
277 obtained; (3) financing approval, as defined in
278 subsection [(i)] (e) of this section, has been
279 obtained; and (4) construction of a structure
280 approved in the certificate of need has begun. For
281 the purposes of this subsection, commencement of
282 construction of a structure shall include, at a
283 minimum, completion of a foundation.
284 Notwithstanding the provisions of this subsection,
285 upon receipt of an application filed at least
286 thirty days prior to the date by which
287 construction is to begin, the office may deem
288 construction to have begun if (A) an owner of a
289 certificate of need has fully complied with the
290 provisions of subdivisions (1), (2) and (3) of
291 this subsection; (B) such owner submits clear and
292 convincing evidence that he has complied with the
293 provisions of this subsection sufficiently to
294 demonstrate a high probability that construction
295 shall be completed in time to obtain licensure by
296 the Department of Public Health on or before the
297 date required [pursuant to subsection (d) of this
298 section] IN THE CERTIFICATE OF NEED AS THE OFFICE
299 MAY AMEND IT FROM TIME TO TIME; (C) construction
300 of a structure cannot begin due to unforseeable
301 circumstances beyond the control of the owner; and
302 (D) at least ten per cent of the approved total
303 capital expenditure or two hundred fifty thousand
304 dollars, whichever is greater, has been expended.
305 (e) [On and after March 1, 1993, financing]
306 FINANCING shall be deemed to have been obtained
307 for the purposes of this section if the owner of
308 the certificate of need has (1) received a final
309 commitment for financing in writing from a lender,
310 or (2) provided evidence to the office that the

311 owner has sufficient funds available to construct
312 the project without financing.
313 (f) The General Assembly finds evidence of
314 insufficient need for all the nursing home beds
315 approved by the Office of Health Care Access but
316 not yet constructed and finds allowing unnecessary
317 beds and facilities to be built will result in
318 severely damaging economic consequences to the
319 state and to consumers. All certificates of need
320 for nursing home beds granted pursuant to this
321 section shall expire on June 9, 1993, except (1)
322 beds for which an application for financing was
323 received and deemed complete by the Connecticut
324 Health and Educational Facilities Authority prior
325 to March 1, 1993; (2) beds restricted to use by
326 patients with acquired immune deficiency syndrome
327 or traumatic brain injury; (3) beds associated
328 with a continuing care facility which guarantees
329 life care for its residents as defined in
330 subsection [(e) of this section] (b) OF SECTION
331 17b-354, AS AMENDED BY THIS ACT; (4) beds
332 authorized under a certificate of need for an
333 addition of five beds in a facility which has
334 undertaken the addition of ten beds pursuant to
335 section 17b-351; and (5) beds for which
336 twenty-five per cent of project costs have been
337 expended prior to June 9, 1993, as submitted to
338 the Office of Health Care Access in the form of a
339 report prepared by a certified public accountant
340 having no affiliation with the owner of the
341 certificate of need or the developer of the
342 project. A certificate of need which has expired
343 pursuant to this subsection may be reauthorized by
344 the Office of Health Care Access, provided need
345 for nursing home beds exists and twenty per cent
346 or more of the project costs have been expended by
347 June 9, 1993. A request for reauthorization shall
348 be submitted to the Office of Health Care Access
349 no later than July 15, 1993. The office shall
350 issue a decision on such request within forty-five
351 days of receipt of documentation necessary to
352 determine expended project costs. Project
353 expenditures shall cease from June 9, 1993, until
354 reauthorization by the office. Evidence of project
355 costs expended shall be submitted in the form of a
356 report prepared by a certified public accountant
357 having no affiliation with the owner of the
358 certificate of need or the developer of the

359 project. For the purposes of this section, "need
360 for nursing home beds" means there is a
361 demonstrated bed need in the towns within twenty
362 miles of the town in which the facility is
363 proposed to be located, including the town of the
364 proposed location, as listed in the March 1, 1974,
365 official mileage table of the Public Utilities
366 Commission. Bed need shall be projected no more
367 than five years into the future at ninety-seven
368 and one-half per cent occupancy using the latest
369 official population projections by town and age as
370 published by the Office of Policy and Management
371 and the latest available nursing home utilization
372 statistics by age cohort from the Department of
373 Public Health. For the purposes of this
374 subsection, "project costs" means the capital
375 costs approved by the Office of Health Care Access
376 in the certificate of need, exclusive of the cost
377 of land acquisition. Owners of certificates of
378 need for nursing home beds which have expired may
379 apply to the Commissioner of Social Services for
380 compensation on or after June 29, 1993, but no
381 later than September 1, 1993. Such compensation
382 shall be limited to actual verifiable losses which
383 directly result from the expiration of the
384 certificate of need pursuant to this subsection
385 and which cannot be otherwise recouped through the
386 mitigating efforts of the owner, excluding
387 consequential and incidental losses such as lost
388 profits. Such compensation shall not exceed an
389 amount approved by the office within the
390 certificate of need unless the commissioner
391 determines it is reasonable or cost-effective to
392 compensate the excess amount. Notwithstanding any
393 provision of this subsection, no compensation
394 shall be provided to an owner of a certificate of
395 need whose ability to implement the certificate of
396 need is contingent on the outcome of a legal
397 action taken against the owner until the owner
398 obtains a final decision in his favor. An owner
399 aggrieved by the amount of compensation determined
400 by the commissioner may request a hearing in
401 accordance with the provisions of sections 17b-61
402 and 17b-104. The commissioner may so compensate an
403 owner of a certificate of need for nursing home
404 beds who volunteers to relinquish such a
405 certificate, provided the request for compensation
406 is received by the commissioner prior to July 15,

407 1993. The commissioner shall notify such an owner
408 as to whether he will be compensated within
409 forty-five days from receipt of notice of
410 voluntary relinquishment or forty-five days of
411 June 29, 1993, whichever is later.
412 Sec. 3. Section 19a-639 of the general
413 statutes, as amended by public act 97-159, is
414 repealed and the following is substituted in lieu
415 thereof:
416 (a) Except [for (1) a program of ambulatory
417 services established and conducted by a health
418 maintenance organization, (2) any outpatient
419 rehabilitation facility affiliated with the Easter
420 Seal Society of Connecticut, Inc., (3) a home
421 health agency or (4) a nursing home, residential
422 care home, rest home or residential facility for
423 the mentally retarded licensed pursuant to section
424 17a-227 and certified to participate in the Title
425 XIX Medicaid program as an intermediate care
426 facility for the mentally retarded] AS PROVIDED IN
427 SECTION 4 OF THIS ACT, EACH HEALTH CARE FACILITY
428 OR INSTITUTION, INCLUDING, BUT NOT LIMITED TO, any
429 inpatient rehabilitation facility, [affiliated
430 with the Easter Seal Society of Connecticut,
431 Inc.,] any health care facility or institution or
432 any state health care facility or institution
433 proposing a capital expenditure exceeding one
434 million dollars, or the acquisition of major
435 medical equipment requiring a capital expenditure,
436 as defined in regulations adopted pursuant to
437 section 19a-643, AS AMENDED BY THIS ACT, in excess
438 of four hundred thousand dollars, including the
439 leasing OR DONATION of equipment or a facility,
440 shall submit a request for approval of such
441 expenditure to the office, with such data,
442 information and plans as the office requires in
443 advance of the proposed initiation date of such
444 project. [and in accordance with any schedule
445 established by the office pursuant to subsection
446 (c) of this section.]
447 (b) The office shall [thereupon] hold a
448 public hearing with respect to [such request] ANY
449 COMPLETE CERTIFICATE OF NEED REQUEST UNDER THIS
450 SECTION, at least two weeks' notice of which shall
451 be given to the facility, [or] institution OR
452 PROVIDER by certified mail and to the public by
453 publication in a newspaper having a substantial
454 circulation in the area served by the facility,

455 [or] institution OR PROVIDER. The commissioner
456 shall notify the Commissioner of Social Services
457 of any application that may impact on expenditures
458 under the state medical assistance program. Such
459 hearing shall be held at the discretion of the
460 office in Hartford or in the area so served OR TO
461 BE SERVED. The office shall consider such request
462 in relation to the community or regional need for
463 such capital program or purchase of land, the
464 possible effect on the operating costs of the
465 health care facility or institution and such other
466 relevant factors as the office deems necessary. In
467 approving or modifying such request, the
468 commissioner may not prescribe any condition, such
469 as but not limited to, any condition or limitation
470 on the indebtedness of the facility or institution
471 in connection with a bond issue, the principal
472 amount of any bond issue or any other details or
473 particulars related to the financing of such
474 capital expenditure, not directly related to the
475 scope of such capital program and within control
476 of the facility or institution. An applicant,
477 prior to submitting a certificate of need
478 application, shall SUBMIT A request, in writing,
479 FOR application forms and instructions [from] TO
480 the office. The request shall be known as a letter
481 of intent. A letter of intent shall [include: (A)
482 The name of the applicant or applicants; (B) a
483 statement indicating whether the application is
484 for a new facility, service or function, expansion
485 of an existing facility, service or function and
486 any new or additional beds and their type; (C) the
487 estimated capital cost; (D) the town where the
488 project will be located; and (E) a brief
489 description of the proposed project] CONFORM TO
490 THE LETTER OF INTENT REQUIREMENTS OF SUBDIVISION
491 (4) OF SUBSECTION (a) OF SECTION 19a-638, AS
492 AMENDED BY THIS ACT. No certificate of need
493 application will be considered [filed with]
494 SUBMITTED TO the office unless a current letter of
495 intent, specific to the proposal and in
496 [accordance] COMPLIANCE with this subsection, has
497 been on file with the office at least [ninety]
498 SIXTY days. A current letter of intent is a letter
499 of intent which has been on file at the office no
500 more than one hundred twenty days. Upon a showing
501 by such facility or institution that the need for
502 such capital program is of an emergency nature, in

503 that the capital expenditure is necessary to
504 comply with any federal, state or local health,
505 fire, building or life safety code, the
506 commissioner may waive the letter of intent
507 requirement [and the requirement that the request
508 be submitted in accordance with any schedule
509 established by the office pursuant to subsection
510 (c) of this section] and that a public hearing be
511 held, [thereon,] provided such request shall be
512 submitted at least ten business days before the
513 proposed initiation date of the project. The
514 commissioner shall grant, modify or deny such
515 request within ninety days or within ten business
516 days, as the case may be, of receipt thereof,
517 except as provided for in this section. Upon the
518 request of the applicant, the review period may be
519 extended for an additional fifteen days if the
520 office has requested additional information
521 subsequent to the commencement of the review
522 period. The commissioner may extend the review
523 period for a maximum of thirty days if the
524 applicant has not filed, in a timely manner,
525 information deemed necessary by the office.
526 Failure of the office to act thereon within such
527 review period shall be deemed approval of such
528 request. The ninety-day review period, pursuant to
529 this section, for an application filed by a
530 hospital, as defined [under] IN section 19a-490,
531 and licensed as a short-term acute-care general
532 hospital or a children's hospital by the
533 Department of Public Health, shall not apply if,
534 in the certificate of need application or request,
535 the hospital projects [that the implementation of
536 such application or request will require future
537 budget adjustments] EITHER (1) THAT, FOR THE FIRST
538 THREE YEARS OF OPERATION TAKEN TOGETHER, THE TOTAL
539 IMPACT OF THE PROPOSAL ON THE HOSPITAL'S OPERATING
540 BUDGET WILL EXCEED ONE PER CENT OF THE ACTUAL
541 OPERATING EXPENSES OF THE HOSPITAL FOR THE MOST
542 RECENTLY COMPLETED FISCAL YEAR AS FILED WITH THE
543 OFFICE, OR (2) THAT THE TOTAL CAPITAL EXPENDITURE
544 FOR THE PROJECT WILL EXCEED FIFTEEN MILLION
545 DOLLARS. IF THE OFFICE DETERMINES THAT AN
546 APPLICATION IS NOT SUBJECT TO THE NINETY-DAY
547 REVIEW PERIOD PURSUANT TO THIS SUBSECTION, IT
548 SHALL REMAIN SO EXCLUDED FOR THE ENTIRE PERIOD OF
549 THAT APPLICATION, EVEN IF THE APPLICATION OR
550 CIRCUMSTANCES CHANGE AND THE APPLICATION NO LONGER

551 MEETS THE STATED TERMS OF THE EXCLUSION. The
552 office shall adopt regulations to establish an
553 expedited hearing process to be used to review
554 requests by any facility or institution for
555 approval of a capital expenditure to establish an
556 energy conservation program or to comply with
557 requirements of any federal, state or local
558 health, fire, building or life safety code OR
559 FINAL COURT ORDER. The office shall adopt
560 regulations in accordance with the provisions of
561 chapter 54 to provide for the waiver of a hearing,
562 for any part of a request by a facility or
563 institution for a capital expenditure, provided
564 such facility or institution and the office agree
565 upon such waiver.
566 [(b) Except as provided for in subsection (a)
567 of this section, any person]
568 (c) NOTWITHSTANDING SECTION 4 OF THIS ACT,
569 EACH PERSON OR FACILITY, OTHER THAN A HEALTH CARE
570 OR STATE HEALTH CARE FACILITY OR INSTITUTION
571 SUBJECT TO SUBSECTION (a) OF THIS SECTION,
572 proposing to acquire OR REPLACE imaging equipment
573 OR A LINEAR ACCELERATOR, requiring a capital
574 expenditure, as defined in regulations adopted
575 pursuant to section 19a-643, AS AMENDED BY THIS
576 ACT, in excess of four hundred thousand dollars,
577 including the leasing OR DONATION of such
578 equipment and facility and including all capital
579 expenditures, as defined in regulations adopted
580 pursuant to said section, associated with the
581 provision of the imaging service [, which imaging
582 equipment will not be owned by or located in a
583 health care facility or institution, or state
584 health care facility or institution,] OR OPERATION
585 OF A LINEAR ACCELERATOR, shall submit a request
586 for approval of any such imaging equipment OR
587 LINEAR ACCELERATOR acquisition pursuant to the
588 provisions of subsection (a) of this section. IN
589 DETERMINING THE CAPITAL COST OR EXPENDITURE FOR AN
590 APPLICATION UNDER THIS SECTION OR SECTION 19a-638,
591 AS AMENDED BY THIS ACT, THE OFFICE SHALL USE THE
592 GREATER OF (1) THE FAIR MARKET VALUE OF THE
593 EQUIPMENT AS IF IT WERE TO BE USED FOR FULL-TIME
594 OPERATION, WHETHER OR NOT THE EQUIPMENT IS TO BE
595 USED, SHARED OR RENTED ON A PART-TIME BASIS, OR
596 (2) THE TOTAL VALUE OR ESTIMATED VALUE DETERMINED
597 BY THE OFFICE OF ANY CAPITALIZED LEASE COMPUTED
598 FOR A THREE-YEAR PERIOD. EACH METHOD SHALL INCLUDE

599 THE COSTS OF ANY SERVICE OR FINANCING AGREEMENTS
600 PLUS ANY OTHER COST COMPONENTS OR ITEMS THE OFFICE
601 SPECIFIES IN REGULATIONS, ADOPTED IN ACCORDANCE
602 WITH CHAPTER 54, OR DEEMS APPROPRIATE.
603 [(c)] (d) Notwithstanding the provisions of
604 section 19a-638, AS AMENDED BY THIS ACT, or
605 subsection (a) of this section, [any] NO community
606 health center, as defined in section 19a-490a,
607 shall [not] be subject to the provisions of said
608 SECTION 19a-638 OR subsection (a) OF THIS SECTION
609 if the community health center is: (1) Proposing a
610 capital expenditure not exceeding one million
611 dollars; [and] (2) EXCLUSIVELY PROVIDING PRIMARY
612 CARE OR DENTAL SERVICES; AND (3) EITHER (A)
613 one-third or more of the cost of [such] THE
614 PROPOSED project is financed by the state of
615 Connecticut, [or (2)] (B) THE PROPOSED PROJECT IS
616 receiving funds from the Department of Public
617 Health, [and] OR (C) THE PROPOSED PROJECT is
618 located in an area designated by the federal
619 Health Resources and Services Administration as a
620 health professional shortage area, a medically
621 underserved area or an area with a medically
622 underserved population. EACH COMMUNITY HEALTH
623 CENTER SEEKING AN EXEMPTION UNDER THIS SUBSECTION
624 SHALL PROVIDE THE OFFICE WITH DOCUMENTATION
625 VERIFYING TO THE SATISFACTION OF THE OFFICE,
626 QUALIFICATION FOR THIS EXEMPTION. EACH COMMUNITY
627 HEALTH CENTER PROPOSING TO PROVIDE ANY SERVICE
628 OTHER THAN A PRIMARY CARE OR DENTAL SERVICE AT ANY
629 LOCATION, INCLUDING A DESIGNATED COMMUNITY HEALTH
630 CENTER LOCATION, SHALL FIRST OBTAIN A CERTIFICATE
631 OF NEED FOR SUCH ADDITIONAL SERVICE IN ACCORDANCE
632 WITH THIS SECTION AND SECTION 19a-638, AS AMENDED
633 BY THIS ACT. EACH SATELLITE, SUBSIDIARY OR
634 AFFILIATE OF A FEDERALLY QUALIFIED HEALTH CENTER,
635 IN ORDER TO QUALIFY UNDER THIS EXEMPTION, SHALL:
636 (i) BE PART OF A FEDERALLY QUALIFIED HEALTH
637 CENTER, THAT MEETS THE REQUIREMENTS OF THIS
638 SUBSECTION; (ii) EXCLUSIVELY PROVIDE PRIMARY CARE
639 OR DENTAL SERVICES; AND (iii) BE LOCATED IN A
640 HEALTH PROFESSIONAL SHORTAGE AREA OR A MEDICALLY
641 UNDERSERVED AREA. IF THE SUBSIDIARY, SATELLITE OR
642 AFFILIATE DOES NOT SO QUALIFY, IT SHALL OBTAIN A
643 CERTIFICATE OF NEED.
644 [(d)] (e) Notwithstanding the provisions of
645 section 19a-638, AS AMENDED BY THIS ACT, or
646 subsection (a) of this section, no school-based

647 health care center shall be subject to the
648 provisions of subsection (a) of this section if
649 the center: (1) Is or will be licensed by the
650 Department of Public Health as an outpatient
651 clinic; (2) has been approved by the Department of
652 Public Health as meeting its standard model for
653 comprehensive school-based health centers; (3)
654 proposes capital expenditures not exceeding one
655 million dollars and does not exceed such amount;
656 (4) once operational, continues to operate and
657 provide services in accordance with the
658 department's standard model for comprehensive
659 school-based health centers; and (5) is or will be
660 located entirely on the property of a functioning
661 school.
662 [(e)] (f) In conducting its activities under
663 this section [and] OR section 19a-638, AS AMENDED
664 BY THIS ACT, the office may hold hearings on
665 applications of a similar nature at the same time.
666 [The office may adopt regulations in accordance
667 with the provisions of chapter 54, to establish a
668 schedule for the submission of such applications
669 which (1) requires applications to be submitted in
670 cycles that allow applications to be heard and
671 reviewed at times when hospital budget reviews are
672 not in progress, and (2) may provide for all
673 completed applications pertaining to similar types
674 of services, facilities or equipment affecting the
675 same health service area to be considered in
676 relation to each other and reviewed at least twice
677 a year.]
678 Sec. 4. (NEW) (a) The provisions of section
679 19a-638 of the general statutes, as amended by
680 this act, and subsection (a) of section 19a-639 of
681 the general statutes, as amended by this act,
682 shall not apply to: (1) An outpatient clinic or
683 program operated exclusively by, or contracted to
684 be operated exclusively for, a municipality or
685 municipal agency, a health district, as defined in
686 section 19a-240 of the general statutes, or a
687 board of education; (2) a nursing home; (3) a
688 residential care home; (4) a rest home; (5) a
689 residential facility for the mentally retarded
690 licensed pursuant to section 17a-227 of the
691 general statutes and certified to participate in
692 the Title XIX Medicaid program as an intermediate
693 care facility for the mentally retarded; (6) a
694 home health agency; or (7) a clinic operated by

695 the Americares Foundation. When a facility or
696 institution otherwise exempt under this subsection
697 is, or will be created, acquired, operated or in
698 any other way related to or affiliated with, or
699 under the complete or partial ownership or control
700 of a facility or institution or affiliate subject
701 to the provisions of section 19a-638 of the
702 general statutes, as amended by this act, or
703 subsection (a) of section 19a-639 of the general
704 statutes, as amended by this act, the exemptions
705 in this section shall not apply.
706 (b) (1) The provisions of section 19a-638 of
707 the general statutes, as amended by this act, and
708 subsection (a) of section 19a-639 of the general
709 statutes, as amended by this act, shall not apply
710 to: (A) An outpatient rehabilitation service
711 agency operated exclusively on an outpatient basis
712 and eligible or whenever operational will be
713 eligible to receive reimbursement under section
714 17b-243 of the general statutes; (B) a clinical
715 laboratory; (C) an assisted living services
716 agency; (D) a primary care clinic owned or
717 operated by a nonprofit corporation that does not
718 charge for any service at that clinic; (E) a
719 satellite clinic that is (i) operated for not more
720 than sixteen hours per week by an existing
721 facility licensed on or before July 1, 1997, by
722 the Department of Public Health or the Department
723 of Children and Families, and (ii) offering only
724 outpatient primary, preventive, dental, mental
725 health or substance abuse services, or some
726 combination thereof; (F) an outpatient service
727 offering chronic dialysis; or (G) a program of
728 ambulatory services established and conducted by a
729 health maintenance organization. (2) Each health
730 care facility or institution exempted under this
731 subsection shall register with the office by
732 filing the information required by subdivision (4)
733 of subsection (a) of section 19a-638 of the
734 general statutes, as amended by this act, for a
735 letter of intent at least ten business days but
736 not more than sixty calendar days prior to
737 commencing operations and prior to changing,
738 expanding, terminating or relocating any facility
739 or service covered by section 19a-638 of the
740 general statutes, as amended by this act, or
741 subsection (a) of section 19a-639 of the general
742 statutes, as amended by this act, except that, if

743 the facility or institution is in operation on the
744 effective date of this act, said information shall
745 be filed not more than sixty days after said date.
746 Not later than ten business days after the office
747 receives a completed filing required under this
748 subsection, the office shall provide the health
749 care facility or institution with written
750 acknowledgement of receipt. Such acknowledgment
751 shall constitute permission to operate or change,
752 expand, terminate or relocate such a facility or
753 institution or to make an expenditure consistent
754 with an authorization received under subsection
755 (a) of section 19a-639 of the general statutes, as
756 amended by this act.
757 Sec. 5. Subsection (a) of section 19a-653 of
758 the general statutes is repealed and the following
759 is substituted in lieu thereof:
760 (a) (1) Any [health care facility or
761 institution, or] health care provider which owns,
762 operates or is seeking to acquire a [CAT] COMPUTER
763 AXIAL TOMOGRAPHY (CT) scanner, [or] medical
764 imaging equipment, OR A LINEAR ACCELERATOR OR ANY
765 HEALTH CARE FACILITY, INSTITUTION OR PROVIDER THAT
766 IS required to file data under chapter 368z, or
767 any regulation adopted or order issued thereunder,
768 which fails to so file within prescribed time
769 periods, shall be subject to a civil penalty of up
770 to one thousand dollars a day for each day such
771 information is missing, incomplete or inaccurate.
772 Any civil penalty authorized by this section shall
773 be imposed by the Office of Health Care Access in
774 accordance with subsections (b) to (e), inclusive,
775 of this section.
776 (2) FAILURE TO COMPLY WITH THE PROVISIONS OF
777 SECTION 19a-638, AS AMENDED BY THIS ACT, SECTION
778 19a-639, AS AMENDED BY THIS ACT, SECTION 4 OF THIS
779 ACT OR ANY REGULATIONS ADOPTED OR ORDERS ISSUED BY
780 THE OFFICE IN ACCORDANCE WITH ANY PROVISION OF
781 CHAPTER 54 OR 368z, SHALL SUBJECT EACH OFFENDER TO
782 A CIVIL PENALTY OF UP TO TWO HUNDRED FIFTY DOLLARS
783 PER DAY. ANY CIVIL PENALTY AUTHORIZED BY THIS
784 SUBDIVISION SHALL BE IMPOSED IN ACCORDANCE WITH
785 SUBSECTIONS (b) TO (e), INCLUSIVE, OF THIS
786 SECTION. IF A VIOLATION IS ONGOING, A CIVIL
787 PENALTY OR SERIES OF CIVIL PENALTIES MAY BE
788 IMPOSED PERIODICALLY SO LONG AS THE VIOLATION
789 EXISTS OR CONTINUES, WITHOUT FURTHER PROCEEDINGS
790 UNDER SUBSECTIONS (b) TO (e), INCLUSIVE, OF THIS

791 SECTION, PROVIDED THE ORIGINAL CIVIL PENALTY
792 IMPOSITION PROCESS WAS IN ACCORDANCE WITH SAID
793 SUBSECTIONS (b) TO (e), INCLUSIVE. IF AN APPLICANT
794 OR PROVIDER IS UNSURE WHETHER A CERTIFICATE OF
795 NEED IS REQUIRED UNDER SECTION 19a-638, AS AMENDED
796 BY THIS ACT, OR SECTION 19a-639, AS AMENDED BY
797 THIS ACT, IT SHALL SEND A LETTER TO THE OFFICE
798 DESCRIBING THE PROJECT AND REQUESTING THAT THE
799 OFFICE MAKE SUCH A DETERMINATION. A PERSON MAKING
800 A REQUEST FOR A DETERMINATION AS TO WHETHER A
801 CERTIFICATE OF NEED, WAIVER OR EXEMPTION IS
802 REQUIRED, SHALL PROVIDE THE OFFICE WITH ANY
803 INFORMATION THE OFFICE REQUESTS AS PART OF ITS
804 DETERMINATION PROCESS.
805 Sec. 6. Subsection (c) of section 19a-643 of
806 the general statutes is repealed and the following
807 is substituted in lieu thereof:
808 (c) The regulations adopted by the Office of
809 Health Care Access concerning requests or
810 proposals pursuant to [sections 19a-638 and]
811 SECTION 19a-639, AS AMENDED BY THIS ACT, shall
812 include a fee schedule for certificate of need
813 review under section [19a-638 or] 19a-639, AS
814 AMENDED BY THIS ACT. The fee schedule shall (1)
815 contain a minimum filing fee for all applications
816 under said [sections] SECTION 19a-639, (2) be
817 based on a percentage of the requested
818 authorization in addition to the minimum filing
819 fee, and (3) apply to new requests and requests
820 for modification of prior decisions [under said
821 sections] IF THE MODIFICATION REQUEST HAS A
822 PROPOSED ADDITIONAL COST OF ONE HUNDRED THOUSAND
823 DOLLARS OR MORE BEYOND THE ORIGINAL AUTHORIZATION
824 AMOUNT, OR IF THE MODIFICATION REQUEST AGGREGATED
825 WITH ANY OTHER PRIOR MODIFICATION REQUESTS TOTALS
826 ONE HUNDRED THOUSAND DOLLARS OR MORE. The fee
827 schedule shall be reviewed annually and adjusted
828 as necessary.
829 Sec. 7. Subsection (b) of section 17a-451b of
830 the general statutes, as amended by public act
831 97-94, is repealed and the following is
832 substituted in lieu thereof:
833 (b) Notwithstanding the provisions of the
834 general statutes or any special act, the
835 consolidation program, each project, each closure
836 and each contract entered into in connection with
837 a project shall be exempt from the provisions of
838 sections 4b-57, 4b-58 and 4b-91 and from the

839 requirements for approval of a request or
840 application provided for in [subsections (a) to
841 (d), inclusive, of] section 19a-638, AS AMENDED BY
842 THIS ACT, and in subsection (a) of section
843 19a-639, AS AMENDED BY THIS ACT, provided (1) the
844 project begins no later than June 30, 1999; (2)
845 the project is completed no later than June 30,
846 2002; (3) the cost of the project does not exceed
847 thirty-six million dollars; and (4) the
848 Commissioner of Mental Health and Addiction
849 Services certifies in writing to the Secretary of
850 the Office of Policy and Management that the
851 project meets the criteria of public act 95-257*
852 and upon such certification the Secretary of the
853 Office of Policy and Management shall authorize
854 the Commissioner of Public Works to implement such
855 project.
856 Sec. 8. Subsection (b) of section 17a-451c of
857 the general statutes is repealed and the following
858 is substituted in lieu thereof:
859 (b) Notwithstanding any provision of the
860 general statutes or any special act, a priority
861 mental health facility project and each contract
862 entered into in connection with a project shall be
863 exempt from the provisions of sections 4b-58 and
864 4b-91 and from the requirements for approval of a
865 request or application provided for in
866 [subsections (a) to (d), inclusive, of] section
867 19a-638, AS AMENDED BY THIS ACT, and in subsection
868 (a) of section 19a-639, AS AMENDED BY THIS ACT,
869 and sections 22a-1 to 22a-1h, inclusive, provided:
870 (1) The project begins no later than October 1,
871 1996; (2) the project is completed no later than
872 July 1, 1998; (3) the cost of the project does not
873 exceed twenty million dollars; and (4) the
874 Commissioner of Mental Health and Addiction
875 Services certifies in writing to the Secretary of
876 the Office of Policy and Management that the
877 project meets the criteria of this section and
878 upon such certification the Secretary of the
879 Office of Policy and Management authorizes the
880 Commissioner of Public Works to implement such
881 project.
882 Sec. 9. Subsection (b) of section 17b-351 of
883 the general statutes is repealed and the following
884 is substituted in lieu thereof:
885 (b) The General Assembly finds evidence of
886 insufficient need for all the nursing home beds

887 permitted pursuant to subsection (a) of this
888 section, but not licensed by the Department of
889 Public Health and finds allowing unnecessary beds
890 to be licensed will result in severely damaging
891 economic consequences to the state and to
892 consumers. An addition of beds initiated pursuant
893 to this section shall be licensed no later than
894 June 9, 1993. A facility which has initiated the
895 addition of beds but has not obtained licensure of
896 such beds, may, no later than July 15, 1993, apply
897 to the Office of Health Care Access for
898 authorization to proceed with completion of the
899 additional beds and application for licensure,
900 provided (A) plans for the additional beds have
901 been approved by the Department of Public Health
902 pursuant to section 19-13-D-8t(v)(4) of the Public
903 Health Code no later than June 1, 1993, and (B)
904 twenty-five per cent of estimated project costs
905 have been expended no later than June 9, 1993,
906 provided project costs may not exceed thirty-one
907 thousand two hundred eleven dollars per bed. The
908 office shall issue a decision on such application
909 within forty-five days of receipt of documentation
910 necessary to determine expended project costs.
911 Evidence of project costs expended shall be
912 submitted in the form of a report prepared by a
913 certified public accountant having no affiliation
914 with the owner of the facility or the developer of
915 the project. The owner of a facility for which
916 completion of additional beds is not so authorized
917 may apply to the Commissioner of Social Services
918 for compensation on or after June 29, 1993, but no
919 later than September 1, 1993, provided plans for
920 the additional beds have been approved by the
921 Department of Public Health no later than June 1,
922 1993. Such compensation shall be limited to actual
923 verifiable losses which directly result from the
924 failure to gain authorization pursuant to this
925 subsection and which cannot be otherwise recouped
926 through the mitigating efforts of the owner,
927 excluding consequential and incidental losses such
928 as lost profits. In no event may such compensation
929 exceed project costs. An owner aggrieved by the
930 amount of compensation determined by the
931 commissioner may request a hearing in accordance
932 with the provisions of sections 17b-60 and 17b-61.
933 This subsection shall not apply to any addition of
934 beds pursuant to this section which is part of a

935 construction project that also includes an
936 addition of beds authorized pursuant to
937 subdivision (4) of subsection [(k)] (f) of section
938 19a-638, AS AMENDED BY THIS ACT.
939 Sec. 10. Subsection (a) of section 17b-353 of
940 the general statutes, as amended by section 148 of
941 public act 97-2 of the June 18 special session, is
942 repealed and the following is substituted in lieu
943 thereof:
944 (a) Any facility, as defined in subsection
945 (a) of section 17b-352, AS AMENDED, which proposes
946 (1) a capital expenditure exceeding one million
947 dollars, which increases facility square footage
948 by more than five thousand square feet or five per
949 cent of the existing square footage, whichever is
950 greater, (2) a capital expenditure exceeding two
951 million dollars, or (3) the acquisition of major
952 medical equipment requiring a capital expenditure
953 in excess of four hundred thousand dollars,
954 including the leasing of equipment or space, shall
955 submit a request for approval of such expenditure,
956 with such information as the department requires,
957 to the Department of Social Services. Any such
958 facility which proposes to acquire imaging
959 equipment requiring a capital expenditure in
960 excess of four hundred thousand dollars, including
961 the leasing of such equipment, shall obtain the
962 approval of the Office of Health Care Access in
963 accordance with [subsection (b) of] section
964 19a-639, AS AMENDED BY THIS ACT, subsequent to
965 obtaining the approval of the Commissioner of
966 Social Services.
967 Sec. 11. Subsection (c) of section 19a-612b
968 of the general statutes is repealed and the
969 following is substituted in lieu thereof:
970 (c) Any order, decision, agreed settlement,
971 or regulation of the Commission on Hospitals and
972 Health Care which is in force on June 30, 1995,
973 shall continue in force and effect as an order or
974 regulation of the Office of Health Care Access
975 until amended, repealed or superseded pursuant to
976 law. The Commissioner of Health Care Access may
977 implement policies and procedures consistent with
978 the provisions of section 4-5, sections 19a-612 to
979 19a-614, inclusive, AS AMENDED BY THIS ACT,
980 [subsection (a) of] section 19a-630, AS AMENDED BY
981 THIS ACT, subsection (b) of section 19a-631,
982 sections 19a-632 [, 19a-633 and 19a-634,

983 subsection (b) of section 19a-638 and subsection
984 (a) of section 19a-639] TO 19a-634, INCLUSIVE,
985 19a-638 AND 19a-639, AS AMENDED BY THIS ACT, while
986 in the process of adopting the policy or procedure
987 in regulation form, provided notice of intention
988 to adopt the regulations is printed in the
989 Connecticut Law Journal within twenty days of
990 implementation. The policy or procedure shall be
991 valid until the time final regulations are
992 effective.
993 Sec. 12. Subsection (a) of section 19a-200 of
994 the general statutes is repealed and the following
995 is substituted in lieu thereof:
996 (a) The mayor of each city, the warden of
997 each borough, and the chief executive officer of
998 each town shall, unless the charter of such city,
999 town or borough otherwise provides, nominate some
1000 person to be director of health for such city,
1001 town or borough, which nomination shall be
1002 confirmed or rejected by the board of selectmen,
1003 if there be such a board, otherwise by the
1004 legislative body of such city or town or by the
1005 burgesses of such borough within thirty days
1006 thereafter. Notwithstanding the charter provisions
1007 of any city, town or borough with respect to the
1008 qualifications of the director of health, such
1009 director of health shall either be a licensed
1010 physician or shall hold a [graduate] degree in
1011 public health [as a result of at least one year's
1012 training, including at least sixty hours in local
1013 public health administration, in a recognized
1014 school of public health] or shall have such
1015 [combination of] EDUCATION, training [and] OR
1016 experience as meets the approval of the
1017 Commissioner of Public Health. In cities, towns or
1018 boroughs with a population of forty thousand or
1019 more for five consecutive years, according to the
1020 estimated population figures authorized pursuant
1021 to subsection (b) of section 8-159a, such director
1022 of health shall devote his entire time to the
1023 duties of his office, except where a town has
1024 designated such director as the chief medical
1025 advisor for its public schools under section
1026 10-205, and shall not engage in private practice.
1027 Such director of health shall have and exercise
1028 within the limits of the city, town or borough for
1029 which he is appointed all powers necessary for
1030 enforcing the general statutes, provisions of the

1031 Public Health Code relating to the preservation
1032 and improvement of the public health and
1033 preventing the spread of diseases therein. In case
1034 of the absence or inability to act of a city, town
1035 or borough director of health or if a vacancy
1036 exists in the office of such director, the
1037 appointing authority of such city, town or borough
1038 may, with the approval of the Commissioner of
1039 Public Health, designate in writing a suitable
1040 person to serve as acting director of health
1041 during the period of such absence or inability or
1042 vacancy provided the commissioner may appoint such
1043 acting director if the city, town or borough fails
1044 to do so. The person so designated, when sworn,
1045 shall have all the powers and be subject to all
1046 the duties of such director. In case of vacancy in
1047 the office of such director, if such vacancy
1048 exists for thirty days, said commissioner may
1049 appoint a director of health for such city, town
1050 or borough. Said commissioner, may, for cause,
1051 remove an officer appointed by him or by any
1052 predecessor in said office, and the common council
1053 of such city, town or the burgesses of such
1054 borough may, respectively, for cause, remove a
1055 director whose nomination has been confirmed by
1056 them, provided such removal shall be approved by
1057 said commissioner; and, within two days
1058 thereafter, notice in writing of such action shall
1059 be given by the clerk of such city, town or
1060 borough, as the case may be, to said commissioner,
1061 who shall, within ten days after he has received
1062 such notice, file with the clerk from whom he
1063 received the same his approval or disapproval.
1064 Each such director of health shall hold office for
1065 the term of four years from the date of his
1066 appointment and until his successor is nominated
1067 and confirmed in accordance with this section.
1068 Each director of health shall, annually, at the
1069 end of the fiscal year of the city, town or
1070 borough, file with the Department of Public Health
1071 a report of his doings as such director for the
1072 year preceding.
1073 Sec. 13. This act shall take effect from its
1074 passage.

1075 HS COMMITTEE VOTE: YEA 12 NAY 0 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF 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 HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5403

STATE IMPACT	Revenue Loss, Workload Increase, Within Anticipated Budgetary Resources, see explanation below
MUNICIPAL IMPACT	See Explanation Below
STATE AGENCY(S)	Office of Health Care Access, Department of Social Services, State Comptroller, Department of Public Health

EXPLANATION OF ESTIMATES:

STATE IMPACT: This bill is anticipated to result in a potential revenue loss to the state of approximately $40,000 and a workload increase to the Office of Health Care Access (OHCA) which can be accommodated within the agency's anticipated budgetary resources.

The bill eliminates the certificate of need (CON) filing fee for projects which do not involve capital expenditures or modifications to authorized projects valued greater than $100,000. An annual revenue loss of approximately $40,000 is estimated, if as a result, an estimated 40 fewer CON projects will be required to pay a $1,000 filing fee.

A potential minimal revenue gain may result to the extent that civil penalties are collected by the OHCA. It is not anticipated that these collections, if any, will be significant.

The Office of Health Care Access will experience workload increases in response to requiring CON reviews in cases in which health care facilities desire to

transfer ownership or control; and when entities which are otherwise exempt from CON review propose affiliations with facilities subject to CON review. An additional workload increase will result from requiring a CON review for the acquisition or replacement of a linear accelerator costing in excess of $400,000 and from responding to inquiries regarding whether a CON is required for specific purposes.

Workload decreases will result from exempting from CON review: a clinic operated by the Americares Foundation, certain outpatient rehabilitation services agencies, clinical laboratories, assisted living service agencies, certain non-profit primary care clinics, certain part-time satellite clinics and outpatient services for chronic dialysis.

It is not anticipated that enactment of this bill will have any impact upon the State Employees Health Cost account or the Medical Assistance (Medicaid) program under the Department of Social Services.

The bill eliminates a current requirement that local directors of health be either a licensed physician or hold a Masters of Public Health degree, (which degree resulted from at least one year's training, including at least sixty hours in local public health administration in a recognized school of public health), or a combination of education and experience as meets the approval of the Commissioner of Public Health. The bill instead requires a degree in public health (eliminating the training requirements) or education, training or experience meeting the approval of the Commissioner. As state aid to local health departments is based on a fixed per capita subsidy, these changes will have no fiscal impact.

Other changes in the bill are technical in nature or eliminate obsolete statutory references and have no associated fiscal impact.

MUNICIPAL IMPACT: Any resulting fiscal impact to local health departments would be dependent upon the outcome of salary negotiations with potential health directors and cannot be determined at this time.

* * * * *

OLR BILL ANALYSIS

sHB 5403

AN ACT CONCERNING CERTIFICATES OF NEED

SUMMARY: This bill creates additional exemptions from certificate of need (CON) review, expands activities for which a CON is required, and makes procedural changes.

CON is a regulatory program, administered by the Office of Health Care Access (OHCA), for review of certain proposed capital expenditures of health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, a CON is a formal statement by OHCA that a health care facility, medical equipment purchase, or service change is needed.

Specifically, the bill:

1. requires CON review for the transfer of ownership or control of a health care facility or institution's license at any time, not just before granting the license;

2. specifies that a CON for major medical or imaging equipment applies to replacement, as well as new, equipment and covers equipment obtained through donations as well as leases and purchases;

3. requires amending existing OHCA regulations on expedited hearings for certain capital expenditures to cover those necessary to comply with a final court order;

4. eliminates CON for a staff increase;

5. retains current exemptions from CON but specifies that the proposed facility or service is not exempt if it is or will be affiliated with a facility that is subject to CON;

6. creates new and expanded exemptions from CON,

including any outpatient rehabilitation services agency (not just those affiliated with Easter Seals), all clinical laboratories, assisted living services, certain nonprofit primary care clinics not charging for services, and outpatient services for chronic dialysis (but subjects these exempt entities to OHCA registration);

7. modifies the exemption for community health centers;

8. allows a person to ask OHCA if a CON is needed for a particular project before actually filing for it;

9. decreases the CON letter-of-intent period from 90 to 60 days;

10. makes more specific the threshold for suspending the 90-day review period on hospital projects ("default approval") by changing the standard from any budget impact to 1% of budget or $15 million;

11. eliminates OHCA's authority to adopt regulations establishing a schedule for submission of CON applications in cycles;

12. limits the CON filing fee to capital expenditures, equipment acquisition, and modification requests that add at least $100,000 in costs; and

13. establishes new civil penalties for violation of the CON law and regulations and OHCA orders.

The bill also eliminates some educational and training requirements for municipal health directors.

Finally, the bill also makes technical changes and eliminates outdated provisions.

EFFECTIVE DATE: Upon passage

FURTHER EXPLANATION

CON Expansion

Transfer of a License, Ownership, or Control. Current law requires a CON for a health care facility or institution intending to transfer all or part of its ownership or control prior to initial licensing. Under the bill, a facility or institution must get a CON when it intends, at any time, to (1) transfer all or part of its ownership or control, (2) change the powers of the board of a parent company or an affiliate, or (3) change or transfer the powers or control of a governing or controlling body of an affiliate.

The bill defines "affiliate" as any person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with another. This includes any corporation, general or limited partnership or limited liability company controlled, directly or indirectly by such other person or corporation. In addition to other ways of being controlled, a general or limited partnership or limited liability company is deemed controlled by the corporation if the corporation or one of its affiliates acts as a general partner or manager of such partnership or company.

Imaging and Major Medical Equipment. By law, anyone who intends to acquire imaging equipment costing more than $400,000, or any facility acquiring major medical equipment requiring a capital expenditure over $400,000 must obtain a CON. The bill specifies that the CON requirement also applies to linear accelerators and replacement equipment and covers equipment obtained through donations as well as leases and purchases.

The bill specifies that in determining the capital cost of the equipment, OHCA must use the greater of (1) the fair market value of the equipment as if used for full-time operation or (2) the total or estimated value determined by OHCA of any capitalized lease computed for a three-year period. Each method must include costs of any service or financing agreements plus any other costs OHCA specifies in regulation or deems appropriate.

Capital Expenditures--Expedited Hearing Process

By law, OHCA must adopt regulations for an expedited

hearing process for review of capital expenditure requests to establish energy conservation programs or to comply with any federal, state, or local health, fire, building, or life safety codes requirements. The bill requires these expedited hearing regulations to also cover a capital expenditure request for compliance with a final court order.

Exemptions From CON

Current law exempts from the following CON: home health agencies, nursing homes, residential care homes, rest homes, and Medicaid-certified intermediate care residential facilities for the mentally retarded (ICF/MR); HMO ambulatory services programs; outpatient rehabilitation facilities affiliated with Easter Seals; outpatient clinics operated by towns; health care facilities operated by nonprofit educational institutions solely for their students, family, staff, and dependents; and Christian Science sanatoriums. The bill exempts an outpatient clinic or program operated by a health district from CON, and a clinic operated by the American Foundation.

Affiliates. The bill retains these CON exemptions but specifies that they do not apply if the facility or institution is or will be created, acquired, operated, or in any other way affiliated with or under the complete or partial ownership or control of a facility, institution, or affiliate that is subject to CON. (The HMO exemption is treated differently--see next section.)

New or Expanded Exemptions. The bill creates new and expanded exemptions from CON but requires the exempted facilities or institutions to register with OHCA. It specifies that CON does not apply to (1) any outpatient rehabilitation service agency, not just those affiliated with Easter Seals, operated exclusively on an outpatient basis, and eligible (or will be when operational) for state reimbursement (the Department of Social Services sets a fee schedule for rehabilitation services); (2) all clinical laboratories (current law exempts clinical laboratories doing less complex tests); (3) assisted living services agencies; (4) primary care clinics owned or operated by a nonprofit corporation not charging for services; (5) satellite clinics (a) operating up to 16 hours per week by a

facility licensed by July 1, 1997 by the Department of Public Health (DPH) or the Department of Children and Families (DCF) and (b) offering only outpatient primary, preventive, dental, mental health, or substance abuse services or a combination of them; and (6) outpatient services offering chronic dialysis. The current exemption for ambulatory services of an HMO is retained but subjected to the registration requirement.

Each exempted facility or institution must register with OHCA by filing the information required for a letter of intent between 10 business and 60 calendar days before beginning operations or changing, expanding, terminating, or relocating any facility or service subject to CON. If the facility or institution is operating on the bill's effective date, the information must be filed no more than 60 days after that date. Within 10 business days of receiving the completed filing, OHCA must provide the facility with a written acknowledgment of receipt which constitutes permission to operate, change, expand, terminate, or relocate the facility, or to make an authorized expenditure.

Community Health Centers. Current law exempts a community health center from CON review if the center is (1) proposing a capital expenditure up to $1 million and at least one-third of the project cost is financed by the state or (2) receiving funds from the DPH and located in an area designated by the federal government as a health professional shortage area, a medically underserved area, or an area with a medically underserved population.

The bill modifies the community health center exemption. It requires a center that proposes a capital expenditure up to $1 million to be exclusively providing primary care services and that either (1) one-third of the cost be state-funded, (2) the proposed project receive DPH funding, or (3) it be located in a federally designated shortage or underserved area. The bill requires the center to provide OHCA with documentation verifying that it qualifies for the exemption. But if a center proposes to provide services other than primary care at any location, including a designated community health center location, it must get a CON for that additional service.

Also, the bill requires any satellite, subsidiary, or affiliate of a federally qualified health center, in order to qualify for an exemption, to (1) be part of a federally qualified health center meeting the requirements cited above and (2) exclusively provide primary care or dental services and be located in a health professional shortage area in a medically underserved area. If the subsidiary, satellite, or affiliate does not qualify for the exemption, it must get a CON.

CON Procedural Changes

Determination of CON Need. The bill allows a CON applicant (including a provider) to ask OHCA whether a CON is needed for a project before actually filing for it. The person requesting the determination must send OHCA a letter describing the project and provide it with any information it requests for the determination.

Letters of Intent. By law, the CON process begins with an applicant's submission of a letter of intent. This letter must be on file for at least 90, but not more than 120, days before a CON application can be submitted and considered filed. The bill reduces from 90 to 60 days the minimum time the letter must be on file.

Current law requires the letter of intent to include a statement indicating whether the CON application is for a new facility, service, or function; expansion of an existing facility, service, or function; or any new or additional beds and their type. Under the bill, the statement also must indicate whether the application is for an additional facility, relocation of an existing facility or service, change in ownership or control, termination of a service, or a reduction in licensed bed capacity.

CON Review Period--"Default Approval". By law, OHCA must grant, modify, or deny a CON request within 90 days of receiving it. The bill specifies that once OHCA determines an application is complete, it has 90 days to review and decide on the CON application. If OHCA fails to act in 90 days, the CON is approved ("default approval"). Currently, the 90-day review period and OHCA's default approval do not apply to a short-term acute care or children's hospital, if the hospital

states in its CON application that implementation of the CON request will require future budget adjustments.

The bill instead specifies that the 90-day review period and default approval do not apply to such hospitals' CON requests if (1) for the first three years of operation, the total effect of the proposal on the hospital's operating budget is projected to exceed 1% of its actual operating expenses for the most recently completed fiscal year as filed with OHCA or (2) the projected total capital expenditure for the project will exceed $15 million.

The bill specifies that once a CON application is excluded from the 90-day review period and default approval, it remains excluded for the entire time OHCA reviews it, even if the application or circumstances change and the application no longer meets the exclusion requirements.

CON Application: Schedules for Submission. By law, OHCA may hold hearings on applications of a similar nature at the same time. The bill eliminates OHCA's authority to create, by regulation, a schedule whereby applicants are restricted to certain times of the year for submitting applications.

Fee Schedule

By law, OHCA must adopt regulations setting a fee schedule for CON reviews. The schedule must (1) contain a minimum fee for all such applications and requests, (2) be based on a percentage of the requested authorization in addition to the minimum filing fee, and (3) apply to both new requests and requests to modify prior decisions. The fee schedule must be reviewed annually and adjusted as necessary.

The bill limits the filing fee to CON applications for capital expenditures, major equipment purchases, and modification requests that propose an additional cost of at least $100,000 beyond the originally authorized amount, including a modification request that, when aggregated with prior requests, totals at least $100,000.

Penalties

By law, OHCA can impose a $1,000-per-day civil penalty on any health care provider that owns, operates, or seeks to acquire a computer axial tomography scanner, medical imaging equipment, or linear accelerator for failing to file required data.

The bill establishes a maximum $250-per-day civil penalty for failure to comply with any other provisions of the CON law, corresponding regulations, or OHCA orders. If a violation is ongoing and if the original penalty was imposed properly, the penalty or series of penalties can be imposed periodically so long as the violation continues without the need for further proceedings. By law, if OHCA believes a violation has occurred for which a civil penalty is authorized, it must notify the party by first class mail or by personal service. Notice must include (1) a reference to the applicable statutory or regulatory section; (2) a short, plain statement of the matter; (3) the civil penalty amount; (4) the initial date of penalty imposition; and (5) a statement of the party's right to a hearing.

The party has 10 calendar days from the notice's mailing to submit a written request to OHCA for a hearing to contest the penalty or a time extension on the data filing. If a timely request for a hearing is not made or a request for an extension is denied, a final order imposing the penalty results.

All hearings must be conducted according to the Uniform Administrative Procedure Act. OHCA can grant a time extension for filing the data or waive the penalty under terms and conditions it deems proper considering any extenuating circumstances.

A final order assessing a civil penalty can be appealed, after an OHCA hearing, to Hartford-New Britain Superior Court. It cannot be appealed under any other statute. The law prohibits a challenge to a final order on any issue that could have been raised by an appeal of an earlier order, denial, or other final OHCA decision.

Failure to pay a civil penalty after the final assessment results in a reduction in payments to the facility, institution, or provider from the Medicaid account.

Municipal Health Directors

Currently, a municipal health director must be either a licensed physician or have a graduate degree in public health as a result of at least one year's training, including at least 60 hours in local public health administration, in a recognized public health school, or have a combination of training and experience approved by the Department of Public Health (DPH).

This bill eliminates the graduate degree requirement and the corresponding training and local health administration requirements and instead allows the health director to have a degree in public health. Also, instead of a combination of training and experience approved by DPH, the bill allows such education, training, or experience as DPH approves.

BACKGROUND

Related Bill

sSB 348, favorably reported by the Public Health Committee, requires HMOs to undergo CON review for certain capital expenditures, equipment acquisition, and service or staff additions.

Legislative History

The House referred the bill (File 336) to the Human Services Committee on April 8. It favorably reported the bill on April 16, changing the educational and training requirements for municipal health directors.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute
Yea 21 Nay 2

Human Services Committee

Joint Favorable Substitute
Yea 12 Nay 0