

File No. 649

(Reprint of File No. 576)

Substitute House Bill No. 5403
As Amended by House Amendment
Schedules "A" and "D"

Approved by the Legislative Commissioner
April 30, 1998

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2 statutes is repealed and the following is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 HEALTH-CARE-RELATED
47 PERSON THAT DIRECTLY OR INDIRECTLY THROUGH ONE OR
48 MORE INTERMEDIARIES, CONTROLS OR IS CONTROLLED BY
49 OR IS UNDER COMMON CONTROL WITH, ANOTHER
50 HEALTH-CARE-RELATED PERSON. FOR PURPOSES OF THIS
51 SUBDIVISION, "PERSON" MEANS A CORPORATION, GENERAL
52 OR LIMITED PARTNERSHIP OR LIMITED LIABILITY
53 COMPANY CONTROLLED, DIRECTLY OR INDIRECTLY, BY
54 SUCH OTHER PERSON OR THE CORPORATION, PROVIDED, IN
55 ADDITION TO OTHER MEANS OF BEING CONTROLLED, A
56 GENERAL OR LIMITED PARTNERSHIP OR LIMITED
57 LIABILITY COMPANY SHALL BE DEEMED TO BE CONTROLLED
58 BY THE CORPORATION IF THE CORPORATION OR ONE OF
59 ITS AFFILIATES ACTS AS A GENERAL PARTNER OR A
60 MANAGER OF SUCH GENERAL OR LIMITED PARTNERSHIP OR
61 LIMITED LIABILITY COMPANY.

62 [(b) As used in this chapter for the purpose
63 of certificate of need, "clinical laboratory"
64 includes any clinical laboratory as defined in
65 section 19a-30, requiring a separate clinical
66 laboratory license from the Department of Public
67 Health, except laboratories designated as
68 laboratories performing waived tests, as defined
69 in 42 CFR 493.15 as from time to time amended, and
70 laboratories performing tests of moderate

71 complexity, as defined in 42 CFR 493.20 as from
72 time to time amended.]

73 Sec. 2. Section 19a-638 of the general
74 statutes is repealed and the following is
75 substituted in lieu thereof:

76 (a) EXCEPT AS PROVIDED IN SECTIONS 4 TO 7,
77 INCLUSIVE, OF THIS ACT:

78 (1) [Any] EACH health care facility or
79 institution, [as defined in subsection (a) of
80 section 19a-490, which intends to transfer all or
81 part of its ownership or control prior to being
82 initially licensed, except a home health agency,
83 nursing home, residential care home, rest home or
84 residential facility for the mentally retarded
85 licensed pursuant to section 17a-227 and certified
86 to participate in the Title XIX Medicaid program
87 as an intermediate care facility for the mentally
88 retarded] THAT INTENDS TO (A) TRANSFER ALL OR PART
89 OF ITS OWNERSHIP OR CONTROL, (B) CHANGE THE
90 GOVERNING POWERS OF THE BOARD OF A PARENT COMPANY
91 OR AN AFFILIATE, WHATEVER ITS DESIGNATION, OR (C)
92 CHANGE OR TRANSFER THE POWERS OR CONTROL OF A
93 GOVERNING OR CONTROLLING BODY OF AN AFFILIATE,
94 shall submit to the office, prior to the proposed
95 date of such transfer [and in accordance with any
96 schedule established by the office pursuant to
97 subsection (c) of this section] OR CHANGE, a
98 request for permission to undertake such transfer
99 OR CHANGE.

100 (2) [Any] EACH health care facility or
101 institution or [any] state health care facility or
102 institution, including any inpatient
103 rehabilitation facility, [affiliated with the
104 Easter Seal Society of Connecticut, Inc., but
105 excluding a home health agency, nursing home,
106 residential care home, rest home or residential
107 facility for the mentally retarded licensed
108 pursuant to section 17a-227 and certified to
109 participate in the Title XIX Medicaid program as
110 an intermediate care facility for the mentally
111 retarded,] which intends to introduce any
112 additional function or service into its program of
113 health care [, except a program of ambulatory
114 services established and conducted by a health
115 maintenance organization or any outpatient
116 rehabilitation facility affiliated with the Easter
117 Seal Society of Connecticut, Inc.,] shall submit
118 to the office, prior to the proposed date of the

119 institution of such function or service, [or
120 increase in staff and in accordance with any
121 schedule established by the office pursuant to
122 subsection (c) of this section,] a request for
123 permission to undertake such function or service.
124 [or increase its staff.]

125 (3) [Any] EACH health care facility or
126 institution or [any] state health care facility or
127 institution [except a home health agency, nursing
128 home, residential care home, rest home or
129 residential facility for the mentally retarded
130 licensed pursuant to section 17a-227 and certified
131 to participate in the Title XIX Medicaid program
132 as an intermediate care facility for the mentally
133 retarded,] which intends to terminate a health
134 service offered by such facility or institution or
135 decrease substantially its total bed capacity,
136 shall submit to the office, prior to the proposed
137 date of such termination or decrease, [and in
138 accordance with any schedule established by the
139 office pursuant to subsection (c) of this
140 section,] a request to undertake such termination
141 or decrease.

142 (4) [An] EACH applicant, prior to submitting a
143 certificate of need application UNDER THIS
144 SECTION, SECTION 19a-639, AS AMENDED BY SECTION 2
145 OF THIS ACT, OR UNDER BOTH SECTIONS, shall SUBMIT
146 A request, in writing, FOR application forms and
147 instructions [from] TO the office. The request
148 shall be known as a letter of intent. A letter of
149 intent shall include: (A) The name of the
150 applicant or applicants; (B) a statement
151 indicating whether the application is for a new,
152 REPLACEMENT OR ADDITIONAL facility, service or
153 function, THE expansion OR RELOCATION of an
154 existing facility, service or function, [and] A
155 CHANGE IN OWNERSHIP OR CONTROL, A TERMINATION OF A
156 SERVICE OR A REDUCTION IN LICENSED BED CAPACITY
157 AND THE BED TYPE, any new or additional beds and
158 their type, A CAPITAL EXPENDITURE OVER ONE MILLION
159 DOLLARS, THE ACQUISITION OF MAJOR MEDICAL
160 EQUIPMENT, IMAGING EQUIPMENT OR A LINEAR
161 ACCELERATOR COSTING OVER FOUR HUNDRED THOUSAND
162 DOLLARS, OR ANY COMBINATION THEREOF; (C) the
163 estimated capital cost, VALUE OR EXPENDITURE; (D)
164 the town where the project IS OR will be located;
165 and (E) a brief description of the proposed
166 project. No certificate of need application will

167 be considered [filed with] SUBMITTED TO the office
168 unless a current letter of intent, specific to the
169 proposal and in [accordance] COMPLIANCE with this
170 subsection, has been on file with the office at
171 least [ninety] SIXTY days. A current letter of
172 intent is a letter of intent which has been on
173 file at the office [no more than] UP TO AND
174 INCLUDING one hundred twenty days, EXCEPT THAT AN
175 APPLICANT MAY REQUEST A ONE TIME EXTENSION OF A
176 LETTER OF INTENT OF UP TO AN ADDITIONAL THIRTY
177 DAYS FOR A MAXIMUM TOTAL OF UP TO ONE HUNDRED
178 FIFTY DAYS IF, PRIOR TO THE EXPIRATION OF THE
179 CURRENT LETTER OF INTENT, THE OFFICE RECEIVES A
180 WRITTEN REQUEST TO SO EXTEND THE LETTER OF
181 INTENT'S CURRENT STATUS. THE EXTENSION REQUEST
182 SHALL FULLY EXPLAIN WHY AN EXTENSION IS REQUESTED.
183 THE OFFICE SHALL ACCEPT OR REJECT THE EXTENSION
184 REQUEST WITHIN FIVE BUSINESS DAYS AND SHALL SO
185 NOTIFY THE APPLICANT.

186 (b) The office shall make such review of a
187 request made pursuant to subdivision (1), (2) or
188 (3) of subsection (a) of this section as it deems
189 necessary. [, including, in] IN the case of a
190 proposed transfer of ownership or control, [prior
191 to initial licensure, such factors as, but not
192 limited to] THE REVIEW SHALL INCLUDE, BUT NOT BE
193 LIMITED TO, the financial responsibility and
194 business interests of the transferee and the
195 ability of the institution to continue to provide
196 needed services [,] or, in the case of the
197 introduction of [an] A NEW OR additional function
198 or service EXPANSION OR THE TERMINATION OF A
199 SERVICE OR FUNCTION, ascertaining the availability
200 of such service or function at other inpatient
201 rehabilitation facilities, health care facilities
202 or institutions or state health care facilities or
203 institutions OR OTHER PROVIDERS within the area to
204 be served, the need for such service or function
205 within such area and any other factors which the
206 office deems relevant to a determination of
207 whether the facility or institution is justified
208 in introducing OR TERMINATING such [additional]
209 functions or services into OR FROM its program.
210 [or increasing its staff.] The office shall grant,
211 modify or deny such request within ninety days of
212 the receipt [thereof] OF A COMPLETE APPLICATION,
213 except as provided for in this section. Upon the
214 request of the applicant, the review period may be

215 extended for an additional fifteen days if the
216 office has requested additional information
217 subsequent to the commencement of the review
218 period. The commissioner may extend the review
219 period for a maximum of thirty days if the
220 applicant has not filed in a timely manner
221 information deemed necessary by the office.
222 Failure of the office to act on such request
223 within such review period shall be deemed approval
224 thereof. The ninety-day review period, pursuant to
225 this subsection, for an application filed by a
226 hospital, as defined in section 19a-490, and
227 licensed as a short-term acute-care general
228 hospital or children's hospital by the Department
229 of Public Health OR AN AFFILIATE OF SUCH A
230 HOSPITAL OR ANY COMBINATION THEREOF, shall not
231 apply if, in the certificate of need application
232 or request, the hospital OR APPLICANT projects
233 [that the implementation of such application or
234 request will require future budget adjustments]
235 EITHER (1) THAT, FOR THE FIRST THREE YEARS OF
236 OPERATION TAKEN TOGETHER, THE TOTAL IMPACT OF THE
237 PROPOSAL ON THE OPERATING BUDGET OF THE HOSPITAL
238 OR AN AFFILIATE OF SUCH A HOSPITAL OR ANY
239 COMBINATION THEREOF WILL EXCEED ONE PER CENT OF
240 THE ACTUAL OPERATING EXPENSES OF THE HOSPITAL FOR
241 THE MOST RECENTLY COMPLETED FISCAL YEAR AS FILED
242 WITH OR DETERMINED BY THE OFFICE, OR (2) THAT THE
243 TOTAL CAPITAL EXPENDITURE FOR THE PROJECT WILL
244 EXCEED FIFTEEN MILLION DOLLARS. IF THE OFFICE
245 DETERMINES THAT AN APPLICATION IS NOT SUBJECT TO
246 THE NINETY-DAY REVIEW PERIOD PURSUANT TO THIS
247 SUBSECTION, IT SHALL REMAIN SO EXCLUDED FOR THE
248 ENTIRE REVIEW PERIOD OF THAT APPLICATION, EVEN IF
249 THE APPLICATION OR CIRCUMSTANCES CHANGE AND THE
250 APPLICATION NO LONGER MEETS THE STATED TERMS OF
251 THE EXCLUSION. Upon a showing by such facility or
252 institution that the need for such function, [or]
253 service or [increase in staff] TERMINATION OR
254 CHANGE OF OWNERSHIP OR CONTROL is of an emergency
255 nature, in that the function, [or] service or
256 [increase in staff] TERMINATION OR CHANGE OF
257 OWNERSHIP OR CONTROL is necessary to comply with
258 requirements of any federal, state or local
259 health, fire, building or life safety code, the
260 commissioner may waive the letter of intent
261 requirement, [and the requirement that the request
262 for such permission be submitted, in accordance

263 with any schedule established by the office
264 pursuant to subsection (c) of this section,]
265 provided such request shall be submitted at least
266 ten business days before the proposed date of
267 institution of the function, [or] service OR
268 TERMINATION OR CHANGE OF OWNERSHIP OR CONTROL.

269 (c) In conducting its activities under this
270 section, [and] section 19a-639, AS AMENDED BY
271 SECTION 3 OF THIS ACT, OR UNDER BOTH SECTIONS, the
272 office may hold hearings on applications of a
273 similar nature at the same time. [The office may
274 adopt regulations in accordance with the
275 provisions of chapter 54, to establish a schedule
276 for the submission of such applications which (1)
277 requires applications to be submitted in cycles
278 that allow applications to be heard and reviewed
279 at times when hospital budget reviews are not in
280 progress, and (2) may provide for all completed
281 applications pertaining to similar types of
282 services, facilities or equipment affecting the
283 same health service area to be considered in
284 relation to each other and reviewed at least twice
285 a year.]

286 (d) For the purposes of this section, SECTION
287 19a-639, AS AMENDED BY SECTION 3 OF THIS ACT, OR
288 BOTH SECTIONS, construction shall be deemed to
289 have begun if the following have occurred and the
290 office has been so notified in writing within the
291 thirty days prior to the date by which
292 construction is to begin: (1) All necessary town,
293 state and federal approvals required to begin
294 construction have been obtained, including all
295 zoning and wetlands approvals; (2) all necessary
296 town and state permits required to begin
297 construction or site work have been obtained; (3)
298 financing approval, as defined in subsection [(i)]
299 (e) of this section, has been obtained; and (4)
300 construction of a structure approved in the
301 certificate of need has begun. For the purposes of
302 this subsection, commencement of construction of a
303 structure shall include, at a minimum, completion
304 of a foundation. Notwithstanding the provisions of
305 this subsection, upon receipt of an application
306 filed at least thirty days prior to the date by
307 which construction is to begin, the office may
308 deem construction to have begun if (A) an owner of
309 a certificate of need has fully complied with the
310 provisions of subdivisions (1), (2) and (3) of

311 this subsection; (B) such owner submits clear and
312 convincing evidence that he has complied with the
313 provisions of this subsection sufficiently to
314 demonstrate a high probability that construction
315 shall be completed in time to obtain licensure by
316 the Department of Public Health on or before the
317 date required [pursuant to subsection (d) of this
318 section] IN THE CERTIFICATE OF NEED AS THE OFFICE
319 MAY AMEND IT FROM TIME TO TIME; (C) construction
320 of a structure cannot begin due to unforeseeable
321 circumstances beyond the control of the owner; and
322 (D) at least ten per cent of the approved total
323 capital expenditure or two hundred fifty thousand
324 dollars, whichever is greater, has been expended.

325 (e) [On and after March 1, 1993, financing]
326 FINANCING shall be deemed to have been obtained
327 for the purposes of this section if the owner of
328 the certificate of need has (1) received a final
329 commitment for financing in writing from a lender,
330 or (2) provided evidence to the office that the
331 owner has sufficient funds available to construct
332 the project without financing.

333 (f) The General Assembly finds evidence of
334 insufficient need for all the nursing home beds
335 approved by the Office of Health Care Access but
336 not yet constructed and finds allowing unnecessary
337 beds and facilities to be built will result in
338 severely damaging economic consequences to the
339 state and to consumers. All certificates of need
340 for nursing home beds granted pursuant to this
341 section shall expire on June 9, 1993, except (1)
342 beds for which an application for financing was
343 received and deemed complete by the Connecticut
344 Health and Educational Facilities Authority prior
345 to March 1, 1993; (2) beds restricted to use by
346 patients with acquired immune deficiency syndrome
347 or traumatic brain injury; (3) beds associated
348 with a continuing care facility which guarantees
349 life care for its residents as defined in
350 subsection [(e) of this section] (b) OF SECTION
351 17b-354; (4) beds authorized under a certificate
352 of need for an addition of five beds in a facility
353 which has undertaken the addition of ten beds
354 pursuant to section 17b-351, AS AMENDED BY SECTION
355 13 OF THIS ACT; and (5) beds for which twenty-five
356 per cent of project costs have been expended prior
357 to June 9, 1993, as submitted to the Office of
358 Health Care Access in the form of a report

359 prepared by a certified public accountant having
360 no affiliation with the owner of the certificate
361 of need or the developer of the project. A
362 certificate of need which has expired pursuant to
363 this subsection may be reauthorized by the Office
364 of Health Care Access, provided need for nursing
365 home beds exists and twenty per cent or more of
366 the project costs have been expended by June 9,
367 1993. A request for reauthorization shall be
368 submitted to the Office of Health Care Access no
369 later than July 15, 1993. The office shall issue a
370 decision on such request within forty-five days of
371 receipt of documentation necessary to determine
372 expended project costs. Project expenditures shall
373 cease from June 9, 1993, until reauthorization by
374 the office. Evidence of project costs expended
375 shall be submitted in the form of a report
376 prepared by a certified public accountant having
377 no affiliation with the owner of the certificate
378 of need or the developer of the project. For the
379 purposes of this section, "need for nursing home
380 beds" means there is a demonstrated bed need in
381 the towns within twenty miles of the town in which
382 the facility is proposed to be located, including
383 the town of the proposed location, as listed in
384 the March 1, 1974, official mileage table of the
385 Public Utilities Commission. Bed need shall be
386 projected no more than five years into the future
387 at ninety-seven and one-half per cent occupancy
388 using the latest official population projections
389 by town and age as published by the Office of
390 Policy and Management and the latest available
391 nursing home utilization statistics by age cohort
392 from the Department of Public Health. For the
393 purposes of this subsection, "project costs" means
394 the capital costs approved by the Office of Health
395 Care Access in the certificate of need, exclusive
396 of the cost of land acquisition. Owners of
397 certificates of need for nursing home beds which
398 have expired may apply to the Commissioner of
399 Social Services for compensation on or after June
400 29, 1993, but no later than September 1, 1993.
401 Such compensation shall be limited to actual
402 verifiable losses which directly result from the
403 expiration of the certificate of need pursuant to
404 this subsection and which cannot be otherwise
405 recouped through the mitigating efforts of the
406 owner, excluding consequential and incidental

407 losses such as lost profits. Such compensation
408 shall not exceed an amount approved by the office
409 within the certificate of need unless the
410 commissioner determines it is reasonable or
411 cost-effective to compensate the excess amount.
412 Notwithstanding any provision of this subsection,
413 no compensation shall be provided to an owner of a
414 certificate of need whose ability to implement the
415 certificate of need is contingent on the outcome
416 of a legal action taken against the owner until
417 the owner obtains a final decision in his favor.
418 An owner aggrieved by the amount of compensation
419 determined by the commissioner may request a
420 hearing in accordance with the provisions of
421 sections 17b-61 and 17b-104. The commissioner may
422 so compensate an owner of a certificate of need
423 for nursing home beds who volunteers to relinquish
424 such a certificate, provided the request for
425 compensation is received by the commissioner prior
426 to July 15, 1993. The commissioner shall notify
427 such an owner as to whether he will be compensated
428 within forty-five days from receipt of notice of
429 voluntary relinquishment or forty-five days of
430 June 29, 1993, whichever is later.

431 Sec. 3. Section 19a-639 of the general
432 statutes, as amended by public act 97-159, is
433 repealed and the following is substituted in lieu
434 thereof:

435 (a) Except [for (1) a program of ambulatory
436 services established and conducted by a health
437 maintenance organization, (2) any outpatient
438 rehabilitation facility affiliated with the Easter
439 Seal Society of Connecticut, Inc., (3) a home
440 health agency or (4) a nursing home, residential
441 care home, rest home or residential facility for
442 the mentally retarded licensed pursuant to section
443 17a-227 and certified to participate in the Title
444 XIX Medicaid program as an intermediate care
445 facility for the mentally retarded] AS PROVIDED IN
446 SECTIONS 4 TO 7, INCLUSIVE, OF THIS ACT, EACH
447 HEALTH CARE FACILITY OR INSTITUTION, INCLUDING,
448 BUT NOT LIMITED TO, any inpatient rehabilitation
449 facility, [affiliated with the Easter Seal Society
450 of Connecticut, Inc.,] any health care facility or
451 institution or any state health care facility or
452 institution proposing a capital expenditure
453 exceeding one million dollars, or the acquisition
454 of major medical equipment requiring a capital

455 expenditure, as defined in regulations adopted
456 pursuant to section 19a-643, AS AMENDED BY SECTION
457 9 OF THIS ACT, in excess of four hundred thousand
458 dollars, including the leasing OR DONATION of
459 equipment or a facility, shall submit a request
460 for approval of such expenditure to the office,
461 with such data, information and plans as the
462 office requires in advance of the proposed
463 initiation date of such project. [and in
464 accordance with any schedule established by the
465 office pursuant to subsection (c) of this
466 section.]

467 (b) The office shall [thereupon] hold a public
468 hearing with respect to [such request] ANY
469 COMPLETE CERTIFICATE OF NEED REQUEST UNDER THIS
470 SECTION, at least two weeks' notice of which shall
471 be given to the facility, [or] institution OR
472 PROVIDER by certified mail and to the public by
473 publication in a newspaper having a substantial
474 circulation in the area served by the facility,
475 [or] institution OR PROVIDER. The commissioner
476 shall notify the Commissioner of Social Services
477 of any application that may impact on expenditures
478 under the state medical assistance program. Such
479 hearing shall be held at the discretion of the
480 office in Hartford or in the area so served OR TO
481 BE SERVED. The office shall consider such request
482 in relation to the community or regional need for
483 such capital program or purchase of land, the
484 possible effect on the operating costs of the
485 health care facility or institution and such other
486 relevant factors as the office deems necessary. In
487 approving or modifying such request, the
488 commissioner may not prescribe any condition, such
489 as but not limited to, any condition or limitation
490 on the indebtedness of the facility or institution
491 in connection with a bond issue, the principal
492 amount of any bond issue or any other details or
493 particulars related to the financing of such
494 capital expenditure, not directly related to the
495 scope of such capital program and within control
496 of the facility or institution. An applicant,
497 prior to submitting a certificate of need
498 application, shall SUBMIT A request, in writing,
499 FOR application forms and instructions [from] TO
500 the office. The request shall be known as a letter
501 of intent. A letter of intent shall [include: (A)
502 The name of the applicant or applicants; (B) a

503 statement indicating whether the application is
504 for a new facility, service or function, expansion
505 of an existing facility, service or function and
506 any new or additional beds and their type; (C) the
507 estimated capital cost; (D) the town where the
508 project will be located; and (E) a brief
509 description of the proposed project] CONFORM TO
510 THE LETTER OF INTENT REQUIREMENTS OF SUBDIVISION
511 (4) OF SUBSECTION (a) OF SECTION 19a-638, AS
512 AMENDED BY SECTION 2 OF THIS ACT. No certificate
513 of need application will be considered [filed
514 with] SUBMITTED TO the office unless a current
515 letter of intent, specific to the proposal and in
516 [accordance] COMPLIANCE with this subsection, [has
517 been] IS on file with the office at least [ninety]
518 SIXTY days. A current letter of intent is a letter
519 of intent which has been on file at the office no
520 more than one hundred twenty days, EXCEPT THAT AN
521 APPLICANT MAY REQUEST A ONE TIME EXTENSION OF A
522 LETTER OF INTENT OF UP TO AN ADDITIONAL THIRTY
523 DAYS FOR A MAXIMUM TOTAL OF UP TO ONE HUNDRED
524 FIFTY DAYS IF, PRIOR TO THE EXPIRATION OF THE
525 CURRENT LETTER OF INTENT, THE OFFICE RECEIVES A
526 WRITTEN REQUEST TO SO EXTEND THE LETTER OF
527 INTENT'S CURRENT STATUS. THE EXTENSION REQUEST
528 SHALL FULLY EXPLAIN WHY AN EXTENSION IS REQUESTED.
529 THE OFFICE SHALL ACCEPT OR REJECT THE EXTENSION
530 REQUEST WITHIN FIVE BUSINESS DAYS AND SHALL SO
531 NOTIFY THE APPLICANT. Upon a showing by such
532 facility or institution that the need for such
533 capital program is of an emergency nature, in that
534 the capital expenditure is necessary to comply
535 with any federal, state or local health, fire,
536 building or life safety code, the commissioner may
537 waive the letter of intent requirement [and the
538 requirement that the request be submitted in
539 accordance with any schedule established by the
540 office pursuant to subsection (c) of this section]
541 and that a public hearing be held, [thereon,]
542 provided such request shall be submitted at least
543 ten business days before the proposed initiation
544 date of the project. The commissioner shall grant,
545 modify or deny such request within ninety days or
546 within ten business days, as the case may be, of
547 receipt thereof, except as provided for in this
548 section. Upon the request of the applicant, the
549 review period may be extended for an additional
550 fifteen days if the office has requested

551 additional information subsequent to the
552 commencement of the review period. The
553 commissioner may extend the review period for a
554 maximum of thirty days if the applicant has not
555 filed, in a timely manner, information deemed
556 necessary by the office. Failure of the office to
557 act thereon within such review period shall be
558 deemed approval of such request. The ninety-day
559 review period, pursuant to this section, for an
560 application filed by a hospital, as defined
561 [under] IN section 19a-490, and licensed as a
562 short-term acute-care general hospital or a
563 children's hospital by the Department of Public
564 Health OR AN AFFILIATE OF SUCH A HOSPITAL OR ANY
565 COMBINATION THEREOF, shall not apply if, in the
566 certificate of need application or request, the
567 hospital OR APPLICANT projects [that the
568 implementation of such application or request will
569 require future budget adjustments] EITHER (1)
570 THAT, FOR THE FIRST THREE YEARS OF OPERATION TAKEN
571 TOGETHER, THE TOTAL IMPACT OF THE PROPOSAL ON THE
572 OPERATING BUDGET OF THE HOSPITAL OR AN AFFILIATE
573 OR ANY COMBINATION THEREOF WILL EXCEED ONE PER
574 CENT OF THE ACTUAL OPERATING EXPENSES OF THE
575 HOSPITAL FOR THE MOST RECENTLY COMPLETED FISCAL
576 YEAR AS FILED WITH THE OFFICE, OR (2) THAT THE
577 TOTAL CAPITAL EXPENDITURE FOR THE PROJECT WILL
578 EXCEED FIFTEEN MILLION DOLLARS. IF THE OFFICE
579 DETERMINES THAT AN APPLICATION IS NOT SUBJECT TO
580 THE NINETY-DAY REVIEW PERIOD PURSUANT TO THIS
581 SUBSECTION, IT SHALL REMAIN SO EXCLUDED FOR THE
582 ENTIRE PERIOD OF THAT APPLICATION, EVEN IF THE
583 APPLICATION OR CIRCUMSTANCES CHANGE AND THE
584 APPLICATION NO LONGER MEETS THE STATED TERMS OF
585 THE EXCLUSION. The office shall adopt regulations
586 to establish an expedited hearing process to be
587 used to review requests by any facility or
588 institution for approval of a capital expenditure
589 to establish an energy conservation program or to
590 comply with requirements of any federal, state or
591 local health, fire, building or life safety code
592 OR FINAL COURT ORDER. The office shall adopt
593 regulations in accordance with the provisions of
594 chapter 54 to provide for the waiver of a hearing,
595 for any part of a request by a facility or
596 institution for a capital expenditure, provided
597 such facility or institution and the office agree
598 upon such waiver.

599 [(b) Except as provided for in subsection (a)
600 of this section, any person]

601 (c) NOTWITHSTANDING SECTION 4 OR 5 OF THIS
602 ACT, EACH PERSON OR FACILITY, OTHER THAN A HEALTH
603 CARE OR STATE HEALTH CARE FACILITY OR INSTITUTION
604 SUBJECT TO SUBSECTION (a) OF THIS SECTION,
605 proposing to acquire OR REPLACE imaging equipment
606 OR A LINEAR ACCELERATOR, requiring a capital
607 expenditure, as defined in regulations adopted
608 pursuant to section 19a-643, AS AMENDED BY SECTION
609 10 OF THIS ACT, in excess of four hundred thousand
610 dollars, including the leasing OR DONATION of such
611 equipment and facility and including all capital
612 expenditures, as defined in regulations adopted
613 pursuant to said section, associated with the
614 provision of the imaging service [, which imaging
615 equipment will not be owned by or located in a
616 health care facility or institution, or state
617 health care facility or institution,] OR OPERATION
618 OF A LINEAR ACCELERATOR, shall submit a request
619 for approval of any such imaging equipment OR
620 LINEAR ACCELERATOR acquisition pursuant to the
621 provisions of subsection (a) of this section. IN
622 DETERMINING THE CAPITAL COST OR EXPENDITURE FOR AN
623 APPLICATION UNDER THIS SECTION OR SECTION 19a-638,
624 AS AMENDED BY SECTION 2 OF THIS ACT, THE OFFICE
625 SHALL USE THE GREATER OF (1) THE FAIR MARKET VALUE
626 OF THE EQUIPMENT AS IF IT WERE TO BE USED FOR
627 FULL-TIME OPERATION, WHETHER OR NOT THE EQUIPMENT
628 IS TO BE USED, SHARED OR RENTED ON A PART-TIME
629 BASIS, OR (2) THE TOTAL VALUE OR ESTIMATED VALUE
630 DETERMINED BY THE OFFICE OF ANY CAPITALIZED LEASE
631 COMPUTED FOR A THREE-YEAR PERIOD. EACH METHOD
632 SHALL INCLUDE THE COSTS OF ANY SERVICE OR
633 FINANCING AGREEMENTS PLUS ANY OTHER COST
634 COMPONENTS OR ITEMS THE OFFICE SPECIFIES IN
635 REGULATIONS, ADOPTED IN ACCORDANCE WITH CHAPTER
636 54, OR DEEMS APPROPRIATE.

637 [(c)] (d) Notwithstanding the provisions of
638 section 19a-638, AS AMENDED BY SECTION 2 OF THIS
639 ACT, or subsection (a) of this section, [any] NO
640 community health center, as defined in section
641 19a-490a, shall [not] be subject to the provisions
642 of said SECTION 19a-638 OR subsection (a) OF THIS
643 SECTION if the community health center is: (1)
644 Proposing a capital expenditure not exceeding one
645 million dollars; [and] (2) EXCLUSIVELY PROVIDING
646 PRIMARY CARE OR DENTAL SERVICES; AND (3) EITHER

647 (A) one-third or more of the cost of [such] THE
648 PROPOSED project is financed by the state of
649 Connecticut, [or (2)] (B) THE PROPOSED PROJECT IS
650 receiving funds from the Department of Public
651 Health, [and] OR (C) THE PROPOSED PROJECT is
652 located in an area designated by the federal
653 Health Resources and Services Administration as a
654 health professional shortage area, a medically
655 underserved area or an area with a medically
656 underserved population. EACH COMMUNITY HEALTH
657 CENTER SEEKING AN EXEMPTION UNDER THIS SUBSECTION
658 SHALL PROVIDE THE OFFICE WITH DOCUMENTATION
659 VERIFYING TO THE SATISFACTION OF THE OFFICE,
660 QUALIFICATION FOR THIS EXEMPTION. EACH COMMUNITY
661 HEALTH CENTER PROPOSING TO PROVIDE ANY SERVICE
662 OTHER THAN A PRIMARY CARE OR DENTAL SERVICE AT ANY
663 LOCATION, INCLUDING A DESIGNATED COMMUNITY HEALTH
664 CENTER LOCATION, SHALL FIRST OBTAIN A CERTIFICATE
665 OF NEED FOR SUCH ADDITIONAL SERVICE IN ACCORDANCE
666 WITH THIS SECTION AND SECTION 19a-638, AS AMENDED
667 BY SECTION 2 OF THIS ACT. EACH SATELLITE,
668 SUBSIDIARY OR AFFILIATE OF A FEDERALLY QUALIFIED
669 HEALTH CENTER, IN ORDER TO QUALIFY UNDER THIS
670 EXEMPTION, SHALL: (i) BE PART OF A FEDERALLY
671 QUALIFIED HEALTH CENTER, THAT MEETS THE
672 REQUIREMENTS OF THIS SUBSECTION; (ii) EXCLUSIVELY
673 PROVIDE PRIMARY CARE OR DENTAL SERVICES; AND (iii)
674 BE LOCATED IN A HEALTH PROFESSIONAL SHORTAGE AREA
675 OR A MEDICALLY UNDERSERVED AREA. IF THE
676 SUBSIDIARY, SATELLITE OR AFFILIATE DOES NOT SO
677 QUALIFY, IT SHALL OBTAIN A CERTIFICATE OF NEED.
678 [(d)] (e) Notwithstanding the provisions of
679 section 19a-638, AS AMENDED BY SECTION 2 OF THIS
680 ACT, SUBSECTION (a) OF SECTION 4 OF THIS ACT, or
681 subsection (a) of this section, no school-based
682 health care center shall be subject to the
683 provisions of SECTION 19a-638, AS AMENDED BY
684 SECTION 2 OF THIS ACT OR subsection (a) of this
685 section if the center: (1) Is or will be licensed
686 by the Department of Public Health as an
687 outpatient clinic; (2) has been approved by the
688 Department of Public Health as meeting its
689 standard model for comprehensive school-based
690 health centers; (3) proposes capital expenditures
691 not exceeding one million dollars and does not
692 exceed such amount; (4) once operational,
693 continues to operate and provide services in
694 accordance with the department's standard model

695 for comprehensive school-based health centers; and
696 (5) is or will be located entirely on the property
697 of a functioning school.

698 [(e)] (f) In conducting its activities under
699 this section, [and] section 19a-638, AS AMENDED BY
700 SECTION 2 OF THIS ACT OR UNDER BOTH SECTIONS, the
701 office may hold hearings on applications of a
702 similar nature at the same time. [The office may
703 adopt regulations in accordance with the
704 provisions of chapter 54, to establish a schedule
705 for the submission of such applications which (1)
706 requires applications to be submitted in cycles
707 that allow applications to be heard and reviewed
708 at times when hospital budget reviews are not in
709 progress, and (2) may provide for all completed
710 applications pertaining to similar types of
711 services, facilities or equipment affecting the
712 same health service area to be considered in
713 relation to each other and reviewed at least twice
714 a year.]

715 Sec. 4. (NEW) (a) Except as required in
716 subsection (b) of this section, the provisions of
717 section 19a-638 of the general statutes, as
718 amended by section 2 of this act, and subsection
719 (a) of section 19a-639 of the general statutes, as
720 amended by section 3 of this act, shall not apply
721 to: (1) An outpatient clinic or program operated
722 exclusively by, or contracted to be operated
723 exclusively for, a municipality or municipal
724 agency, a health district, as defined in section
725 19a-240 of the general statutes, or a board of
726 education; (2) a residential facility for the
727 mentally retarded licensed pursuant to section
728 17a-227 of the general statutes and certified to
729 participate in the Title XIX Medicaid program as
730 an intermediate care facility for the mentally
731 retarded; (3) an outpatient rehabilitation service
732 agency that was in operation on January 1, 1998,
733 that is operated exclusively on an outpatient
734 basis and that is eligible to receive
735 reimbursement under section 17b-243 of the general
736 statutes; (4) a clinical laboratory; (5) an
737 assisted living services agency; (6) an outpatient
738 service offering chronic dialysis; (7) a program
739 of ambulatory services established and conducted
740 by a health maintenance organization; (8) a home
741 health agency; (9) a clinic operated by the
742 Americares Foundation; (10) a nursing home; (11) a

743 residential care home; or (12) a rest home.
744 However, the exemptions provided in this section
745 shall not apply when a nursing home, residential
746 care home or rest home is, or will be created,
747 acquired, operated or in any other way related to
748 or affiliated with, or under the complete or
749 partial ownership or control of a facility or
750 institution or affiliate subject to the provisions
751 of section 19a-638 of the general statutes, as
752 amended by section 2 of this act, or subsection
753 (a) of section 19a-639 of the general statutes, as
754 amended by section 3 of this act.

755 (b) Each health care facility or institution
756 exempted under this section shall register with
757 the office by filing the information required by
758 subdivision (4) of subsection (a) of section
759 19a-638 of the general statutes, as amended by
760 section 2 of this act, for a letter of intent at
761 least ten business days but not more than sixty
762 calendar days prior to commencing operations and
763 prior to changing, expanding, terminating or
764 relocating any facility or service otherwise
765 covered by section 19a-638 of the general
766 statutes, as amended by section 2 of this act,
767 subsection (a) of section 19a-639 of the general
768 statutes, as amended by section 3 of this act, or
769 covered by both sections or subsections, except
770 that, if the facility or institution is in
771 operation on the effective date of this act, said
772 information shall be filed not more than sixty
773 days after said date. Not later than ten business
774 days after the office receives a completed filing
775 required under this subsection, the office shall
776 provide the health care facility or institution
777 with written acknowledgement of receipt. Such
778 acknowledgment shall constitute permission to
779 operate or change, expand, terminate or relocate
780 such a facility or institution or to make an
781 expenditure consistent with an authorization
782 received under subsection (a) of section 19a-639
783 of the general statutes, as amended by section 3
784 of this act until the next September thirty. Each
785 entity exempted under this section shall renew its
786 exemption annually by filing current information
787 each September.

788 Sec. 5. (NEW) (a) The Commissioner of the
789 Office of Health Care Access or the commissioner's
790 designee may grant an exemption from the

791 requirements of section 19a-638 of the general
792 statutes, as amended by section 2 of this act, or
793 subsection (a) of section 19a-639 of the general
794 statutes, as amended by section 3 of this act, or
795 both, for any nonprofit facility, institution or
796 provider seeking to engage in any activity, other
797 than the termination of a service or a facility,
798 otherwise subject to said section or subsection
799 if:

800 (1) The nonprofit facility, institution or
801 provider is proposing a capital expenditure of not
802 more than one million dollars and the expenditure
803 does not in fact exceed one million dollars;

804 (2) The activity meets a specific service need
805 identified by a state agency or department and
806 confirmed as a current need by the Office of
807 Health Care Access; and

808 (3) The commissioner, executive director,
809 chairman or chief court administrator of the state
810 agency or department that has identified the
811 specific need confirms, in writing, to the office
812 that (A) the agency or department has identified a
813 specific need with a detailed description of that
814 need and that the agency or department believes
815 that the need continues to exist, (B) the activity
816 in question meets all or part of the identified
817 need and specifies how much of that need the
818 proposal meets, (C) in the case where the activity
819 is the relocation of services, the agency or
820 department has determined that the needs of the
821 area previously served will continue to be met in
822 a better or satisfactory manner and specifies how
823 that is to be done, (D) in the case where the
824 activity is the transfer of all or part of the
825 ownership or control of a facility or institution,
826 the agency or department has investigated the
827 proposed change and the person or entity
828 requesting the change and has determined that the
829 change would be in the best interests of the state
830 and the patients or clients, and (E) the activity
831 will be cost-effective and well managed.

832 (b) A nonprofit facility, institution or
833 provider seeking an exemption under this section
834 shall provide the office with any information it
835 needs to determine exemption eligibility. An
836 exemption granted under this section shall be
837 limited to part or all of any services, equipment,
838 expenditures or location directly related to the

839 need or location that the state agency or
840 department has identified.

841 (c) The office may revoke or modify the scope
842 of the exemption at any time following a public
843 review that allows the state agency or department
844 and the nonprofit facility, institution or
845 provider to address specific, identified, changed
846 conditions or any problems that the state agency,
847 department or the office has identified. A party
848 to any exemption modification or revocation
849 proceeding and the original requesting agency
850 shall be given at least fourteen calendar days
851 written notice prior to any action by the office
852 and shall be furnished with a copy, if any, of a
853 revocation or modification request or a statement
854 by the office of the problems that have been
855 brought to its attention. If the requesting
856 commissioner, executive director, chairman or
857 chief court administrator or the Commissioner of
858 Health Care Access certifies that an emergency
859 condition exists, only forty-eight hours written
860 notice shall be required for such modification or
861 revocation action to proceed.

862 Sec. 6. (NEW) Notwithstanding the provisions
863 of section 19a-638, as amended by section 2 of
864 this act, or section 19a-639, as amended by
865 section 3 of this act, prior to October 1, 2000,
866 the office may waive the requirements of those
867 sections and grant a certificate of need to any
868 health care facility or institution or any state
869 health care facility for purchases necessary for
870 year-2000 computer capability:

871 (1) The purchase is for physical plant or
872 nonmedical equipment and the total aggregate cost
873 under this subdivision is less than three million
874 dollars;

875 (2) The purchase is for computer diagnostic or
876 therapeutic medical equipment components or
877 medical equipment year-2000 capability and the
878 total aggregate cost for all equipment and
879 components under this subdivision is less than two
880 million dollars; or

881 (3) The purchase is for computer hardware or
882 software that is used for data collection or to
883 interface between medical equipment and data
884 equipment and the data equipment is to be used for
885 medical records, data collection, data storage,
886 business functions or other similar uses as part

887 of an information system or project and the total
888 aggregate cost under this subdivision is less than
889 three million dollars.

890 Sec. 7. (NEW) Notwithstanding the provisions
891 of section 19a-638, as amended by section 2 of
892 this act, or section 19a-639, as amended by
893 section 3 of this act, the office may waive the
894 requirements of those sections and grant a
895 certificate of need to any health care facility or
896 institution or any state health care facility,
897 institution or provider proposing to replace major
898 medical equipment, imaging equipment or a linear
899 accelerator if:

900 (1) The facility, institution or provider has
901 previously obtained a certificate of need for the
902 equipment or accelerator being replaced;

903 (2) The replacement value or expenditure for
904 the replacement equipment or accelerator is not
905 more than the original cost plus an increase of
906 ten per cent for each twelve-month period that has
907 elapsed since the date of the original certificate
908 of need; and

909 (3) The replacement value or expenditure is
910 less than two million dollars.

911 Sec. 8. Subsection (a) of section 19a-653 of
912 the general statutes is repealed and the following
913 is substituted in lieu thereof:

914 (a) (1) Any [health care facility or
915 institution, or] health care provider which owns,
916 operates or is seeking to acquire a [CAT] COMPUTER
917 AXIAL TOMOGRAPHY (CT) scanner, [or] medical
918 imaging equipment, OR A LINEAR ACCELERATOR OR ANY
919 HEALTH CARE FACILITY, INSTITUTION OR PROVIDER THAT
920 IS required to file data OR INFORMATION UNDER ANY
921 PUBLIC OR SPECIAL ACT OR under chapter 368z [,] or
922 any regulation adopted or order issued thereunder,
923 which fails to so file within prescribed time
924 periods, shall be subject to a civil penalty of up
925 to one thousand dollars a day for each day such
926 information is missing, incomplete or inaccurate.
927 Any civil penalty authorized by this section shall
928 be imposed by the Office of Health Care Access in
929 accordance with subsections (b) to (e), inclusive,
930 of this section.

931 (2) IF AN APPLICANT OR PROVIDER IS UNSURE
932 WHETHER A CERTIFICATE OF NEED IS REQUIRED UNDER
933 SECTION 19a-638, AS AMENDED BY SECTION 2 OF THIS
934 ACT, OR SECTION 19a-639, AS AMENDED BY SECTION 3

935 OF THIS ACT, OR UNDER BOTH SECTIONS, IT SHALL SEND
936 A LETTER TO THE OFFICE DESCRIBING THE PROJECT AND
937 REQUESTING THAT THE OFFICE MAKE SUCH A
938 DETERMINATION. A PERSON MAKING A REQUEST FOR A
939 DETERMINATION AS TO WHETHER A CERTIFICATE OF NEED,
940 WAIVER OR EXEMPTION IS REQUIRED SHALL PROVIDE THE
941 OFFICE WITH ANY INFORMATION THE OFFICE REQUESTS AS
942 PART OF ITS DETERMINATION PROCESS.

943 Sec. 9. Subsection (c) of section 19a-643 of
944 the general statutes is repealed and the following
945 is substituted in lieu thereof:

946 (c) The regulations adopted by the Office of
947 Health Care Access concerning requests or
948 proposals pursuant to [sections 19a-638 and]
949 SECTION 19a-639, AS AMENDED BY SECTION 3 OF THIS
950 ACT, shall include a fee schedule for certificate
951 of need review under section [19a-638 or] 19a-639,
952 AS AMENDED BY SECTION 3 OF THIS ACT. The fee
953 schedule shall (1) contain a minimum filing fee
954 for all applications under said [sections] SECTION
955 19a-639, (2) be based on a percentage of the
956 requested authorization in addition to the minimum
957 filing fee, and (3) apply to new requests and
958 requests for modification of prior decisions
959 [under said sections] IF THE MODIFICATION REQUEST
960 HAS A PROPOSED ADDITIONAL COST OF ONE HUNDRED
961 THOUSAND DOLLARS OR MORE BEYOND THE ORIGINAL
962 AUTHORIZATION AMOUNT, OR IF THE MODIFICATION
963 REQUEST AGGREGATED WITH ANY OTHER PRIOR
964 MODIFICATION REQUESTS TOTALS ONE HUNDRED THOUSAND
965 DOLLARS OR MORE. The fee schedule shall be
966 reviewed annually and adjusted as necessary.

967 Sec. 10. Subsection (b) of section 17a-451b of
968 the general statutes, as amended by public act
969 97-94, is repealed and the following is
970 substituted in lieu thereof:

971 (b) Notwithstanding the provisions of the
972 general statutes or any special act, the
973 consolidation program, each project, each closure
974 and each contract entered into in connection with
975 a project shall be exempt from the provisions of
976 sections 4b-57, 4b-58, AS AMENDED, and 4b-91, AS
977 AMENDED, and from the requirements for approval of
978 a request or application provided for in
979 [subsections (a) to (d), inclusive, of] section
980 19a-638, AS AMENDED BY SECTION 2 OF THIS ACT, and
981 in subsection (a) of section 19a-639, AS AMENDED
982 BY SECTION 3 OF THIS ACT, provided (1) the project

983 begins no later than June 30, 1999; (2) the
984 project is completed no later than June 30, 2002;
985 (3) the cost of the project does not exceed
986 thirty-six million dollars; and (4) the
987 Commissioner of Mental Health and Addiction
988 Services certifies in writing to the Secretary of
989 the Office of Policy and Management that the
990 project meets the criteria of public act 95-257*
991 and upon such certification the Secretary of the
992 Office of Policy and Management shall authorize
993 the Commissioner of Public Works to implement such
994 project.

995 Sec. 11. Subsection (b) of section 17a-451c of
996 the general statutes is repealed and the following
997 is substituted in lieu thereof:

998 (b) Notwithstanding any provision of the
999 general statutes or any special act, a priority
1000 mental health facility project and each contract
1001 entered into in connection with a project shall be
1002 exempt from the provisions of sections 4b-58 and
1003 4b-91, AS AMENDED, and from the requirements for
1004 approval of a request or application provided for
1005 in [subsections (a) to (d), inclusive, of] section
1006 19a-638, AS AMENDED BY SECTION 2 OF THIS ACT, and
1007 in subsection (a) of section 19a-639, AS AMENDED
1008 BY SECTION 3 OF THIS ACT, and sections 22a-1 to
1009 22a-1h, inclusive, AS AMENDED, provided: (1) The
1010 project begins no later than October 1, 1996; (2)
1011 the project is completed no later than July 1,
1012 1998; (3) the cost of the project does not exceed
1013 twenty million dollars; and (4) the Commissioner
1014 of Mental Health and Addiction Services certifies
1015 in writing to the Secretary of the Office of
1016 Policy and Management that the project meets the
1017 criteria of this section and upon such
1018 certification the Secretary of the Office of
1019 Policy and Management authorizes the Commissioner
1020 of Public Works to implement such project.

1021 Sec. 12. Subsection (b) of section 17b-351 of
1022 the general statutes is repealed and the following
1023 is substituted in lieu thereof:

1024 (b) The General Assembly finds evidence of
1025 insufficient need for all the nursing home beds
1026 permitted pursuant to subsection (a) of this
1027 section, but not licensed by the Department of
1028 Public Health and finds allowing unnecessary beds
1029 to be licensed will result in severely damaging
1030 economic consequences to the state and to

1031 consumers. An addition of beds initiated pursuant
1032 to this section shall be licensed no later than
1033 June 9, 1993. A facility which has initiated the
1034 addition of beds but has not obtained licensure of
1035 such beds, may, no later than July 15, 1993, apply
1036 to the Office of Health Care Access for
1037 authorization to proceed with completion of the
1038 additional beds and application for licensure,
1039 provided (A) plans for the additional beds have
1040 been approved by the Department of Public Health
1041 pursuant to section 19-13-D-8t(v)(4) of the Public
1042 Health Code no later than June 1, 1993, and (B)
1043 twenty-five per cent of estimated project costs
1044 have been expended no later than June 9, 1993,
1045 provided project costs may not exceed thirty-one
1046 thousand two hundred eleven dollars per bed. The
1047 office shall issue a decision on such application
1048 within forty-five days of receipt of documentation
1049 necessary to determine expended project costs.
1050 Evidence of project costs expended shall be
1051 submitted in the form of a report prepared by a
1052 certified public accountant having no affiliation
1053 with the owner of the facility or the developer of
1054 the project. The owner of a facility for which
1055 completion of additional beds is not so authorized
1056 may apply to the Commissioner of Social Services
1057 for compensation on or after June 29, 1993, but no
1058 later than September 1, 1993, provided plans for
1059 the additional beds have been approved by the
1060 Department of Public Health no later than June 1,
1061 1993. Such compensation shall be limited to actual
1062 verifiable losses which directly result from the
1063 failure to gain authorization pursuant to this
1064 subsection and which cannot be otherwise recouped
1065 through the mitigating efforts of the owner,
1066 excluding consequential and incidental losses such
1067 as lost profits. In no event may such compensation
1068 exceed project costs. An owner aggrieved by the
1069 amount of compensation determined by the
1070 commissioner may request a hearing in accordance
1071 with the provisions of sections 17b-60 and 17b-61.
1072 This subsection shall not apply to any addition of
1073 beds pursuant to this section which is part of a
1074 construction project that also includes an
1075 addition of beds authorized pursuant to
1076 subdivision (4) of subsection [(k)] (f) of section
1077 19a-638, AS AMENDED BY SECTION 2 OF THIS ACT.

1078 Sec. 13. Subsection (a) of section 17b-353 of
1079 the general statutes, as amended by section 148 of
1080 public act 97-2 of the June 18 special session, is
1081 repealed and the following is substituted in lieu
1082 thereof:

1083 (a) Any facility, as defined in subsection (a)
1084 of section 17b-352, AS AMENDED, which proposes (1)
1085 a capital expenditure exceeding one million
1086 dollars, which increases facility square footage
1087 by more than five thousand square feet or five per
1088 cent of the existing square footage, whichever is
1089 greater, (2) a capital expenditure exceeding two
1090 million dollars, or (3) the acquisition of major
1091 medical equipment requiring a capital expenditure
1092 in excess of four hundred thousand dollars,
1093 including the leasing of equipment or space, shall
1094 submit a request for approval of such expenditure,
1095 with such information as the department requires,
1096 to the Department of Social Services. Any such
1097 facility which proposes to acquire imaging
1098 equipment requiring a capital expenditure in
1099 excess of four hundred thousand dollars, including
1100 the leasing of such equipment, shall obtain the
1101 approval of the Office of Health Care Access in
1102 accordance with [subsection (b) of] section
1103 19a-639, AS AMENDED BY SECTION 3 OF THIS ACT,
1104 subsequent to obtaining the approval of the
1105 Commissioner of Social Services. PRIOR TO THE
1106 FACILITY'S OBTAINING THE IMAGING EQUIPMENT, THE
1107 COMMISSIONER OF THE OFFICE OF HEALTH CARE ACCESS,
1108 AFTER CONSULTATION WITH THE COMMISSIONER OF THE
1109 DEPARTMENT OF SOCIAL SERVICES, MAY ELECT TO
1110 PERFORM A JOINT OR SIMULTANEOUS REVIEW WITH THE
1111 DEPARTMENT OF SOCIAL SERVICES.

1112 Sec. 14. Subsection (c) of section 19a-612b of
1113 the general statutes is repealed and the following
1114 is substituted in lieu thereof:

1115 (c) Any order, decision, agreed settlement, or
1116 regulation of the Commission on Hospitals and
1117 Health Care which is in force on June 30, 1995,
1118 shall continue in force and effect as an order or
1119 regulation of the Office of Health Care Access
1120 until amended, repealed or superseded pursuant to
1121 law. The Commissioner of Health Care Access may
1122 implement policies and procedures consistent with
1123 the provisions of section 4-5, sections 19a-612 to
1124 19a-614, inclusive, AS AMENDED BY THIS ACT,
1125 [subsection (a) of] section 19a-630, AS AMENDED BY

1126 SECTION 1 OF THIS ACT, subsection (b) of section
1127 19a-631, sections 19a-632 [, 19a-633 and 19a-634,
1128 subsection (b) of section 19a-638 and subsection
1129 (a) of section 19a-639] TO 19a-634, INCLUSIVE,
1130 19a-638 AND 19a-639, AS AMENDED BY THIS ACT, while
1131 in the process of adopting the policy or procedure
1132 in regulation form, provided notice of intention
1133 to adopt the regulations is printed in the
1134 Connecticut Law Journal within twenty days of
1135 implementation. The policy or procedure shall be
1136 valid until the time final regulations are
1137 effective.

1138 Sec. 15. Section 19a-644 of the general
1139 statutes is repealed and the following is
1140 substituted in lieu thereof:

1141 (a) On or before February twenty-eighth
1142 annually, each health care facility and
1143 institution for which a budget was approved or
1144 revenue limits were established under the
1145 provisions of section 19a-640 or section 19a-674,
1146 for the fiscal year ending on September thirtieth
1147 of the immediately preceding year, shall report to
1148 the office with respect to its operations in such
1149 fiscal year, in such form as the office may by
1150 regulation require. Said report shall include: (1)
1151 Average salaries in each department of
1152 administrative personnel, supervisory personnel,
1153 and direct service personnel by job
1154 classification; (2) salaries and fringe benefits
1155 for the ten highest paid positions; (3) the name
1156 of each joint venture, partnership, subsidiary and
1157 corporation related to the hospital; (4) the
1158 salaries paid to hospital employees by each such
1159 joint venture, partnership, subsidiary and related
1160 corporation and by the hospital to the employees
1161 of related corporations; and (5) a breakdown of
1162 hospital and department budgets by administrative,
1163 supervisory and direct service categories, by
1164 total dollars and by full-time equivalent staff.

1165 (b) THE OFFICE SHALL ADOPT REGULATIONS IN
1166 ACCORDANCE WITH CHAPTER 54 TO PROVIDE FOR THE
1167 COLLECTION OF DATA AND INFORMATION IN ADDITION TO
1168 THE ANNUAL REPORT REQUIRED IN SUBSECTION (a) OF
1169 THIS SECTION. SUCH REGULATIONS SHALL PROVIDE FOR
1170 THE SUBMISSION OF INFORMATION ABOUT THE OPERATIONS
1171 OF THE FOLLOWING ENTITIES: PARENT CORPORATIONS
1172 THAT OWN OR CONTROL THE HEALTH CARE FACILITY,
1173 INSTITUTION OR PROVIDER; CORPORATIONS, INCLUDING

1174 LIMITED LIABILITY CORPORATIONS, IN WHICH THE
1175 HEALTH CARE FACILITY, INSTITUTION, PROVIDER, ITS
1176 PARENT, AN AFFILIATE OR ANY COMBINATION THEREOF,
1177 OWNS MORE THAN FIFTY PER CENT OF THE STOCK OR, IN
1178 THE CASE OF NONSTOCK CORPORATIONS, IS THE SOLE
1179 MEMBER; AND ANY PARTNERSHIPS IN WHICH THE HEALTH
1180 CARE FACILITY, INSTITUTION, ITS PARENT OR AN
1181 AFFILIATE OR ANY COMBINATION THEREOF, OWNS A
1182 GREATER THAN FIFTY PER CENT INTEREST.

1183 Sec. 16. Section 17a-678 of the general
1184 statutes is repealed and the following is
1185 substituted in lieu thereof:

1186 (a) Notwithstanding the provisions of sections
1187 19a-638 and 19a-639, (1) a community agency
1188 operating a program in a state institution or
1189 facility, (2) a nonprofit community agency
1190 operating a program, identified as closing a
1191 service delivery system gap in the state-wide
1192 service delivery plan, in a state institution or
1193 facility, and receiving funds from the Department
1194 of Mental Health and Addiction Services, or (3) a
1195 nonprofit substance abuse treatment facility,
1196 identified as closing a service delivery system
1197 gap in the state-wide service delivery plan and
1198 receiving funds from the department, shall not be
1199 required to obtain a certificate of need from the
1200 Office of Health Care Access.

1201 (b) NOTHING IN SUBSECTION (a) OF THIS SECTION
1202 SHALL BE CONSTRUED AS CREATING A CERTIFICATE OF
1203 NEED EXEMPTION FOR THE RELOCATION OR TERMINATION
1204 OF SERVICES.

1205 Sec. 17. This act shall take effect from its
1206 passage.

* * * * *

"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."

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FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5403

STATE IMPACT	Revenue Loss, Minimal Cost, Within Anticipated Budgetary Resources, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Various

EXPLANATION OF ESTIMATES:

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 involve capital expenditures or modifications to authorized projects valued less 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.

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 certain health care 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 for the acquisition or replacement of a linear accelerator costing in excess of \$400,000.

A minimal cost, which can be accommodated within anticipated budgetary resources, will result for the OHCA in the course of processing letters of registration from entities pursuant to Section 4 of the bill; responding to requests for one-time extensions of letters of intent; performing CON review in cases in which community agency programs and facilities associated with the Department of Mental Health and Addiction Services seek to relocate or terminate a service; and implementing other various changes.

Workload decreases will result from exempting from CON review: a clinic operated by the Americares Foundation, certain outpatient rehabilitation service agencies, clinical laboratories, assisted living service agencies, outpatient services for chronic dialysis; and eliminating CON review in cases involving replacement equipment under \$2 million when a CON has previously been granted.

A further workload decrease will result from waiving CON requirements for health care entities for "year 2000" computer projects. This will also facilitate the upgrading of state operated health facilities' computer capabilities to achieve "year 2000" compliance in a timely manner.

It is anticipated that State agencies will be able to document service needs in cases in which nonprofit facilities, institutions, or providers seek to modify service delivery in accordance with the bill's provisions within their anticipated budgetary resources. The OCHA will be able to process these requests for CON exemptions in the course of its normal workload.

Allowing simultaneous review of certificate of need applications by the Department of Social Services and the OHCA, when applicable, will not result in a fiscal impact to the State, as joint hearings would be only held with the agreement of each agency.

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

It is anticipated that the Office of Health Care Access will be able to adopt the required regulations within its anticipated budgetary resources.

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.

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

House "A" strikes the original bill and results in the fiscal impact discussed above. Changes contained within the amendment minimally change cost and revenue impacts to the State as compared to the original bill.

House "D" makes a technical change and has no associated fiscal impact.

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OLR AMENDED BILL ANALYSIS

SHB 5403 (as amended by House "A" and "D")*

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 by 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. defines "affiliate" for purposes of CON to mean any health care-related person that directly or indirectly, through one or more intermediaries, controls or is under common control with another health-related person;
3. specifies that nursing homes, residential care homes, or rest homes are not exempt from CON if they are or will be created, acquired, operated, or affiliated with or under the partial or complete ownership or control of a facility, or institution, or affiliate that is subject to CON;
4. creates new and expanded exemptions from CON, including any outpatient rehabilitation service agencies in operation on January 1, 1998, all clinical laboratories, assisted living services agencies, outpatient services for chronic dialysis, and clinics operated by AmeriCare;
5. requires exempted entities to register annually with OHCA;
6. modifies the existing exemption for community health centers;
7. allows OHCA to exempt from CON certain activities of nonprofit facilities, institutions, or providers seeking to engage in an activity, other than termination of a service or facility, if (a) they are proposing to spend not more than \$1 million, (b) the activity meets a service need identified by a state agency and is confirmed as such by OHCA, and (c) the state agency provides written confirmation of that need to OHCA;
8. allows OHCA, before October 1, 2000, to waive CON for any health care facility or institution, including state health facilities, for purchases necessary for "year 2000" computer capability if certain purchase and cost standards are met;

9. 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, but it allows OHCA to waive CON for health care facilities or institutions, including state facilities, to replace major medical equipment, imaging equipment, or linear accelerators if the replacement value or expenditure is under \$2 million and other conditions are met;
10. modifies the current CON exemption for certain community agency programs and facilities meeting identified service delivery system needs and receiving Department of Mental Health and Addiction Services (DMHAS) funding by specifying that this exemption does not create an exemption for the relocation or termination of services;
11. decreases the minimum CON letter of intent filing period from 90 to 60 days and allows a CON applicant to request a one-time extension of the letter of intent period of up to 30 days;
12. eliminates CON for a staff increase;
13. allows an individual to ask OHCA if a CON is needed for a particular project before actually filing for it;
14. provides that the 90-day "default period" (the period in which OHCA must grant, modify, or deny a CON request or it is deemed approved) does not apply to cases in which a hospital, an affiliate, or combination will exceed 1% of the hospital's actual operating expenses for the most recent fiscal year or the projected total capital expenditure for the project exceeds \$15 million;
15. directs OHCA to adopt regulations on collecting data from each facility, institution or provider required to report to it annually; the data must include information about the operations of parent corporations

which own or control the health care facility, institution, or provider; limited liability corporations; and partnerships;

16. eliminates OHCA's authority to adopt regulations establishing a schedule for submission of CON applications in cycles;
17. limits the CON filing fee to capital expenditures, equipment acquisition, and modification requests that add at least \$100,000 in costs;
18. allows OHCA to perform joint or simultaneous CON review with the Department of Social Services (DSS) of applications of nursing homes, ICF/MRs, rest homes, or residential care homes to acquire imaging equipment over \$400,000;
19. expands the application of existing penalties;
20. requires amending existing OHCA regulations on expedited hearings for certain capital expenditures to cover those necessary to comply with a final court order; and
21. makes technical changes and removes outdated provisions.

*House Amendment "A" replaces the underlying bill (File 576) but retains a substantial amount of it. It also makes a number of additions, modifications, and deletions. Specifically it: (1) adds CON exemptions for activities of nonprofits meeting state service needs; (2) provides CON waiver for "Year 2000" computer capability purchases, and for replacement of certain medical equipment; (3) allows for a 30-day extension of the letter-of-intent period; (4) requires OHCA to develop data collection regulations for specified entities; (5) permits joint or simultaneous review with DSS for certain projects; (6) changes the definition of affiliate to mean "health-related" persons; (7) requires certain exempted entities to register annually with OHCA; (8) specifies that nursing homes, residential care homes, and rest homes are not exempt from CON if they are affiliated with a facility subject to CON; (9) eliminates new civil penalties in the

original bill but expands application of existing ones; (10) eliminates a provision in File 576 that changed the educational and training requirements for municipal health directors; (11) eliminates an exemption in the original bill for certain satellite clinics; (12) modifies the default period language to also apply it to hospital affiliates; (13) modifies the current CON exemption for certain community agency-operated programs in state facilities and DMHAS-funded nonprofit programs to specify that the exemption does not apply to relocation or termination of services; and (14) makes technical changes.

*House Amendment "D" specifies that the CON waiver for replacement of certain medical equipment also applies to providers as well as institutions and facilities.

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 governing 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 health care-related person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another health care-related person. This means a 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 (1) applies to linear accelerators and replacement equipment and (2) covers equipment obtained through donations as well as leases and purchases. (See below "CON Waiver for Replacement Equipment".)

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 and Waivers From CON

Current law exempts the following from 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.

Certain Affiliates. The bill retains these CON exemptions but specifies that they do not apply if a nursing home, residential care home, or rest home is or will be created, acquired, operated, or in any other

way related to or affiliated with or under the complete or partial ownership or control of a facility, institution, or affiliate that is subject to CON.

New or Expanded Exemptions. The bill creates new and expanded exemptions from CON. It specifies that CON does not apply to (1) any outpatient rehabilitation service agency in operation on January 1, 1998, not just those affiliated with Easter Seals, operated exclusively on an outpatient basis, and eligible for state reimbursement; (2) all clinical laboratories (current law exempts clinical laboratories doing less complex tests); (3) assisted living services agencies; (4) outpatient services offering chronic dialysis; and (5) a clinic operated by the American Foundation.

Registration With OHCA. The bill requires each of these exempted facilities or institutions to 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 until the next September 30. Each exempted entity must renew its exemption annually by filing current information each September.

Community Health Centers. Current law exempts a community health center from CON review if it 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 Department of Public Health (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 this exemption. It requires a center that proposes a capital expenditure up to \$1 million to be exclusively providing primary care or dental 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 or dental services 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.

Projects Needed by a State Agency. The bill allows the OHCA commissioner to grant an exemption from the CON requirements for any nonprofit facility, institution, or provider wanting to engage in any activity, other than terminating a service or facility, if: (1) the proposed and actual capital expenditure does not exceed \$1 million; (2) the activity meets a specific service need identified by a state agency or department and is confirmed as a current need by OHCA; and (3) the head of the state agency or department or the chief court administrator confirms in writing to OHCA that (a) the agency has identified the specific need and it continues to exist, (b) the activity meets all or part of the need and specifies how much of that need the proposal meets, (c) in the case where the proposed activity is relocation of services, the agency determines that the needs of the area previously served will continue to be met in a better or satisfactory manner, (d) in the case of a proposal to transfer all or part of a facility's ownership or control, the agency has investigated the proposal and the entity requesting the change and determined that it would be in the best interests of the state and the clients; and (e) the activity will be cost-effective and well managed.

The nonprofit facility, institution, or provider

seeking the CON exemption must provide OHCA with any information it needs to make a decision. The exemption is limited to part or all of any services, equipment, expenditures, or location directly related to the need or location identified by the agency.

The bill allows OHCA to modify or revoke the exemption at any time following a public review allowing the state agency and the facility, institution, or provider to address specific, identified changed conditions or any problems identified by the state agency or OHCA. OHCA must give a party to any exemption modification or revocation proceeding and the original agency requesting the exemption at least 14 days written notice before it takes any action. They must also be given a copy of the revocation or modification request or a statement by OHCA of the problems reported. Only 48 hours written notice is required if the requesting commissioner, chief court administrator or OHCA commissioner certifies that an emergency condition exists.

CON Waiver for "Year 2000" Computer Capability. The bill allows OHCA, prior to October 1, 2000, to waive CON requirements and grant a CON to a health care facility or institution, including a state health care facility, for purchases necessary for Year 2000 computer capability if they are for: (1) physical plant or nonmedical equipment with a total aggregate cost under \$3 million; (2) for diagnostic or therapeutic medical equipment components or medical equipment Year 2000 capability with a total aggregate cost under \$2 million; or (3) computer hardware or software used for data collection or to interface between medical and data equipment that is used for medical records, data collection, data storage, business functions or similar uses as part of an information system, with a total aggregate cost under \$3 million.

CON Waiver for Replacement Equipment. The bill allows OHCA to waive CON requirements and grant a CON to a health care facility or institution, including state facilities, and providers proposing to replace major medical equipment, imaging equipment, or a linear accelerator if:

1. the facility, institution, or provider previously obtained a CON for the equipment or

accelerator being replaced;

2. the replacement value is not more than the original cost plus an increase of 10% for each 12-month period that has passed since the original CON; and
3. the replacement value or expenditure is less than \$2 million.

CON Exemption for Certain Community Agency Programs.

Current law exempts from CON requirements: (1) a community agency operating a program in a state institution or facility, (2) a nonprofit community agency operating a program identified as closing a service delivery system gap in the statewide service delivery plan in a state institution or facility and receiving funds from DMHAS, or (3) a nonprofit substance abuse facility identified as closing a service gap as the statewide plan and receiving DMHAS funding.

This bill specifies that this exemption should not be construed as crediting a CON exemption for the relocation or termination of services.

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. Under current law, 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. It also allows a CON applicant to request a one-time extension of a letter of intent period up to 30 days, for a maximum of 150 days, if it makes a written request to OHCA before the current letter of intent expires. The extension request must fully explain why it is needed. OHCA must accept or

reject the request within five business days and notify the applicant.

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 or replacement facility, service, or function; relocation of an existing facility or service; change in ownership or control; termination of a service; or a reduction in licensed bed capacity.

Current law requires the letter of intent to include the estimated capital cost. The bill expands this to include the estimated value or expenditure.

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 it. 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, including an affiliate of a hospital or any combination, if (1) for the first three years of operation, the total effect of the proposal on the hospital's, an affiliate's, or any combination's operating budget is projected by the hospital or applicant to exceed 1% of the hospital's actual operating expenses for the most recently completed fiscal year as filed with or determined by 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.

Data Collection Regulations

The bill directs OHCA to adopt regulations for collecting data and information from each health care facility, institution, or provider required to report annually to it. These regulations must require information submission about the operations of the following: (1) parent corporations which own or control the health care facility, institution, or provider; (2) corporations, including limited liability corporations, where the health care facility, institution, provider, its parent, an affiliate, or any combination owns more than 50% of the stock, or if a nonstock corporation, is the sole member; and (3) any partnerships in which the health care facility, institution, its parent or an affiliate, or any combination owns more than 50% interest.

Joint Review With DSS

Under the law, nursing homes, rest homes, residential care homes, and ICF/MRs participating in Medicaid must get a CON from DSS for ownership changes before initial license; adding expanding, or reducing, services; and capital expenditures over a certain amount. The law requires these facilities, when proposing to acquire imaging equipment costing over \$400,000 to obtain a CON from OHCA after getting DSS approval.

This bill allows OHCA, after consulting with DSS, to perform a joint or simultaneous review with DSS before the facility obtains the imaging equipment.

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

Under current 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 or medical imaging equipment for failing to file required data. The bill also (1) applies the penalty to providers owning, operating, or acquiring linear accelerators or any health care facility, institution, or provider required to file data and (2) extends the penalty to cover failure to file information required by statute or special act.

By law, 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.

BACKGROUND

Related Bill

sSB 348 (File 304), favorably reported by the Public Health and Insurance committees, 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. The committee favorably reported the bill (File 576) on April 16, changing the educational and training requirements for municipal health directors. The House referred the bill to the

Finance, Revenue and Bonding Committee, which reported it favorably without change on April 23.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute
Yea 21 Nay 2

Human Services Committee

Joint Favorable Substitute
Yea 12 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Report
Yea 41 Nay 0