



General Assembly

**Amendment**

February Session, 2022

LCO No. 4876



Offered by:

REP. WOOD K., 29<sup>th</sup> Dist.

To: Subst. House Bill No. 5449

File No. 343

Cal. No. 255

**"AN ACT CONCERNING CERTIFICATES OF NEED."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Subsection (a) of section 19a-639a of the general statutes is  
4 repealed and the following is substituted in lieu thereof (*Effective from*  
5 *passage*):

6 (a) An application for a certificate of need shall be filed with the unit  
7 in accordance with the provisions of this section and any regulations  
8 adopted by the Office of Health Strategy. The application shall address  
9 the guidelines and principles set forth in (1) subsection (a) of section 19a-  
10 639, and (2) regulations adopted by the department. The applicant shall  
11 include with the application a nonrefundable application fee [of five  
12 hundred dollars] based on the cost of the project. The amount of the fee

13 shall be as follows: (A) One thousand five hundred dollars for a project  
14 that will cost not greater than fifty thousand dollars; (B) two thousand  
15 five hundred dollars for a project that will cost greater than fifty  
16 thousand dollars but not greater than one hundred thousand dollars;  
17 (C) five thousand dollars for a project that will cost greater than one  
18 hundred thousand dollars but not greater than five hundred thousand  
19 dollars; (D) ten thousand dollars for a project that will cost greater than  
20 five hundred thousand dollars but not greater than one million dollars;  
21 (E) fifteen thousand dollars for a project that will cost greater than one  
22 million dollars but not greater than five million dollars; (F) twenty  
23 thousand dollars for a project that will cost greater than five million  
24 dollars but not greater than ten million dollars; and (G) twenty-five  
25 thousand dollars for a project that will cost greater than ten million  
26 dollars.

27 Sec. 2. Section 19a-630 of the general statutes is repealed and the  
28 following is substituted in lieu thereof (*Effective from passage*):

29 As used in this chapter, unless the context otherwise requires:

30 (1) "Affiliate" means a person, entity or organization controlling,  
31 controlled by or under common control with another person, entity or  
32 organization. Affiliate does not include a medical foundation organized  
33 under chapter 594b.

34 (2) "Applicant" means any person or health care facility that applies  
35 for a certificate of need pursuant to section 19a-639a, as amended by this  
36 act.

37 (3) "Bed capacity" means the total number of inpatient beds in a  
38 facility licensed by the Department of Public Health under sections 19a-  
39 490 to 19a-503, inclusive.

40 (4) "Capital expenditure" means an expenditure that under generally  
41 accepted accounting principles consistently applied is not properly  
42 chargeable as an expense of operation or maintenance and includes  
43 acquisition by purchase, transfer, lease or comparable arrangement, or

44 through donation, if the expenditure would have been considered a  
45 capital expenditure had the acquisition been by purchase.

46 (5) "Certificate of need" means a certificate issued by the unit.

47 (6) "Days" means calendar days.

48 (7) "Executive director" means the executive director of the Office of  
49 Health Strategy.

50 (8) "Free clinic" means a private, nonprofit community-based  
51 organization that provides medical, dental, pharmaceutical or mental  
52 health services at reduced cost or no cost to low-income, uninsured and  
53 underinsured individuals.

54 (9) "Large group practice" means eight or more full-time equivalent  
55 physicians, legally organized in a partnership, professional corporation,  
56 limited liability company formed to render professional services,  
57 medical foundation, not-for-profit corporation, faculty practice plan or  
58 other similar entity (A) in which each physician who is a member of the  
59 group provides substantially the full range of services that the physician  
60 routinely provides, including, but not limited to, medical care,  
61 consultation, diagnosis or treatment, through the joint use of shared  
62 office space, facilities, equipment or personnel; (B) for which  
63 substantially all of the services of the physicians who are members of  
64 the group are provided through the group and are billed in the name of  
65 the group practice and amounts so received are treated as receipts of the  
66 group; or (C) in which the overhead expenses of, and the income from,  
67 the group are distributed in accordance with methods previously  
68 determined by members of the group. An entity that otherwise meets  
69 the definition of group practice under this section shall be considered a  
70 group practice although its shareholders, partners or owners of the  
71 group practice include single-physician professional corporations,  
72 limited liability companies formed to render professional services or  
73 other entities in which beneficial owners are individual physicians.

74 (10) "Health care facility" means (A) hospitals licensed by the

75 Department of Public Health under chapter 368v; (B) specialty hospitals;  
76 (C) freestanding emergency departments; (D) outpatient surgical  
77 facilities, as defined in section 19a-493b and licensed under chapter  
78 368v; (E) a hospital or other facility or institution operated by the state  
79 that provides services that are eligible for reimbursement under Title  
80 XVIII or XIX of the federal Social Security Act, 42 USC 301, as amended;  
81 (F) a central service facility; (G) mental health facilities; (H) substance  
82 abuse treatment facilities; and (I) any other facility requiring certificate  
83 of need review pursuant to subsection (a) of section 19a-638. "Health  
84 care facility" includes any parent company, subsidiary, affiliate or joint  
85 venture, or any combination thereof, of any such facility.

86 (11) "Nonhospital based" means located at a site other than the main  
87 campus of the hospital.

88 (12) "Office" means the Office of Health Strategy.

89 (13) "Person" means any individual, partnership, corporation, limited  
90 liability company, association, governmental subdivision, agency or  
91 public or private organization of any character, but does not include the  
92 agency conducting the proceeding.

93 (14) "Physician" has the same meaning as provided in section 20-13a.

94 (15) "Reduction" means any modification to a health care service by a  
95 hospital or hospital system that, independently or in conjunction with  
96 another modification or change, results in a fifty per cent or greater  
97 decrease in the availability of such health care service offered by such  
98 hospital or hospital system, or reduces the service area covered by such  
99 hospital or hospital system.

100 (16) "Termination of services" means the cessation of any services for  
101 a period greater than one hundred eighty days.

102 ~~[(15)]~~ (17) "Transfer of ownership" means a transfer that impacts or  
103 changes the governance or controlling body of a health care facility,  
104 institution or large group practice, including, but not limited to, all

105 affiliations, mergers or any sale or transfer of net assets of a health care  
106 facility.

107 [(16)] (18) "Unit" means the Health Systems Planning Unit.

108 Sec. 3. Subsection (a) of section 19a-486c of the general statutes is  
109 repealed and the following is substituted in lieu thereof (*Effective October*  
110 *1, 2022*):

111 (a) The Attorney General shall deny an application as not in the  
112 public interest if the Attorney General determines that one or more of  
113 the following conditions exist: (1) The transaction is prohibited by  
114 Connecticut statutory or common law governing nonprofit entities,  
115 trusts or charities; (2) the nonprofit hospital failed to exercise due  
116 diligence in (A) deciding to transfer, (B) selecting the purchaser, (C)  
117 obtaining a fairness evaluation from an independent person expert in  
118 such agreements, or (D) negotiating the terms and conditions of the  
119 transfer; (3) the nonprofit hospital failed to disclose any conflict of  
120 interest, including, but not limited to, conflicts of interest pertaining to  
121 board members, officers, key employees and experts of the hospital, the  
122 purchaser or any other party to the transaction; (4) the nonprofit  
123 hospital will not receive fair market value for its assets, which, for  
124 purposes of this subsection, means the most likely price that the assets  
125 would bring in a sale in a competitive and open market under all  
126 conditions requisite to a fair sale, with the buyer and seller each acting  
127 prudently, knowledgeably and in their own best interest, and with a  
128 reasonable time being allowed for exposure in the open market; (5) the  
129 fair market value of the assets has been manipulated by any person in a  
130 manner that causes the value of the assets to decrease; (6) the financing  
131 of the transaction by the nonprofit hospital will place the nonprofit  
132 hospital's assets at an unreasonable risk; (7) any management contract  
133 contemplated under the transaction is not for reasonable fair value; (8)  
134 a sum equal to the fair market value of the nonprofit hospital's assets  
135 (A) is not being transferred to one or more persons to be selected by the  
136 superior court for the judicial district where the nonprofit hospital is  
137 located who are not affiliated through corporate structure, governance

138 or membership with either the nonprofit hospital or the purchaser,  
139 unless the nonprofit hospital continues to operate on a nonprofit basis  
140 after the transaction and such sum is transferred to the nonprofit  
141 hospital to provide health care services, and (B) is not being used for one  
142 of the following purposes: (i) For appropriate charitable health care  
143 purposes consistent with the nonprofit hospital's original purpose, (ii)  
144 for the support and promotion of health care generally in the affected  
145 community, or (iii) with respect to any assets held by the nonprofit  
146 hospital that are subject to a use restriction imposed by a donor, for a  
147 purpose consistent with the intent of said donor; [or] (9) the nonprofit  
148 hospital or the purchaser has failed to provide the Attorney General  
149 with information and data sufficient to evaluate the proposed  
150 agreement adequately, provided the Attorney General has notified the  
151 nonprofit hospital or the purchaser of the inadequacy of the information  
152 or data and has provided a reasonable opportunity to remedy such  
153 inadequacy; or (10) the purchaser has not provided evidence of  
154 sufficient representation from the community on the hospital's  
155 governing board, provided the Attorney General has notified the  
156 purchaser of the failure to provide such evidence and provided a  
157 reasonable opportunity to remedy such failure. For the purposes of this  
158 section, "sufficient representation from the community" means  
159 members of the hospital's community, as defined by the nonprofit  
160 hospital's most recent community health needs assessment conducted  
161 pursuant to Section 501(r) of the Internal Revenue Code of 1986, or any  
162 subsequent corresponding internal revenue code of the United States,  
163 as amended from time to time, who are charged with representing  
164 community interests and are not otherwise compensated, employed or  
165 affiliated with the hospital, comprise at least fifty-one per cent of the  
166 voting members of the governing board of such hospital.

167 Sec. 4. Subsection (a) of section 19a-653 of the general statutes is  
168 repealed and the following is substituted in lieu thereof (*Effective from*  
169 *passage*):

170 (a) Any person or health care facility or institution that is required to  
171 file a certificate of need for any of the activities described in section 19a-

172 638, and any person or health care facility or institution that is required  
173 to file data or information under any public or special act or under this  
174 chapter or sections 19a-486 to 19a-486h, inclusive, or any regulation  
175 adopted or order issued under this chapter or said sections, which  
176 [wilfully] fails to seek certificate of need approval for any of the  
177 activities described in section 19a-638 or to so file within prescribed time  
178 periods, shall be subject to a civil penalty of up to one thousand dollars  
179 a day for each day such person or health care facility or institution  
180 conducts any of the described activities without certificate of need  
181 approval as required by section 19a-638 or for each day such  
182 information is missing, incomplete or inaccurate. Any civil penalty  
183 authorized by this section shall be imposed by the Office of Health  
184 Strategy in accordance with subsections (b) to (e), inclusive, of this  
185 section.

186 Sec. 5. Section 19a-633 of the general statutes is repealed and the  
187 following is substituted in lieu thereof (*Effective from passage*):

188 (a) The executive director, or any agent authorized by such executive  
189 director to conduct any inquiry, investigation or hearing under the  
190 provisions of this chapter, shall have power to administer oaths and take  
191 testimony under oath relative to the matter of inquiry or investigation.  
192 At any hearing ordered by the unit, the executive director or such agent  
193 having authority by law to issue such process may subpoena witnesses  
194 and require the production of records, papers and documents pertinent  
195 to such inquiry. If any person disobeys such process or, having  
196 appeared in obedience thereto, refuses to answer any pertinent question  
197 put to such person by the executive director or such executive director's  
198 authorized agent or to produce any records and papers pursuant  
199 thereto, the executive director or such executive director's agent may  
200 apply to the superior court for the judicial district of Hartford or for the  
201 judicial district wherein the person resides or wherein the business has  
202 been conducted, or to any judge of said court if the same is not in  
203 session, setting forth such disobedience to process or refusal to answer,  
204 and said court or such judge shall cite such person to appear before said  
205 court or such judge to answer such question or to produce such records

206 and papers.

207 (b) If the executive director or such agent determines that any person,  
208 health care facility or institution has violated, is violating or is about to  
209 violate any provision of this chapter, or any regulation or order of the  
210 unit, the executive director or such agent may issue a cease and desist  
211 order requiring the immediate cessation of the activity. The Office of  
212 Health Strategy shall provide such person, health care facility or  
213 institution an opportunity for a hearing regarding the issuance of such  
214 cease and desist order, in accordance with subsections (c) and (d) of this  
215 section. A cease and desist order issued pursuant to this subsection shall  
216 be binding upon all persons, health care facilities or institutions against  
217 whom it is issued, any agent of such person, facility or institution and  
218 any independent contractors engaged by any such person, facility or  
219 institution. Any recipient of such order shall immediately comply with  
220 it upon receipt.

221 (c) If the executive director or such agent issues a cease and desist  
222 order pursuant to subsection (b) of this section, such executive director  
223 or agent shall notify the person, health care facility or institution against  
224 whom such order is issued by first-class mail or personal service. The  
225 notice shall include: (1) A reference to the sections of the general  
226 statutes, regulations of Connecticut state agencies or orders involved;  
227 (2) a short and plain language statement of the matters asserted or  
228 charged; (3) a description of the activity to cease; (4) a statement  
229 concerning the right to a hearing of such person, health care facility or  
230 institution; and (5) a statement that such person, health care facility or  
231 institution may, not later than ten business days after receipt of such  
232 notice, make a request for a hearing on the matters asserted, to be sent  
233 to the executive director or such agent.

234 (d) The person, health care facility or institution to whom such notice  
235 is provided pursuant to subsection (c) of this section may, not later than  
236 ten business days after receipt of the notice, make written application to  
237 the Office of Health Strategy to request a hearing to show such violation  
238 has not occurred, a certificate of need was not required, or each required



239 certificate of need was obtained. A failure to make a timely request for  
240 a hearing shall result in such cease and desist order becoming final. Each  
241 hearing held under this subsection shall be conducted pursuant to  
242 sections 4-176e to 4-184, inclusive. After a hearing, the office may  
243 mitigate or waive a cease and desist order issued pursuant to this  
244 subsection upon such terms and conditions as, in the office's discretion,  
245 it deems proper or necessary upon consideration of any extenuating  
246 factors or circumstances.

247 (e) Following a hearing before the Office of Health Strategy pursuant  
248 to subsection (d) of this section, a final cease and desist order of the office  
249 shall be subject to appeal in accordance with section 4-183, except that  
250 any such appeal shall be taken to the superior court for the judicial  
251 district of New Britain. Such final order shall not be subject to appeal  
252 under any other provision of the general statutes. No challenge to any  
253 such final order shall be allowed as to any issue that could have been  
254 raised by an appeal of an earlier order, denial or other final decision by  
255 the office.

256 (f) Any cease and desist order issued under this section may be  
257 enforced by the Attorney General pursuant to section 19a-642, as  
258 amended by this act.

259 Sec. 6. (NEW) (*Effective from passage*) On and after January 1, 2023, the  
260 Office of Health Strategy shall post on its Internet web site an  
261 informational chart summarizing the history of regulation in the state of  
262 capital expenditures by health care providers, which relate to the  
263 construction and renovation of buildings, for the period of 1990 to 2010,  
264 inclusive. For the purposes of this section, "capital expenditures" has the  
265 same meaning as provided in section 19a-630 of the general statutes, as  
266 amended by this act.

267 Sec. 7. Section 4-5 of the 2022 supplement to the general statutes, as  
268 amended by section 6 of public act 17-237, section 279 of public act 17-2  
269 of the June special session, section 20 of public act 18-182, section 283 of  
270 public act 19-117 and section 254 of public act 21-2 of the June special

271 session, is repealed and the following is substituted in lieu thereof  
272 (*Effective July 1, 2022*):

273 As used in sections 4-6, 4-7 and 4-8, the term "department head"  
274 means Secretary of the Office of Policy and Management, Commissioner  
275 of Administrative Services, Commissioner of Revenue Services,  
276 Banking Commissioner, Commissioner of Children and Families,  
277 Commissioner of Consumer Protection, Commissioner of Correction,  
278 Commissioner of Economic and Community Development, State Board  
279 of Education, Commissioner of Emergency Services and Public  
280 Protection, Commissioner of Energy and Environmental Protection,  
281 Commissioner of Agriculture, Commissioner of Public Health,  
282 Insurance Commissioner, Labor Commissioner, Commissioner of  
283 Mental Health and Addiction Services, Commissioner of Social Services,  
284 Commissioner of Developmental Services, Commissioner of Motor  
285 Vehicles, Commissioner of Transportation, Commissioner of Veterans  
286 Affairs, Commissioner of Housing, Commissioner of Rehabilitation  
287 Services, the Commissioner of Early Childhood, the executive director  
288 of the Office of Health Strategy, the executive director of the Office of  
289 Military Affairs, the executive director of the Technical Education and  
290 Career System and the Chief Workforce Officer. As used in sections 4-6  
291 and 4-7, "department head" also means the Commissioner of Education.

292 Sec. 8. Section 19a-642 of the general statutes is repealed and the  
293 following is substituted in lieu thereof (*Effective from passage*):

294 The Superior Court on application of the [unit] Office or the Attorney  
295 General, may enforce, by appropriate decree or process, any provision  
296 of this chapter or any act or any order of the unit rendered in pursuance  
297 of any statutory provision."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	19a-639a(a)
Sec. 2	<i>from passage</i>	19a-630
Sec. 3	<i>October 1, 2022</i>	19a-486c(a)

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Sec. 4	<i>from passage</i>	19a-653(a)
Sec. 5	<i>from passage</i>	19a-633
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>July 1, 2022</i>	4-5
Sec. 8	<i>from passage</i>	19a-642