



General Assembly

Amendment

February Session, 2022

LCO No. 4998



Offered by:
REP. WOOD K., 29th 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4 repealed and the following is substituted in lieu thereof (*Effective from*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 Section 19a-630 of the general statutes is repealed and the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) "Termination of services" means the cessation of any services for
95 a period greater than one hundred eighty days.

96 ~~[(15)]~~ (16) "Transfer of ownership" means a transfer that impacts or
97 changes the governance or controlling body of a health care facility,
98 institution or large group practice, including, but not limited to, all
99 affiliations, mergers or any sale or transfer of net assets of a health care
100 facility.

101 ~~[(16)]~~ (17) "Unit" means the Health Systems Planning Unit.

102 Sec. 3. Subsection (a) of section 19a-486c of the general statutes is
103 repealed and the following is substituted in lieu thereof (*Effective October*

104 1, 2022):

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

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

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

164 (a) Any person or health care facility or institution that is required to
165 file a certificate of need for any of the activities described in section 19a-
166 638, and any person or health care facility or institution that is required
167 to file data or information under any public or special act or under this
168 chapter or sections 19a-486 to 19a-486h, inclusive, or any regulation
169 adopted or order issued under this chapter or said sections, which
170 [wilfully] negligently fails to seek certificate of need approval for any of
171 the activities described in section 19a-638 or to so file within prescribed

172 time periods, shall be subject to a civil penalty of up to one thousand
173 dollars a day for each day such person or health care facility or
174 institution conducts any of the described activities without certificate of
175 need approval as required by section 19a-638 or for each day such
176 information is missing, incomplete or inaccurate. Any civil penalty
177 authorized by this section shall be imposed by the Office of Health
178 Strategy in accordance with subsections (b) to (e), inclusive, of this
179 section.

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

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

201 (b) If the executive director or such agent determines that any person,
202 health care facility or institution has violated, is violating or is about to
203 violate any provision of this chapter, or any regulation or order of the
204 unit, the executive director or such agent may issue a cease and desist

205 order requiring the immediate cessation of the activity. The Office of
206 Health Strategy shall provide such person, health care facility or
207 institution an opportunity for a hearing regarding the issuance of such
208 cease and desist order, in accordance with subsections (c) and (d) of this
209 section. A cease and desist order issued pursuant to this subsection shall
210 be binding upon all persons, health care facilities or institutions against
211 whom it is issued, any agent of such person, facility or institution and
212 any independent contractors engaged by any such person, facility or
213 institution. Any recipient of such order shall immediately comply with
214 it upon receipt.

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

228 (d) The person, health care facility or institution to whom such notice
229 is provided pursuant to subsection (c) of this section may, not later than
230 ten business days after receipt of the notice, make written application to
231 the Office of Health Strategy to request a hearing to show such violation
232 has not occurred, a certificate of need was not required, or each required
233 certificate of need was obtained. A failure to make a timely request for
234 a hearing shall result in such cease and desist order becoming final. Each
235 hearing held under this subsection shall be conducted pursuant to
236 sections 4-176e to 4-184, inclusive. After a hearing, the office may
237 mitigate or waive a cease and desist order issued pursuant to this
238 subsection upon such terms and conditions as, in the office's discretion,

239 it deems proper or necessary upon consideration of any extenuating
240 factors or circumstances.

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

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

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

261 Sec. 7. Section 4-5 of the 2022 supplement to the general statutes, as
262 amended by section 6 of public act 17-237, section 279 of public act 17-2
263 of the June special session, section 20 of public act 18-182, section 283 of
264 public act 19-117 and section 254 of public act 21-2 of the June special
265 session, is repealed and the following is substituted in lieu thereof
266 (*Effective July 1, 2022*):

267 As used in sections 4-6, 4-7 and 4-8, the term "department head"
268 means Secretary of the Office of Policy and Management, Commissioner
269 of Administrative Services, Commissioner of Revenue Services,
270 Banking Commissioner, Commissioner of Children and Families,

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

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

288 The Superior Court on application of the [unit] office or the Attorney
 289 General, may enforce, by appropriate decree or process, any provision
 290 of this chapter or any act or any order of the [unit] office rendered in
 291 pursuance 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)
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