
OLR Bill Analysis

sSB 290

AN ACT CONCERNING CERTIFICATES OF NEED FOR LONG-TERM CARE FACILITIES.

SUMMARY

This bill makes various changes to the Department of Social Services' (DSS) certificate of need (CON) process for certain long-term care facilities. By law, nursing homes, residential care homes, rest homes, and intermediate care facilities for people with intellectual disabilities must generally receive DSS approval when (1) introducing new services, (2) changing ownership, (3) relocating licensed beds or decreasing bed capacity, (4) terminating a service, or (5) incurring certain capital expenditures.

Among other things, the bill allows DSS to approve requests to build nontraditional, small-house style nursing homes under certain conditions and establishes factors DSS must consider when deciding on these requests. It also broadens other exemptions to the general moratorium on nursing home beds.

The bill adds additional criteria that DSS must consider when evaluating certain types of CON requests, including requests to relocate beds.

The bill allows the DSS commissioner to place conditions on any decision approving or modifying a CON request as she deems necessary. It also allows DSS to hold an informal conference with the facility when reviewing a request to discuss the CON application. If the commissioner modifies the request, the bill requires her to notify the facility before issuing the decision and provide an opportunity for an informal conference to discuss the modifications.

The bill subjects adverse CON decisions to provisions on proposed final decisions under the state's Uniform Administrative Procedures Act

(UAPA).

The bill also makes minor changes to timing and notification requirements for public hearings and makes other technical and conforming changes.

By law, the DSS commissioner must adopt regulations to implement the CON process provisions and may adopt regulations on the nursing home bed moratorium provisions.

EFFECTIVE DATE: July 1, 2022

NURSING HOME BED MORATORIUM

Existing law establishes a nursing home bed moratorium that generally prohibits DSS from accepting or approving requests for additional nursing home beds, with certain exceptions. The bill adds a new exception that allows DSS to approve a proposal to build a nontraditional, small-house style nursing home designed to enhance the quality of life for residents as long as the facility agrees to reduce its total number of licensed beds by a percentage the DSS commissioner determines in accordance with DSS's strategic plan for long-term care.

The bill also broadens two existing exceptions. One exception allows DSS to approve beds associated with a continuing care facility that are not used in the Medicaid program. For this exception, the bill eliminates a requirement that the ratio of proposed nursing home beds to the continuing care facility's independent living units is within applicable industry standards. For these facilities, the bill also eliminates a requirement that DSS only consider the need for beds for current and prospective continuing care facility residents when considering whether there is clear public need for additional nursing home beds.

Another exception allows DSS to approve licensed Medicaid nursing facility beds that will be relocated from existing facilities to a new facility under certain criteria (see below). The bill additionally allows DSS to approve facilities relocated to a replacement facility under this exception.

By law, the moratorium exception that allows DSS to approve relocation of nursing home beds only applies if:

1. no new Medicaid certified beds are added;
2. due to the relocation, at least one currently licensed facility is closed in the transaction;
3. the relocation is done within available appropriations;
4. the facility participates in the Money Follows the Person demonstration project;
5. the relocation will not adversely affect bed availability in the area of need;
6. the facility receives an approved CON and obtains associated capital expenditures; and
7. the facilities included in the bed relocation and closure are in accordance with the long-term care strategic plan.

Under the bill, as is generally the case under the moratorium, a proposal to relocate a nursing home bed from an existing facility to a new facility may not increase the number of Medicaid certified beds. The bill also requires that the proposal result in a closure of at least one currently licensed facility in addition to the one that is being replaced.

Additionally, the bill requires the DSS commissioner to consider the above criteria when evaluating a CON request to relocate licensed nursing facility beds from an existing facility to another licensed facility or a new or replacement facility. Under the bill, she must also consider priority needs identified in the long-term care strategic plan.

FACTORS CONSIDERED IN CON DECISIONS

By law, when determining whether to grant, modify, or deny a CON application, the DSS commissioner must consider several factors, including:

1. the request's financial feasibility and impact on the applicant's rates and financial condition;
2. whether there is a clear public need for the request;
3. the relationship of any proposed change to the applicant's current utilization statistics;
4. the business interests and personal background of all owners, partners, associates, incorporators, directors, sponsors, stockholders, and operators; and
5. any other factor DSS deems relevant.

The bill requires DSS to consider how the request contributes to the quality, accessibility, and cost-effectiveness of long-term care delivery, rather than health care delivery, and additionally requires DSS to consider the proposal's effect on utilization statistics for other facilities in the applicant's service area. The bill eliminates requirements that DSS consider the request's relationship to the state health plan and include a written explanation in its decision when the decision conflicts with the plan.

Current law requires DSS, when determining whether there is a public need for a request to relocate beds, to consider whether there is a demonstrated bed need in the towns within a 15-mile radius of the town where the proposal would relocate beds. The bill specifies that this only applies to a request to relocate beds to a replacement facility, and additionally requires DSS to consider whether the proposal will adversely affect bed availability in the applicant's service area.

For applications to establish a new or replacement nursing facility, the bill requires DSS to consider whether the proposed facility is a nontraditional, small-house style nursing facility and incorporates goals for nursing facilities under the long-term care strategic plan, including:

1. promoting person-centered care,
2. providing enhanced quality of care,

3. creating community space for residents, and
4. developing stronger connections between residents and the surrounding community.

CON REQUEST REVIEW AND APPROVAL PROCESS

Informal Conferences and Approval Conditions

By law, the DSS commissioner must grant, modify, or deny a CON request within 90 days after receiving it, with certain exceptions. The bill allows DSS to hold an informal conference with the facility while it reviews the request to discuss the CON application. Under the bill, if the DSS commissioner modifies the request, she must notify the facility before issuing the decision and provide the applicant with an opportunity for an informal conference to discuss the modifications.

The bill also allows the DSS commissioner to place conditions on any decision approving or modifying a CON request as she deems necessary, including project and Medicaid reimbursement details and applicant requirements for summary and audit purposes.

CON Process for Capital Expenditures

Existing law establishes a similar process for facilities to request a CON from DSS to incur capital expenditures over \$2 million or over \$1 million if the expenditure increases the facility's square footage by 5,000 square feet or 5% of the existing square footage, whichever is larger.

Like the process described above, the DSS commissioner must grant, modify, or deny a request within 90 days, with certain exceptions. The bill allows her to place conditions on any decision approving or modifying a request as she deems necessary to address specified concerns, including project and Medicaid reimbursement details and applicant requirements for summary and audit purposes. However, existing law, unchanged by the bill, prohibits the commissioner, or her designee, from prescribing any condition not directly related to the capital program's scope and within the facility's control. The law explicitly prohibits any condition or limitation on the facility's indebtedness in connection with a bond issued, the principal amount of

any bond issued, or any other details or particulars related to the capital expenditure's financing.

Additional DSS Stipulations

For CON applications, the bill allows the DSS commissioner to request that any applicant seeking to replace an existing facility reduce the number of beds in the new facility by a percentage consistent with the long-term care strategic plan. If the applicant owns or operates more than one nursing facility and seeks to replace an existing facility with a new facility, the bill allows the DSS commissioner to request that the applicant close two or more facilities before approving a proposal to build a new one.

ADVERSE PROPOSED FINAL DECISIONS

Under the bill, for all CON requests, if the DSS commissioner's designee recommends denying the request, the decision is subject to provisions on proposed final decisions under the state's Uniform Administrative Procedure Act (UAPA).

Under these UAPA provisions, if a majority of agency members who will render a final decision have not heard the matter or read the record, the decision, if adverse to the facility, may not be rendered until a proposed final decision is served on the parties and each has an opportunity to file exceptions and present briefs and oral argument to agency members who will render the final decision. These proposed final decisions must be in writing and include reasons for the decision, finding of facts, and a legal conclusion on each issue of fact or law necessary to the decision (CGS § 4-179).

PUBLIC HEARING NOTICE AND TIMING

For CON requests other than those to relocate beds, existing law requires that the DSS commissioner or her designee hold a public hearing. Current law requires her to do so within 30 days after receiving either a letter of intent or a CON application, whichever is received first. The bill instead requires her to do so within 30 days after receiving a CON application.

Additionally, the bill (1) decreases, from 14 to 10 days, the amount of advance notice DSS must provide the facility and the public before the hearing and (2) requires DSS to notify the facility by email or first-class mail rather than certified mail.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 20 Nay 0 (03/24/2022)