



General Assembly

February Session, 2022

***Raised Bill No. 290***

LCO No. 2094



Referred to Committee on HUMAN SERVICES

Introduced by:  
(HS)

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-352 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2022*):

3 (a) For the purposes of this section and section 17b-353, as amended  
4 by this act, "facility" means a residential facility for persons with  
5 intellectual disability licensed pursuant to section 17a-277 and certified  
6 to participate in the Title XIX Medicaid program as an intermediate care  
7 facility for individuals with intellectual disabilities, a nursing home, rest  
8 home or residential care home, as defined in section 19a-490. "Facility"  
9 does not include a nursing home that does not participate in the  
10 Medicaid program and is associated with a continuing care facility as  
11 described in section 17b-520.

12 (b) Any facility which intends to (1) transfer all or part of its  
13 ownership or control prior to being initially licensed; (2) introduce any  
14 additional function or service into its program of care or expand an  
15 existing function or service; (3) terminate a service or decrease

16 substantially its total bed capacity; or (4) relocate all or a portion of such  
17 facility's licensed beds, to a new facility or replacement facility, shall  
18 submit a complete request for permission to implement such transfer,  
19 addition, expansion, increase, termination, decrease or relocation of  
20 facility beds to the Department of Social Services with such information  
21 as the department requires, provided no permission or request for  
22 permission to close a facility is required when a facility in receivership  
23 is closed by order of the Superior Court pursuant to section 19a-545. The  
24 Commissioner of Social Services shall consider the criteria in  
25 subdivisions (3) and (4) of subsection (a) of section 17b-354, as amended  
26 by this act, when evaluating a certificate of need request to relocate  
27 nursing facility beds from an existing facility to another licensed nursing  
28 facility or to a new facility or replacement facility. The Office of the  
29 Long-Term Care Ombudsman pursuant to section 17a-405 shall be  
30 notified by the facility of any proposed actions pursuant to this  
31 subsection at the same time the request for permission is submitted to  
32 the department and when a facility in receivership is closed by order of  
33 the Superior Court pursuant to section 19a-545.

34 (c) A facility may submit a petition for closure to the Department of  
35 Social Services. The Department of Social Services may authorize the  
36 closure of a facility if the facility's management demonstrates to the  
37 satisfaction of the Commissioner of Social Services in the petition for  
38 closure that the facility (1) is not viable based on actual and projected  
39 operating losses; (2) has an occupancy rate of less than seventy per cent  
40 of the facility's licensed bed capacity; (3) closure is consistent with the  
41 strategic rebalancing plan developed in accordance with section 17b-  
42 369, including bed need by geographical region; (4) is in compliance  
43 with the requirements of Sections 1128I(h) and 1819(h)(4) of the Social  
44 Security Act and 42 CFR 483.75; and (5) is not providing special services  
45 that would go unmet if the facility closes. The department shall review  
46 a petition for closure to the extent it deems necessary and the facility  
47 shall submit information the department requests or deems necessary  
48 to substantiate that the facility closure is consistent with the provisions  
49 of this subsection. The facility shall submit information the department

50 requests or deems necessary to allow the department to provide  
51 oversight during this process. The Office of the Long-Term Care  
52 Ombudsman shall be notified by the facility at the same time as a  
53 petition for closure is submitted to the department. Any facility acting  
54 pursuant to this subsection shall provide written notice, on the same  
55 date that the facility submits its petition for closure, to all patients,  
56 guardians or conservators, if any, or legally liable relatives or other  
57 responsible parties, if known, and shall post such notice in a  
58 conspicuous location at the facility. The facility's written notice shall be  
59 accompanied by an informational letter issued jointly from the Office of  
60 the Long-Term Care Ombudsman and the Department of Rehabilitation  
61 Services on patients' rights and services available as they relate to the  
62 petition for closure. The informational letter shall also state the date and  
63 time that the Office of the Long-Term Care Ombudsman and the  
64 Department of Public Health will hold an informational session at the  
65 facility for patients, guardians or conservators, if any, and legally liable  
66 relatives or other responsible parties, if known, about their rights and  
67 the process concerning a petition for closure. The notice shall state: (A)  
68 The date the facility submitted the petition for closure, (B) that only the  
69 Department of Social Services has the authority to either grant or deny  
70 the petition for closure, (C) that the Department of Social Services has  
71 up to thirty days to grant or deny the petition for closure, (D) a brief  
72 description of the reason or reasons for submitting the petition for  
73 closure, (E) that no patient shall be involuntarily transferred or  
74 discharged within or from a facility pursuant to state and federal law  
75 because of the filing of a petition for closure, (F) that all patients have a  
76 right to appeal any proposed transfer or discharge, and (G) the name,  
77 mailing address and telephone number of the Office of the Long-Term  
78 Care Ombudsman and local legal aid office. The commissioner shall  
79 grant or deny a petition for closure within thirty days of receiving such  
80 request.

81 (d) An applicant, prior to submitting a certificate of need application,  
82 shall request, in writing, application forms and instructions from the  
83 department. The request shall include: (1) The name of the applicant or

84 applicants; (2) a statement indicating whether the application is for (A)  
85 a new, additional, expanded or replacement facility, service or function  
86 or relocation of facility beds, (B) a termination or reduction in a  
87 presently authorized service or bed capacity, or (C) any new, additional  
88 or terminated beds and their type; (3) the estimated capital cost; (4) the  
89 town where the project is or will be located; and (5) a brief description  
90 of the proposed project. Such request shall be deemed a letter of intent.  
91 No certificate of need application shall be considered submitted to the  
92 department unless a current letter of intent, specific to the proposal and  
93 in accordance with the provisions of this subsection, has been on file  
94 with the department for not less than ten business days. For purposes of  
95 this subsection, "a current letter of intent" means a letter of intent on file  
96 with the department for not more than one hundred eighty days. A  
97 certificate of need application shall be deemed withdrawn by the  
98 department, if a department completeness letter is not responded to  
99 within one hundred eighty days. The Office of the Long-Term Care  
100 Ombudsman shall be notified by the facility at the same time as the letter  
101 of intent is submitted to the department.

102 (e) Any facility acting pursuant to subdivision (3) of subsection (b) of  
103 this section shall provide written notice, at the same time it submits its  
104 letter of intent, to all patients, guardians or conservators, if any, or  
105 legally liable relatives or other responsible parties, if known, and shall  
106 post such notice in a conspicuous location at the facility. The facility's  
107 written notice shall be accompanied by an informational letter issued  
108 jointly from the Office of the Long-Term Care Ombudsman and the  
109 Department of Aging and Disability Services on patients' rights and  
110 services available as they relate to the letter of intent. The notice shall  
111 state the following: (1) The projected date the facility will be submitting  
112 its certificate of need application, (2) that only the Department of Social  
113 Services has the authority to either grant, modify or deny the  
114 application, (3) that the Department of Social Services has up to ninety  
115 days to grant, modify or deny the certificate of need application, (4) a  
116 brief description of the reason or reasons for submitting a request for  
117 permission, (5) that no patient shall be involuntarily transferred or

118 discharged within or from a facility pursuant to state and federal law  
119 because of the filing of the certificate of need application, (6) that all  
120 patients have a right to appeal any proposed transfer or discharge, and  
121 (7) the name, mailing address and telephone number of the Office of the  
122 Long-Term Care Ombudsman and local legal aid office.

123 (f) The [department] Department of Social Services shall review a  
124 request made pursuant to subsection (b) of this section to the extent it  
125 deems necessary, including, but not limited to, in the case of a proposed  
126 transfer of ownership or control prior to initial licensure, the financial  
127 responsibility and business interests of the transferee and the ability of  
128 the facility to continue to provide needed services, or in the case of the  
129 addition or expansion of a function or service, ascertaining the  
130 availability of the function or service at other facilities within the area to  
131 be served, the need for the service or function within the area and any  
132 other factors the department deems relevant to a determination of  
133 whether the facility is justified in adding or expanding the function or  
134 service. The [commissioner] Commissioner of Social Services shall  
135 grant, modify or deny the request within ninety days of receipt thereof,  
136 except as otherwise provided in this section. The commissioner may  
137 place conditions, as the commissioner deems necessary to address  
138 specified concerns, on any decision approving or modifying a request  
139 for a certificate of need filed pursuant to this section. Conditions may  
140 include, but are not limited to, project and Medicaid reimbursement  
141 details and applicant requirements for summary and audit purposes.  
142 Upon the request of the applicant, the review period may be extended  
143 for an additional fifteen days if the department has requested additional  
144 information subsequent to the commencement of the commissioner's  
145 review period. The director of the office of certificate of need and rate  
146 setting may extend the review period for a maximum of thirty days if  
147 the applicant has not filed in a timely manner information deemed  
148 necessary by the department. The applicant may request and shall  
149 receive a hearing in accordance with section 4-177 if aggrieved by a  
150 decision of the commissioner.

151 (g) The Commissioner of Social Services shall not approve any

152 requests for beds in residential facilities for persons with intellectual  
153 disability which are licensed pursuant to section 17a-227 and are  
154 certified to participate in the Title XIX Medicaid Program as  
155 intermediate care facilities for individuals with intellectual disabilities,  
156 except those beds necessary to implement the residential placement  
157 goals of the Department of Developmental Services which are within  
158 available appropriations.

159 (h) The Commissioner of Social Services shall adopt regulations, in  
160 accordance with chapter 54, to implement the provisions of this section.

161 Sec. 2. Subsection (c) of section 17b-353 of the general statutes is  
162 repealed and the following is substituted in lieu thereof (*Effective July 1,*  
163 *2022*):

164 (c) In conducting its activities pursuant to this section, section 17b-  
165 352, as amended by this act, or both, except as provided for in subsection  
166 (d) of this section, the Commissioner of Social Services or said  
167 commissioner's designee may hold a public hearing on an application  
168 or on more than one application, if such applications are of a similar  
169 nature with respect to the request. At least two weeks' notice of the  
170 hearing shall be given to the facility by certified mail and to the public  
171 by publication in a newspaper having a substantial circulation in the  
172 area served by the facility. Such hearing shall be held at the discretion  
173 of the commissioner in Hartford or in the area so served. The  
174 commissioner or the commissioner's designee shall consider such  
175 request in relation to the community or regional need for such capital  
176 program or purchase of land, the possible effect on the operating costs  
177 of the facility and such other relevant factors as the commissioner or the  
178 commissioner's designee deems necessary. In approving or modifying  
179 such request, the commissioner or the commissioner's designee may not  
180 prescribe any condition, such as, but not limited to, any condition or  
181 limitation on the indebtedness of the facility in connection with a bond  
182 issued, the principal amount of any bond issued or any other details or  
183 particulars related to the financing of such capital expenditure, not  
184 directly related to the scope of such capital program and within the

185 control of the facility. If the hearing is conducted by a designee of the  
186 commissioner, the designee shall submit any findings and  
187 recommendations to the commissioner. The commissioner shall grant,  
188 modify or deny such request within ninety days, except as provided for  
189 in this section. The commissioner may place conditions, as the  
190 commissioner deems necessary to address specified concerns, on any  
191 decision approving or modifying a request for a certificate of need filed  
192 pursuant to this section. Conditions may include, but are not limited to,  
193 project and Medicaid reimbursement details and applicant  
194 requirements for summary and audit purposes. Upon the request of the  
195 applicant, the review period may be extended for an additional fifteen  
196 days if the commissioner or the commissioner's designee has requested  
197 additional information subsequent to the commencement of the review  
198 period. The commissioner or the commissioner's designee may extend  
199 the review period for a maximum of thirty days if the applicant has not  
200 filed in a timely manner information deemed necessary by the  
201 commissioner or the commissioner's designee.

202 Sec. 3. Subsection (a) of section 17b-354 of the general statutes is  
203 repealed and the following is substituted in lieu thereof (*Effective July 1,*  
204 *2022*):

205 (a) The Department of Social Services shall not accept or approve any  
206 requests for additional nursing home beds, except (1) beds restricted to  
207 use by patients with acquired immune deficiency syndrome or by  
208 patients requiring neurological rehabilitation; (2) beds associated with a  
209 continuing care facility, as described in section 17b-520, provided such  
210 beds are not used in the Medicaid program and the ratio of proposed  
211 nursing home beds to the continuing care facility's independent living  
212 units is within applicable industry standards. For the purpose of this  
213 subsection, beds associated with a continuing care facility are not subject  
214 to the certificate of need provisions pursuant to sections 17b-352, as  
215 amended by this act, and 17b-353, as amended by this act; (3) Medicaid  
216 certified beds to be relocated from one licensed nursing facility to  
217 another licensed nursing facility to meet a priority need identified in the  
218 strategic plan developed pursuant to subsection (c) of section 17b-369;

219 [and] (4) licensed Medicaid nursing facility beds to be relocated from  
 220 one or more existing nursing facilities to a new nursing facility,  
 221 provided (A) no new Medicaid certified beds are added, (B) at least one  
 222 currently licensed facility is closed in the transaction as a result of the  
 223 relocation, (C) the relocation is done within available appropriations,  
 224 (D) the facility participates in the Money Follows the Person  
 225 demonstration project pursuant to section 17b-369, (E) the availability of  
 226 beds in the area of need will not be adversely affected, (F) the certificate  
 227 of need approval for such new facility or facility relocation and the  
 228 associated capital expenditures are obtained pursuant to sections 17b-  
 229 352, as amended by this act, and 17b-353, as amended by this act, and  
 230 (G) the facilities included in the bed relocation and closure shall be in  
 231 accordance with the strategic plan developed pursuant to subsection (c)  
 232 of section 17b-369; and (5) proposals to build a nontraditional, small-  
 233 house style nursing home designed to enhance the quality of life for  
 234 nursing facility residents, provided that the nursing facility agrees to  
 235 reduce its total number of licensed beds by a percentage determined by  
 236 the Commissioner of Social Services in accordance with the  
 237 department's strategic plan for long-term care.

238 Sec. 4. Section 17b-355 of the general statutes is repealed and the  
 239 following is substituted in lieu thereof (*Effective July 1, 2022*):

240 In determining whether a request submitted pursuant to sections 17b-  
 241 352 to 17b-354, inclusive, as amended by this act, will be granted,  
 242 modified or denied, the Commissioner of Social Services shall consider  
 243 the following: The [relationship of the request to the state health plan,  
 244 the] financial feasibility of the request and its impact on the applicant's  
 245 rates and financial condition, the contribution of the request to the  
 246 quality, accessibility and cost-effectiveness of [health care delivery] the  
 247 delivery of long-term care in the region, whether there is clear public  
 248 need for the request, the relationship of any proposed change to the  
 249 applicant's current utilization statistics and the effect of the proposal on  
 250 the utilization statistics of other facilities in the applicant's service area,  
 251 the business interests of all owners, partners, associates, incorporators,  
 252 directors, sponsors, stockholders and operators and the personal



253 background of such persons, and any other factor which the  
254 [department] Department of Social Services deems relevant. [Whenever  
255 the granting, modification or denial of a request is inconsistent with the  
256 state health plan, a written explanation of the reasons for the  
257 inconsistency shall be included in the decision. In considering whether  
258 there is clear public need for any request for additional nursing home  
259 beds associated with a continuing care facility submitted pursuant to  
260 section 17b-354, the commissioner shall only consider the need for beds  
261 for current and prospective residents of the continuing care facility.] In  
262 considering whether there is clear public need for any request for the  
263 relocation of beds to a replacement facility, the commissioner shall  
264 consider whether there is a demonstrated bed need in the towns within  
265 a fifteen-mile radius of the town in which the beds are proposed to be  
266 located and whether the availability of beds in the applicant's service  
267 area will be adversely affected. Any proposal to relocate nursing home  
268 beds from an existing facility to a new facility shall not increase the  
269 number of Medicaid certified beds and shall result in the closure of at  
270 least one currently licensed facility other than the facility that is being  
271 replaced. The commissioner may request that any applicant seeking to  
272 replace an existing facility reduce the number of beds in the new facility  
273 by a percentage that is consistent with the department's strategic plan  
274 for long-term care. The commissioner shall also consider whether an  
275 application to establish a new or replacement nursing facility proposes  
276 a nontraditional, small-house style nursing facility and incorporates  
277 goals for nursing facilities referenced in the department's strategic plan  
278 for long-term care, including, but not limited to, (1) promoting person-  
279 centered care, (2) providing enhanced quality of care, (3) creating  
280 community space for all nursing facility residents, and (4) developing  
281 stronger connections between the nursing facility residents and the  
282 surrounding community. Bed need shall be based on the recent  
283 occupancy percentage of area nursing facilities and the projected bed  
284 need for no more than five years into the future at ninety-seven and one-  
285 half per cent occupancy using the latest official population projections  
286 by town and age as published by the Office of Policy and Management  
287 and the latest available state-wide nursing facility utilization statistics

288 by age cohort from the Department of Public Health. The commissioner  
289 may also consider area specific utilization and reductions in utilization  
290 rates to account for the increased use of less institutional alternatives.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2022</i>	17b-352
Sec. 2	<i>July 1, 2022</i>	17b-353(c)
Sec. 3	<i>July 1, 2022</i>	17b-354(a)
Sec. 4	<i>July 1, 2022</i>	17b-355

**Statement of Purpose:**

To modify the certificate of need process for long-term care facilities.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*