



General Assembly

Substitute Bill No. 290

February Session, 2022



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 Section 17b-352 of the general statutes is repealed and the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 licensed bed capacity; or (4) relocate all or a portion
17 of such facility's licensed beds, to a new facility or replacement facility,
18 shall submit a complete request for permission to implement such

19 transfer, addition, expansion, increase, termination, decrease or
20 relocation of facility beds to the Department of Social Services with such
21 information as the department requires, provided no permission or
22 request for permission to close a facility is required when a facility in
23 receivership is closed by order of the Superior Court pursuant to section
24 19a-545. The Commissioner of Social Services shall consider the criteria
25 in subdivisions (3) and (4) of subsection (a) of section 17b-354, as
26 amended by this act, when evaluating a certificate of need request to
27 relocate licensed nursing facility beds from an existing facility to another
28 licensed nursing facility or to a new facility or replacement facility. The
29 Office of the Long-Term Care Ombudsman pursuant to section 17a-405
30 shall be 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. During the review, the department may hold an informal
135 conference with the facility to discuss the certificate of need application.
136 The [commissioner] Commissioner of Social Services shall grant, modify
137 or deny the request within ninety days of receipt thereof, except as
138 otherwise provided in this section. The commissioner may place
139 conditions, as the commissioner deems necessary to address specified
140 concerns, on any decision approving or modifying a request for a
141 certificate of need filed pursuant to this section. Conditions may include,
142 but are not limited to, project and Medicaid reimbursement details and
143 applicant requirements for summary and audit purposes. If the
144 commissioner modifies the request, the commissioner shall notify the
145 facility of such modification prior to issuing the decision and provide
146 the applicant with an opportunity for an informal conference to discuss
147 the modifications. Upon the request of the applicant, the review period
148 may be extended for an additional fifteen days if the department has
149 requested additional information subsequent to the commencement of
150 the commissioner's review period. The director of the office of certificate
151 of need and rate setting may extend the review period for a maximum
152 of thirty days if the applicant has not filed in a timely manner
153 information deemed necessary by the department. The applicant may
154 request and shall receive a hearing in accordance with section 4-177 if

155 aggrieved by a decision of the commissioner.

156 (g) The Commissioner of Social Services shall not approve any
157 requests for beds in residential facilities for persons with intellectual
158 disability which are licensed pursuant to section 17a-227 and are
159 certified to participate in the Title XIX Medicaid Program as
160 intermediate care facilities for individuals with intellectual disabilities,
161 except those beds necessary to implement the residential placement
162 goals of the Department of Developmental Services which are within
163 available appropriations.

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

166 Sec. 2. Subsections (c) and (d) of section 17b-353 of the general statutes
167 are repealed and the following is substituted in lieu thereof (*Effective July*
168 *1, 2022*):

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

187 condition, such as, but not limited to, any condition or limitation on the
188 indebtedness of the facility in connection with a bond issued, the
189 principal amount of any bond issued or any other details or particulars
190 related to the financing of such capital expenditure, not directly related
191 to the scope of such capital program and within the control of the
192 facility. If the hearing is conducted by a designee of the commissioner,
193 the designee shall submit any findings and recommendations to the
194 commissioner. If the designee recommends denial of the request, the
195 designee shall issue a proposed final decision in accordance with section
196 4-179. The commissioner shall grant, modify or deny such request
197 within ninety days, except as provided for in this section. The
198 commissioner may place conditions, as the commissioner deems
199 necessary to address specified concerns, on any decision approving or
200 modifying a request for a certificate of need filed pursuant to this
201 section. Conditions may include, but are not limited to, project and
202 Medicaid reimbursement details and applicant requirements for
203 summary and audit purposes. Upon the request of the applicant, the
204 review period may be extended for an additional fifteen days if the
205 commissioner or the commissioner's designee has requested additional
206 information subsequent to the commencement of the review period. The
207 commissioner or the commissioner's designee may extend the review
208 period for a maximum of thirty days if the applicant has not filed in a
209 timely manner information deemed necessary by the commissioner or
210 the commissioner's designee.

211 (d) Except as provided in this subsection, no facility shall be allowed
212 to close or decrease substantially its licensed total bed capacity until
213 such time as a public hearing has been held in accordance with the
214 provisions of this subsection and the Commissioner of Social Services
215 has approved the facility's request unless such decrease is associated
216 with a census reduction. The commissioner may impose a civil penalty
217 of not more than five thousand dollars on any facility that fails to
218 comply with the provisions of this subsection. Penalty payments
219 received by the commissioner pursuant to this subsection shall be
220 deposited in the special fund established by the department pursuant to

221 subsection (c) of section 17b-357 and used for the purposes specified in
222 said subsection (c). The commissioner or the commissioner's designee
223 shall hold a public hearing [upon the earliest occurrence of: (1) Receipt
224 of any letter of intent submitted by a facility to the department, or (2)]
225 not later than thirty days after the receipt of any certificate of need
226 application. Such hearing shall be held at the facility for which the [letter
227 of intent or] certificate of need application was submitted. [not later than
228 thirty days after the date on which such letter or application was
229 received by the commissioner.] The commissioner or the
230 commissioner's designee shall provide both the facility and the public
231 with notice of the date of the hearing not less than [fourteen] ten days in
232 advance of such date. Notice to the facility shall be [by certified mail]
233 sent via electronic mail or first-class mail and notice to the public shall
234 be by publication in a newspaper having a substantial circulation in the
235 area served by the facility. The provisions of this subsection shall not
236 apply to any certificate of need approval requested for the relocation of
237 a facility, or a portion of a facility's licensed beds, to a new or
238 replacement facility.

239 Sec. 3. Subsection (a) of section 17b-354 of the general statutes is
240 repealed and the following is substituted in lieu thereof (*Effective July 1,*
241 *2022*):

242 (a) The Department of Social Services shall not accept or approve any
243 requests for additional nursing home beds, except (1) beds restricted to
244 use by patients with acquired immune deficiency syndrome or by
245 patients requiring neurological rehabilitation; (2) beds associated with a
246 continuing care facility, as described in section 17b-520, provided such
247 beds are not used in the Medicaid program. [and the ratio of proposed
248 nursing home beds to the continuing care facility's independent living
249 units is within applicable industry standards.] For the purpose of this
250 subsection, beds associated with a continuing care facility are not subject
251 to the certificate of need provisions pursuant to sections 17b-352, as
252 amended by this act, and 17b-353, as amended by this act; (3) Medicaid
253 certified beds to be relocated from one licensed nursing facility to

254 another licensed nursing facility to meet a priority need identified in the
255 strategic plan developed pursuant to subsection (c) of section 17b-369;
256 [and] (4) licensed Medicaid nursing facility beds to be relocated from
257 one or more existing nursing facilities to a new nursing facility,
258 including a replacement facility, provided (A) no new Medicaid
259 certified beds are added, (B) at least one currently licensed facility is
260 closed in the transaction as a result of the relocation, (C) the relocation
261 is done within available appropriations, (D) the facility participates in
262 the Money Follows the Person demonstration project pursuant to
263 section 17b-369, (E) the availability of beds in the area of need will not
264 be adversely affected, (F) the certificate of need approval for such new
265 facility or facility relocation and the associated capital expenditures are
266 obtained pursuant to sections 17b-352, as amended by this act, and 17b-
267 353, as amended by this act, and (G) the facilities included in the bed
268 relocation and closure shall be in accordance with the strategic plan
269 developed pursuant to subsection (c) of section 17b-369; and (5)
270 proposals to build a nontraditional, small-house style nursing home
271 designed to enhance the quality of life for nursing facility residents,
272 provided that the nursing facility agrees to reduce its total number of
273 licensed beds by a percentage determined by the Commissioner of
274 Social Services in accordance with the department's strategic plan for
275 long-term care.

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

278 In determining whether a request submitted pursuant to sections
279 17b-352 to 17b-354, inclusive, as amended by this act, will be granted,
280 modified or denied, the Commissioner of Social Services shall consider
281 the following: The [relationship of the request to the state health plan,
282 the] financial feasibility of the request and its impact on the applicant's
283 rates and financial condition, the contribution of the request to the
284 quality, accessibility and cost-effectiveness of [health care delivery] the
285 delivery of long-term care in the region, whether there is clear public
286 need for the request, the relationship of any proposed change to the

287 applicant's current utilization statistics and the effect of the proposal on
288 the utilization statistics of other facilities in the applicant's service area,
289 the business interests of all owners, partners, associates, incorporators,
290 directors, sponsors, stockholders and operators and the personal
291 background of such persons, and any other factor which the
292 [department] Department of Social Services deems relevant. [Whenever
293 the granting, modification or denial of a request is inconsistent with the
294 state health plan, a written explanation of the reasons for the
295 inconsistency shall be included in the decision. In considering whether
296 there is clear public need for any request for additional nursing home
297 beds associated with a continuing care facility submitted pursuant to
298 section 17b-354, the commissioner shall only consider the need for beds
299 for current and prospective residents of the continuing care facility.] In
300 considering whether there is clear public need for any request for the
301 relocation of beds to a replacement facility, the commissioner shall
302 consider whether there is a demonstrated bed need in the towns within
303 a fifteen-mile radius of the town in which the beds are proposed to be
304 located and whether the availability of beds in the applicant's service
305 area will be adversely affected. Any proposal to relocate nursing home
306 beds from an existing facility to a new facility shall not increase the
307 number of Medicaid certified beds and shall result in the closure of at
308 least one currently licensed facility other than the facility that is being
309 replaced. The commissioner may request that any applicant seeking to
310 replace an existing facility reduce the number of beds in the new facility
311 by a percentage that is consistent with the department's strategic plan
312 for long-term care. If an applicant seeking to replace an existing facility
313 with a new facility owns or operates more than one nursing facility, the
314 commissioner may request that the applicant close two or more facilities
315 before approving the proposal to build a new facility. The commissioner
316 shall also consider whether an application to establish a new or
317 replacement nursing facility proposes a nontraditional, small-house
318 style nursing facility and incorporates goals for nursing facilities
319 referenced in the department's strategic plan for long-term care,
320 including, but not limited to, (1) promoting person-centered care, (2)
321 providing enhanced quality of care, (3) creating community space for all

322 nursing facility residents, and (4) developing stronger connections
323 between the nursing facility residents and the surrounding community.
324 Bed need shall be based on the recent occupancy percentage of area
325 nursing facilities and the projected bed need for no more than five years
326 into the future at ninety-seven and one-half per cent occupancy using
327 the latest official population projections by town and age as published
328 by the Office of Policy and Management and the latest available state-
329 wide nursing facility utilization statistics by age cohort from the
330 Department of Public Health. The commissioner may also consider area
331 specific utilization and reductions in utilization rates to account for the
332 increased use of less institutional alternatives.

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

Statement of Legislative Commissioners:

In Section 1(b), "nursing facility beds" was changed to "licensed nursing facility beds" for consistency.

HS *Joint Favorable Subst.*