
OLR Bill Analysis

HB 6731

AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING CHANGE IN OWNERSHIP OF HEALTH CARE FACILITIES.

SUMMARY

This bill expands the circumstances under which licensed health care facility or institution (“facility”) ownership changes need prior approval from the Department of Public Health (DPH). It does so by eliminating exemptions in current law for (1) changes in ownership or beneficial ownership of under 10% of the stock of a corporation that owns or operates the facility or (2) certain transfers to relatives.

As under current law, these provisions apply to all DPH-licensed facilities (e.g., hospitals, behavioral health facilities, nursing homes, outpatient surgical facilities, or home health care agencies).

The bill requires proposed new owners to submit several documents and other information to DPH as part of its review of the transfer, such as (1) a copy of the sale or transfer agreement; (2) organizational charts, if applicable; and (3) information on certain prior penalties or sanctions in any state. As under current law, the bill requires DPH to inspect facilities before approving an ownership change.

The bill establishes the criteria that the commissioner must consider when evaluating an application and sets conditions under which she may deny it (for example, if other facilities the person owned or operated were subject to specified adverse actions). The bill prohibits someone from applying to acquire ownership in a facility if DPH denied a prior application by the person’s relative.

It also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2023

APPROVAL PROCESS FOR HEALTH CARE FACILITY OWNERSHIP CHANGES

Scope of Requirement

The bill subjects all transfers of ownership or beneficial ownership of DPH-licensed health care facilities to prior approval by the department. This includes (1) direct ownership changes or (2) changes in the ownership of the business entity that owns, operates, or maintains the facility.

The bill does so by eliminating two exemptions from current law. First, it eliminates the exemption for changes in ownership or beneficial ownership of under 10% of the stock of a corporation that owns, operates, or maintains the facility.

Second, it eliminates the exemption for certain transfers to relatives, including relatives by marriage (specifically parents, spouses, children, siblings, aunts, uncles, nieces, or nephews). Current law exempts these transfers unless they involve (1) at least 10% of the ownership or beneficial ownership of the entity that owns, operates, or maintains more than one facility; (2) multiple facilities; or (3) a facility that is the subject of a pending complaint, investigation, or licensure action. The bill specifies that changes in ownership or beneficial ownership resulting in transfers to these relatives to owners or beneficial owners are subject to prior approval.

By law, unchanged by the bill, the following are not considered to be ownership changes and do not require DPH approval: (1) a change in an entity's legal form of ownership (e.g., a corporation becoming a limited liability company) that does not change the beneficial ownership or (2) a public stock offering meeting certain requirements (e.g., it does not result in someone owning 10% or more of the stock).

Application Process

Current law requires at least 120 days' prior notice to DPH before a proposed facility ownership change, but it does not specify the

application process.

The bill requires the proposed new owner (or current owner, for changes in beneficial ownership) to apply within this same timeframe, in a way the commissioner sets. The application must include the following materials and information:

1. a cover letter identifying the facility by name, address, county, and number and type of licensed beds;
2. a description of the proposed transaction;
3. the names of each current owner and proposed new owner or beneficial owner;
4. the names of each owner of any non-publicly traded parent corporation of each proposed new owner and beneficial owner;
5. if applicable, organizational charts for the (a) current owner (showing the change in beneficial ownership) and (b) proposed new owner, its parent business entity, and its wholly owned subsidiaries;
6. a copy of the sale agreement or other transfer of ownership document and any lease or management agreements;
7. disclosures of whether each proposed new owner was ever convicted or pled guilty to fraud, patient or resident abuse or neglect, or a crime of violence or moral turpitude; and
8. various disclosures for certain other facilities (see below).

Other Facilities. Under the bill, the application also must include the name and address of any U.S.-based (including territories) licensed health care facility each proposed new owner or beneficial owner owned, operated, or managed during the prior five years. The bill requires several disclosures related to these facilities.

The application must disclose any direct or indirect interest arising from the person's ownership, operation, or management of these

facilities. This includes interests in intermediate entities; parent, management, and property companies; and other related entities.

The application must disclose whether each facility is the subject of a pending complaint, investigation, or licensure action. Additionally, it must disclose whether each facility has been subject to the following:

1. three or more civil penalties imposed through DPH final orders or civil penalties in other states during the prior two years;
2. Medicare or Medicaid sanctions in any state, other than civil penalties of \$20,000 or less;
3. termination or nonrenewal of a Medicare or Medicaid provider agreement;
4. any violations of any state licensing or federal certification standard on inappropriate admission denials or discharges; and
5. any state licensure or federal certification deficiency, during the prior five years, that presented a serious risk to the life, safety, or quality of care of the facility's patients or residents.

Under the bill, these serious risks include deficiencies that led to:

1. a state or federal agency action to ban, curtail, or temporarily suspend facility admissions or suspend or revoke its license;
2. a Medicare or Medicaid decertification, termination, or exclusion from participation, including denying payment for new admissions, imposed by DPH or the federal Centers for Medicare and Medicaid Services (CMS), due to noncompliance with Medicare or Medicaid conditions of participation;
3. a citation of any deficiency that constitutes a pattern or widespread scope of harm or immediate jeopardy, or any deficiency causing widespread actual harm, as described in specified CMS regulations (for these purposes, "immediate jeopardy" is a situation where noncompliance with certain CMS

requirements caused, or is likely to cause, a resident's serious injury, harm, impairment, or death);

4. a determination that the facility failed to correct cited deficiencies that led to CMS denying payment for new admissions or DPH requiring the facility to curtail admissions; or
5. a determination that the provider is a poor performer based on a finding of substandard quality of care or immediate jeopardy on the current survey and on a survey in either of the two prior years.

Under the bill, "substandard quality of care" means the failure to meet specified CMS requirements that constitute either (1) immediate jeopardy to resident health or safety; (2) a pattern of or widespread actual harm that is not immediate jeopardy; or (3) a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm. Generally, these requirements concern long term care facility (1) admission, transfer, and discharge rights and (2) quality of care in numerous areas (e.g., respiratory care and pain management) (42 C.F.R. §§ 483.15 & 483.25).

Inspection

Similar to current law, the bill requires DPH, after receiving an application for an ownership change, to inspect the facility to ensure its compliance with applicable laws and regulations.

Grounds to Deny Application

The bill requires the commissioner, when evaluating an application, to consider whether each proposed new owner and beneficial owner demonstrates character and competence and quality of care. She must also consider whether any licensed facilities they owned, operated, or managed (in the U.S. and its territories) has an acceptable history of compliance in the past five years with (1) state licensure and regulatory requirements and (2) federal requirements.

Under the bill, the commissioner may deny an application if these qualities are not demonstrated, as shown by the following:

1. the facility was subject to any adverse action listed in the application (e.g., termination of a Medicare or Medicaid provider agreement or certain licensing or certification deficiencies);
2. the facility had continuing violations, or a pattern of them, of state licensure or federal certification standards; or
3. the applicant's criminal conviction or guilty plea to any crime listed on the application (e.g., patient abuse or neglect).

The bill also allows the commissioner to temporarily deny an application if she determines that there are certain pending investigations of the applicant's actions at any facility it operates or manages. This applies when the investigation, if substantiated, would constitute a threat to patient or resident life, safety, or quality of care. She may deny the application until there is a final determination of the investigation.

Additionally, if the commissioner denies an application, the bill prohibits the applicant's relatives from applying to acquire an ownership interest in the facility.

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 25 Nay 12 (03/20/2023)