
OLR Bill Analysis

HB 6731 (as amended by House "A")*

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

SUMMARY

This bill generally 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 institutions (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. The bill allows DPH to inspect facilities before approving an ownership change; current law requires an inspection.

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). It prohibits someone from applying to acquire ownership in a facility if DPH denied a prior application by the person's relative.

The bill gives the commissioner the discretion to waive specified requirements for certain applicants. It also creates an exemption from prior approval requirements for certain transfers involving outpatient

surgical facilities or nonprofit hospitals.

The bill makes related changes by lowering the ownership threshold, from 10% to 5%, for certain notification requirements concerning nursing home licensing and ownership transfers.

It also makes technical and conforming changes.

*House Amendment "A" (1) delays the bill's effective date by three months; (2) makes several changes to the underlying bill, such as allowing DPH to waive information submission requirements in certain circumstances and exempting certain transfers involving outpatient surgical facilities or nonprofit hospitals; and (3) adds the provisions lowering the ownership threshold for certain nursing home-related notifications.

EFFECTIVE DATE: October 1, 2023

APPROVAL PROCESS FOR HEALTH CARE FACILITY OWNERSHIP CHANGES

Scope of Requirement

The bill generally 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.

Similar to current law, the following are not considered to be ownership changes and do not require DPH approval: (1) a change in a licensee'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).

Additionally, the bill provides that, under certain conditions, the change in ownership of, or to, a 501(c)(3) nonprofit business entity licensed as a hospital is not considered to be an ownership change requiring approval. This applies if the ownership transfer is exempt from review under the law on nonprofit hospital transfers to for-profit entities. As with the other exemptions above, the owner must give DPH information about the change, as the department requires, to properly identify the current ownership status.

The bill also exempts from these requirements transfers of ownership or beneficial ownership of 10% or less of an outpatient surgical facility to a physician, as long as the facility gives DPH information (in a manner the commissioner sets) to update the facility's licensing information.

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 by a government authority. 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 Medicare decertification, termination, or exclusion from participation, including denying payment for new admissions solely due to the provider's failure to correct deficiencies or non-compliance with regulatory requirements, 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 actual 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, on a second revisit, that the facility failed to correct cited deficiencies from a prior survey 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 as defined by CMS 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 and Compliance With Regulatory Requirements

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

As under current law, the bill conditions DPH’s approval on the facility showing that it has complied with all applicable requirements of the health care institution statutes, licensure regulations, and other applicable regulations. The bill also specifies that approval is conditioned upon the proposed new owner or beneficial owner meeting the bill’s requirements as to character and competence, quality of care, and an acceptable history of regulatory compliance (see below).

Permissible Waiver

The bill allows DPH to waive certain requirements.

For ownership or beneficial ownership changes resulting in a transfer to a person related by blood or marriage to an owner or beneficial owner, she may waive the requirement to submit specified information on other health care facilities they owned or operated during the past five years (see above).

For ownership or beneficial ownership changes of 5% or less of the ownership of a business entity that is a licensed institution, she may waive (1) the submission of some or all of the information required under the bill or (2) the determination as to the owner's character, competence, and related matters (see below).

Under the bill, the commissioner must develop a waiver application process and the criteria for evaluating waiver requests. When developing the application process and criteria, the commissioner must consult with long-term care industry representatives.

Grounds to Deny or Stay an 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 stay the department's decision on 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 delay the decision 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.

§§ 2 & 3 — NURSING HOME OWNERSHIP INTERESTS

The bill requires applicants for a nursing home license to give DPH the names of anyone with a 5% or greater ownership interest in the owner, rather than 10% or greater as under current law.

The bill makes a related change to the application for a nursing home ownership change. Existing law requires DPH to include on the application a statement notifying the potential nursing home licensee and owner that they (and certain other individuals) may be held civilly or criminally liable, or subject to administrative sanctions, for abuse or neglect of a resident by a nursing home employee. In addition to certain other listed positions, current law applies this notice provision to anyone having at least a 10% ownership interest in the nursing home or entity that owns it. The bill lowers this threshold to 5%.

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 25 Nay 12 (03/20/2023)

Human Services Committee

Joint Favorable

Yea 14 Nay 7 (04/17/2023)