



# House of Representatives

**File No. 837**

General Assembly

January Session, 2023

**(Reprint of File No. 474)**

House Bill No. 6731  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 26, 2023

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

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

1 Section 1. Section 19a-493 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2023*):

3 (a) Upon receipt of an application for an initial license, the  
4 Department of Public Health, subject to the provisions of section 19a-  
5 491a, shall issue such license if, upon conducting a scheduled inspection  
6 and investigation, the department finds that the applicant and facilities  
7 meet the requirements established under section 19a-495, provided a  
8 license shall be issued to or renewed for an institution, as defined in  
9 section 19a-490, only if such institution is not otherwise required to be  
10 licensed by the state. If an institution, as defined in subsections (b), (d),  
11 (e) and (f) of section 19a-490, applies for license renewal and has been  
12 certified as a provider of services by the United States Department of

13 Health and Human Services under Medicare or Medicaid programs  
14 within the immediately preceding twelve-month period, or if an  
15 institution, as defined in subsection (b) of section 19a-490, is currently  
16 certified, the commissioner or the commissioner's designee may waive  
17 on renewal the inspection and investigation of such facility required by  
18 this section and, in such event, any such facility shall be deemed to have  
19 satisfied the requirements of section 19a-495 for the purposes of  
20 licensure. Such license shall be valid for two years or a fraction thereof  
21 and shall terminate on March thirty-first, June thirtieth, September  
22 thirtieth or December thirty-first of the appropriate year. A license  
23 issued pursuant to this chapter, unless sooner suspended or revoked,  
24 shall be renewable biennially (1) after an unscheduled inspection is  
25 conducted by the department, and (2) upon the filing by the licensee,  
26 and approval by the department, of a report upon such date and  
27 containing such information in such form as the department prescribes  
28 and satisfactory evidence of continuing compliance with requirements  
29 established under section 19a-495. In the case of an institution, as  
30 defined in subsection (d) of section 19a-490, that is also certified as a  
31 provider under the Medicare program, the license shall be issued for a  
32 period not to exceed three years, to run concurrently with the  
33 certification period. In the case of an institution, as defined in subsection  
34 (m) of section 19a-490, that is applying for renewal, the license shall be  
35 issued pursuant to section 19a-491. Except in the case of a multicare  
36 institution, each license shall be issued only for the premises and  
37 persons named in the application. Such license shall not be transferable  
38 or assignable. Licenses shall be posted in a conspicuous place in the  
39 licensed premises.

40 (b) [(1)] A nursing home license may be renewed biennially after [(A)]  
41 (1) an unscheduled inspection conducted by the department, [(B)] (2)  
42 submission of the information required by section 19a-491a, and [(C)]  
43 (3) submission of evidence satisfactory to the department that the  
44 nursing home is in compliance with the provisions of this chapter, the  
45 regulations of Connecticut state agencies and licensing regulations.

46 (c) (1) (A) For the purposes of this subsection, (i) "a person related by

47 blood or marriage" means a parent, spouse, child, brother, sister, aunt,  
48 uncle, niece or nephew, (ii) "business entity" means a corporation,  
49 association, trust, estate, partnership, limited partnership, limited  
50 liability partnership, limited liability company, sole proprietorship, joint  
51 stock company, nonstock corporation or other legal entity, (iii)  
52 "institution" has the same meaning as provided in section 19a-490, and  
53 (iv) "organizational chart" means a graphical representation of an  
54 organization, including, but not limited to, the relationships between  
55 such organization's ownership interests.

56 (B) For the purposes of this subsection, (i) a change in the legal form  
57 of the licensee, including, but not limited to, changes from a corporation  
58 to a limited liability company, a partnership to a limited liability  
59 partnership, a sole proprietorship to a corporation and similar changes,  
60 shall not be considered a change in ownership if the beneficial  
61 ownership remains unchanged and the owner provides such  
62 information regarding the change to the department as may be required  
63 by the commissioner to properly identify the current status of  
64 ownership and beneficial ownership of the facility or institution, (ii) a  
65 public offering of the stock of any corporation that owns, conducts,  
66 operates or maintains any facility or institution shall not be considered  
67 a change in ownership or beneficial ownership of such facility or  
68 institution if the licensee and the officers and directors of such  
69 corporation remain unchanged, such public offering cannot result in an  
70 individual or entity owning ten per cent or more of the stock of such  
71 corporation, and the owner provides such information to the  
72 department as may be required by the department in order to properly  
73 identify the current status of ownership and beneficial ownership of the  
74 facility or institution, and (iii) a change of ownership of, or to, a business  
75 entity recognized as a nonprofit organization under Section 501(c)(3) of  
76 the Internal Revenue Code of 1986, or any subsequent corresponding  
77 internal revenue code of the United States, as amended from time to  
78 time, that is licensed as a hospital pursuant to this chapter resulting in  
79 the transfer of ownership which is exempt from review required under  
80 subsection (a) of section 19a-486a shall not be considered a change in

81 ownership provided the owner provides such information regarding  
82 the change to the department as may be required by the commissioner  
83 to properly identify the current status of ownership.

84 (C) For the purposes of this subsection, "serious risk to the life, safety  
85 or quality of care of patients or residents" includes, but is not limited to,  
86 any deficiency in state licensure or federal certification requirements,  
87 including the provisions of 42 CFR 488.400 et seq., resulting in:

88 (i) An action by a state or federal agency to ban, curtail or temporarily  
89 suspend admissions to a facility or to suspend or revoke a facility's  
90 license;

91 (ii) A decertification, termination or exclusion from Medicaid or  
92 Medicare participation, including denial of payment for new  
93 admissions resulting solely due to the provider's failure to correct  
94 deficiencies or noncompliance with regulatory requirements, imposed  
95 by the Department of Public Health or by the Centers for Medicare and  
96 Medicaid Services, as a result of noncompliance with Medicaid or  
97 Medicare conditions of participation;

98 (iii) A citation of any deficiency that constitutes a pattern or  
99 widespread scope of actual harm or immediate jeopardy, or any  
100 deficiency causing widespread actual harm, as described in 42 CFR 488;

101 (iv) A determination that the provider is a "poor performer" as  
102 defined by the Centers for Medicare and Medicaid Services on the basis  
103 of a finding of substandard quality of care or immediate jeopardy, as  
104 described in 42 CFR 488, on the current survey and on a survey during  
105 one of the two preceding years. For the purposes of this subparagraph,  
106 "substandard quality of care" means the failure to meet one or more  
107 requirements of 42 CFR 483.13, 42 CFR 483.15 or 42 CFR 483.25, that  
108 constitute either immediate jeopardy to resident health or safety, a  
109 pattern of or widespread actual harm that is not immediate jeopardy or  
110 a widespread potential for more than minimal harm, but less than  
111 immediate jeopardy, with no actual harm; or

112        (v) A determination that the facility has failed to correct, on a second  
113 revisit, deficiencies that have been cited during a prior survey, and that  
114 has resulted in a denial by the Centers for Medicare and Medicaid  
115 Services of payment for new admissions or a requirement by the  
116 department to curtail admission.

117        (2) Any change in the ownership or beneficial ownership of a facility  
118 or institution [, as defined in section 19a-490,] owned by an individual [,  
119 partnership or association or the change in ownership or beneficial  
120 ownership of ten per cent or more of the stock of a corporation which]  
121 or a business entity that owns, conducts, operates or maintains such  
122 facility or institution, including a change in ownership or beneficial  
123 ownership resulting in a transfer to a person related by blood or  
124 marriage to an owner or a beneficial owner, shall be subject to prior  
125 approval of the department, [after a scheduled inspection of such facility  
126 or institution is conducted by the department,] provided such approval  
127 shall be conditioned upon a showing by such facility or institution to the  
128 commissioner that it has complied with all requirements of this chapter,  
129 the regulations relating to licensure and all applicable requirements of  
130 the regulations of Connecticut state agencies [. Any such change in  
131 ownership or beneficial ownership resulting in a transfer to a person  
132 related by blood or marriage to such an owner or beneficial owner shall  
133 not be subject to prior approval of the department unless: (A)  
134 Ownership or beneficial ownership of ten per cent or more of the stock  
135 of a corporation, limited liability company, partnership or association  
136 which owns, conducts, operates or maintains more than one facility or  
137 institution is transferred; (B) ownership or beneficial ownership is  
138 transferred in more than one facility or institution; or (C) the facility or  
139 institution is the subject of a pending complaint, investigation or  
140 licensure action. If the facility or institution is not in compliance, the  
141 commissioner may require the new owner to sign a consent order  
142 providing reasonable assurances that the violations shall be corrected  
143 within a specified period of time. Notice of any such proposed change  
144 of ownership shall be given to the department at least one hundred  
145 twenty days prior to the effective date of such proposed change. For the

146 purposes of this subdivision, "a person related by blood or marriage"  
147 means a parent, spouse, child, brother, sister, aunt, uncle, niece or  
148 nephew. For the purposes of this subdivision, a change in the legal form  
149 of the ownership entity, including, but not limited to, changes from a  
150 corporation to a limited liability company, a partnership to a limited  
151 liability partnership, a sole proprietorship to a corporation and similar  
152 changes, shall not be considered a change of ownership if the beneficial  
153 ownership remains unchanged and the owner provides such  
154 information regarding the change to the department as may be required  
155 by the department in order to properly identify the current status of  
156 ownership and beneficial ownership of the facility or institution. For the  
157 purposes of this subdivision, a public offering of the stock of any  
158 corporation that owns, conducts, operates or maintains any such facility  
159 or institution shall not be considered a change in ownership or beneficial  
160 ownership of such facility or institution if the licensee and the officers  
161 and directors of such corporation remain unchanged, such public  
162 offering cannot result in an individual or entity owning ten per cent or  
163 more of the stock of such corporation, and the owner provides such  
164 information to the department as may be required by the department in  
165 order to properly identify the current status of ownership and beneficial  
166 ownership of the facility or institution.] and the change of ownership or  
167 beneficial ownership meets the requirements of subdivision (5) of  
168 subsection (c) of this section.

169 (3) Not later than one hundred twenty days before the proposed date  
170 of a change in ownership or beneficial ownership of a facility or  
171 institution, the proposed new owner, or in the case of a change in  
172 beneficial ownership, the current owner, of such facility or institution  
173 shall submit an application for approval to the department. Such  
174 application shall be in a form and manner prescribed by the  
175 commissioner and shall include, but need not be limited to, the  
176 following:

177 (A) A cover letter identifying the facility or institution subject to such  
178 change by name, address, county and number and type of beds licensed  
179 by the department;

180 (B) A description of the proposed transaction resulting in such  
181 change, including the name of each current owner of the facility or  
182 institution;

183 (C) The name of each proposed new owner or beneficial owner;

184 (D) The name of each owner of any nonpublicly traded parent  
185 corporation of each proposed new owner and beneficial owner;

186 (E) If applicable, (i) the proposed new owner's organizational chart,  
187 (ii) the proposed new owner's parent business entity's organizational  
188 chart, (iii) the organizational chart of each wholly-owned subsidiary of  
189 such proposed new owner, and (iv) the current owner's organizational  
190 chart showing the changes in beneficial ownership;

191 (F) A copy of the agreement of sale or other transfer of ownership  
192 interests and, if applicable, a copy of any lease or management  
193 agreements that will be in effect after the transaction;

194 (G) The name and address of any licensed health care facility owned,  
195 operated or managed by each proposed new owner and beneficial  
196 owner in the United States or any territory of the United States during  
197 the five years preceding the date on which such application is  
198 submitted, and information relating to any such facility, including:

199 (i) Disclosure of any direct or indirect interests, including such  
200 interests in intermediate entities and parent, management and property  
201 companies and other related entities arising from such ownership,  
202 operation or management;

203 (ii) Disclosure of whether each such facility or institution is the  
204 subject of a pending complaint, investigation or licensure action by a  
205 governmental authority;

206 (iii) Disclosure of whether each such facility or institution has been  
207 subject to:

208 (I) Three or more civil penalties imposed through final order of the

209 commissioner in accordance with the provisions of sections 19a-524 to  
210 19a-528, inclusive, or civil penalties imposed pursuant to the laws or  
211 regulations of another state during the two-year period preceding the  
212 date on which such application is submitted;

213 (II) Sanctions, other than civil penalties less than or equal to twenty  
214 thousand dollars, imposed in any state through final adjudication under  
215 the Medicare or Medicaid program pursuant to Title XVIII or XIX of the  
216 federal Social Security Act, 42 USC 301, as amended from time to time;

217 (III) Termination or nonrenewal of a Medicare or Medicaid provider  
218 agreement;

219 (IV) Any state licensing or federal certification deficiency during the  
220 five-year period prior to the submission of the application that  
221 presented a serious risk to the life, safety or quality of care of the  
222 facility's patients or residents; and

223 (V) Any violation of any state licensing or federal certification  
224 standard in connection with an inappropriate discharge or denial of  
225 admission; and

226 (H) Disclosure of whether each proposed new owner has ever been  
227 convicted or pleaded guilty to a charge of fraud, patient or resident  
228 abuse or neglect or a crime of violence or moral turpitude.

229 (4) After receiving an application for change in ownership, the  
230 commissioner may schedule an inspection of such facility or institution  
231 to determine if the facility or institution has complied with the  
232 requirements of this chapter and the regulations of Connecticut state  
233 agencies relating to licensure of such facility or institution.

234 (5) When evaluating an application for a change in ownership, the  
235 commissioner shall consider whether each proposed new owner and  
236 beneficial owner demonstrates character and competence, quality of  
237 care and whether an acceptable history of past and current compliance  
238 with state licensure requirements, applicable federal requirements and



239 state regulatory requirements exists for each licensed health care facility  
240 owned, operated or managed by each proposed new owner and  
241 beneficial owner in the United States or any territory of the United States  
242 during the five years preceding the date on which such application is  
243 submitted. The commissioner may deny an application for change in  
244 ownership if such qualities are not demonstrated, as evidenced by:

245 (A) Any such licensed health care facility being subject to any adverse  
246 action described in subparagraph (G)(iii) of subdivision (3) of this  
247 subsection;

248 (B) Any such licensed health care facility exhibiting continuing  
249 violations or a pattern of violations of state licensure standards or  
250 federal certification standards; or

251 (C) An applicant's criminal conviction of, or guilty plea to, any of the  
252 crimes described in subparagraph (H) of subdivision (3) of this  
253 subsection.

254 (6) Notwithstanding the provisions of subdivision (5) of this  
255 subsection, the commissioner may stay the determination of an  
256 application if the commissioner determines that there is a pending  
257 investigation of actions of the applicant at any facility operated or  
258 managed by the applicant that, if substantiated, would constitute a  
259 threat to the life, safety or quality of care of the patients or residents until  
260 such time as there is a final determination of the allegations underlying  
261 the investigation.

262 (7) If the commissioner denies an application for change in  
263 ownership, a person related by blood or marriage to the applicant may  
264 not apply to acquire ownership interest in the facility or institution.

265 (8) In the event of a change in ownership or beneficial ownership  
266 resulting in a transfer to a person related by blood or marriage to an  
267 owner or beneficial owner, the commissioner may waive the submission  
268 of information required pursuant to the provisions of subparagraph (G)  
269 of subdivision (3) of this subsection. In the event of a change in

270 ownership or beneficial ownership of five per cent or less of the  
271 ownership of a business entity that is a licensed institution, the  
272 commissioner may waive the submission of some or all of the  
273 information required pursuant to the provisions of subdivision (3) of  
274 this subsection or the determination required pursuant to subdivision  
275 (5) of this subsection. The commissioner shall develop an application  
276 process through which a person may request a waiver described in this  
277 subdivision and criteria to be used by the commissioner when  
278 evaluating such a request. The commissioner shall consult with  
279 representatives of the long-term care industry when developing such  
280 application process and criteria.

281 (9) The provisions of this subsection shall not apply the event of a  
282 change of ownership or beneficial ownership of ten per cent or less of  
283 the ownership of a licensed outpatient surgical facility, as defined in  
284 section 19a-493b, resulting in a transfer to a physician licensed under  
285 chapter 370 if such facility provides information, in a form and manner  
286 prescribed by the commissioner, to update such facility's licensing  
287 information.

288 [(c)] (d) (1) A multicare institution may, under the terms of its existing  
289 license, provide behavioral health services or substance use disorder  
290 treatment services on the premises of more than one facility, at a satellite  
291 unit or at another location outside of its facilities or satellite units that is  
292 acceptable to the patient receiving services and is consistent with the  
293 patient's assessment and treatment plan. Such behavioral health  
294 services or substance use disorder treatment services may include  
295 methadone delivery and related substance use treatment services to  
296 persons in a nursing home facility pursuant to the provisions of section  
297 19a-495c or in a mobile narcotic treatment program, as defined in 21 CFR  
298 1300.

299 (2) Any multicare institution that intends to offer services at a satellite  
300 unit or other location outside of its facilities or satellite units shall submit  
301 an application for approval to offer services at such location to the  
302 Department of Public Health. Such application shall be submitted on a

303 form and in the manner prescribed by the Commissioner of Public  
304 Health. Not later than forty-five days after receipt of such application,  
305 the commissioner shall notify the multicare institution of the approval  
306 or denial of such application. If the satellite unit or other location is  
307 approved, that satellite unit or location shall be deemed to be licensed  
308 in accordance with this section and shall comply with the applicable  
309 requirements of this chapter and regulations adopted under this  
310 chapter.

311 (3) A multicare institution that is a hospital providing outpatient  
312 behavioral health services or other health care services shall provide the  
313 Department of Public Health with a list of satellite units or locations  
314 when completing the initial or renewal licensure application.

315 (4) The Commissioner of Public Health may adopt regulations, in  
316 accordance with the provisions of chapter 54, to carry out the provisions  
317 of this subsection. The Commissioner of Public Health may implement  
318 policies and procedures necessary to administer the provisions of this  
319 subsection while in the process of adopting such policies and  
320 procedures as regulation, provided the commissioner prints notice of  
321 intent to adopt regulations in the Connecticut Law Journal not later than  
322 twenty days after the date of implementation. Policies and procedures  
323 implemented pursuant to this section shall be valid until the time final  
324 regulations are adopted.

325 Sec. 2. Subsection (a) of section 19a-491a of the general statutes is  
326 repealed and the following is substituted in lieu thereof (*Effective October*  
327 *1, 2023*):

328 (a) A person seeking a license to establish, conduct, operate or  
329 maintain a nursing home shall provide the Department of Public Health  
330 with the following information:

331 (1) (A) The name and business address of the owner and a statement  
332 of whether the owner is an individual, partnership, corporation or other  
333 legal entity; (B) the names of the officers, directors, trustees, or  
334 managing and general partners of the owner, the names of persons

335 having a [ten] five per cent or greater ownership interest in the owner,  
336 and a description of each such person's occupation with the owner; and  
337 (C) if the owner is a corporation which is incorporated in another state,  
338 a certificate of good standing from the secretary of state of the state of  
339 incorporation;

340 (2) A description of the relevant business experience of the owner and  
341 of the administrator of the nursing home and evidence that the  
342 administrator has a license issued pursuant to section 19a-514;

343 (3) Affidavits signed by the owner, any of the persons described in  
344 subdivision (1) of this subsection, the administrator, assistant  
345 administrator, the medical director, the director of nursing and assistant  
346 director of nursing disclosing any matter in which such person has been  
347 convicted of a felony, as defined in section 53a-25, or has pleaded nolo  
348 contendere to a felony charge, or has been held liable or enjoined in a  
349 civil action by final judgment, if the felony or civil action involved fraud,  
350 embezzlement, fraudulent conversion or misappropriation of property;  
351 or is subject to an injunction or restrictive or remedial order of a court of  
352 record at the time of application, within the past five years has had any  
353 state or federal license or permit suspended or revoked as a result of an  
354 action brought by a governmental agency or department, arising out of  
355 or relating to health care business activity, including, but not limited to,  
356 actions affecting the operation of a nursing home, retirement home,  
357 residential care home or any facility subject to sections 17b-520 to 17b-  
358 535, inclusive, or a similar statute in another state or country;

359 (4) (A) A statement as to whether or not the owner is, or is affiliated  
360 with, a religious, charitable or other nonprofit organization; (B) the  
361 extent of the affiliation, if any; (C) the extent to which the affiliate  
362 organization will be responsible for the financial obligations of the  
363 owner; and (D) the provision of the Internal Revenue Code of 1986, or  
364 any subsequent corresponding internal revenue code of the United  
365 States, as from time to time amended, if any, under which the owner or  
366 affiliate is exempt from the payment of income tax;

367 (5) The location and a description of other health care facilities of the  
368 owner, existing or proposed, and, if proposed, the estimated completion  
369 date or dates and whether or not construction has begun; and

370 (6) If the operation of the nursing home has not yet commenced, a  
371 statement of the anticipated source and application of the funds used or  
372 to be used in the purchase or construction of the home, including:

373 (A) An estimate of such costs as financing expense, legal expense,  
374 land costs, marketing costs and other similar costs which the owner  
375 expects to incur or become obligated for prior to the commencement of  
376 operations; and

377 (B) A description of any mortgage loan or any other financing  
378 intended to be used for the financing of the nursing home, including the  
379 anticipated terms and costs of such financing.

380 Sec. 3. Subsection (a) of section 19a-528a of the general statutes is  
381 repealed and the following is substituted in lieu thereof (*Effective October*  
382 *1, 2023*):

383 (a) For any application of licensure for the acquisition of a nursing  
384 home, any potential nursing home licensee or owner shall submit in  
385 writing, a change in ownership application with respect to the facility  
386 for which the change in ownership is sought. The application shall be  
387 submitted in the form and manner prescribed by the Commissioner of  
388 Public Health. The commissioner shall include on the first page of the  
389 application the following statement: "NOTICE: The State of Connecticut  
390 values the quality of care provided to all nursing home residents. Please  
391 know that any nursing home licensee, owner or officer, including, but  
392 not limited to, a director, trustee, limited partner, managing partner,  
393 general partner or any person having at least a [ten] five per cent  
394 ownership interest in the nursing home or the entity that owns the  
395 nursing home, and any administrator, assistant administrator, medical  
396 director, director of nursing or assistant director of nursing may be  
397 subject to civil and criminal liability, as well as administrative sanctions  
398 under applicable federal and state law, for the abuse or neglect of a

399 resident of the nursing home perpetrated by an employee of the nursing  
400 home.".

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2023</i>	19a-493
Sec. 2	<i>October 1, 2023</i>	19a-491a(a)
Sec. 3	<i>October 1, 2023</i>	19a-528a(a)

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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### **OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

### **Explanation**

The bill as amended, which expands the circumstances under which licensed healthcare entity ownership changes need prior approval from the Department of Public Health, is not anticipated to result in a fiscal impact to the state or municipalities.

House "A" struck the language of the underlying bill, replacing it with language that is not anticipated to result in a fiscal impact to the state or municipalities.

### **The Out Years**

**State Impact:** None

**Municipal Impact:** None

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**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 Medicaid 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)