
OLR Bill Analysis

sSB 9

AN ACT PROMOTING HOSPITAL FINANCIAL STABILITY.

SUMMARY

This bill modifies the state's Certificate of Need (CON) program for health care entities, administered by the Office of Health Strategy's (OHS) Health Systems Planning Unit (HSPU). Under the program, health care entities must generally receive CON approval when establishing new facilities or services, changing ownership, acquiring certain equipment, or terminating certain services.

The bill adds to the types of transactions that require CON approval: (1) transfers of a controlling interest in any entity with at least a 20% interest of a health care facility, institution, or large group practice (i.e., eight or more full-time equivalent physicians); (2) transfers of at least 10% of a hospital's assets; and (3) issuance of dividends over any three-year period that exceed 20% of a hospital's net worth.

Among other changes to CON transactions, the bill (1) eliminates current law's CON requirement for acquiring computed tomography (CT) scanners and (2) requires HSPU to automatically issue a CON for non-hospital ownership transfers, temporarily until December 31, 2025.

The bill also modifies the criteria HSPU must use when reviewing CON applications to, among other things, include whether the (1) applicant's actions or inactions contributed to the conditions that resulted in a request to terminate services and (2) applicant satisfactorily showed the proposal will not affect its finances in a way that would impair its future operations.

Additionally, the bill makes the following changes affecting health care facility oversight:

1. authorizes the Department of Public Health (DPH) to impose a civil penalty of up to \$25,000 against a health care institution for noncompliance with statutory or regulatory requirements, in addition to various other disciplinary actions authorized under existing law (e.g., license suspension or revocation, probation, or a letter of reprimand) (§ 1);
2. requires DPH to establish emergency department diversion requirements for hospitals when they reroute incoming ambulances to other hospitals and subjects hospitals and emergency medical services (EMS) organizations to disciplinary action for noncompliance with the requirements (§ 2);
3. requires hospitals to report quarterly to OHS, starting by October 31, 2024, on specified financial information (e.g., invoices unpaid for more than 90 days and their balances) and subjects them to a civil penalty of up to \$10,000 for each incident of noncompliance (§ 6); and
4. requires OHS to report quarterly, starting by November 30, 2024, to the Office of Policy and Management secretary summaries of the reports it receives from hospitals for the prior calendar quarter (§ 6).

Lastly, the bill makes minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2024, except that the provisions (1) modifying CON program requirements take effect October 1, 2024, and (2) changing CON definitions take effect upon passage.

§ 1 — DPH DISCIPLINARY AUTHORITY FOR HEALTH CARE INSTITUTIONS

The bill authorizes the DPH commissioner, after a hearing held in accordance with the Uniform Administrative Procedure Act, to impose a civil penalty of up to \$25,000 on a health care institution (e.g., a hospital, freestanding emergency department, outpatient surgical facility, or long-term care facility) when she finds that the institution substantially failed to comply with statutory or regulatory

requirements, including licensing regulations.

Existing law already authorizes the commissioner to take various other disciplinary actions for these reasons, such as license suspension, revocation, or censure; probation; a corrective action plan; or a letter of reprimand.

§ 2 — HOSPITAL EMERGENCY DEPARTMENT DIVERSIONS

The bill requires DPH to establish emergency department diversion requirements for hospitals when they reroute incoming ambulances to other hospitals because (1) their emergency department's resources are fully committed and unavailable to incoming ambulance patients (i.e., "saturation") or (2) they lack medical capability.

Specifically, DPH must establish the following:

1. hospital emergency department diversion requirements that include, at a minimum, each hospital to adopt related policies and their required content;
2. the permissible grounds for which a hospital may declare an emergency department diversion and procedures it must follow after doing so;
3. requirements for hospitals receiving diverted patients (i.e., "receiving hospitals"); and
4. requirements for licensed or certified EMS organizations when a hospital declares an emergency department diversion.

Before declaring an emergency department diversion, the bill requires a hospital to notify DPH as the commissioner prescribes. It also subjects violators to (1) a civil penalty of up to \$25,000 for hospitals and (2) various DPH disciplinary actions (e.g., license suspension, revocation, or censure) for EMS organizations.

Under the bill, the DPH commissioner must adopt regulations to implement the emergency department diversion requirements and may implement policies and procedures while doing so if she publishes her

intent to adopt regulations on the eRegulations system within 20 days after implementing the policies and procedures. The policies and procedures are valid until the final regulations are adopted.

§§ 3-5 — CERTIFICATE OF NEED

Definition of “Person”

The bill adds public companies and entities (e.g., nonprofits, business trusts, and estates) to the statutory definition of “person” for purposes of the CON program. Under current law, “person” also includes any individual, partnership, corporation, limited liability company, association, government subdivision, agency, or private organization of any character.

By law, HSPU may impose civil penalties on a “person” that fails to file required data or information, as it may do for health care facilities and large group practices.

Transactions Requiring CON Approval

By law, health care institutions must generally receive approval from HSPU when establishing new facilities or services, changing ownership, acquiring certain equipment, or terminating services.

The bill adds to the types of transactions that require CON approval the following:

1. transfers of a controlling interest in any entity (e.g., corporation, nonprofit, limited liability company, or partnership) that directly or indirectly controls or possesses at least 20% interest of a health care facility, institution, or large group practice, instead of only ownership transfers that impact the facility, institution, or practice itself;
2. transfers of at least 10% of a hospital’s assets, including real estate transfers; and
3. the issuing of dividends over any three-year period that exceed 20% of a hospital’s net worth.

Temporary Automatic CON Approvals for Non-Hospital Ownership Transfers

The bill requires HSPU to automatically issue a CON for ownership transfers for large group practices and health care facilities other than hospitals that submit a CON determination request (i.e., non-hospital ownership transfers). HSPU must do this until December 31, 2025, regardless of existing CON laws.

CON Exemptions for CT Scanners

The bill eliminates the CON requirement for acquiring CT scanners. Current law requires a CON when acquiring MRI, CT, PET, and PET/CT scanners, unless they are replacements for scanners previously approved through the CON process.

CON Review Criteria

The bill adds to the factors HSPU must consider when reviewing a CON application the following:

1. for service terminations, whether and to what extent the applicant's actions or inactions caused or contributed to the conditions that result in filing the application; and
2. whether the applicant satisfactorily demonstrated that the proposal will not negatively impact the health care facility's finances in a way that jeopardizes or substantially impairs its future operations.

Under current law, the unit must consider whether there is a clear public need for the applicant's proposal. The bill specifies that this includes a public health or community health need identified in a community health needs assessment, community service plan, community health improvement plan, community profile, the applicant's long-term plan, or other similar report.

Current law also requires the unit to consider several other criteria related to health care quality, access, cost effectiveness, and financial feasibility. The bill makes minor changes to these criteria, principally by separating these different components into distinct criteria.

By law, HSPU may revise the review criteria by regulation. The bill allows the OHS executive director to implement policies and procedures to update the criteria while in the process of adopting them in regulations. Before implementing the policies and procedures, the bill requires her to (1) hold a public hearing at least 30 days before and (2) publish her intent to adopt regulations on the OHS website and eRegulations system within 20 days after implementing them. The policies and procedures are valid until the final regulations are adopted.

Cost and Market Impact Reviews

By law, HSPU must conduct a cost and market impact review (CMIR) of CON applications that propose to transfer a hospital's ownership if the purchaser is (1) an in- or out-of-state hospital or hospital system that had net patient revenue exceeding \$1.5 billion for fiscal year 2013 or (2) organized or operated for profit (CGS § 19a-639f).

The bill expressly authorizes HSPU, when reviewing these CON applications, to consider the CMIR preliminary report and the response to it, the final report, and the parties' written comments on reports that are part of the review. HSPU may do this if it determined disclosing the reports is appropriate and each party in the CON proceeding was given at least 14 days after the final CMIR report was issued to submit written comments on these reports.

Additionally, when the HSPU approves a CON for these hospital ownership transfers, current law requires the unit to hire an independent consultant to serve as a post-transfer compliance reporter for three years following the transfer's completion. The bill specifies that three years is the minimum time period the reporter must serve.

§ 6 — HOSPITAL FINANCIAL REPORTING TO OHS

The bill requires hospitals to report quarterly, starting by October 31, 2024, to the OHS executive director on the following information for the prior calendar quarter:

1. any vendor invoices unpaid for more than 90 days after their receipt, regardless of whether the hospital disputed them, and

- their outstanding balances;
2. the number of days of cash on hand;
 3. the operating and total margins;
 4. unpaid rent or utilities;
 5. fees, taxes, or assessments owed to public utilities; and
 6. unpaid employee health insurance premiums, including unpaid contributions, claims, or other obligations supporting employees under self-insured plans.

The bill requires the executive director to develop a uniform template for hospitals to use to submit the quarterly reports to OHS and to post the template on the OHS website. The template must (1) include definitions for the terms it uses and (2) allow for hospitals to explain disputed charges.

Under the bill, hospitals may request an extension of up to 15 days to comply with the reporting requirement, as the executive director prescribes. She may grant an extension request for good cause.

Hospitals who violate the bill's reporting requirements are subject to a civil penalty of up to \$10,000 for each incident of noncompliance. Before imposing a penalty, the bill requires the executive director to notify the hospital of the alleged violation and associated penalty and allow the hospital to request OHS to review its findings. A hospital must request the review within 15 days after receiving the notice and the executive director cannot impose the penalty until the review is completed. Any penalties OHS collects must be deposited into the General Fund.

The bill also requires OHS to report quarterly, starting by November 30, 2024, to the Office of Policy and Management secretary summaries of the reports it receives from hospitals for the prior calendar quarter.

BACKGROUND

Related Bills

SB 440, favorably reported by the Public Health Committee, makes various changes to the CON program, such as modifying the types of transactions that require, and are exempt from, CON approval; transferring responsibility, from HSPU to the attorney general, for conducting cost and market impact reviews of certain hospital ownership transfers; and shortening the deadlines for certain CON processes.

HB 5316, favorably reported by the Public Health Committee, makes various changes to CON program requirements for large group practices.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 24 Nay 12 (03/22/2024)