

Connecticut General Statutes: Certificate of Need for Long Term Care Facilities

Effective July 1, 2015

Sec. 17b-352. Certificate of need for nursing home facilities; transfer of ownership or control; introduction of additional function or service; termination or decrease of service. Notice to Office of the Long-Term Care Ombudsman. Notice and public hearing requirements. Regulations. (a) For the purposes of this section and section 17b-353, "facility" means a residential facility for persons with intellectual disability licensed pursuant to section 17a-277 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for individuals with intellectual disabilities, a nursing home, rest home or residential care home, as defined in section 19a-490.

(b) Any facility which intends to (1) transfer all or part of its ownership or control prior to being initially licensed; (2) introduce any additional function or service into its program of care or expand an existing function or service; or (3) terminate a service or decrease substantially its total bed capacity, shall submit a complete request for permission to implement such transfer, addition, expansion, increase, termination or decrease with such information as the department requires to the Department of Social Services, provided no permission or request for permission to close a facility is required when a facility in receivership is closed by order of the Superior Court pursuant to section 19a-545. The Office of the Long-Term Care Ombudsman pursuant to section 17a-405 shall be notified by the facility of any proposed actions pursuant to this subsection at the same time the request for permission is submitted to the department and when a facility in receivership is closed by order of the Superior Court pursuant to section 19a-545.

(c) An applicant, prior to submitting a certificate of need application, shall request, in writing, application forms and instructions from the department. The request shall include: (1) The name of the applicant or applicants; (2) a statement indicating whether the application is for (A) a new, additional, expanded or replacement facility, service or function, (B) a termination or reduction in a presently authorized service or bed capacity, or (C) any new, additional or terminated beds and their type; (3) the estimated capital cost; (4) the town where the project is or will be located; and (5) a brief description of the proposed project. Such request shall be deemed a letter of intent. No certificate of need application shall be considered submitted to the department unless a current letter of intent, specific to the proposal and in accordance with the provisions of this subsection, has been on file with the department for not less than ten business days. For purposes of this subsection, "a current letter of intent" means a letter of intent on file with the department for not more than one hundred eighty days. A certificate of need application shall be deemed withdrawn by the department, if a department completeness letter is not responded to within one hundred eighty days. The Office of the Long-Term Care Ombudsman shall be notified by the facility at the same time as the letter of intent is submitted to the department.

(d) Any facility acting pursuant to subdivision (3) of subsection (b) of this section shall provide written notice, at the same time it submits its letter of intent, to all patients, guardians or

conservators, if any, or legally liable relatives or other responsible parties, if known, and shall post such notice in a conspicuous location at the facility. The notice shall state the following: (A) The projected date the facility will be submitting its certificate of need application, (B) that only the department has the authority to either grant, modify or deny the application, (C) that the department has up to ninety days to grant, modify or deny the certificate of need application, (D) a brief description of the reason or reasons for submitting a request for permission, (E) that no patient shall be involuntarily transferred or discharged within or from a facility pursuant to state and federal law because of the filing of the certificate of need application, (F) that all patients have a right to appeal any proposed transfer or discharge, and (G) the name, mailing address and telephone number of the Office of the Long-Term Care Ombudsman and local legal aid office.

(e) The department shall review a request made pursuant to subsection (b) of this section to the extent it deems necessary, including, but not limited to, in the case of a proposed transfer of ownership or control prior to initial licensure, the financial responsibility and business interests of the transferee and the ability of the facility to continue to provide needed services, or in the case of the addition or expansion of a function or service, ascertaining the availability of the function or service at other facilities within the area to be served, the need for the service or function within the area and any other factors the department deems relevant to a determination of whether the facility is justified in adding or expanding the function or service. The commissioner shall grant, modify or deny the request within ninety days of receipt thereof, except as otherwise provided in this section. Upon the request of the applicant, the review period may be extended for an additional fifteen days if the department has requested additional information subsequent to the commencement of the commissioner's review period. The director of the office of certificate of need and rate setting may extend the review period for a maximum of thirty days if the applicant has not filed in a timely manner information deemed necessary by the department. The applicant may request and shall receive a hearing in accordance with section 4-177 if aggrieved by a decision of the commissioner.

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

(g) The Commissioner of Social Services shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section. The commissioner shall implement the standards and procedures of the Office of Health Care Access division of the Department of Public Health concerning certificates of need established pursuant to section 19a-643, as appropriate for the purposes of this section, until the time final regulations are adopted in accordance with said chapter 54.

Sec. 17b-353. Certificate of need; capital expenditure or acquisition of major medical equipment. Hearings. Regulations. (a) Any facility, as defined in subsection (a) of section 17b-352, which proposes (1) a capital expenditure exceeding one million dollars, which increases facility square footage by more than five thousand square feet or five per cent of the existing square footage, whichever is greater, (2) a capital expenditure exceeding two million dollars, or

(3) the acquisition of major medical equipment requiring a capital expenditure in excess of four hundred thousand dollars, including the leasing of equipment or space, shall submit a request for approval of such expenditure, with such information as the department requires, to the Department of Social Services. Any such facility which proposes to acquire imaging equipment requiring a capital expenditure in excess of four hundred thousand dollars, including the leasing of such equipment, shall obtain the approval of the Office of Health Care Access division of the Department of Public Health in accordance with the provisions of chapter 368z, subsequent to obtaining the approval of the Commissioner of Social Services. Prior to the facility's obtaining the imaging equipment, the Commissioner of Public Health, after consultation with the Commissioner of Social Services, may elect to perform a joint or simultaneous review with the Department of Social Services.

(b) An applicant, prior to submitting a certificate of need application, shall request, in writing, application forms and instructions from the department. The request shall include: (1) The name of the applicant or applicants; (2) a statement indicating whether the application is for (A) a new, additional, expanded or replacement facility, service or function, (B) a termination or reduction in a presently authorized service or bed capacity, or (C) any new, additional or terminated beds and their type; (3) the estimated capital cost; (4) the town where the project is or will be located; and (5) a brief description of the proposed project. Such request shall be deemed a letter of intent. No certificate of need application shall be considered submitted to the department unless a current letter of intent, specific to the proposal and in accordance with the provisions of this subsection, has been on file with the department for not less than ten business days. For purposes of this subsection, "a current letter of intent" means a letter of intent on file with the department for not more than one hundred eighty days. A certificate of need application shall be deemed withdrawn by the department if a department completeness letter is not responded to within one hundred eighty days.

(c) In conducting its activities pursuant to this section, section 17b-352 or both, except as provided for in subsection (d) of this section, the Commissioner of Social Services or said commissioner's designee may hold a public hearing on an application or on more than one application, if such applications are of a similar nature with respect to the request. At least two weeks' notice of the hearing shall be given to the facility by certified mail and to the public by publication in a newspaper having a substantial circulation in the area served by the facility. Such hearing shall be held at the discretion of the commissioner in Hartford or in the area so served. The commissioner or the commissioner's designee shall consider such request in relation to the community or regional need for such capital program or purchase of land, the possible effect on the operating costs of the facility and such other relevant factors as the commissioner or the commissioner's designee deems necessary. In approving or modifying such request, the commissioner or the commissioner's designee may not prescribe any condition, such as, but not limited to, any condition or limitation on the indebtedness of the facility in connection with a bond issued, the principal amount of any bond issued or any other details or particulars related to the financing of such capital expenditure, not directly related to the scope of such capital program and within the control of the facility. If the hearing is conducted by a designee of the commissioner, the designee shall submit any findings and recommendations to the commissioner. The commissioner shall grant, modify or deny such request within ninety days, except as provided for in this section. Upon the request of the applicant, the review period may be extended for an additional fifteen days if the commissioner or the commissioner's designee

has requested additional information subsequent to the commencement of the review period. The commissioner or the commissioner's designee may extend the review period for a maximum of thirty days if the applicant has not filed in a timely manner information deemed necessary by the commissioner or the commissioner's designee.

(d) No facility shall be allowed to close or decrease substantially its total bed capacity until such time as a public hearing has been held in accordance with the provisions of this subsection and the Commissioner of Social Services has approved the facility's request unless such decrease is associated with a census reduction. The commissioner may impose a civil penalty of not more than five thousand dollars on any facility that fails to comply with the provisions of this subsection. Penalty payments received by the commissioner pursuant to this subsection shall be deposited in the special fund established by the department pursuant to subsection (c) of section 17b-357 and used for the purposes specified in said subsection (c). The commissioner or the commissioner's designee shall hold a public hearing upon the earliest occurrence of: (1) Receipt of any letter of intent submitted by a facility to the department, or (2) receipt of any certificate of need application. Such hearing shall be held at the facility for which the letter of intent or certificate of need application was submitted not later than thirty days after the date on which such letter or application was received by the commissioner. The commissioner or the commissioner's designee shall provide both the facility and the public with notice of the date of the hearing not less than fourteen days in advance of such date. Notice to the facility shall be by certified mail and notice to the public shall be by publication in a newspaper having a substantial circulation in the area served by the facility.

(e) The Commissioner of Social Services shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section. The commissioner shall implement the standards and procedures of the Office of Health Care Access division of the Department of Public Health concerning certificates of need established pursuant to section 19a-643, as appropriate for the purposes of this section, until the time final regulations are adopted in accordance with said chapter 54.

Sec. 17b-354. Moratorium on requests for additional nursing home beds. Exceptions. Continuing care facility. Construction. Financing. Regulations.

(a) The Department of Social Services shall not accept or approve any requests for additional nursing home beds except (1) beds restricted to use by requiring neurological rehabilitation; (2) beds associated with a continuing care facility which guarantees life care for its residents; (3) Medicaid certified beds to be relocated from one licensed nursing facility to another licensed nursing facility to meet a priority need identified in the strategic plan developed pursuant to subsection (c) of section 17b-369, as amended by this act; and (4) Medicaid beds to be relocated from a licensed facility or facilities to a new licensed facility, provided at least one currently licensed facility is closed in the transaction, and the new facility bed total is not less than ten per cent lower than the total number of beds relocated. The facilities included in the bed relocation and closure shall be in accordance with the strategic plan developed pursuant to subsection (c) of section 17b-369, as amended by this act, provided (A) the availability of beds in an area of need will not be adversely affected; and (B) no such relocation shall result in an increase in state expenditures.

(b) For the purposes of subsection (a) of this section, "a continuing care facility which guarantees life care for its residents" means: (1) A facility which does not participate in the Medicaid program; (2) a facility which establishes its financial stability by submitting to the commissioner documentation which (A) demonstrates in financial statements compiled by certified public accountants that the facility and its direct or indirect owners have (i) on the date of the certificate of need application and for five years preceding such date, net assets or reserves equal to or greater than the projected operating revenues for the facility in its first two years of operation or (ii) assets or other indications of financial stability determined by the commissioner to be sufficient to provide for the financial stability of the facility based on its proposed financial structure and operations, (B) demonstrates in financial statements compiled by certified public accountants that the facility, on the date of the certificate of need application, has a projected debt coverage ratio at ninety-five per cent occupancy of at least one and twenty-five one-hundredths, (C) details the financial operation and projected cash flow of the facility on the date of the certificate of need application, to be updated every five years thereafter, and demonstrates that fees payable by residents and the assets, income and insurance coverage of residents, in combination with other sources of facility funding, are sufficient to provide for the expenses of life care services for the life of the residents to be made available within a continuum of care which shall include the provision of health services in the independent living units, and (D) provides that any transfer of ownership of the facility to take place within a five-year period from the date of approval of its certificate of need shall be subject to the approval of the Commissioner of Social Services in accordance with the provisions of section 17b-355; (3) a facility which establishes to the satisfaction of the commissioner that it can provide for the expenses of the continuum of care to be made available to residents by complying with the provisions of chapter 319f and demonstrating sufficient assets, income, financial reserves or long-term care insurance to provide for such expenses and maintain financially viable operation of the facility for a thirty-year period based on generally accepted accounting practices and actuarial principles, which demonstration (A) may include making available to prospective residents long-term care insurance policies which are substantially equivalent in value and coverage to policies precertified pursuant to section 38a-475, (B) shall include establishing eligibility criteria and screening each resident prior to admission and annually thereafter to ensure that his assets, income and insurance coverage are sufficient in combination with other sources of facility funding to cover such expenses, (C) shall include entering into contracts with residents concerning monthly or other periodic fees payable by residents for services provided, and (D) allowing residents whose expenses are not covered by insurance to pledge or transfer income, assets or proceeds from the sale of assets in amounts sufficient to cover such expenses; (4) a facility which demonstrates it will establish a contingency fund, prior to becoming operational, in an initial amount of five hundred thousand dollars which shall be increased in equal annual increments to at least one million dollars by the start of the facility's sixth year of operation and which shall be replenished within twelve months of any expenditure, provided the amount to be replenished shall not exceed two hundred fifty thousand dollars annually until one million dollars is reached, to provide for the expenses of the continuum of care to be made available to residents which may not be covered by residents' assets, income or insurance, provided the commissioner may approve the establishment of a contingency fund in a lesser amount upon the application of a facility for which a lesser amount is appropriate based on the size of the facility; and (5) a facility which is operated by management with demonstrated

experience and ability in the operation of similar facilities. Notwithstanding the provisions of this subsection, a facility may be deemed a continuing care facility which guarantees life care for its residents if (A) the facility meets the criteria set forth in subdivisions (2) to (5), inclusive, of this subsection, was Medicaid certified prior to October 1, 1993, and has been deemed qualified to enter into a continuing care contract under chapter 319hh for at least two consecutive years prior to filing its certificate of need application under this section, provided (i) no additional bed approved pursuant to this section shall be Medicaid certified; (ii) no patient in such a bed shall be involuntarily transferred to another bed due to his eligibility for Medicaid and (iii) the facility shall pay the cost of care for a patient in such a bed who is Medicaid eligible and does not wish to be transferred to another bed or (B) the facility is operated exclusively by and for a religious order which is committed to the care and well-being of its members for the duration of their lives and whose members are bound thereto by the profession of permanent vows. On and after July 1, 1997, the Department of Social Services shall give priority to a request for modification of a certificate of need from a continuing care facility which guarantees life care for its residents pursuant to the provisions of this subsection.

(c) For the purposes of this section and sections 17b-352 and 17b-353, construction shall be deemed to have begun if the following have occurred and the department has been so notified in writing within the thirty days prior to the date by which construction is to begin: (1) All necessary town, state and federal approvals required to begin construction have been obtained, including all zoning and wetlands approvals; (2) all necessary town and state permits required to begin construction or site work have been obtained; (3) financing approval, as defined in subsection (d) of this section, has been obtained; and (4) construction of a structure approved in the certificate of need has begun. For the purposes of this subsection, commencement of construction of a structure shall include, at a minimum, completion of a foundation. Notwithstanding the provisions of this subsection, upon receipt of an application filed at least thirty days prior to the date by which construction is to begin, the commissioner may deem construction to have begun if: (A) An owner of a certificate of need has fully complied with the provisions of subdivisions (1), (2) and (3) of this subsection; (B) such owner submits clear and convincing evidence that he has complied with the provisions of this subsection sufficiently to demonstrate a high probability that construction shall be completed in time to obtain licensure by the Department of Public Health on or before the date required pursuant to subsection (a) of this section; (C) construction of a structure cannot begin due to unforeseeable circumstances beyond the control of the owner; and (D) at least ten per cent of the approved total capital expenditure or two hundred fifty thousand dollars, whichever is greater, has been expended.

(d) For the purposes of subsection (c) of this section, subject to the provisions of subsection (e) of this section, financing shall be deemed to have been obtained if the owner of the certificate of need receives a commitment letter from a lender indicating an affirmative interest in financing the project subject to reasonable and customary conditions, including a final commitment from the lender's loan committee or other entity responsible for approving loans. If a lender which has issued a commitment letter subsequently refuses to finance the project, the owner shall notify the department in writing within five business days of the receipt of the refusal. The owner shall, if so requested by the department, provide the commissioner with copies of all communications between the owner and the lender concerning the request for financing. The owner shall have one further opportunity to obtain financing which shall be demonstrated by submitting another

commitment letter from a lender to the department within thirty days of the owner's receipt of the refusal from the first lender.

(e) On and after March 1, 1993, financing shall be deemed to have been obtained for the purposes of this section and sections 17b-352 and 17b-353 if the owner of the certificate of need has (1) received a final commitment for financing in writing from a lender or (2) provided evidence to the department that the owner has sufficient funds available to construct the project without financing.

(f) Any decision of the Office of Health Care Access issued prior to July 1, 1993, as to whether construction has begun or financing has been obtained for nursing home beds approved by the office prior to said date shall be deemed to be a decision of the Commissioner of Social Services for the purposes of this section and sections 17b-352 and 17b-353.

(g) (1) A continuing care facility which guarantees life care for its residents, as defined in subsection (b) of this section, (A) shall arrange for a medical assessment to be conducted by an independent physician or an access agency approved by the Office of Policy and Management and the Department of Social Services as meeting the requirements for such agency as defined by regulations adopted pursuant to subsection (e) of section 17b-342, prior to the admission of any resident to the nursing facility and shall document such assessment in the resident's medical file and (B) may transfer or discharge a resident who has intentionally transferred assets in a sum which will render the resident unable to pay the cost of nursing facility care in accordance with the contract between the resident and the facility.

(2) A continuing care facility which guarantees life care for its residents, as defined in subsection (b) of this section, may, for the seven-year period immediately subsequent to becoming operational, accept nonresidents directly as nursing facility patients on a contractual basis provided any such contract shall include, but not be limited to, requiring the facility (A) to document that placement of the patient in such facility is medically appropriate; (B) to apply to a potential nonresident patient the financial eligibility criteria applied to a potential resident of the facility pursuant to said subsection (b); and (C) to at least annually screen each nonresident patient to ensure the maintenance of assets, income and insurance sufficient to cover the cost of at least forty-two months of nursing facility care. A facility may transfer or discharge a nonresident patient upon the patient exhausting assets sufficient to pay the costs of his care or upon the facility determining the patient has intentionally transferred assets in a sum which will render the patient unable to pay the costs of a total of forty-two months of nursing facility care from the date of initial admission to the nursing facility. Any such transfer or discharge shall be conducted in accordance with section 19a-535. The commissioner may grant one or more three-year extensions of the period during which a facility may accept nonresident patients, provided the facility is in compliance with the provisions of this section.

(h) Notwithstanding the provisions of subsection (a) of this section, if an owner of an approved certificate of need for additional nursing home beds has notified the Office of Health Care Access or the Department of Social Services on or before September 30, 1993, of his intention to utilize such beds for a continuing care facility which guarantees life care for its residents in accordance with subsection (b) of this section and has filed documentation with the

Department of Social Services on or before September 30, 1994, demonstrating the requirements of said subsection (b) have been met, the certificate of need shall not expire.

(i) The Commissioner of Social Services may waive or modify any requirement of this section, except subdivision (1) of subsection (b) which prohibits participation in the Medicaid program, to enable an established continuing care facility registered pursuant to chapter 319hh prior to September 1, 1991, to add nursing home beds provided the continuing care facility agrees to no longer admit nonresidents into any of the facility's nursing home beds except for spouses of residents of such facility and provided the addition of nursing home beds will not have an adverse impact on the facility's financial stability, as defined in subsection (b) of this section, and are located within a structure constructed and licensed prior to July 1, 1992.

(j) The Commissioner of Social Services shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section. The commissioner shall implement the standards and procedures of the Office of Health Care Access division of the Department of Public Health concerning certificates of need established pursuant to section 19a-643, as appropriate for the purposes of this section, until the time final regulations are adopted in accordance with said chapter 54.

Sec. 17b-354a. Judicial enforcement. The Superior Court on application of the Commissioner of Social Services or the Attorney General, may enforce, by appropriate decree or process any provision of section 17b-352, 17b-353 or 17b-354, respectively, or any act or any order of the commissioner rendered in pursuance of any such provision.

Sec. 17b-354b. Relocation of Medicaid certified nursing home beds. The Commissioner of Social Services may approve the relocation of Medicaid certified nursing home beds from a licensed nursing home to a continuing care facility registered with the Department of Social Services in accordance with the provisions of section 17b-520 to 17b-535, inclusive, and may approve Medicaid participation for any such nursing home beds transferred to a continuing care facility as part of the approval of any such relocation, provided the relocation of beds complies with the requirements of subdivision (3) of subsection (a) of section 17b-354 and provided further that: (1) Beds are transferred and eliminated from existing four-bed rooms licensed prior to July 1, 1992; (2) the Medicaid per diem rate does not exceed the rate in place at the facility that is transferring beds, and increases in such rate are limited annually thereafter to any rate increase limits under section 17b-340; and (3) any such nursing home bed transfer is to a continuing care facility under the same ownership or a subsidiary of the nursing home transferring such bed.

Sec. 17b-354c. Conversion of intermediate care facility beds to nursing home beds. Regulations. (a) Except for applications filed on or before May 1, 2001, which shall not be subject to the restrictions set forth in this section, for the period from July 1, 2001, to June 30, 2007, rest homes with nursing supervision beds under common ownership with chronic and convalescent nursing home beds in the same or an immediately adjacent building may be converted to chronic and convalescent nursing home beds in accordance with the provisions of section 17b-352, provided that such conversion shall not result in an increase in cost to the state of more than twelve per cent of the amount previously paid to the facility annually for both levels of care. This limitation shall apply only to conversion of rest homes with nursing

supervision beds under common ownership with chronic and convalescent nursing home beds or in the same or an immediately adjacent building. Rest homes with nursing supervision beds in freestanding facilities and rest homes with nursing supervision beds transferred to another licensed and Medicaid-certified nursing home may be converted to chronic and convalescent nursing home beds pursuant to section 17b-352 and subsection (a) of section 17b-354 as applicable.

(b) No later than December 31, 2001, the commissioner shall publish proposed regulations pursuant to subsections (a) to (e), inclusive, of section 4-168 implementing this section.

(June Sp. Sess. P.A. 01-2, S. 54, 69; June Sp. Sess. P.A. 01-9, S. 129, 131.)

Sec. 17b-355. Certificate of need for capital expenditures; transfer of ownership or control; criteria. In determining whether a request submitted pursuant to sections 17b-352 to 17b-354, inclusive, will be granted, modified or denied, the Commissioner of Social Services shall consider the following: The relationship of the request to the state health plan, the financial feasibility of the request and its impact on the applicant's rates and financial condition, the contribution of the request to the quality, accessibility and cost-effectiveness of health care delivery in the region, whether there is clear public need for the request, the relationship of any proposed change to the applicant's current utilization statistics, the business interests of all owners, partners, associates, incorporators, directors, sponsors, stockholders and operators and the personal background of such persons, and any other factor which the department deems relevant. Whenever the granting, modification or denial of a request is inconsistent with the state health plan, a written explanation of the reasons for the inconsistency shall be included in the decision. In considering whether there is clear public need for any request for additional nursing home beds associated with a continuing care facility submitted pursuant to section 17b-354, the commissioner shall only consider the need for beds for current and prospective residents of the continuing care facility. In considering whether there is clear public need for any request for the relocation of beds, the commissioner shall consider whether there is a demonstrated bed need in the towns within a fifteen-mile radius of the town in which the beds are proposed to be located. Bed need shall be based on the recent occupancy percentage of area nursing facilities and the projected bed need for no more than five years into the future at ninety-seven and one-half per cent occupancy using the latest official population projections by town and age as published by the Office of Policy and Management and the latest available state-wide nursing facility utilization statistics by age cohort from the Department of Public Health. The commissioner may also consider area specific utilization and reductions in utilization rates to account for the increased use of less institutional alternatives.