OLR Bill Analysis
sHB 5045

AN ACT STREAMLINING HEALTH CARE FACILITY APPROVALS.

SUMMARY

Starting in 2027, this bill replaces the Office of Health Strategy (OHS)-administered health care facility certificate of need (CON) program with a new program overseen by a panel comprised of the public health (DPH) and social services (DSS) commissioners and Office of Policy and Management (OPM) secretary or their designees. It creates a new CON unit within DPH to support the panel, and requires the panel to meet at least quarterly to review and decide CON applications.

The bill's new program differs in various respects from the current program. It reduces the overall number of categories requiring CON approval (for example, by eliminating required approval for certain service terminations and creating a separate process to oversee only hospital service pauses or terminations), but expands the types of transactions covered by certain other categories. For example, it expands the circumstances when physician group practice transfers require CON approval, replacing the current eight-physician threshold with a $10 million asset or revenue threshold and requiring review of any practice transfer involving a private equity entity. More generally, it expands the types of ownership or control changes subject to CON approval for all health care entities covered by the program.

Among other things, it:

1. shortens the list of required factors that must be considered in the CON determination process;

2. generally requires a public hearing for all CON applications (unless waived by the applicant under certain conditions), instead of only a subset as under current law;

3. allows the panel to create an expedited CON review pathway and designate application categories that are eligible for this pathway;

4. expands the circumstances when a CON application for a hospital transfer is subject to a cost and market impact review; and

5. increases, from $1,000 to $5,000, the maximum daily civil penalties for CON-related violations.

Under the bill, the current OHS CON program continues for applications submitted on or before December 31, 2026 (§§ 13-21). As under current law, that program is administered by OHS's Health Systems Planning Unit, with the OHS commissioner having independent decision-making authority over CON decisions. For the current program, the bill extends from June 30, 2026, to December 31, 2026, an existing CON exemption for increases in the licensed bed capacity for mental health facilities under certain situations (§ 14).

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2026

§§ 2, 3 & 13 — CON PANEL AND DPH CON UNIT

The bill creates a three-person panel, placed within DPH for administrative purposes only, to make final decisions on CON-related determinations under the new process. The panel consists of the DPH and DSS commissioners and OPM secretary or their designees. The DPH commissioner or her designee serves as the panel's chairperson.

Specifically, the panel must make final decisions and rulings on the following (under the bill, except where noted):

1. CON applications submitted on or after January 1, 2027;

2. civil penalties and cease and desist orders imposed on or after that date;

3. policies and procedures effective on and after that date;

4. hospital plans for continued access to care during service terminations on and after that date; and

5. sales of nonprofit hospitals under existing law's procedures (see BACKGROUND).

Starting in 2027, the panel must meet at least quarterly to review and decide CON applications. The panel chairperson may call special meetings at other times do so.

The bill also creates a CON unit within DPH to support the panel in its decision-making. The DPH commissioner must appoint an executive director to oversee the unit. Under the bill, starting in 2027:

1. anyone applying for a CON must file the application with the DPH unit (rather than with OHS as under current law),

2. the unit must prepare a summary analysis of the application record and present it at any public hearing and panel meeting on the application, and

3. the unit must make all determinations as to whether a CON is required (subject to the panel's final decision).

The unit must also monitor compliance with the bill's new CON process and with any panel-issued order or decision, including any associated panel-imposed conditions. In any enforcement action under the bill (see § 10 below), the unit must present the allegations at the panel's public hearing.

The provisions described below apply on and after January 1, 2027, or to CON applications filed on or after that date, as applicable.

§§ 1, 4, 14 & 18 — CON REQUIREMENT AND EXEMPTIONS

The following table compares the activities requiring CON approval under the current OHS program and the bill's new program.

Table: Activities Requiring CON Approval

Current Law	***Bill***
Establishment of a new "health care facility" (see below)	Same as current law
Transfer of ownership of a health care facility	"Change of ownership or control" of a health care facility (see below)
Transfer of ownership of a large group practice (eight or more physicians) to any entity other than a (1) physician or (2) physician group meeting certain requirements (for example, not affiliated with a hospital)	Change of ownership or control of a group practice (of any size): • with at least $10 million in total assets, annual revenue, or anticipated combined annual revenue (including out-of-state assets or revenue) or • that includes a private equity entity (The bill does not carry forward a current provision that creates a presumption in favor of approving a CON for group practice ownership transfers when the offer was made in response to a voluntary offer for sale)
Establishment of a freestanding emergency department	Same as current law (under bill's definition of "health care facility")
Establishment of an outpatient surgical facility	Same as current law (under bill's definition of "health care facility")
Establishment of cardiac services, including inpatient and outpatient cardiac catheterization, interventional cardiology, and cardiovascular surgery	Not required
Acquisition of CT, MRI, PET, or PET-CT scanners, with certain exceptions (for example, replacements under specified conditions)	Same as current law
Acquisition of non-hospital based linear accelerators, except for replacements under specified conditions	Not required
Increase in a licensed facility's licensed bed capacity, except for certain mental health facilities	Same as current law, other than the exception (see below)
Acquisition of equipment using technology that is new to the state	Same as current law
Increase of two or more operating rooms within a three-year period by an outpatient surgical facility or short-term acute care general hospital	Same as current law
Termination of the following: • hospital inpatient or outpatient services	Not required, but the bill creates a new review process for certain hospital service pauses or terminations; see § 12 below

Current Law	*Bill*
• certain outpatient surgical services by outpatient surgical facilities or certain hospitals • a short-term acute care hospital's emergency department • inpatient or outpatient services offered by state-operated facilities that provide services eligible for Medicare or Medicaid reimbursement Under this law, a termination is the combined stop to a service for more than 180 days over a two-year period	

The bill's list of exemptions from CON requirements under the new process is generally similar to the current OHS-led process. For example, the exemptions include, among several others, (1) nursing homes and certain other long-term care facilities (they are subject to a separate DSS CON process), (2) free clinics, and (3) school-based health centers.

The bill adds new exemptions for:

1. a nonprofit facility, institution, or provider solely providing behavioral health or substance use disorder treatment services; and

2. an association between a group practice and management service organization (MSO) in which the MSO is paid fair market value through a contract rather than being paid through profit or revenue sharing.

The bill differs from current law in some other respects, including the following:

1. specifying that the exemption for Department of Children and Families-funded programs only applies if DCF exclusively funds them (as under current law, psychiatric residential treatment facilities are not exempt);

2. exempting the acquisition of cone-beam imaging equipment

generally, rather than only exempting this equipment if it is to be used exclusively by dentists;

3. not carrying forward a current exemption for certain nonprofits that contract with, or are certified or licensed to provide a service for, a state agency for services otherwise requiring CON approval; and

4. not carrying forward a current exemption for increases in the licensed bed capacity of mental health facilities that meet specified criteria (the bill extends the current exemption under the OHS CON program by six months).

Also, under current law, a facility seeking to relocate must first show that doing so will not substantially change the population served or the payer mix; if the facility cannot show this, then it must get CON approval. The bill instead creates a specific CON exemption for a health care facility's relocation within the same town or within 10 miles of the existing location, as long as the move does not substantially change the facility's patient population or payer mix.

"Health Care Facilities" Definition

Under the current CON law, "health care facilities" are hospitals; specialty hospitals; freestanding emergency departments; outpatient surgical facilities; state-operated facilities that provide services eligible for Medicare or Medicaid reimbursement; central service facilities; mental health facilities; substance abuse treatment facilities; any other facilities requiring a CON; and any of these facilities' parent companies, subsidiaries, affiliates, or joint ventures, or any combination of them.

The bill specifies that the term includes hospitals' satellite locations.

It also includes within the term outpatient surgical facilities that are established by acute-care hospitals, in addition to those that are independently licensed as under current law. (While current law does not include the former in the "health care facility" definition, it requires CON approval to establish either type of outpatient surgical facility.)

“Change of Ownership or Control” Definition

For the current CON program, ownership transfers requiring CON approval are those transfers that impact or change the facility’s (or other applicable group practice’s) governance or controlling body, including all affiliations, mergers, or any sale or transfer of the facility’s net assets.

The bill instead requires CON approval for a “change of ownership or control” of a health care facility or certain group practices (see above). This is defined as any change in the entity’s ownership, beneficial ownership, or governance, specifically including:

1. a corporate merger;
2. an acquisition of 20% or more of the entity’s assets or operations by direct or indirect purchase in any way (for example, lease, transfer, or exchange), such as by a health care system, private equity group, hedge fund, publicly traded company, real estate investment trust, MSO, health carrier, or their subsidiaries;
3. any affiliation or arrangement that leads to a change in the entity’s control in which another person or entity acquires direct or indirect control over all or most of its operations;
4. the formation of a partnership, joint venture, accountable care organization, parent organization, or MSO for the purpose of administering contracts with carriers, third-party administrators, pharmacy benefit managers, or providers;
5. a sale, purchase, lease, affiliation, or transfer of control of the entity’s board or governing body; or
6. a real estate sale or lease of 20% or more of the entity’s assets.

CON Determination Letter

Similar to current law, the bill requires anyone who is unsure whether a CON is required to send a letter to the CON unit describing the proposal and asking the unit to determine if a CON is required. The person or facility making the request must give the unit any information

it needs to determine this. The unit must make its decision within 30 days of getting the request.

§§ 5 & 15 — REVIEW FACTORS

The bill requires the panel, in any deliberation on a CON application, to determine by a preponderance of the evidence whether the application shows that the proposal is in the public's interest. In doing so, the panel must consider whether the proposal:

1. is consistent with any policies and procedures the panel has adopted;
2. promotes delivery of high-quality care in the applicant's primary service area;
3. promotes access, including Medicaid access, in that area;
4. promotes delivery of cost-effective care in that area;
5. promotes the health care system's financial stability, including whether the proposal is financially feasible for the applicant and whether there is any evidence of the applicant's prior financial mismanagement or misconduct;
6. meets a clear public need (for the proposal and services provided under it); and
7. would result in an unnecessary duplication of services.

Current law requires consideration of a longer list of factors, including similar matters as under the bill and other factors such as (1) the applicant's past and proposed provision of health care to relevant populations and payer mix and (2) whether the applicant has shown that the proposal will not negatively impact provider diversity and patient choice in the region. Current law, unlike the bill, also requires additional factors to be considered in deliberations for hospital ownership transfers.

Generally similar to current law, the bill allows the panel and the

CON unit to engage a third-party consultant to help in this analysis. As under current law, the consultant must submit the bills for its services directly to the applicant. The bill sets a $200,000 limit on these bills per application.

§§ 6 & 16 — APPLICATION PROCESS

The bill requires CON applicants under the new process to submit applications to DPH's CON unit, in a way the unit sets. The applications must (1) include all information required under the unit's policies and procedures (see § 11 below) and (2) be submitted based on quarterly deadlines the panel sets, including submission dates on the first of March, June, September, and December. Unlike current law, there is no application fee (the current fee ranges from $1,000 to $10,000 based on the project's costs).

The bill specifies that it does not affect DPH's authority under the laws on health care institutions (for example, licensure requirements).

Ownership Changes Requiring DPH Approval

For proposals that include a facility's change of ownership or control requiring DPH approval under existing law (see BACKGROUND), the bill requires the CON application to include that separation application as well. The CON unit (after deeming the application complete) must submit the change of ownership or control application to DPH. After DPH completes its review, it must give the unit its decision and any supporting documents, to be added to the CON application record. If DPH denied the application, the CON cannot be issued; otherwise, the CON review process must resume.

Notice Posting and Determination of Application's Completeness

Under the bill, within 30 days before the CON application deadline, the applicant must give the CON unit a notice for posting on the unit's website. The notice must (1) identify the applicant, any known parties to the application, and the proposal's address and (2) briefly describe the proposal in plain language, including a reference to the bill's provision requiring CON approval (see § 4).

Within 30 days after the application deadline, the unit must notify the applicant whether the application is deemed complete. Within 15 days after deeming an application incomplete, the unit must give the applicant written notice of any application or data elements that were inadequately addressed. DPH must not review the application until the applicant resubmits it, with the missing elements, in a subsequent application period.

The bill's notice and application process differs in several respects from the current process. Among other things, current law requires the applicant to also post a notice in the newspaper and at least two community locations.

Public Hearings and Summary Report

With certain exceptions, current law requires a hearing on CON applications only if requested by a specified number of people. By contrast, under the bill, the panel generally must hold a public hearing on any application within 90 days after the unit deems it as properly filed and complete. But the applicant may waive the right to a hearing if the applicant is the only party and no one has been granted intervenor status. Applicants that waive a hearing also waive their right to appeal. Someone seeking to intervene must apply within 30 days after the application notice was posted, in a manner set by the CON unit executive director.

Under the bill, the unit's executive director must submit a report to the panel and any designated hearing officer before the hearing or at the panel meeting reviewing the application. The report must summarize the application and analyze the bill's relevant criteria for the CON requirement. The unit must give the report to the panel or hearing officer and post it online within five days before the hearing or scheduled meeting.

Within 60 days after the hearing record is closed (or after the applicant waives the hearing), the hearing officer must send the report, the hearing record (if any), and his or her proposed final decision to the panel for its consideration at the next meeting.

Panel Meeting and Decision

Under the bill, the panel must vote on an application at a meeting. The panel may approve the application with or without conditions, deny it, or send it back to the hearing officer to further develop the record for presentation at the next meeting.

The bill allows the CON unit to recommend, and the panel to impose, any conditions on a CON approval that are consistent with the bill's purposes. The applicant and any party to the application may request an amendment or relief from any condition due to changed circumstances, hardship, or other good cause. The panel may grant or deny the request, and its decision is not subject to appeal.

§ 7 — EXPEDITED REVIEW PATHWAY

The bill allows the panel to create an expedited review pathway and designate CON application categories or subcategories that are eligible for it. An applicant requesting expedited review must submit its CON application under the same deadlines and notice requirements as described above (see § 6.)

The applicant also must submit an application for expedited review to the CON unit, in a way the unit's executive director decides. Within 30 days, the unit must notify the applicant whether the application is deemed complete and whether it qualifies for expedited review.

If the unit deems an application incomplete, it must give the applicant written notice within 15 days of which elements of the submitted application or data were inadequate. DPH must not review the application until the applicant resubmits it, with the missing elements, in a subsequent application period.

If the unit deems the application complete but ineligible for expedited review, it must review the application under the bill's standard process. On the other hand, if the unit deems the application eligible for expedited review, the unit must complete its analysis within 60 days after that determination and present the application to the panel at its next meeting. The panel may hold a hearing on eligible applications but

is not required to do so.

As with applications under the bill's standard process, the panel must vote on an expedited application and approve it, deny it, or remand it to the hearing officer to further develop the record for the next panel meeting. The bill applies to expedited approvals the same provisions as under the standard process on the (1) panel's authority to set conditions on its approval and (2) applicant's or party's ability to request an amendment or relief from any condition.

PA 25-2, unchanged by the bill, created a separate OHS-administered emergency CON process for bankruptcy-related hospital ownership transfers.

§§ 8 & 17 — VALIDITY, REVOCATION, AND RELATED MATTERS

Generally mirroring current law, the bill provides that:

1. a CON is valid only for (a) the proposal described in the application and (b) two years from the date it is issued;

2. the CON holder must give the unit any information it requests on the proposal's development during these two years and for 30 days after it expires;

3. if the CON holder asks, the unit may extend the CON's duration as it deems necessary, subject to a public comment period (unlike current law, the bill does not require a public hearing on these requests if a certain number of people ask for it);

4. the unit may withdraw, revoke, or rescind the CON if it determines that the (a) project has not substantially begun during a valid CON period or (b) CON holder has not made a good-faith effort to complete the proposal as approved; and

5. a CON is not transferable or assignable and the project cannot be transferred to someone else.

§§ 9 & 20 — COST AND MARKET IMPACT REVIEW

Under a generally similar process as current law, the bill requires the

CON unit to conduct a Cost and Market Impact Review (CMIR) of certain CON applications that propose to transfer a hospital's ownership, to examine the businesses and relative market provisions of the transacting parties. The bill's requirement also applies to notice of material change filings (see BACKGROUND) with the attorney general's office for these same transfers.

In either case, the bill's requirement applies to hospital ownership transfers when the purchaser is (1) an in- or out-of-state hospital or a hospital system that had net patient revenue exceeding $1 billion for FY 25 or (2) organized or operated for profit. (The current threshold for (1) is $1.5 billion revenue for FY 13.)

The CON unit must hire an independent consultant to conduct the review at the purchaser's expense, with similar requirements as under current law, except the maximum bills per application are $250,000 under the bill compared to $200,000 currently.

The bill requires the unit to develop a set of data requests for these CMIRs. The applicant must submit all necessary CMIR data when the applicant begins the CON application process or submits its material change notice, whichever is earlier. The unit must review the data submission for completeness within 30 days, and notify the applicant of any missing elements.

Under the bill, the CON unit must submit a preliminary CMIR report to the applicant and the attorney general within 90 days after the data submissions are complete. The applicant then has 15 days to respond in writing. After the applicant responds (or waives the opportunity to do so), the unit must make the preliminary report and the applicant's comments public. Within 120 days after the CON application was completed, the unit must issue a final CMIR report and make it part of the public CON record for that application.

In several respects, the bill's CMIR provisions mirror those under current law. These include provisions on the:

1. confidentiality of submitted nonpublic information and limited

exceptions to it;

2. factors that may be examined in the review, such as the parties' size and market share, prices for services, and service quality;

3. attorney general's authority, after the final CMIR report is issued, to investigate certain matters (for example, possible antitrust violations) or take related actions; and

4. required stay of the proposed transfer for a 30-day period after the CMIR final report is issued or while a court case brought by the attorney general is pending.

§ 10 — INVESTIGATIONS AND ENFORCEMENT

The bill requires the CON unit's executive director to investigate all inquiries about compliance with the bill's new CON process. It gives the panel similar enforcement authority as OHS has under current law to investigate alleged CON violations. For example, it allows the panel, or its authorized agent, to (1) administer oaths and take testimony under oath relating to the matter under investigation and (2) subpoena witnesses or require the production of documents or other materials, subject to judicial enforcement.

Similar to current law, it sets a civil penalty (through proceedings brought by the CON unit) for any person or health care facility or institution that negligently (1) undertakes an activity without a required CON approval or (2) fails to comply with a CON decision's terms or conditions or a panel-approved agreed settlement. The maximum penalty is $5,000 per day, compared to $1,000 per day under current law. The CON unit must present allegations of this negligence at a hearing before the panel.

The bill generally mirrors current procedures (and related deadlines) for these penalties, such as prior notice, the right to a hearing, and the right to appeal. It similarly mirrors a current provision that makes failing to pay the penalty after the final assessment grounds for deducting Medicaid payments.

It also generally mirrors current law for cease and desist orders, by allowing the CON unit to pursue this remedy when the executive director (or his or her agent) has received information or reasonably believes that someone has or is violating the bill's new CON procedures or requirements. The bill includes prior notice, hearing, and appeal provisions that are similar to current law, with the panel holding the hearings.

The bill allows any civil penalty proceeding and investigation or cease and desist proceeding to be held together in one proceeding.

§§ 11 & 16 — POLICIES AND PROCEDURES

The bill allows the CON unit's executive director to implement policies and procedures to administer the new CON process, as long as (1) he or she first holds a public hearing and (2) the policies and procedures are then unanimously approved by the panel. The policies and procedures, or any amendment to them, must not take effect until at least 30 days after the panel votes to approve them. They need not be adopted as regulations. The bill eliminates OHS's ability under current law to implement policies and procedures while adopting regulations for the CON process

§§ 12 & 19 — HOSPITAL SERVICE PAUSES OR TERMINATIONS

Under current law, in addition to required CON approval for certain service terminations (see above), health care facilities must give OHS 60 days' notice of other service terminations, with the specific procedures differing based on whether the service originally needed CON approval.

By contrast, the bill's new process generally addresses service terminations only by hospitals and does not set related notification requirements for other facilities. It allows a hospital to temporarily pause a service for up to 90 days. If the hospital intends to pause a service for longer than that or to indefinitely terminate a service, it must notify the CON unit at least 90 days in advance. These provisions apply to any inpatient or outpatient service, except for emergency department

services.

The notice may be in writing or electronic, and must include:

1. a description of the service to be paused or terminated;
2. current and historical utilization rates for it;
3. the anticipated impact of the pause or termination on people and health care facilities in the hospital's primary service area;
4. the date set for the pause or termination and, if applicable, the anticipated date to resume the service;
5. a detailed account of any community engagement and planning that has been done or that is scheduled to take place before the pause or termination; and
6. any other information the executive director requires.

The hospital must also send a copy of the notice to (1) the attorney general's office, DSS, and the Office of the Healthcare Advocate, and (2) if it relates to a behavioral health or substance use disorder treatment service, the Department of Mental Health and Addiction Services and Behavioral Health Advocate.

The CON unit executive director may order a public hearing on the proposed pause or termination, the impact on the hospital's primary service area, and the proposed plan for ensuring continued access to high-quality affordable health care in that area.

Plan for Continued Access

The bill requires a hospital, at least 60 days before the pause or termination, to submit a plan for ensuring access to the service afterwards. The plan must include:

1. information on service utilization before the proposed pause or termination;
2. information on the location and service capacity of alternative

sites that provide the service and travel times to them;

3. an assessment of transportation needs after the pause or termination and a plan to meet them;

4. a protocol that details ways to maintain continuity of care for patients and describes how patients in the hospital's primary service area will get the service at other sites; and

5. a communication plan to ensure that all affected patients in that area are aware of the pause or termination, where else they may get the service, and the hospital's available help to get it.

Under the bill, the CON unit must review the hospital's plan to determine if it ensures continued access to the service. Within 10 days after receiving the plan, the unit must review it and give the hospital and panel written recommendations to approve (with or without conditions), modify, or reject it.

The panel then must hold a meeting on the plan within 10 days. The hospital may submit a response to the recommendations at the meeting. Within 10 days after the meeting, the panel must make its decision.

The CON unit must monitor the plan's implementation. If the hospital fails to implement any aspect of the approved plan, the unit may impose a performance improvement plan. The hospital may be subject to civil penalties (see § 10 above) for failure to comply with the performance improvement plan and continued failure to perform under the plan.

BACKGROUND

Nonprofit Hospital Sales

Under existing law, a nonprofit hospital needs approval from the OHS commissioner and attorney general before entering into an agreement to transfer a material amount of its assets or operations or change control of its operations to a for-profit purchaser. Among other things, the hospital and purchaser must submit a CON determination letter as part of this process. OHS and the attorney general's office must

evaluate several factors in deciding whether to approve the transaction (CGS § 19a-486 et seq.).

Ownership Changes Requiring DPH Approval

Existing law generally requires prior approval from DPH for changes to the ownership or beneficial ownership of licensed health care facilities. The department must evaluate the application based on specified factors (for example, the proposed new owner's history of compliance with licensing and regulatory requirements) (CGS § 19a-493).

Notice of Material Change

Existing law requires prior notice to the attorney general before parties may complete a transaction resulting in (1) a material change to a physician group practice's business or corporate structure or (2) an affiliation between one hospital or hospital system and another, so the attorney general can review the transaction under the antitrust laws (CGS § 19a-486i).

COMMITTEE ACTION

Public Health Committee

Joint Favorable
Yea 22 Nay 10 (03/09/2026)