

ENROLLED SENATE
BILL NO. 774

By: Taylor of the Senate

and

Steidley of the House

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 1-853, 1-854.1, as amended by Section 1, Chapter 234, O.S.L. 1993, and 1-880.8 (63 O.S. Supp. 1993, Section 1-854.1), which relate to the Long-term Care Certificate of Need Act and the Psychiatric and Chemical Dependency Facility Certificate of Need Act; clarifying language; correcting statutory cite; specifying venue for certain appeals; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-853, is amended to read as follows:

Section 1-853. A. Except as provided in subsection B of this section, no certificate of need shall be issued by the State Department of Health unless after investigation the Department makes the following findings:

1. The action proposed in the application for such certificate of need is necessary and desirable in order to provide the services required in the locality to be served;

2. The proposed action can be economically accomplished and maintained;

3. The proposed action will contribute to the orderly development of long-term care services in the locality; and

4. The applicant is or has in his employ a licensed nursing home administrator.

B. 1. An application for a certificate of need for a capital expenditure to eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes or regulations, or to comply with state licensure standards, or to comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such act, shall be approved unless the Department finds that the facility or service is not needed;

2. Approval under this subsection shall cover only the capital expenditure to eliminate or prevent the hazards or to comply with standards described herein.

C. The Department shall schedule review cycles of equal duration in each calendar year, for the review of completed applications, but may make provision in its procedures for the granting of variances from the schedule for reasons of hardship.

D. Any application seeking a certificate of need for the construction of a long-term care facility in replacement of an existing facility shall be reviewed by the Department and shall be

granted a certificate of need if the application meets the following criteria:

1. The replacement facility involves no increase in licensed beds; and

2. The replacement facility shall be located no farther than three (3) miles from the facility it is replacing; and

3. A plan for the use of the facility to be replaced is provided which assures that its use as a Nursing Facility, or a Specialized Facility will be discontinued upon licensure of the replacement facility.

E. Any application for a certificate of need for an increase in the number of licensed beds in an existing facility shall be reviewed and approved by the Department if the application meets the following criteria:

1. The increase in any calendar year is no more than ten percent (10%) of the applicant's total licensed beds in each facility or the increase is no more than ten beds, whichever is greater; and

2. The total capital cost of the project is less than Five Hundred Thousand Dollars (\$500,000.00); and

3. The rate of occupancy of the beds in the existing facility is an average of ninety-three percent (93%) or more during the six (6) months preceding the filing of the application.

F. When the Department completes its investigation and makes a determination to issue or deny a certificate of need, it shall provide written findings to the applicant, other reviewers and to other persons upon their request. The certificate of need shall establish the maximum capital expenditure for the project. The Department shall adopt rules and regulations concerning the time in which a decision must be made by the Department on an application.

G. Any person may request a reconsideration of a Department determination for good cause shown, the grounds for which shall be established by the Department by rule. A request for reconsideration shall be filed within thirty (30) days of the Department determination. The hearing thereupon shall be conducted within thirty (30) days following the receipt of request. Written findings shall be issued within forty-five (45) days of such hearing.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-854.1, as amended by Section 1, Chapter 234, O.S.L. 1993 (63 O.S. Supp. 1993, Section 1-854.1), is amended to read as follows:

Section 1-854.1 Any final determination by the State Department of Health under this act, except for a determination made pursuant to subsection D of Section 1-853 of this title, may be appealed by the applicant, or any other aggrieved party under Article II of the Administrative Procedures Act, Section ~~309~~ 308a et seq. of Title 75 of the Oklahoma Statutes; provided, that the venue for such appeal shall be in Oklahoma County or in the county in which the facility at issue in the application is located. The decision of the Department shall be upheld by the court unless it is arbitrary or capricious or is not in accordance with applicable law.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-880.8, is amended to read as follows:

Section 1-880.8 Any final determination by the State Department of Health under this act may be appealed by the applicant, or any other aggrieved party under the Administrative Procedures Act, Sections 301 through 326 of Title 75 of the Oklahoma Statutes; provided, that the venue for such appeal shall be in Oklahoma County or in the county in which the facility at issue in the application is located. The decision of the Department shall be upheld by the

court unless it is arbitrary or capricious or is not in accordance with applicable law.

SECTION 4. This act shall become effective September 1, 1994.
Passed the Senate the 8th day of March, 1994.

President of the Senate

Passed the House of Representatives the 6th day of April, 1994.

Speaker of the House of
Representatives