

ENGROSSED SENATE  
BILL NO. 1177

By: Williams (Penny), Campbell  
and Cole of the Senate

and

McCorkell and Toure of the  
House

[ public health and safety - Long-term Care  
Certificate of Need Act -  
effective date ]

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-851.2, is  
amended to read as follows:

Section 1-851.2 A. The ~~Department~~ State Commissioner of Health  
shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke certificates  
of need;
2. Establish and enforce standards and requirements for  
certificates of need;
3. Require the submission of and to review reports from any  
person requesting or obtaining a certificate of need;
4. Employ or designate personnel necessary to implement the  
provisions of the Long-term Care Certificate of Need Act, Section 1-  
850 et seq. of this title;
5. Report to the district attorney having jurisdiction or the  
Attorney General, any act committed by any person which may  
constitute a misdemeanor pursuant to the provisions of the Long-term  
Care Certificate of Need Act;

6. Advise, consult and cooperate with other agencies of this state, the federal government, other states and interstate agencies, and with affected groups and political subdivisions to further the purposes of the provisions of the Long-term Care Certificate of Need Act;

7. Develop and enforce rules and regulations subject to the approval of the State Board of Health to implement the provisions of the Long-term Care Certificate of Need Act;

8. Investigate, request or otherwise obtain the information necessary to determine the qualifications and background of an applicant for a certificate of need;

9. Establish administrative penalties for violations of the provisions of the Long-term Care Certificate of Need Act as authorized by the Board;

10. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department pursuant to the Long-term Care Certificate of Need Act;

11. Develop and administer plans for health services, including manpower, facilities and other resources;

12. Develop and publish, once every four (4) years, a Quadrennial State Health Plan, following guidelines and procedures adopted by the Board which specify the method of adoption of the plan document, its format, provisions for developing and publishing plan amendments and the role of the State Department of Health, local health planning advisory councils and the Alcohol, Drug Abuse and Community Mental Health Planning and Coordination Boards of each mental health catchment area in its development;

13. Establish and administer criteria and standards for the delineation and approval of areas and regions for health planning purposes;

14. Promote and maintain plans for providing health services including health, manpower and health facilities, in the State of Oklahoma; and

15. Exercise all incidental powers as necessary and proper for the administration of the Long-term Care Certificate of Need Act.

B. The State Department of Health shall be the single state agency to participate in federal programs for health planning and to apply for and administer federal funds for health planning, provided, that the Long-term Care Certificate of Need Act, and any other law vesting planning functions in any other state agency, shall not apply to health planning functions vested by law in the Department of Mental Health and Substance Abuse Services, the Oklahoma Health Care Authority and the Department of Human Services.

C. The Department shall establish forms and provide for the collection of monthly data necessary for the computation of occupancy rates from licensed long-term care facilities which do not provide services to Medicaid recipients. Data shall include licensed bed capacity, average daily census, days on which beds were reserved for residents temporarily absent, and the number, if any, of semi-private units rented as private rooms.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-851.3, is amended to read as follows:

Section 1-851.3 No long-term care facility shall be developed, acquired or offered unless a certificate of need therefor has been issued as provided in the Long-term Care Certificate of Need Act, Section 1-850 et seq. of this title. No governmental entity shall approve any grant of funds, issue any debentures or issue or renew any license for the operation of a long-term care facility, nor shall any third-party purchasers, licensed or operated by this state, issue reimbursement for services provided to its insurers or clients, unless the certificate of need as provided in the Long-term Care Certificate of Need Act has been obtained.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-852, as amended by Section 14, Chapter 269, O.S.L. 1993 (63 O.S. Supp. 1995, Section 1-852), is amended to read as follows:

Section 1-852. A. 1. Every entity desiring to establish a new long-term care service or to expand an existing service whether through construction or conversion of facilities, or desiring to acquire an existing long-term care service shall make application to the State Department of Health for a certificate of need. The application for a certificate of need shall be in such form and accompanied by such information, ~~including a complete list of stockholders, partners, and owners and any other information the Commission~~ as the State Commissioner of Health shall prescribe.

2. Complete disclosures for the applicant's owner, operator and manager shall be a part of the application, which shall include, but not be limited to:

a. the name, mailing address and finding address of:

(1) the owner, operator and manager, if an individual,

(2) every member, if a firm, partnership or association, and

(3) every stockholder with at least five percent (5%) ownership interest, every officer and the registered agent, if a corporation, and

b. the names, locations and dates of involvement for all current and prior long-term care facilities owned, operated or managed in this state or in any other state by the applicant or by any of its principals.

B. ~~1.~~ Long-term care service shall include ~~any~~:

1. Any capital investment or lease of Five Hundred Thousand Dollars (\$500,000.00) or more, including predevelopment activities such as arrangements and commitments for financing, architectural designs, plans, working drawings, specifications, and site

acquisition; provided, that this dollar limit shall not apply to a change in bed capacity-; and

2. ~~Long-term care service shall include acquisition~~ Acquisition of the ownership, operation or management of a facility by purchase, lease, donation or through, transfer of stock or, corporate merger, assignment, or through foreclosure.

C. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewers it may select to determine whether the application is complete. Once the Department has determined that the application is complete, it shall notify the affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and appropriateness of such expanded long-term care service.

D. The investigation made pursuant to an application for a certificate of need shall include the following:

1. The adequacy of long-term care services in relation to an optimal target ratio of long-term care beds per thousand persons seventy-five (75) years of age or older in the state;

2. The availability of services which may serve as alternatives or substitutes;

3. The adequacy of financial resources for the new or expanded long-term care services and for the continued operation thereof;

4. The availability of sufficient staff to properly operate the proposed new or expanded long-term care service;

5. The record of the applicant's current and prior ownership, operation and management of similar facilities in this state and in any other state. The investigation of such record shall include, but not be limited to, inquiry to the state ombudsman office, the state Medicaid fraud control unit, and the state licensure and certification agency; and

6. Any other matter which the Department deems appropriate.

E. 1. If the ~~Department~~ Commissioner finds that a proposed acquisition is consistent with the criteria and standards for review of such projects, then the ~~Department~~ Commissioner shall issue a certificate of need. If the ~~Department~~ Commissioner finds that the proposed acquisition is not consistent with the criteria and standards, the ~~project will be referred to the Commissioner of Health for final determination~~ shall deny the certificate of need.

2. Before making a final determination on an acquisition application, the Commissioner shall cause paid public notices to be published in a newspaper of general circulation near the facility and in a newspaper of general circulation in the area where the application is available for public inspection. The public notices shall offer participating parties an opportunity to submit written comments.

3. The Commissioner's ~~determination~~ decision to approve or deny the proposed acquisition ~~or to refer it to the Department~~ shall be made ~~no later than fifteen (15)~~ within forty-five (45) days following the ~~day the application is determined to be complete and review ready~~ deadline for submitting written comments, or the proposed acquisition shall be automatically approved. ~~Proposed acquisitions shall be reviewed against standards adopted by the Department which relate only to the acquirer's capability to operate a long-term facility.~~

~~C. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewers it may select to determine whether the application is complete. Once the Department has determined that the application is complete, it shall notify affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and appropriateness of such expanded long-term care service. The investigation made pursuant to an application for a certificate of need shall include the following:~~

~~1. The adequacy of long-term care services in relation to an optimal target ratio of long-term care beds per thousand persons seventy-five (75) years of age or older in the state;~~

~~2. The availability of services which may serve as alternatives or substitutes;~~

~~3. The adequacy of financial resources for the new or expanded long-term care services and for the continued operation thereof;~~

~~4. The availability of sufficient manpower to properly staff and operate the proposed new or expanded long-term care service; and~~

~~5. Any other matter which the Department deems appropriate.~~

~~D. F. 1.~~ Each application for a certificate of need applied for pursuant to the provisions of this section, except for those applications filed by state agencies, shall be accompanied by an application fee equal to one percent (1%) of the capital cost of the project, with a minimum fee of One Thousand Dollars (\$1,000.00).

2. The maximum filing fee on an application for:

a. replacement of an existing facility, pursuant to subsection D of Section 1-853 of this title, shall be Five Thousand Dollars (\$5,000.00), and

b. acquisition of an existing facility, pursuant to paragraph 2 of subsection B of this section, shall be Ten Thousand Dollars (\$10,000.00).

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-853, as amended by Section 1, Chapter 48, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-853), is amended to read as follows:

Section 1-853. A. Except as provided in ~~subsection~~ subsections B, C, D and E of this section, no certificate of need shall be issued by the State Department of Health unless after investigation the ~~Department~~ State Commissioner of Health 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~~ employs a licensed nursing home administrator; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

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:

a. that the facility or service is not needed, ~~or~~ or

b. the applicant is found to be out of compliance with the provisions of subsection F of this section.

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~~ No certificate of need shall be issued for the acquisition of an

existing facility unless after investigation the Commissioner finds that the applicant:

1. Has financial resources necessary to complete the transaction and to maintain services and staffing; and

2. Is found to be in compliance with the provisions of subsection F of this section.

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;

4. The facility to be replaced does not substantially comply with current codes and standards applicable to the construction of new facilities; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

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~~ Commissioner 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; and

4. The applicant is found to be in compliance with the provisions of subsection F of this section.

F. No certificate of need shall be issued unless after investigation the Commissioner makes the following findings in addition to the findings in subsections A, B, C, D and E of this section:

1. The applicant, in all of its operations, during the preceding twenty-four (24) months has not been found two (2) or more times to have rendered substandard care at levels defined under 42 CFR, Sections 483.13, 483.15 and 483.25, and which consist of:

- a. immediate jeopardy to resident health or safety, or
- b. a pattern of or widespread actual harm to residents;

2. The applicant, in all of its operations, during the preceding twenty-four (24) months has not been cited two (2) or more times with license deficiencies that resulted in administrative penalties;

3. The applicant during the preceding sixty (60) months has not had a facility license or certificate revoked, rescinded, canceled or involuntarily suspended; and

4. The applicant in all current and prior ownership, operation and management of long-term care facilities has complied with all lawful orders of suspension, receivership, temporary management, administrative penalty, or other negative sanctions issued by the Department or by other authorities with similar responsibilities in other states.

G. When the ~~Department completes its investigation and~~ Commissioner makes a determination to issue or deny a certificate of

need, ~~it~~ the Commissioner 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~~ State Board of Health shall adopt rules ~~and regulations~~ concerning the time in which a decision must be made ~~by the Department~~ on an application.

~~G. H.~~ H. Any person may request a reconsideration of a ~~Department~~ the Commissioner's determination for good cause shown, the grounds for which shall be established by the ~~Department~~ Board 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 5. AMENDATORY 63 O.S. 1991, Section 1-854.1, as last amended by Section 2, Chapter 48, O.S.L. 1994 (63 O.S. Supp. 1995, 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~~ the Long-term Care Certificate of Need Act, Section 1-850 et seq. of this title, 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 the provisions of Sections 317 and 318 of Article II of the Administrative Procedures Act, Section 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~~ state ombudsman shall have standing to appeal on behalf of residents in facilities affected by a certificate of need decision.

SECTION 6. This act shall become effective November 1, 1996.

Passed the Senate the 6th day of March, 1996.

President of the Senate

Passed the House of Representatives the \_\_\_\_ day of

\_\_\_\_\_, 1996.

Speaker of the House of  
Representatives