

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2368

By: Adkins and Gilbert of the
House

and

Morgan of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to vulnerable adults and long-term care facilities; vesting certain courts with authority to restrict visitation of a vulnerable adult by specified persons; requiring certain determinations; requiring certain restrictions; requiring notice; requiring certain petitions; providing for type of restrictions; requiring information to be stated in the court record; requiring certain notification to the Department of Human Services; amending 63 O.S. 1991, Section 1-853, as last amended by Section 6, Chapter 336, O.S.L. 1996 (63 O.S. Supp. 1997, Section 1-853), which relates to certificates of need; providing for replacement facilities; providing for relocation or replacement; adding, clarifying and specifying certain conditions and criteria, restrictions and qualifications for operation; modifying certain criteria relating to new certificates and certificates for increase; authorizing refusal of issuance of certificate for certain facilities; providing for applicability of provision; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-111 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. 1. The district courts are vested with jurisdiction to issue orders and enforce orders restricting visitation, by the custodian or by any other person specified by the court, of a vulnerable adult who is receiving or has been determined to need protective services pursuant to the Protective Services for Vulnerable Adults Act.

2. Whenever it is consistent with the welfare and safety of a vulnerable adult, the court shall restrict the visitation of a custodian or other person specified by the court who is alleged or has been determined to have abused, neglected or exploited the vulnerable adult.

3. Notice as ordered by the court shall be given to the custodian or other person alleged or determined to have abused, neglected or exploited a vulnerable adult.

B. If the Department of Human Services determines, as a result of its investigation, that a vulnerable adult needs voluntary or involuntary protective services as a result of abuse, neglect or exploitation by the caretaker or by any other person, the Department may petition the district court to restrict the visitation of such custodian or other person with the vulnerable adult.

C. 1. Consistent with the welfare and safety of the vulnerable adult, the court may require supervised visitation, prohibit visitation or otherwise limit the visitation by the custodian or such other person with the vulnerable adult.

2. The basis for restricting visitation shall be stated in the record by the court.

D. The owner, operator or any facility personnel of a nursing home, residential home, assisted living facility or other long-term care facility having reason to believe that visitation of a vulnerable adult should be restricted may notify the long-term care ombudsman program or adult protective services. Any other person having reason to believe that visitation of a vulnerable adult should be restricted may notify the Department of Human Services pursuant to the Protective Services for Vulnerable Adults Act.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-853, as last amended by Section 6, Chapter 336, O.S.L. 1996 (63 O.S. Supp. 1997, Section 1-853), is amended to read as follows:

Section 1-853. A. Except as provided in 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 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;

4. The applicant is or 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

b. that 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. 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. 1. Any application seeking a certificate of need for the construction of a long-term care facility ~~in replacement of to~~ replace or relocate all or part of the licensed bed capacity of an existing facility shall be granted a certificate of need if the application meets the following criteria:

~~1. The replacement facility~~

~~a. the project~~ involves no increase in licensed beds; and

~~2. The replacement~~

~~b. the facility shall be located~~ constructed no farther than three (3) miles from the facility it is replacing; or relocating, and

~~3. A~~

~~c. a plan for the use of the facility to be replaced or relocated is provided which assures that its use as a Nursing Facility, or a Specialized Facility will be discontinued upon licensure of the replacement facility; and that ensures continuity of services.~~

~~4. 2.~~ The provisions of subsection F of this section shall not apply to ~~replacement~~ replaced or relocated facilities.

E. Any application for a certificate of need for an increase in the number of licensed beds in an existing nursing or specialized facility currently licensed under Section 1-1906 of this title shall be approved by the 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;

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

3. The rate of occupancy of the beds in the existing facility is an average of ninety-three percent (93%) or more during the twelve (12) months preceding the filing of the application; ~~and~~

4. The facility was constructed to replace or relocate part of a facility pursuant to subsection D of this section; and

5. The facility previously has not increased beds pursuant to subsection E of this section; and

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

F. 1. The Commissioner shall refuse to issue a certificate of need to any applicant who has had, in ten percent (10%) or more of the applicant's long-term care facility holdings in the preceding twenty-four (24) months, a facility license or certification revoked, rescinded, canceled, terminated, involuntarily suspended, or refused renewal; or if the license or certification was relinquished voluntarily in lieu of penalty.

2. The Commissioner shall refuse to issue a certificate of need to any applicant except where the applicant overcomes a presumption against approval with clear and convincing evidence that one of the following circumstances was not due to the action or inaction of the applicant or any person with a controlling interest:

- a. the applicant has had, in any of the applicant's long-term care holdings in the preceding twenty-four (24) months, a facility's license or certificate revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal,
- b. the applicant has a history of noncompliance, as defined by rule, with the standards for licensure of long-term care facilities of any state in which the applicant has or has had long-term care facilities, or with federal standards for certification of long-term care facilities, or
- c. the applicant, in all current and prior ownership, operation and management of long-term care facilities, has not complied with all lawful orders of suspension, receivership, temporary management, or administrative penalty issued by the Department or by other authorities with similar responsibilities in other states or by the federal Health Care Financing Administration.

3. The Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding twenty-four (24) months, an administrative penalty above the level of a deficiency, other than any of those listed in paragraph 1 or 2 of this subsection, against any of the applicant's long-term care facility holdings or against any long-term care facility operated by a person with a controlling interest.

G. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

H. When the Commissioner makes a determination to issue or deny a certificate of need, 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 State Board of Health shall adopt rules concerning the time in which a decision must be made on an application.

I. Any person may request a reconsideration of the Commissioner's determination for good cause shown, the grounds for which shall be established by the Board by rule. A request for reconsideration shall be filed within ten (10) 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.

J. The Commissioner shall refuse to issue a certificate of need for an increase in licensed bed capacity of any facility that was replaced or relocated in part pursuant to subsection D of this section unless all of that facility is subsequently replaced or relocated. The applicability of this subsection shall not be affected by any change in ownership, operation or management of the facility.

SECTION 3. This act shall become effective November 1, 1998.

