STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1420 By: Case

COMMITTEE SUBSTITUTE

An Act relating to public health; amending 63 O.S. 1991, Sections 1-852, as last amended by Section 4, Chapter 336, O.S.L. 1996 and 1-853, as last amended by Section 13, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, 1-852 and 1-853), which relate to the Long-term Care Certificate of Need Act; establishing certain exception from certain investigation requirements under certain circumstances; providing definitions; authorizing certain initial certificate of need for certain facilities; authorizing certain admission period; establishing certain conditions; authorizing certain certificate of need under certain circumstances; providing certain exception from certain distance requirements; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-852, as last amended by Section 4, Chapter 336, O.S.L. 1996 (63 O.S. Supp. 2000, Section 1-852), is amended to read as follows:

Section 1-852. A. Every entity desiring to establish a new long-term care service, to expand an existing service whether through construction or conversion of facilities, or 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 as the State Commissioner of Health shall prescribe.

B. Long-term care service shall include:

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. Acquisition of the ownership or operation of a facility by purchase, lease, donation, transfer of stock, corporate merger, assignment, or through foreclosure. Acquisition through management contract shall be subject to a certificate of need unless said management contract is part of a purchase or lease proceeding. In such case the management contract shall be exempt from the certificate of need for a single term of up to nine (9) months, with no more than one three-month extension. A copy of the purchase contract shall be included by the applicant in the request for the management contract certificate of need exemption.

Management contracts for a period of six (6) months or less shall not be subject to certificate of need review. Such management contracts cannot be renewed unless the applicant files for a certificate of need.

C. All applicants for the issuance of a certificate of need, at such time and in such manner as required by the Department, shall file:

1. A disclosure statement with their applications unless the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company. In such case, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved;

2. Copies of residents council minutes and family council minutes, if any, and the facility's written response to the councils' requests or grievances, for the three (3) months prior to

the date of application, for each of the applicant's current holdings in the State of Oklahoma; and

3. Such other relevant information required by the Department pursuant to the Long-term Care Certificate of Need Act that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

D. An application for a certificate of need thereof shall be signed under oath by the applicant.

E. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewing bodies selected by the Department to assist the Department in determining 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 the new or any long-term care service acquisition, expansion, or establishment of a new facility.

F. ~~The~~ Except for applications for continuing care retirement community nursing home bed projects filed by an applicant who will be a qualified continuing care facility as such term is defined under the Internal Revenue Code Section 7872(g)(4)(A) or which qualify with the requirements established in subsection J of this section, 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 acquisition, expansion, or establishment of a new long-term care service and for the continued operation thereof;

4. The availability of sufficient staff to properly operate the proposed acquisition, expansion, or establishment of a new 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 Long-Term Care Ombudsman Office, the state Medicaid Fraud Control Unit, and the state licensure and certification agency;

6. Review of minutes of family councils and residents councils, and the facilities' responses, from each of the applicant's holdings in Oklahoma; and

7. Any other matter which the Department deems appropriate.

G. 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. A notice in a form prescribed by the Department also shall be posted by the applicant in a public area in each facility operated by the applicant in Oklahoma, to inform residents and families of the applicant's proposed action. The public notices shall offer participating parties an opportunity to submit written comments.

H. The Commissioner's decision to approve or deny the proposed acquisition, expansion, or establishment of a new facility shall be made within forty-five (45) days following the deadline for submitting written comments, or the proposed acquisition, expansion, or establishment shall be automatically approved, unless otherwise prohibited pursuant to the provisions of the Long-term Care Certificate of Need Act.

I. If the Commissioner finds that a proposed acquisition, expansion, or establishment of a new facility is consistent with the

criteria and standards for review of such projects, and is otherwise in compliance with the provision of the Long-term Care Certificate of Need Act, then the Commissioner shall issue a certificate of need. If the Commissioner finds that the proposed acquisition, expansion, or establishment of a new facility is not consistent with the criteria and standards, or is otherwise not in compliance with the provisions of the Long-term Care Certificate of Need Act, the Commissioner shall deny the certificate of need.

J. 1. The State Department of Health may approve an initial certificate of need for nursing home beds in a qualified continuing care retirement community not to exceed the lesser of 60 beds or thirty percent (30%) of the total number of beds that are not nursing home beds which authorizes an initial one-time, seven-year open admission period during which the qualified continuing care retirement community may accept direct admissions into its nursing home beds. Upon the expiration of an initial one-time, seven-year open admission period, a qualified continuing care retirement community which has obtained a certificate of need for a nursing facility may only admit into its nursing home beds:

a. a standard contract holder who has been a bona fide resident of the nonnursing home portion of the continuing care retirement community for at least thirty (30) days, or

b. a person who is a standard contract holder who has lived in the nonnursing home portion of the continuing care retirement community for less than thirty (30) days but who requires nursing home care that was not originally contemplated upon admission to the continuing care retirement community, or

c. a person who is a family member of a standard contract holder residing in a nonnursing home portion of the continuing care retirement community;

2. The State Department of Health may approve a certificate of need for nursing home beds in a continuing care retirement community in addition to those nursing home beds requested for this initial one-time, seven-year open admission period if:

a. the number of new nursing home beds requested in any subsequent application does not cause the continuing care retirement community's total number of nursing home beds to exceed thirty percent (30%) of its total number of beds that are not nursing beds,

b. the number of licensed nursing home beds within the continuing care retirement community does not and will not exceed thirty percent (30%) of the number of occupied beds that are not nursing beds, and

c. no open admission period is allowed for these nursing home beds;

3. For purposes of this section:

a. "family member" means spouse, mother, father, son, daughter, brother, sister, aunt, uncle or cousin by blood, marriage or adoption,

b. "one-time, seven-year open admission period" means the seven (7) years after the initial licensure of nursing home beds during which the qualified continuing care retirement community may take admissions directly into its nursing home beds without the signing of a standard contract, and

c. "continuing care retirement community" means a community furnishing shelter, and licensed to provide either medical and nursing services or other health related services to an individual fifty-five (55) years of age or older not related by blood or marriage to the provider for the life of the individual, or for a period in excess of one (1) year, under a written

agreement that requires an entrance fee notwithstanding periodic charges, unless the individual moves directly into a licensed health care portion of the facility.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-853, as last amended by Section 13, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, 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 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:

a. the project involves no increase in licensed beds,

b. <u>except for qualified continuing care facilities, as that term is defined under the Internal Revenue Code, Section 7872(g)(4)(A),</u> the facility shall be constructed no farther than three (3) miles from the facility it is replacing or relocating, and

c. a plan for the use of the facility to be replaced or relocated is provided that ensures continuity of services.

2. The provisions of subsection F of this section shall not apply to 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;

4. If the facility previously has not increased beds pursuant to this subsection. The provisions of this paragraph shall apply only to a facility that was constructed to replace or relocate part of the facility pursuant to subsection D of this section; and

5. 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 sixty (60) 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 sixty (60) 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,

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, or

d. the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility.

3. The Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding sixty (60) 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, 2001.

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