

and

Fisher of the Senate

(public health - amending 63 O.S., Sections 1-851.1,
1-852 and 1-853 - Long-term Care Certificate of
Need Act - exception from certain investigation
requirements - codification -
effective date)

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-851.1, as
last amended by Section 12, Chapter 340, O.S.L. 2000 (63 O.S. Supp.
2000, Section 1-851.1), is amended to read as follows:

Section 1-851.1 For purposes of the Long-term Care Certificate
of Need Act:

1. "Board" means the State Board of Health;
2. "Commissioner" means the State Commissioner of Health;
3. "Department" means the State Department of Health;
4. "Long-term care ~~service facility~~" means ~~service provided by:~~
 - a. a nursing facility or a specialized facility, as such terms are defined by Section 1-1902 of this title ~~or,~~
 - b. skilled nursing care provided in a distinct part of a hospital as such term is defined by Section 1-701 of this title, ~~or~~
 - c. the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, or

- d. the nursing care component of a life care community as such term is defined by the Long-term Care Insurance Act;

5. "Disclosure statement" means a written statement by the applicant which contains:

- a. the full name, business address, and social security number of the applicant, and all persons with controlling interest as defined by this act,
- b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant,
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to long-term care facility regulation,
- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any person with a controlling interest which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal related to long-term care in the five (5) years immediately preceding the filing of the application. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the federal Health Care Financing Administration, and
- e. a listing of any federal long-term care agency and any state long-term care agency outside this state that has or has had regulatory responsibility over the applicant;

6. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized; and

7. "Person with a controlling interest" means a person who meets any one or more of the following requirements:

- a. controls fifty percent (50%) or more of the common stock of the corporate entity involved or controls fifty percent (50%) or more of the interest in the partnership involved,
- b. controls a percentage of stock greater than any other stockholder or equal to the other single largest stockholder or controls a percentage of partnership interest greater than any other partner or equal to the other single largest partnership interest,
- c. serves on the board of the entity involved,
- d. serves as an officer of the entity involved, or
- e. actively participates in the management of the entity involved or actively participates in the management of the entity in the relevant time period.

SECTION 2. 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~~ facility, to expand an existing ~~service~~ facility whether through construction or conversion of facilities, or to acquire an existing long-term care ~~service~~ facility 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~~ A certificate of need shall be required for:

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 as provided by Section 4 of this act, the investigation made pursuant to an application for a certificate of need shall include the following:

1. The adequacy of long-term care ~~services~~ facilities 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~~ long-term care 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~~ facility 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~~ facility;

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.

SECTION 3. 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. except for a not-for-profit life care community, 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-853.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The investigation made pursuant to an application by a not-for-profit life care community for a certificate of need shall include:

1. The adequacy of financial resources for the acquisition, expansion, or establishment of a new long-term care facility and for the continued operation thereof;

2. 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;

3. If the applicant has holdings in Oklahoma, a review of minutes of family councils and residents' councils, and the facilities' responses, from each of the applicant's holdings in this state; and

4. Any other matter which the Department deems necessary and appropriate.

B. 1. The State Department of Health may approve an initial certificate of need for a not-for-profit life care community for nursing care beds that does not exceed twenty percent (20%) of the total number of units in the life care community for which no certificate of need is required.

2. Approval of the initial certificate of need shall include authorization for an open admission period for not more than seven (7) years following the initial licensure of nursing care beds in the life care community. During the open admission period, the life care community may admit individuals who are not residents of the life care community to the nursing care beds.

3. Upon expiration of the one-time seven-year open admission period, a life care community that has obtained a certificate of need pursuant to this section shall admit only the following persons to its nursing care beds:

- a. an individual who has executed a written agreement for services with the facility and who has been a bona

- fide resident of the portion of the life care community for which a certificate of need bed is not required for a period of at least thirty (30) days,
- b. an individual who has executed a written agreement for services with the facility and who has been a bona fide resident of the portion of the life care community for which a certificate of need bed is not required for a period of less than thirty (30) days and requires skilled care that was not originally contemplated upon admission to the life care community,
 - c. an individual who has executed a written agreement for services with the facility and whose physician certifies that the individual is likely to be able to move to a portion of the life care community for which a certificate of need bed is not required in thirty (30) days or less after entering the life care community, or
 - d. an individual who is a family member (spouse, parent, child, sibling, aunt, uncle or first cousin by blood, marriage or adoption) of an individual who has executed a written agreement for services with the facility and resides in the portion of the life care community for which a certificate of need bed is not required.

C. The State Department of Health may approve a subsequent certificate of need for nursing care beds for a not-for-profit life care community that has obtained a certificate of need pursuant to this section when a subsequent application does not cause the nursing care beds to exceed twenty percent (20%) of the total number of units in the life care community for which no certificate of need

is required. No open admission period shall be authorized for the additional nursing care beds.

SECTION 5. This act shall become effective November 1, 2001.

Passed the House of Representatives the 7th day of March, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2001.

Presiding Officer of the Senate