

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 798

By: Johnson

AS INTRODUCED

An Act relating to long-term care; amending 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), which relates to application for certificate of need; modifying criteria for investigation made pursuant to an application for a certificate of need; providing an effective date; and declaring an emergency.

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 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~~ based on a long-term care beds per thousand persons seventy-five (75) years of age or older in the state bed overall mean occupancy rate of sixty percent (60%) of the beds in a service area as defined in rules promulgated by the State Board of Health pursuant to the provisions of this section;

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.

SECTION 2. This act shall become effective July 1, 2001.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

48-1-891

CJ

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