STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

SENATE BILL 317 By: Wilson

AS INTRODUCED

An Act relating to public health and safety; declaring public policy; stating legislative purpose; defining terms; requiring consideration of need by the State Department of Health in certain circumstances; directing the Department to prescribe certain form; requiring certain notification; directing the Department to conduct certain periodic review; requiring certain entities to make application in specified circumstances; authorizing review cycles for certain applications; directing the Department to examine certain applications; providing for certain investigation; permitting the withdrawal of certain application; directing the State Board of Health to adopt certain rules; specifying circumstances under which certificates of need shall be granted; requiring the Department to issue certain order; directing the Department to accept certain requests; entitling certain parties to an appeal; specifying period of validation for certificates of need; permitting the Department to extend a certificate of need; requiring certain report; granting authority to the Department to withdraw a certificate of need in certain circumstances; prohibiting the offering or development of certain services without a certificate of need; providing for penalties; authorizing the Department to administer oaths at certain hearings and investigations; requiring certain annual report; 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 2650.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby declares that it is the public policy of the State of Oklahoma that the offering and development of institutional health services should be made in a planned, orderly and economical manner consistent with appropriateness of services and needs of the people in various regions of the state. It is the purpose of the Legislature to further such public policy by providing procedures for submitting plans and applying for and obtaining a certificate of need or exemption prior to the offering, development, acquisition or change of an institutional health service by prohibiting any such offering, development, acquisition or change, except pursuant to a certificate of need or exemption issued by the State Department of Health.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Health care facility" means:

a. hospitals and related institutions as defined in Sections 1-701 of this title,

b. health maintenance organizations, ambulatory surgical centers, kidney disease treatment centers and rehabilitation centers, and

c. such institutions or services operated by the federal government in this state as may be authorized by the United States Congress;

2. a. "Institutional health services" means:

(1) services offered by a health care facility,

(2) any change in bed capacity of a health care facility,

(3) any capital expenditure on or behalf of a health care facility of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, including predevelopment activities such as arrangements and commitments for financing, site acquisition and architectural designs, plans working, drawings and specifications,

(4) acquisition of a health care facility. If thirty (30) days prior written notice of the proposed acquisition is given to the State Department of Health and the acquisition does not include any change in services or in bed capacity, the Department shall determine that the acquisition

is exempt from certificate of need requirements, and

(5) acquisition of major medical equipment by any person, except acquisitions by medical doctors and chiropractic and osteopathic physicians to further their specialized area of practice and independent clinical laboratories qualified under Title XVIII of the Social Security Act. If thirty (30) days prior written notice of the acquisition is given to the Department and the Department determines that the equipment will not be used to provide significant services to inpatients, the Department shall determine that the acquisition is exempt from certificate of need requirements. Acquisitions shall include donations, leases and transfers for less than fair market value of major medical equipment if the fair market value of major medical equipment is at least Two Hundred Fifty Thousand Dollars ($250,000.00), and

b. "Institutional health services" shall not mean:

(1) any expenditures, acquisitions or services if offered by a health maintenance organization as specified in the Section 6902 of Title 36 of the

Oklahoma Statutes or a health care facility controlled, directly or indirectly, or leased by a health maintenance organization if such facility has made an application for and has been granted an exemption from review by the Department. Applications for exemption shall be submitted on forms supplied by the Department and shall include information upon which the Department can make the determination to grant an exemption. Once such an exemption or a certificate of need is granted, the health care facility or equipment to which the exemption or certificate applies may not be sold, leased or acquired and a health care facility may not be used by any other person unless a certificate of need or another exemption has been granted, or

(2) any service for which a certificate of need has been issued or which was not covered under law prior to the effective date of this act; and

3. "Home health services" means those items and services listed in 42 U.S.C. Section 1395x(m), and any subsequent amendments, provided by a home health agency.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

Notwithstanding Section 7 of this act, when an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Department of Health shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship and residency training levels.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall prescribe a form and content for the annual Hospital Utilization Survey (Plan) of all hospitals which shall include a statement of the plans for expansion, addition or discontinuance of services of hospitals for the following three (3) years. The Department shall notify

hospitals that such survey and other periodic reports shall be filed with the Department.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall establish and conduct a periodic review as to the appropriateness of those institutional health services and home health services designated by it. The Department shall consider the need for the service, its accessibility and availability, financial viability, cost effectiveness and the quality of services provided. Procedures for this review shall be in accordance with federal law and regulations.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Every governmental or private entity, desiring to offer new or develop, acquire or change institutional health services, unless the State Department of Health has granted an exception, shall make application to the Department, in the form, and accompanied by information, as the Department shall prescribe.

B. The Department is authorized to establish review cycles of equal length in each calendar year, for the review of completed applications. The schedule for reviews may allow the Department to group similar projects for comparative review.

C. The Department shall promptly examine each application and shall transmit to such reviewers as it may select, for the purpose of determining whether the application is complete. Within fifteen (15) days of receipt of each application, the Department shall notify the applicant that the application is complete or that additional information is required. Investigation and review of an application shall be initiated only after the Department has determined that the application is complete.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Promptly upon determination that an application is complete, the State Department of Health shall notify affected parties and other reviewing bodies and shall cause an investigation to be made of the need for an appropriateness of the proposed offering, development, acquisition or change.

B. The investigation shall include consideration of the following criteria:

1. The appropriateness and adequacy of existing services in a region as they relate to the needs of the population served or to be served, and the relationship of the proposed service;

2. The availability of alternative, less costly or more effective methods for providing service;

3. In the case of health services proposed to be provided:

a. the availability of resources, including health manpower, management personnel and funds for capital and operating needs, for the provision of such services,

b. the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the areas in which such services are to be provided,

c. if such services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes,

d. the availability of alternative uses of such resources for the provision of other health services, and

e. the extent to which such proposed services will be accessible to all the residents of the area to be served by such services;

4. The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multi-disciplinary clinics, specialty centers and such other entities as the State Board of Health may prescribe.

5. In the case of construction projects:

a. the costs and methods of proposed construction, including costs and methods of energy provision, and

b. the probable impact of a construction project on the costs of providing health service by the person proposing such construction project and on the cost and charges to the public of providing health services to other persons;

6. The extent to which the services proposed will improve the availability and access to services for underserved populations;

7. The special needs and circumstances of health maintenance organizations;

8. The special circumstances of health service institutions and the need for conserving energy;

9. The factors which affect the effect of competition on the supply of the health services being reviewed;

10. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness;

11. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed; and

12. Any other criteria established by the Department in accordance with federal law or regulation.

C. The Department shall establish weights for the criteria specified in subsection B of this section according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

D. The Department shall afford each applicant the opportunity to withdraw an application from investigation, without prejudice, upon written request to the Department until such time as a determination has been made by the Department.

E. The State Board of Health shall adopt rules concerning time limitations for reaching a decision to issue or deny a certificate of need. Once a certificate of need is issued it shall not be transferable.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No certificate of need shall be issued by the State Department of Health unless after investigation it determines the following:

1. The action proposed in the application for certificate of need is necessary and desirable in order to appropriately provide necessary institutional health services in the region to be served;

2. The proposed action can be economically accomplished and maintained and can be operational on or before a date the Department determines to be appropriate;

3. The proposed action will contribute to the orderly development of health services in the region; and

4. The criteria for investigation as specified in subsection B of Section 7 of this act have been considered.

B. Notwithstanding subsection A of this section, if a health maintenance organization or health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need, the application shall be approved if the Department makes the following findings:

1. Approval is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

2. The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through allopathic, chiropractic and osteopathic physicians and other health professionals associated with it.

C. 1. Notwithstanding subsection A of this section or Section 7 of this act, 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 licensing 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 that the facility or service is not needed.

2. Approval under this subsection shall cover only the capital expenditure to eliminate or prevent the hazards or to comply with standards described above.

D. When the Department determines that a certificate of need should or should not be issued, it shall issue an order granting or denying the application and giving the reasons for such determination. If the certificate of need is granted, the Department shall set the maximum capital expenditure for the project. A copy of the order shall be transmitted to the applicant, other reviewing bodies and any other parties. The general public shall be notified by means of news releases issued to newspapers of general circulation and to other public media. If the decision of the Department is inconsistent with the recommendation of any reviewer specified by the Department, the Department shall forward to the reviewer a detailed statement of its reasons.

E. For a period of thirty (30) calendar days following the issuance of an order, the Department shall accept a written request from any person that the Department reconsider its determination.

Within thirty (30) days following receipt of the request, the Department shall determine whether the information submitted in connection with such request was available or known to the Department, constitutes good cause and warrants the reconsideration of its decision. If the Department determines that good cause for reconsideration is shown, it shall conduct a hearing within thirty (30) days of the request. Written findings shall be issued within forty-five (45) days following the hearing.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any party aggrieved by a decision of the State Department of Health on an application for a certificate of need under this act shall be entitled to appeal the determination of the Department under the Administrative Procedures Act. The final decision of the Department shall be upheld by the court unless it is arbitrary or capricious or was not in accordance with applicable law.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A certificate of need shall be valid for the period specified by the State Department of Health, which may vary, based on the nature of the project. However, no certificate of need shall be granted for an initial period of more than four (4) years.

B. The Department may, for good cause shown and upon written request filed with the Department prior to the expiration of the certificate of need, extend the validity of the certificate for a period not to exceed six (6) months.

C. The holder of a certificate of need shall make a written report at the end of each six-month period following issuance, concerning progress made toward implementation. The holder of a certificate of need shall make a final report the Department when the service for which the certificate of need has been issued is operational. All such reports shall relate to the timetable established by the Department.

D. The Department shall have the power to withdraw a certificate of need if the holder willfully fails to file reports or make a good faith effort to meet the timetables.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

No institutional health service shall be offered or developed unless the State Department of Health has issued a certificate of need as provided in this act. No governmental entity shall approve any grant of funds or debentures or issue or renew any license for an institutional health service, unless the certificate of need as provided by this act has been obtained.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

The offering or development of an institutional health service without a certificate of need shall constitute a misdemeanor, punishable by payment of a fine in an amount not to exceed Eight Hundred Fifty Dollars ($850.00). If the State Department of Health, through one of its agents or representatives, notifies in writing, by certified mail, return receipt requested, the person who has unlawfully commenced the offering or development of an institutional health service to cease and desist, then each day that such person continues to offer or develop such services shall be a separate offense. If any person continues to offer or develop an institutional health service after the issuance of a case and desist order, the Department shall seek an injunction to prohibit the continued offering or development of the service.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health may administer oaths at any hearing or investigation conducted pursuant to this act, and may receive federal grant or contract funds by complying with the respective requirements.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2650.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall prepare and distribute an annual report to the Oklahoma Legislature, to any health systems agency if required by federal law, and to any other person who requests the report, which shall include the status of each review currently being conducted, the reviews completed since the last report and a general statement of the findings and decisions made in the course of such reviews.

SECTION 15. This act shall become effective November 1, 2009.

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