

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 34

By: Wilson

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5
6 AS INTRODUCED

7 An Act relating to health care facility certificates
8 of need; declaring public policy; stating legislative
9 purpose; defining terms; requiring consideration of
10 need by the State Department of Health in certain
11 circumstances; directing the Department to prescribe
12 certain form; requiring certain notification;
13 directing the Department to conduct certain periodic
14 review; requiring certain entities to make
15 application in specified circumstances; authorizing
16 review cycles for certain applications; directing the
17 Department to examine certain applications; providing
18 for certain investigation; permitting the withdrawal
19 of certain application; directing the State Board of
20 Health to adopt certain rules; specifying
21 circumstances under which certificates of need shall
22 be granted; requiring the Department to issue certain
23 order; directing the Department to accept certain
24 requests; providing for a hearing; 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.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 2650.1 of Title 63, unless there
4 is created a duplication in numbering, reads as follows:

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

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

20 As used in this act:

21 1. "Health care facility" means:

22 a. hospitals and related institutions as defined in
23 Sections 1-701 of this title,
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1 b. health maintenance organizations, ambulatory surgical
2 centers, kidney disease treatment centers and
3 rehabilitation centers, and

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

7 2. a. "Institutional health services" means:

8 (1) services offered by a health care facility,

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

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

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

1 is exempt from certificate of need requirements,
2 and

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

21 b. "Institutional health services" shall not mean:

22 (1) any expenditures, acquisitions or services if
23 offered by a health maintenance organization as
24 specified in 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.

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

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

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

19 The State Department of Health shall prescribe a form and
20 content for the annual Hospital Utilization Survey (Plan) of all
21 hospitals, which shall include a statement of any plans for
22 expansion, addition or discontinuance of services of hospitals for
23 the following three (3) years. The Department shall notify
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1 hospitals that such survey and other periodic reports shall be filed
2 with the Department.

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

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

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

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

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

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

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

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

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

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

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

24 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.

- 1 5. In the case of construction projects:
 - 2 a. the costs and methods of proposed construction,
3 including costs and methods of energy provision, and
 - 4 b. the probable impact of a construction project on the
5 costs of providing health service by the person
6 proposing such construction project and on the cost
7 and charges to the public of providing health services
8 to other persons;
- 9 6. The extent to which the services proposed will improve the
10 availability and access to services for underserved populations;
- 11 7. The special needs and circumstances of health maintenance
12 organizations;
- 13 8. The special circumstances of health service institutions and
14 the need for conserving energy;
- 15 9. The factors which affect the effect of competition on the
16 supply of the health services being reviewed;
- 17 10. Improvements or innovations in the financing and delivery
18 of health services which foster competition and serve to promote
19 quality assurance and cost effectiveness;
- 20 11. In the case of health services or facilities proposed to be
21 provided, the efficiency and appropriateness of the use of existing
22 services and facilities similar to those proposed; and
- 23 12. Any other criteria established by the Department in
24 accordance with federal law or regulation.

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

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

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

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

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

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

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

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

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

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

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

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

21 C. 1. Notwithstanding subsection A of this section or Section
22 7 of this act, an application for a certificate of need for a
23 capital expenditure to eliminate or prevent imminent safety hazards
24 as defined by federal, state or local fire, building or safety codes

1 or regulations, or to comply with state licensing standards, or to
2 comply with accreditation standards, compliance with which is
3 required to receive reimbursements under Title XVIII of the Social
4 Security Act or payments under a state plan for medical assistance
5 approved under Title XIX of such act, shall be approved unless the
6 Department finds that the facility or service is not needed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 SECTION 15. This act shall become effective November 1, 2011.

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