

Tenn. Code Ann. § 68-11-1607

Current through the 2016 Session

Tennessee Code Annotated > Title 68 Health, Safety and Environmental Protection > Health > Chapter 11 Health Facilities and Resources > Part 16 Tennessee Health Services and Planning Act of 2002

68-11-1607. Certificate of need -- Applications -- Exemptions -- Registration of equipment -- Critical access hospital designation.

- (a) No person may perform the following actions in the state except after applying for and receiving a certificate of need for the same:
- (1) The construction, development, or other establishment of any type of health care institution;
 - (2) [Deleted by 2016 amendment.]
 - (3) In the case of a health care institution, any change in the bed complement, regardless of cost, that:
 - (A) Increases by one (1) or more the total number of licensed beds;
 - (B) Redistributes beds from acute to long-term care categories;
 - (C) Redistributes beds from any category to acute, rehabilitation, child and adolescent psychiatric, or adult psychiatric; or
 - (D) Relocates beds to another facility or site;
 - (4) Initiation of any of the following healthcare services: burn unit, neonatal intensive care unit, open heart surgery, organ transplantation, cardiac catheterization, linear accelerator, positron emission tomography, home health, hospice, psychiatric, or opiate addiction treatment provided through a nonresidential substitution-based treatment center for opiate addiction;
 - (5) A change in the location of or the replacement of existing or certified facilities providing health care services and health care institutions, or a change in the location of or the replacement of medical equipment that requires a certificate of need. An additional certificate of need is not required to move mobile medical equipment that requires a certificate of need to a facility site for which a certificate of need already has been issued. A change in the location of or the replacement of a home health agency may be exempted from the certificate of need requirements by agency rule. The relocation of the principal office of a home health agency or hospice within the same county shall not require a certificate of need;
 - (6) [Deleted by 2016 amendment.]
 - (7) [Deleted by 2016 amendment.]
 - (8) Nothing in this part shall require a certificate of need in order for an existing hospital licensed by the department of mental health and substance abuse services to become licensed by the department of health as a satellite of an affiliated general acute care hospital as provided by § 33-2-403(b)(8)(B);
 - (9) [Deleted by 2016 amendment.]
 - (10) Initiation of magnetic resonance imaging;

cycle. The application or applications that are not deemed complete to enter the review cycle will not be considered with the applications deemed complete and entering the review cycle.

- (5)** Review cycles shall begin on the first day of each of the following months: January, March, May, July, September, and November; provided, however, that the agency may expand the beginning of the review cycle to other months by rule. Written notice of the beginning of the review cycle shall be made to all applicants deemed complete by the agency for that review cycle. The review cycle shall also be distributed to the members of the agency. If an application is not deemed complete within sixty (60) days after written notification is given to the applicant by the agency staff that the application is deemed incomplete, the application shall be deemed void. If the applicant decides to resubmit the application, the applicant shall comply with all procedures as set out by this part and a new filing fee shall accompany the application.
- (6)** Each application filed with the agency shall be accompanied by a nonrefundable examination fee which will be fixed by the rules of the agency.
- (7)** All information provided in the application or any information submitted to the agency in support of an application shall be true and correct. No substantive amendments to the application, as defined by rule of the agency, shall be allowed.
- (8)** Each applicant shall designate a representative as the contact person for the applicant and shall notify the agency, in writing, of the contact person's name, address, and telephone number. The applicant shall immediately notify the agency in writing of any change in the identity of the contact person or the contact person's address. In addition to any other method of service permitted by law, the agency may serve by registered or certified mail any notice or other legal document upon the contact person at such person's last address of record in the files of the agency. Notwithstanding any law to the contrary, service in the manner specified in this subdivision (c)(8) shall be deemed to constitute actual service upon the applicant.
- (9)**

 - (A)** Within ten (10) days of the filing of an application for a nonresidential substitution-based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located; the state representative and senator representing the house district and the senate district in which the facility is proposed to be located; and the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality; by certified mail, return receipt requested, informing those officials that an application for a nonresidential substitution-based treatment center for opiate addiction has been filed with the agency by the applicant.
 - (B)** If an application involves a healthcare facility in which a county or municipality is the lessor of the facility or real property on which it sits, then within ten (10) days of filing the application, the applicant shall notify the chief executive officer of the county or municipality of the filing, by certified mail, return receipt requested.
 - (C)** An application subject to the notification requirement of this subdivision (c)(9) shall not be deemed complete if the applicant has not provided proof of compliance with this subdivision (c)(9) to the agency.
- (d)**

 - (1)** No communications are permitted with the members of the agency once the letter of intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the executive director and a written summary of such communication shall be made part of the certificate of need file.
 - (2)** All communications between the contact person or legal counsel for the applicant and the executive director or agency staff after an application is deemed complete and placed in the review cycle are

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prohibited, unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the executive director or agency staff are not prohibited.

- (e)** For purposes of this part, agency action shall be the same as administrative action defined in § 3-6-102.
- (f)**
 - (1)** Notwithstanding this section to the contrary, Tennessee state veterans' homes pursuant to title 58, chapter 7 shall not be required to obtain a certificate of need pursuant to this section.
 - (2)** Notwithstanding this section to the contrary, the beds located in any Tennessee state veterans' home pursuant to title 58, chapter 7 shall not be considered by the health services and development agency when granting a certificate of need to a health care institution due to a change in the number of licensed beds, redistributing beds, or relocating beds pursuant to this section.
- (g)**
 - (1) (A) (i)** Notwithstanding subdivision (a)(3)(A) or (a)(5), no more frequently than one (1) time every three (3) years, a hospital, rehabilitation facility, or mental health hospital may increase its total number of licensed beds in any bed category by ten percent (10%) or less of its licensed capacity at any one (1) campus over any period of one (1) year for any services or purposes it is licensed to perform without obtaining a certificate of need. The hospital, rehabilitation facility, or mental health hospital shall provide written notice of the increase in beds to the agency on forms provided by the agency prior to the request for licensing by the board for licensing healthcare facilities or the department of mental health and substance abuse services, whichever is appropriate.
 - (ii)** A hospital, rehabilitation facility, or mental health hospital shall not:
 - (a)** Increase its number of licensed beds for any service or purpose for which it is not licensed to provide; or
 - (b)** Redistribute beds within its bed complement to a different category.
 - (B)** For the purposes of this subsection (g), "campus" means structures and physical areas that have the same address and are immediately adjacent or strictly contiguous to the facility's or hospital's main buildings.
 - (2)** For new hospitals, rehabilitation facilities, or mental health hospitals, the ten percent (10%) increase authorized by subdivision (g)(1) cannot be requested until one (1) year after the date all of the new beds were initially licensed.
 - (3)** When determining projected county hospital bed need for certificate of need applications, all notices filed with the agency pursuant to subdivision (g)(1), with written confirmation from the board for licensing healthcare facilities or the department of mental health and substance abuse services, whichever is appropriate, that a request and application for license has been received and a review has been scheduled, shall be considered with the total of licensed hospital beds, plus the number of beds from approved certificates of need, but yet unlicensed.
- (h)** After a person holding a certificate of need has completed the actions for which a certificate of need was granted, such certificate of need shall expire.
- (i)** The owners of the following types of equipment shall register such equipment with the health services and development agency: computerized axial tomographers, magnetic resonance imagers, linear accelerators and position emission tomography. The registration shall be in a manner and on forms prescribed by the agency and shall include ownership, location, and the expected useful life of such equipment. The first registration of all such equipment shall be on or before September 30, 2002. Thereafter, registration shall occur within ninety (90) days of acquisition of the equipment. All such equipment shall be filed on an annual inventory survey developed by the agency. The survey shall include, but not be limited to, the identification of the equipment and utilization data according to source of payment. The survey shall be

filed no later than thirty (30) days following the end of each state fiscal year. The agency is authorized to impose a penalty not to exceed fifty dollars (\$50.00) for each day the survey is late.

- (j)** Notwithstanding this section to the contrary, an entity, or its successor, that was formerly licensed as a hospital, and that has received from the commissioner of health a written determination that it will be eligible for designation as a critical access hospital under the medicare rural hospital flexibility program, is not required to obtain a certificate of need to establish a hospital qualifying for such designation, if it meets the requirements of this subsection (j). In order to qualify for the exemption set forth in this subsection (j), the entity proposing to establish a critical access hospital shall publish notice of its intent to do so in a newspaper of general circulation in the county where the hospital will be located and in contiguous counties. Such notice shall be published at least twice within a 15-day period. The written determination from the department of health and proof of publication required by this subsection (j) shall be filed with the agency within ten (10) days after the last date of publication. If no health care institution within the same county or contiguous counties files a written objection to the proposal with the agency within thirty (30) days of the last publication date, then the exemption set forth in this subsection (j) shall be applicable; provided, that this exemption shall apply only to the establishment of a hospital that qualifies as a critical access hospital under the medicare rural flexibility program and not to any other activity or service. If a written objection by a health care institution within the same county or contiguous counties is filed with the agency within thirty (30) days from the last date of publication, then the exemption set forth in this subsection (j) shall not be applicable.

(k)

- (1)** A nursing home may increase its total number of licensed beds by the lesser of ten (10) beds or ten percent (10%) of its licensed capacity over any period of one (1) year without obtaining a certificate of need. The nursing home shall provide written notice of the increase in beds to the agency on forms provided by the agency prior to the request for licensing by the board for licensing health care facilities.
- (2)** For new nursing homes, the ten (10) bed or ten percent (10%) increase cannot be requested until one (1) year after the date all of the new beds were initially licensed.
- (3)** When determining projected county nursing home bed need for certificate of need applications, all notices filed with the agency pursuant to subdivision (k)(1), with written confirmation from the board of licensing health care facilities that a request and application for license has been received and a review has been scheduled, shall be considered with the total of licensed nursing home beds, plus the number of beds from approved certificates of need, but yet unlicensed.
- (4)** During such time as § 68-11-1622 shall apply, this subsection (k) shall be suspended.

- (l)** Nothing in this part shall require a certificate of need for a home care organization that is authorized to provide only professional support services as defined in § 68-11-201.

- (m)** Notwithstanding any other law to the contrary, after May 14, 2004, a home care organization may only initiate hospice services after applying for and receiving a certificate of need for providing hospice services.

(n)

- (1)** Any person who provides magnetic resonance imaging services shall file an annual report by March 1 of each year with the agency concerning adult and pediatric patients that details the mix of payors by percentage of cases for the prior calendar year for its patients, including private pay, private insurance, uncompensated care, charity care, medicare, and medicaid.
- (2)** In any county with a population in excess of two hundred fifty thousand (250,000), according to the 2010 federal census or any subsequent federal census, any person who initiates magnetic resonance imaging services shall notify the agency in writing that imaging services are being initiated and shall indicate whether pediatric patients will be provided imaging services.

- (o)** **(1)** An application for certificate of need for organ transplantation shall separately:

- (A)** Identify each organ to be transplanted under the application; and

- (B)** State, by organ, whether the organ transplantation recipients will be adult patients or pediatric patients.
- (2)** After an initial application for transplantation has been granted, the addition of a new organ to be transplanted or the addition of a new recipient category shall require a separate certificate of need; the application shall:
- (A)** Identify the organ to be transplanted under the application; and
- (B)** State whether the organ transplantation recipients will be adult patients or pediatric patients.
- (3)**
- (A)** For the purposes of certificate of need approval for organ transplantation programs under this part, any program submitted to the United Network for Organ Sharing (UNOS) by January 1, 2017, shall not be required to obtain a certificate of need.
- (B)** If the organ transplantation program ceases to be a UNOS-approved program, then a certificate of need shall be required.
- (p)** After receiving a certificate of need, an outpatient diagnostic center shall become accredited by the American College of Radiology in the modalities provided by that facility within a period of time set by rule by the agency as a condition of receiving a certificate of need.

History

Acts 2002, ch. 780, § 4; 2003, ch. 69, §§ 1, 2; 2003, ch. 90, § 2; 2004, ch. 649, § 1; 2004, ch. 942, §§ 4, 5; 2008, ch. 1120, § 6; 2009, ch. 323, § 2; 2010, ch. 1100, § 117; 2011, ch. 494, §§ 3, 4; 2012, ch. 575, § 1; 2015, ch. 505, §§ 1, 2; 2016, ch. 1043, §§ 5-13.

TENNESSEE CODE ANNOTATED

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