

SENATE BILL 1093

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 33; Title 68 and Title 71, relative to
certificates of need.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-1603, is amended by deleting the section.

SECTION 2. Tennessee Code Annotated, Section 68-11-1606(c)(6), is amended by deleting the subdivision and substituting:

(6) Issuing exemptions from the requirement that a certificate of need be obtained for the relocation of existing approved services under § 68-11-1607(a)(2);

SECTION 3. Tennessee Code Annotated, Section 68-11-1607, is amended by deleting the section and substituting:

(a) A person shall not perform the following actions in this state, except after applying for and receiving a certificate of need for the action:

(1) Initiation of the following healthcare services:

(A) Burn unit; or

(B) Organ transplantation; and

(2)

(A) A change in the location of existing approved services.

However, the executive director may issue an exemption for the relocation of existing approved services if the executive director determines that:

(i) At least ninety-five percent (95%) of patients to be served are reasonably expected to reside in the same zip codes as the existing patient population;

(ii) The relocation does not reduce access to consumers, particularly those in underserved communities; those who are uninsured or underinsured; women and racial and ethnic minorities; TennCare or medicaid recipients; and low-income groups; and

(iii) The payor mix does not include an increase in commercial insurance;

(B) The executive director must notify the commission of an exemption granted pursuant to subdivision (a)(2)(A) at the next regularly scheduled commission meeting; and

(C) An exemption granted or denied by the executive director pursuant to subdivision (a)(2)(A) is subject to commission review in the same manner as described in § 68-11-1606(g) and (h).

(b) An agency of this state, or of a county or municipal government, shall not approve a grant of funds for, or issue a license to, a healthcare institution for a portion or activity of the healthcare institution that is established, modified, relocated, changed, or resumed, or that constitutes a covered healthcare service, in violation of this part. If an agency of this state, or of a county or municipal government, approves a grant of funds for, or issues a license to, a person or institution for which a certificate of need was required but was not granted, then the license is void, and the person or institution shall refund the funds to the state within ninety (90) days. The health facilities commission

has the authority to impose civil penalties and petition a circuit or chancery court having jurisdiction to enjoin a person who is in violation of this part.

(c)

(1) For each application, a letter of intent must be filed between the first day of the month and the fifteenth day of the month prior to the application's submission. At the time of filing, the applicant shall cause the letter of intent to be published in a newspaper of general circulation in the proposed service area of the project. The published letter of intent must contain a statement that:

(A) A healthcare institution wishing to oppose the application must file written notice with the commission no later than fifteen (15) days before the commission meeting at which the application is originally scheduled; and

(B) Any other person wishing to oppose the application may file a written objection with the commission at or prior to the consideration of the application by the commission, or may appear in person to express opposition.

(2) Persons desiring to file a certificate of need application seeking a simultaneous review regarding a similar project for which a letter of intent has been filed shall file with the commission a letter of intent between the sixteenth day of the month and the last day of the month of publication of the first filed letter of intent. A copy of a letter of intent filed after the first letter of intent must be mailed or delivered to the first filed applicant and must be published in a newspaper of general circulation in the proposed service area of the first filed applicant. The health facilities commission shall consider and decide the applications simultaneously. However, the commission may refuse to consider

the applications simultaneously if it finds that the applications do not meet the requirements of simultaneous review under the rules of the commission.

(3) Applications for a certificate of need, including simultaneous review applications, must be filed by the first business day of the month following the date of publication of the letter of intent.

(4) If there are two (2) or more applications to be reviewed simultaneously in accordance with this part and the rules of the commission, and one (1) or more of those applications are not deemed complete by the deadline to be considered at the next commission meeting, then the other applications that are deemed complete by the deadline must be considered at the next commission meeting. An application that is not deemed complete by the deadline to be considered at the next commission meeting must not be considered with the applications deemed complete by the deadline to be considered at the next commission meeting.

(5) Review cycles begin on the fifteenth day of each month. Review cycles are thirty (30) days. The first meeting at which an application can be considered by the commission is the meeting following the application's review cycle. If an application is not deemed complete within sixty (60) days after initial written notification is given to the applicant by commission staff that the application is deemed incomplete, then the application is void. If the applicant decides to resubmit the application, then the applicant shall comply with all procedures as set out by this part and pay a new filing fee when submitting the application. Prior to deeming an application complete, the executive director shall ensure independent review and verification of information submitted to the commission in applications, presentations, or otherwise. The independent review

and verification must ensure that the information is accurate, complete, comprehensive, timely, and relevant to the decision to be made by the commission. The independent review and verification must be applied, but not necessarily be limited, to:

(A) Applicant-provided information as to the number of available beds within a region, occupancy rates, the number of individuals on waiting lists, the demographics of a region, the number of procedures, and other critical information submitted or requested concerning an application; and

(B) Staff examinations of data sources, data input, data processing, and data output, used to verify critical information.

(6) An application filed with the commission must be accompanied by a nonrefundable examination fee fixed by the rules of the commission.

(7) Information provided in the application, or information submitted to the commission in support of an application, must be true and correct. Substantive amendments to the application, as defined in rules of the commission, are not allowed.

(8) An applicant shall designate a representative as the contact person for the applicant and shall notify the commission, in writing, of the contact person's name, address, and telephone number. The applicant shall immediately notify the commission in writing of a change in the identity or contact information of the contact person. In addition to other methods of service permitted by law, the commission may serve, by registered or certified mail, a notice or other legal document upon the contact person at the person's last address of record in the files of the commission. Notwithstanding a law to the contrary, service in the

manner specified in this subdivision (c)(8) constitutes actual service upon the applicant.

(d) Communications with the members of the commission are not permitted once the letter of intent initiating the application process is filed with the commission. Communication between commission members and commission staff is not prohibited. Communication received by a commission member from a person unrelated to the applicant or party opposing the application must be reported to the executive director, and a written summary of the communication must be made part of the certificate of need file.

(e) As used in this part, "commission action" has the same meaning as administrative action, as defined in § 3-6-301.

(f) After a person holding a certificate of need has completed the actions for which the certificate of need was granted, the time to complete activities authorized by the certificate of need expires.

(g)

(1) An application for a certificate of need for organ transplantation must 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 requires a separate certificate of need. The application must:

(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, a program submitted to the United Network for Organ Sharing (UNOS) by January 1, 2017, is not 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 is required.

(h)

(1) This part does not require a certificate of need for actions in a county that:

(A) Is designated as an eligible county pursuant to § 67-6-104, as updated annually; and

(B) Has no hospital that is actively licensed under this title located within the county.

(2) A person that initiates a service pursuant to this subsection (h) shall submit proof of accreditation by an appropriate external peer-review organization for the service or facility to the commission within two (2) years of the date of initiation of service.

(i) No later than July 1, 2023, the commission shall implement and make available for use by applicants an electronic certificate of need application system.

SECTION 4. Tennessee Code Annotated, Section 68-11-1609(a)(1)(A), is amended by deleting "or department of mental health and substance abuse services".

SECTION 5. Tennessee Code Annotated, Section 68-11-1609(c), is amended by deleting the first sentence and substituting:

Activity authorized by a certificate of need must be completed within a period not to exceed two (2) years from the date of its issuance and after such time the certificate of need authorization expires.

SECTION 6. Tennessee Code Annotated, Section 68-11-1609(d), is amended by deleting "or the department of mental health and substance abuse services".

SECTION 7. Tennessee Code Annotated, Section 68-11-1609(g)(1), is amended by deleting the subdivision and substituting:

(1) A healthcare institution wishing to oppose a certificate of need application must be located within a thirty-five-mile radius of the location of the action proposed, and must have served patients within that radius within the three hundred sixty-five (365) days immediately preceding the date of filing the certificate of need application.

SECTION 8. Tennessee Code Annotated, Section 68-11-1609(h), is amended by deleting "three (3) years" and substituting "two (2) years".

SECTION 9. Tennessee Code Annotated, Section 68-11-1609(i)(1)(A), is amended by deleting "and the department of mental health and substance abuse services".

SECTION 10. Tennessee Code Annotated, Section 68-11-1609(i)(1)(B), is amended by deleting the subdivision.

SECTION 11. Tennessee Code Annotated, Section 68-11-1614(c), is amended by deleting the subsection and substituting:

(c) The commissioner of health may submit written reports or statements and may also send representatives to testify before the commission to inform the commission with respect to applications.

SECTION 12. Tennessee Code Annotated, Section 68-11-1614(b), is amended by deleting the subsection.

SECTION 13. Tennessee Code Annotated, Section 68-11-1617(5), is amended by deleting "or department of mental health and substance abuse services".

SECTION 14. Tennessee Code Annotated, Section 68-11-1619, is amended by deleting the section.

SECTION 15. Tennessee Code Annotated, Section 68-11-1623, is amended by deleting the section.

SECTION 16. Tennessee Code Annotated, Section 68-11-1625, is amended by deleting the section.

SECTION 17. Tennessee Code Annotated, Section 68-11-1626, is amended by deleting the section and substituting:

(a) The commission may renew a license for a hospital upon application by the party seeking to establish the hospital and finding that the hospital will operate in a manner that is substantially similar to the manner authorized under the previous hospital's license at the time of the previous hospital's closure, if:

(1) The hospital was previously licensed under this title or another hospital was previously licensed under this title at the proposed location;

(2) The hospital is located in a county:

(A) Designated by the department of economic and community development as a tier 2, tier 3, or tier 4 enhancement county pursuant to § 67-4-2109; or

(B) With a population less than forty-nine thousand (49,000), according to the 2010 federal census or a subsequent census; and

(3) The last date of operations at the hospital, the hospital site service area, or proposed hospital site service area was no more than fifteen (15) years prior to the date on which the party seeking to establish the hospital submits information to the commission pursuant to subsection (b).

(b) The commission shall review and make a determination on an application submitted pursuant to subsection (a) and notify the applicant in writing of the determination within sixty (60) days of the date the applicant submits a completed application to the commission. If the commission determination is to deny the application, then the commission must also provide to the applicant a written explanation detailing the reasons for the denial.

SECTION 18. This act takes effect upon becoming a law, the public welfare requiring it.