

Committee Substitute for Senate Bill No. 2326

An act relating to certificates of need; amending s. 408.035, F.S.; revising the requirements for the Agency for Health Care Administration with respect to reviewing an application for a certificate of need for a general hospital; amending s. 408.037, F.S.; revising the requirements for an application for a certificate of need by an applicant for a general hospital; amending s. 408.039, F.S.; requiring the agency to attend public hearings on such applications; requiring an existing hospital to submit a written statement of opposition in order to challenge the agency decision on an application for a certificate of need for a general hospital; authorizing the applicant to submit a written response; limiting filing a letter of intent to file an application; limiting the period of a continuance that may be granted with respect to an administrative hearing considering an application for a general hospital; limiting the parties who may challenge in an administrative hearing involving an application for a certificate of need; limiting the scope of the challenge; authorizing the administrative judge to expand the scope of the issues to be heard upon a motion showing good cause; requiring that the party appealing a final order granting a certificate of need for a general hospital pay the appellee's attorney's fees and costs subject to certain requirements; repealing s. 408.040(3), F.S.; relating to a requirement for an architect's certification of final payment before issuance of a certificate of need; providing for application of the act; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 408.035, Florida Statutes, is amended to read:

408.035 Review criteria.—

(1) The agency shall determine the reviewability of applications and shall review applications for certificate-of-need determinations for health care facilities and health services in context with the following criteria, except for general hospitals as defined in s. 395.002:

~~(a)~~(1) The need for the health care facilities and health services being proposed.

~~(b)~~(2) The availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant.

~~(c)~~(3) The ability of the applicant to provide quality of care and the applicant's record of providing quality of care.

~~(d)~~(4) The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation.

(e)(5) The extent to which the proposed services will enhance access to health care for residents of the service district.

(f)(6) The immediate and long-term financial feasibility of the proposal.

(g)(7) The extent to which the proposal will foster competition that promotes quality and cost-effectiveness.

(h)(8) The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction.

(i)(9) The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent.

(j)(10) The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, when the applicant is requesting additional nursing home beds at that facility.

(2) For a general hospital, the agency shall consider only the criteria specified in paragraph (1)(a), paragraph (1)(b), except for quality of care in paragraph (1)(b), and paragraphs (1)(e), (g), and (i).

Section 2. Section 408.037, Florida Statutes, is amended to read:

408.037 Application content.—

(1) Except as provided in subsection (2) for a general hospital, an application for a certificate of need must contain:

(a) A detailed description of the proposed project and statement of its purpose and need in relation to the district health plan.

(b) A statement of the financial resources needed by and available to the applicant to accomplish the proposed project. This statement must include:

1. A complete listing of all capital projects, including new health facility development projects and health facility acquisitions applied for, pending, approved, or underway in any state at the time of application, regardless of whether or not that state has a certificate-of-need program or a capital expenditure review program pursuant to s. 1122 of the Social Security Act. The agency may, by rule, require less-detailed information from major health care providers. This listing must include the applicant's actual or proposed financial commitment to those projects and an assessment of their impact on the applicant's ability to provide the proposed project.

2. A detailed listing of the needed capital expenditures, including sources of funds.

3. A detailed financial projection, including a statement of the projected revenue and expenses for the first 2 years of operation after completion of the proposed project. This statement must include a detailed evaluation of the impact of the proposed project on the cost of other services provided by the applicant.

(c) An audited financial statement of the applicant. In an application submitted by an existing health care facility, health maintenance organization, or hospice, financial condition documentation must include, but need not be limited to, a balance sheet and a profit-and-loss statement of the 2 previous fiscal years' operation.

(2) An application for a certificate of need for a general hospital must contain a detailed description of the proposed general hospital project and a statement of its purpose and the needs it will meet. The proposed project's location, as well as its primary and secondary service areas, must be identified by zip code. Primary service area is defined as the zip codes from which the applicant projects that it will draw 75 percent of its discharges. Secondary service area is defined as the zip codes from which the applicant projects that it will draw its remaining discharges. If, subsequent to issuance of a final order approving the certificate of need, the proposed location of the general hospital changes or the primary service area materially changes, the agency shall revoke the certificate of need. However, if the agency determines that such changes are deemed to enhance access to hospital services in the service district, the agency may permit such changes to occur. A party participating in the administrative hearing regarding the issuance of the certificate of need for a general hospital has standing to participate in any subsequent proceeding regarding the revocation of the certificate of need for a hospital for which the location has changed or for which the primary service area has materially changed. In addition, the application for the certificate of need for a general hospital must include a statement of intent that, if approved by final order of the agency, the applicant shall within 120 days after issuance of the final order or, if there is an appeal of the final order, within 120 days after the issuance of the court's mandate on appeal, furnish satisfactory proof of the applicant's financial ability to operate. The agency shall establish documentation requirements, to be completed by each applicant, which show anticipated provider revenues and expenditures, the basis for financing the anticipated cash-flow requirements of the provider, and an applicant's access to contingency financing. A party participating in the administrative hearing regarding the issuance of the certificate of need for a general hospital may provide written comments concerning the adequacy of the financial information provided, but such party does not have standing to participate in an administrative proceeding regarding proof of the applicant's financial ability to operate. The agency may require a licensee to provide proof of financial ability to operate at any time if there is evidence of financial instability, including, but not limited to, unpaid expenses necessary for the basic operations of the provider.

(3)(2) The applicant must certify that it will license and operate the health care facility. For an existing health care facility, the applicant must be the licenseholder of the facility.

Section 3. Subsection (3), paragraphs (b) and (c) of subsection (5), and paragraph (d) is added to subsection (6) of section 408.039, Florida Statutes, to read:

408.039 Review process.—The review process for certificates of need shall be as follows:

(3) APPLICATION PROCESSING.—

(a) An applicant shall file an application with the agency and shall furnish a copy of the application to the agency. Within 15 days after the applicable application filing deadline established by agency rule, the staff of the agency shall determine if the application is complete. If the application is incomplete, the staff shall request specific information from the applicant necessary for the application to be complete; however, the staff may make only one such request. If the requested information is not filed with the agency within 21 days after the receipt of the staff's request, the application shall be deemed incomplete and deemed withdrawn from consideration.

(b) Upon the request of any applicant or substantially affected person within 14 days after notice that an application has been filed, a public hearing may be held at the agency's discretion if the agency determines that a proposed project involves issues of great local public interest. In such cases, the agency shall attend the public hearing. The public hearing shall allow applicants and other interested parties reasonable time to present their positions and to present rebuttal information. A recorded verbatim record of the hearing shall be maintained. The public hearing shall be held at the local level within 21 days after the application is deemed complete.

(c) Except for competing applicants, in order to be eligible to challenge the agency decision on a general hospital application under review pursuant to paragraph (5)(c), existing hospitals must submit a detailed written statement of opposition to the agency and to the applicant. The detailed written statement must be received by the agency and the applicant within 21 days after the general hospital application is deemed complete and made available to the public.

(d) In those cases where a written statement of opposition has been timely filed regarding a certificate of need application for a general hospital, the applicant for the general hospital may submit a written response to the agency. Such response must be received by the agency within 10 days of the written statement due date.

(5) ADMINISTRATIVE HEARINGS.—

(b) Hearings shall be held in Tallahassee unless the administrative law judge determines that changing the location will facilitate the proceedings. The agency shall assign proceedings requiring hearings to the Division of Administrative Hearings of the Department of Management Services within 10 days after the time has expired for requesting a hearing. Except upon unanimous consent of the parties or upon the granting by the administrative law judge of a motion of continuance, hearings shall commence within 60 days after the administrative law judge has been assigned. For an application for a general hospital, administrative hearings shall commence within 6 months after the administrative law judge has been assigned, and a continuance may not be granted absent a finding of extraordinary circumstances by the administrative law judge. All parties, except the agency, shall bear their own expense of preparing a transcript. In any application for a certificate of need which is referred to the Division of Administrative Hearings for hearing, the administrative law judge shall complete and submit to

the parties a recommended order as provided in ss. 120.569 and 120.57. The recommended order shall be issued within 30 days after the receipt of the proposed recommended orders or the deadline for submission of such proposed recommended orders, whichever is earlier. The division shall adopt procedures for administrative hearings which shall maximize the use of stipulated facts and shall provide for the admission of prepared testimony.

(c) In administrative proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the agency in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in an administrative hearing upon a showing that an established program will be substantially affected by the issuance of any certificate of need, whether reviewed under s. 408.036(1) or (2), to a competing proposed facility or program within the same district. With respect to an application for a general hospital, competing applicants and only those existing hospitals that submitted a detailed written statement of opposition to an application as provided in this paragraph may initiate or intervene in an administrative hearing. Such challenges to a general hospital application shall be limited in scope to the issues raised in the detailed written statement of opposition that was provided to the agency. The administrative law judge may, upon a motion showing good cause, expand the scope of the issues to be heard at the hearing. Such motion shall include substantial and detailed facts and reasons for failure to include such issues in the original written statement of opposition.

(6) JUDICIAL REVIEW.—

(d) The party appealing a final order that grants a general hospital certificate of need shall pay the appellee's attorney's fees and costs, in an amount up to \$1 million, from the beginning of the original administrative action if the appealing party loses the appeal, subject to the following limitations and requirements:

1. The party appealing a final order must post a bond in the amount of \$1 million in order to maintain the appeal.

2. Except as provided under s. 120.595(5), in no event shall the agency be held liable for any other party's attorney's fees or costs.

Section 4. Subsection (3) of section 408.040, Florida Statutes, is repealed.

Section 5. The provisions of this act do not apply to a certificate of need application filed before the effective date of this act.

Section 6. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 7. This act shall take effect upon becoming a law.

Approved by the Governor May 19, 2008.

Filed in Office Secretary of State May 19, 2008.