

LONG-TERM CARE CERTIFICATE OF NEED ACT

**TITLE 63 OF THE OKLAHOMA STATUTES
SECTION 1-850 ET SEQ.**

§63-1-850. Short title.

Sections 6 through 17 of this act¹ shall be known and may be cited as the Long-term Care Certificate of Need Act.

§63-1-851. Public policy as to development of long-term services.

The Legislature hereby declares that it is the public policy of the State of Oklahoma that the offering and development of long-term care services should be made in a planned, orderly and economical manner consistent with and appropriate to services needed by people in various regions, districts or localities in the State of Oklahoma, and that it is essential to the realization of this public policy that the offering and development of long-term care services in the state be made in accordance with the needs for such services. It is the purpose of the Legislature in enacting this act to further this public policy by providing for the submittal of plans and applications, and by prohibiting the offering, development or change of existing services prior to the issuance of a certificate of need by the State Department of Health.

Added by Laws 1971, c. 64, § 1, emerg. eff. April 8, 1971.

Amended by Laws 1980, c. 188, § 2, eff. July 1, 1980; Laws 1986, c. 149, § 12, emerg. eff. April 29, 1986; Laws 1989, c. 227, § 6, operative July 1, 1989.

§63-1-851.1. Definitions.

For purposes of the Long-term Care Certificate of Need Act:

1. "Board" means the State Board of Health;
2. "Commissioner" means the State Commissioner of Health;
3. "Department" means the State Department of Health;
4. "Long-term care facility" means:
 - a. a nursing facility or a specialized facility, as such terms are defined by Section 1-1902 of this title,
 - b. skilled nursing care provided in a distinct part of a hospital as such term is defined by Section 1-701 of this title,
 - c. the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, or

¹ Title 63 O.S. Section 1-851 to 1-858.

- d. the nursing care component of a life care community as such term is defined by the Long-term Care Insurance Act;²
5. "Disclosure statement" means a written statement by the applicant which contains:
- a. the full name, business address, and social security number of the applicant, and all persons with controlling interest as defined by the Long-term Care Certificate of Need Act,
 - b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant,
 - c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to long-term care facility regulation,
 - d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any person with a controlling interest which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal related to long-term care in the five (5) years immediately preceding the filing of the application. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the Centers for Medicare and Medicaid Services, and
 - e. a listing of any federal long-term care agency and any state long-term care agency outside this state that has or has had regulatory responsibility over the applicant;
6. "History of noncompliance" means three standard or complaint surveys found to be at the substandard quality of care level when the facility does not achieve compliance by date

²Title 36 O.S. Supp. 2000, Section 4424: "Life care community" means any arrangement pursuant to which a person contracts for a place of residence and personal care services, including but not limited to services which progress from independent living to semi-dependent nursing care to acute nursing care, in consideration of a payment or payments of fees prior to the delivery of services and accommodations. Life care community shall not include the following:

- a. traditional landlord and tenant agreements utilizing periodic rental and security deposit payments,
- b. residential care homes licensed pursuant to the Oklahoma Residential Care Act,
- c. assisted living centers and continuum of care facilities licensed pursuant to the Oklahoma Continuum of Care and Assisted Living Act, or
- d. facilities licensed pursuant to the Oklahoma Nursing Home Care Act.

certain in a nursing facility or specialized facility for persons with Alzheimer's disease or related disorders. Additionally, "history of noncompliance" for an intermediate care or specialized facility for persons with mental retardation means three consecutive routine or complaint surveys that resulted in determinations that the facility was out of compliance with two or more Conditions of Participation in the Medicaid program within the preceding thirty-six (36) months when the facility does not achieve compliance within sixty (60) days;

7. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized; and

8. "Person with a controlling interest" means a person who meets any one or more of the following requirements:

- a. controls fifty percent (50%) or more of the common stock of the corporate entity involved or controls fifty percent (50%) or more of the interest in the partnership involved,
- b. controls a percentage of stock greater than any other stockholder or equal to the other single largest stockholder or controls a percentage of partnership interest greater than any other partner or equal to the other single largest partnership interest, or
- c. a managing member of a Limited Liability Company (LLC).

Added by Laws 1989, c. 227, § 7, operative July 1, 1989. Amended by Laws 1996, c. 336, § 1, eff. Nov. 1, 1996; Laws 1997, c. 223, § 9, emerg. eff. May 20, 1997; Laws 2000, c. 340, § 12, eff. July 1, 2000; Laws 2001, c. 285, § 1 eff. Nov. 1, 2001. Amended by Section 1 of Enrolled House Bill No. 2723 of the 2nd Session of the 49th Oklahoma Legislature, effective June 4, 2004.

§63-1-851.2. Department - Powers and duties - Participation in federal programs - Collection of monthly data.

A. The State Commissioner of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke certificates of need;
2. Establish and enforce standards and requirements for certificates of need;
3. Require the submission of and to review reports from any person requesting or obtaining a certificate of need;
4. Employ or designate personnel necessary to implement the provisions of the Long-term Care Certificate of Need Act;
5. Report to the district attorney having jurisdiction or the Attorney General, any act committed by any person which may constitute a violation pursuant to the provisions of the Long-term Care Certificate of Need Act;

6. Advise, consult and cooperate with other agencies of this state, the federal government, other states and interstate agencies, and with affected groups and political subdivisions to further the purposes of the provisions of the Long-term Care Certificate of Need Act;

7. Promulgate and enforce rules subject to the approval of the State Board of Health to implement the provisions of the Long-term Care Certificate of Need Act;

8. Investigate, request or otherwise obtain the information necessary to determine the qualifications and background of an applicant for a certificate of need;

9. Establish administrative penalties for violations of the provisions of the Long-term Care Certificate of Need Act as authorized by the Board;

10. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department pursuant to the Long-term Care Certificate of Need Act;

11. Develop and administer plans for health services including, but not limited to, staffing, facilities and other resources;

12. Develop and publish, once every four (4) years, a Quadrennial State Health Plan, following guidelines and procedures adopted by the Board which specify the method of adoption of the plan document, its format, provisions for developing and publishing plan amendments and the role of the State Department of Health, local health planning advisory councils and the Alcohol, Drug Abuse and Community Mental Health Planning and Coordination Boards of each mental health catchment area in its development;

13. Establish and administer criteria and standards for the delineation and approval of areas and regions for health planning purposes;

14. Promote and maintain plans for providing health services including, but not limited to, health, staffing and health facilities, in this state; and

15. Exercise all incidental powers as necessary and proper for the administration of the Long-term Care Certificate of Need Act.

B. The State Department of Health shall be the single state agency to participate in federal programs for health planning and to apply for and administer federal funds for health planning, provided, that the Long-term Care Certificate of Need Act, and any other law vesting planning functions in any other state agency, shall not apply to health planning functions vested by law in the Department of Mental Health and Substance Abuse Services, the Oklahoma Health Care Authority and the Department of Human Services.

C. Facility occupancy data used in the review of Certificate of Need applications shall be based upon monthly reports that are submitted by facilities to the Oklahoma Health Care Authority

pursuant to Section 1-1925.2 of this title and that are available to the public upon request.

Added by Laws 1989, c. 227, § 9, operative July 1, 1989. Amended by Laws 1996, c. 336, § 3, eff. Nov. 1, 1996.

Amended by Section 2 of Enrolled House Bill No. 2723 of the 2nd Session of the 49th Oklahoma Legislature, effective June 4, 2004.

§63-1-851.3. Certificate of need required.

No long-term care facility shall be developed, acquired or offered unless a certificate of need therefor has been issued as provided in the Long-term Care Certificate of Need Act. No governmental entity shall approve any grant of funds, issue any debentures or issue or renew any license for the operation of a long-term care facility, nor shall any third-party purchasers, licensed or operated by this state, issue reimbursement for services provided to its insurers or clients, unless the certificate of need as provided in the Long-term Care Certificate of Need Act has been obtained.

Added by Laws 1989, c. 227, § 9, operative July 1, 1989. Amended by Laws 1996, c. 336, § 3, eff. Nov. 1, 1996.

§63-1-852. Application for certificate of need - Form - Long-term care service defined - Information required - Signature under oath - Review for completeness - Investigation - Public notice - Deadline for decision - Issuance or denial of certificate.

A. Every entity desiring to establish a new long-term care facility, to expand an existing facility whether through construction or conversion of facilities, or to acquire an existing long-term care facility shall make application to the State Department of Health for a certificate of need. The application for a certificate of need shall be in such form as the State Commissioner of Health shall prescribe.

B. A certificate of need shall be required for:

1. Any capital investment or lease of One Million Dollars (\$1,000,000.00) or more, including predevelopment activities such as arrangements and commitments for financing, architectural designs, plans, working drawings, specifications, and site acquisition; provided, that this dollar limit shall not apply to a change in bed capacity;

2. Acquisition of the ownership or operation of a facility whether by purchase, lease, donation, transfer of stock or interest, management contract, corporate merger, assignment, or through foreclosure; and

3. An increase in licensed beds, whether through establishment of a new facility or expansion of an existing facility

C. The Department within fifteen (15) days after receipt of an application, shall issue an exemption from certificate of need

requirements upon written request and demonstration that applicable exemption criteria have been met, for any of the following activities:

1. An increase of no more than ten beds or ten percent (10%) of the facility's licensed beds, whichever is greater, per calendar year if:

- a. the total capital cost of the increase is less than One Million Dollars (\$1,000,000.00), and
- b. the facility's occupancy rate averaged ninety-three percent (93%) or more during the twelve (12) months preceding the filing of the exemption request;

2. Construction of a long-term care facility to replace or relocate all or part of the licensed bed capacity of an existing facility if:

- a. the project involves no increase in licensed beds;
- b. the facility shall be constructed no farther than three (3) miles for rural areas and seven and one-half (7 1/2) miles for urban areas, as defined by the Standard Metropolitan Statistical Area (SMSA), from the facility it is replacing or relocating, and
- c. a plan for the use of the facility to be replaced or relocated is provided that ensures continuity of services; and

3. A management agreement if:

- a. the management entity discloses all persons with controlling interest in the management entity and discloses all experience in long-term care facility management or operation in any state during the preceding thirty-six (36) months,
- b. the management entity and any person with controlling interest if the management entity has less than thirty-six (36) months experience in management or operation of facilities, does not have a history of noncompliance, and
- c. the licensed entity remains responsible for facility operation, financial performance, staffing and delivery of resident services required under the Nursing Home Care Act.

D. A certificate of need shall not be required for:

1. Any changes of ownership resulting from the operation of law, including but not limited to divorce, probate, reversions and bankruptcy if the transfer of interest is to any already existing stockholder or person or entity listed on the license application disclosure statement. This shall also include cancellations and expirations of leases. Operational law ownership changes shall be reported to the Department within five (5) working days of the change;

2. Ownership changes for estate planning purposes, treasury stock purchases, and transfers between existing owners and/or

family members; increases in the amount of common stock or partnership interest for any individual who already owns fifty percent (50%) of the common stock or corporate entity involved or controls fifty percent (50%) or more of the interest in the partnership involved; and

3. New purchases of common stock or partnership interest by any legal entity if such new purchaser will own, in total, less than fifty percent (50%) of the corporate entity involved or partnership involved.

E. All applicants for the issuance of a certificate of need, at such time and in such manner as required by the Department, shall file:

1. A disclosure statement with their applications unless the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company. In such case, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved;

2. Copies of residents council minutes and family council minutes, if any, and the facility's written response to the councils' requests or grievances, for the three (3) months prior to the date of application, for each of the applicant's current holdings in the State of Oklahoma; and

3. Such other relevant information required by the Department pursuant to the Long-term Care Certificate of Need Act that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

F. An application for a certificate of need shall be signed under oath by the applicant.

G. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewing bodies selected by the Department to assist the Department in determining whether the application is complete. Once the Department has determined that the application is complete, it shall notify the affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and appropriateness of the new or any long-term care service acquisition, expansion, or establishment of a new facility.

H. Except as provided by Section 1-853.1 of this title³, the investigation made pursuant to an application for a certificate of need shall include the following:

³ 63 O.S. Section 1-853.1, effective 11/1/01.

1. The adequacy of long-term care facilities in relation to an optimal target ratio of long-term care beds per thousand persons seventy-five (75) years of age or older in the state;

2. The availability of long-term care which may serve as alternatives or substitutes;

3. The adequacy of financial resources for the acquisition, expansion, or establishment of a new long-term care facility and for the continued operation thereof;

4. The availability of sufficient staff to properly operate the proposed acquisition, expansion, or establishment of a new long-term care facility;

5. The record of the applicant's current and prior ownership, operation and management of similar facilities in this state and in any other state. The investigation of such record shall include, but not be limited to, inquiry to the State Long-Term Care Ombudsman Office, the state Medicaid Fraud Control Unit, and the state licensure and certification agency;

6. Review of minutes of family councils and residents councils, and the facilities' responses, from each of the applicant's holdings in Oklahoma; and

7. Any other matter which the Department deems appropriate.

I. Before making a final determination on an acquisition application, the Commissioner shall cause paid public notices to be published in a newspaper of general circulation near the facility and in a newspaper of general circulation in the area where the application is available for public inspection. A notice in a form prescribed by the Department also shall be posted by the applicant in a public area in each facility operated by the applicant in Oklahoma, to inform residents and families of the applicant's proposed action. The public notices shall offer participating parties an opportunity to submit written comments.

J. The Commissioner's decision to approve or deny the proposed acquisition, expansion, or establishment of a new facility shall be made within forty-five (45) days following the deadline for submitting written comments, or the proposed acquisition, or establishment shall be automatically approved, unless otherwise prohibited pursuant to the provisions of the Long-term Care Certificate of Need Act.

K. If the Commissioner finds that a proposed acquisition, expansion, or establishment of a new facility is consistent with the criteria and standards for review of such projects, and is otherwise in compliance with the provision of the Long-term Care Certificate of Need Act, then the Commissioner shall issue a certificate of need. If the Commissioner finds that the proposed acquisition, expansion, or establishment of a new facility is not consistent with the criteria and standards, or is otherwise not in compliance with the provisions of the Long-term Care Certificate of Need Act, the Commissioner shall deny the certificate of need.

*Added by Laws 1971, c. 64, § 2, emerg. eff. April 8, 1971.
Amended by Laws 1980, c. 188, § 3, eff. July 1, 1980; Laws 1983, c. 285, § 5, operative July 1, 1983; Laws 1984, c. 238, § 4, operative July 1, 1984; Laws 1986, c. 149, § 13, emerg. eff. April 29, 1986; Laws 1987, c. 206, § 43, operative July 1, 1987; Laws 1987, c. 236, § 27, emerg. eff. July 20, 1987; Laws 1988, c. 282, § 4, operative July 1, 1988; Laws 1989, c. 227, § 10, operative July 1, 1989; Laws 1993, c. 269, § 14, eff. Sept. 1, 1993; Laws 1996, c. 336, § 4, eff. Nov. 1, 1996; amended by Section 2 of Enrolled House Bill No. 1420 of the 1st Session of the 48th Oklahoma Legislature, eff. Nov. 1, 2001. Amended by Section 3 of Enrolled House Bill No. 2723 of the 2nd Session of the 49th Oklahoma Legislature, effective June 4, 2004.*

§63-1-852.1. Fees and costs.

A. Each application for a new certificate of need applied for pursuant to the provisions of Section 1-852 of this title⁴, except for those applications filed by state agencies, shall be accompanied by an application fee of Three Thousand Dollars (\$3,000.00).

B. The maximum filing fee on an application for replacement of an existing facility shall be One Thousand Dollars (\$1,000.00).

C. 1. The maximum filing fee on an application for an acquisition shall be Five Thousand Dollars (\$5,000.00).

2. The capital cost for acquisition shall be the current book value of the facility as shown by a recognized method or basis of accounting as attested by a Certified Public Accountant.

D. If an application for a certificate of need is not approved, the Department shall refund the application fee in full.

E. Each request for exemption from certificate of need requirements submitted under Section 1-852 of this title, except for a request filed by a state agency, shall be accompanied by a fee of One Hundred Dollars (\$100.00).

Added by Laws 1996, SB 1177, c. 336, § 5, emerg. eff. June 12, 1996; Amended by Laws 2004, HB 2723, c. 436, § 4, emerg. eff. June 4, 2004; Amended by Laws 2009, SB 541, c. 121, § 1, emerg. eff. April 28, 2009.

§63-1-853. Findings as to necessity.

A. Except as provided in subsections B and C of this section, no certificate of need shall be issued by the State Department of Health unless after investigation the State Commissioner of Health makes the following findings:

⁴ Title 63 O.S. Section 1-852.

1. The action proposed in the application for such certificate of need is necessary and desirable in order to provide the services required in the locality to be served;

2. The proposed action can be economically accomplished and maintained;

3. The proposed action will contribute to the orderly development of long-term care services in the locality;

4. The applicant is or employs a licensed nursing home administrator; and

5. The applicant is found to be in compliance with the provisions of subsection D of this section.

B. 1. 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 licensure 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:

a. that the facility or service is not needed, or

b. that the applicant is found to be out of compliance with the provisions of subsection D of this section.

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

C. No certificate of need shall be issued for the acquisition of an existing facility unless after investigation the Commissioner finds that the applicant:

1. Has financial resources necessary to complete the transaction and to maintain services and staffing; and

2. Is found to be in compliance with the provisions of subsection D of this section.

D. 1. The Commissioner shall refuse to issue a certificate of need to any applicant who has had, in ten percent (10%) or more of the applicant's long-term care facility holdings in the preceding sixty (60) months, a facility license or certification revoked, rescinded, canceled, terminated, involuntarily suspended, or refused renewal; or if the license or certification was relinquished voluntarily in lieu of penalty.

2. The Commissioner shall refuse to issue a certificate of need to any applicant except where the applicant overcomes a presumption against approval with clear and convincing evidence that one of the following circumstances was not due to the action or inaction of the applicant or any person with a controlling interest:

a. the applicant has had, in any of the applicant's long-term care holdings in the preceding sixty (60) months, a facility's license or certificate

- revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal,
- b. the applicant has a history of noncompliance, as defined by statute, with the standards for licensure of long-term care facilities of any state in which the applicant has or has had long-term care facilities, or with federal standards for certification of long-term care facilities,
- c. the applicant, in all current and prior ownership, operation and management of long-term care facilities, has not complied with all lawful orders of suspension, receivership, temporary management, or administrative penalty issued by the Department or by other authorities with similar responsibilities in other states or by the federal Centers for Medicare and Medicaid Services, or
- d. the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility.

3. Other than any of those reasons listed in paragraph 1 or 2 of this subsection, the Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding thirty-six (36) months, one or more of the following:

- a. findings of substandard quality of care or noncompliance with two or more conditions of participation on twenty percent (20%) or more of the surveys conducted in the applicant's long-term care facility holdings or against any long-term care facility operated by a person with a controlling interest during the preceding thirty-six (36) months,
- b. a temporary manager, monitor, or receiver appointed, or
- c. had a civil money penalty imposed of Thirty-five Thousand Dollars (\$35,000.00) or more.

E. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

F. When the Commissioner makes a determination to issue or deny a certificate of need, the Commissioner shall provide written findings to the applicant, other reviewers and to other persons upon their request. The certificate of need shall establish the maximum capital expenditure for the project. The State Board of Health shall adopt rules concerning the time in which a decision must be made on an application.

G. Any person may request a reconsideration of the Commissioner's determination for good cause shown, the grounds for which shall be established by the Board by rule. A request for reconsideration shall be filed within ten (10) days of the

Department determination. The hearing thereupon shall be conducted within thirty (30) days following the receipt of request. Written findings shall be issued within forty-five (45) days of such hearing.

*Added by Laws 1971, c. 64, § 3, emerg. eff. April 8, 1971.
Amended by Laws 1980, c. 188, § 4, eff. July 1, 1980; Laws 1986, c. 149, § 14, emerg. eff. April 29, 1986; Laws 1989, c. 227, § 11, operative July 1, 1989; Laws 1994, c. 48, § 1, eff. Sept. 1, 1994; Laws 1996, c. 336, § 6, eff. Nov. 1, 1996; Laws 1998, c. 328, § 2, eff. Nov. 1, 1998; Laws 2000, c. 340, § 13, eff. July 1, 2000; amended by Section 3 of Enrolled House Bill No. 1420 of the 1st Session of the 48th Oklahoma Legislature, eff. Nov. 1, 2001. Amended by Section 5 of Enrolled House Bill No. 2723 of the 2nd Session of the 49th Oklahoma Legislature, effective June 4, 2004.*

§63-1-853.1 Life Care communities--Investigation and findings

A. The investigation made pursuant to an application by a not-for-profit life care community for a certificate of need shall include:

1. The adequacy of financial resources for the acquisition, expansion, or establishment of a new long-term care facility and for the continued operation thereof;

2. The record of the applicant's current and prior ownership, operation, and management of similar facilities in this state and in any other state. The investigation of such record shall include, but not be limited to, inquiry to the State Long-Term Care Ombudsman Office, the state Medicaid Fraud Control Unit, and the state licensure and certification agency;

3. If the applicant has holdings in Oklahoma, a review of minutes of family councils and residents' councils, and the facilities' responses, from each of the applicant's holdings in this state; and

4. Any other matter which the Department deems necessary and appropriate.

B. 1. The State Department of Health may approve an initial certificate of need for a not-for-profit life care community for nursing care beds that does not exceed twenty percent (20%) of the total number of units in the life care community for which no certificate of need is required.

2. Approval of the initial certificate of need shall include authorization for an open admission period for not more than seven (7) years following the initial licensure of nursing care beds in the life care community. During the open admission period, the life care community may admit individuals who are not residents of the life care community to the nursing care beds.

3. Upon expiration of the one-time seven-year open admission period, a life care community that has obtained a

certificate of need pursuant to this section shall admit only the following persons to its nursing care beds:

- a. an individual who has executed a written agreement for services with the facility and who has been a bona fide resident of the portion of the life care community for which a certificate of need bed is not required for a period of at least thirty (30) days,
- b. an individual who has executed a written agreement for services with the facility and who has been a bona fide resident of the portion of the life care community for which a certificate of need bed is not required for a period of less than thirty (30) days and requires skilled care that was not originally contemplated upon admission to the life care community,
- c. an individual who has executed a written agreement for services with the facility and whose physician certifies that the individual is likely to be able to move to a portion of the life care community for which a certificate of need bed is not required in thirty (30) days or less after entering the life care community, or
- d. an individual who is a family member (spouse, parent, child, sibling, aunt, uncle or first cousin by blood, marriage or adoption) of an individual who has executed a written agreement for services with the facility and resides in the portion of the life care community for which a certificate of need bed is not required.

C. The State Department of Health may approve a subsequent certificate of need for nursing care beds for a not-for-profit life care community that has obtained a certificate of need pursuant to this section when a subsequent application does not cause the nursing care beds to exceed twenty percent (20%) of the total number of units in the life care community for which no certificate of need is required. No open admission period shall be authorized for the additional nursing care beds.

Added by Section 4 of Enrolled House Bill No. 1420 of the 1st Session of the 48th Oklahoma Legislature, eff. Nov. 1, 2001.

§63-1-854.1. Appeal of findings.

Any final determination by the State Department of Health pursuant to the Long-term Care Certificate of Need Act may be appealed by the applicant, or any other aggrieved party under the provisions of Sections 317 and 318 of Article II of the Administrative Procedures Act; provided, that the venue for such appeal shall be in Oklahoma County or in the county in which the facility at issue in the application is located.

Added by Laws 1980, c. 188, § 5, eff. July 1, 1980. Amended by Laws 1986, c. 149, § 15, emerg. eff. April 29, 1986; Laws 1989, c. 227, § 12, operative July 1, 1989; Laws 1993, c. 234, § 1, eff. July 1, 1993; Laws 1994, c. 48, § 2, eff. Sept. 1, 1994; Laws 1996, c. 336, § 7, eff. Nov. 1, 1996. Amended by Section 6 of Enrolled House Bill No. 2723 of the 2nd Session of the 49th Oklahoma Legislature, effective June 4, 2004.

§63-1-857. Time for submitting plans and specifications - Time for construction - Time for acquisition.

A. 1. A certificate of need issued pursuant to the provisions of the Long-term Care Certificate of Need Act for the construction or establishment of a new long-term care service or the expansion of an existing service shall be valid for a period of six (6) months during which time the applicant shall submit to the State Department of Health the plans and specifications for the facility to be constructed; however, the Department may extend such time by a period not to exceed twelve (12) months for extraordinary circumstances beyond the control of the applicant.

2. If no such plans and specifications are submitted within the time required by this section, then such certificate shall be null and void.

3. If plans and specifications are submitted, the Department shall approve or disapprove such plans and specifications within thirty (30) days of the filing or such plans and specifications shall be presumed to be approved.

4. If the Department disapproves the plans and specifications, such disapproval shall include a detailed statement of the corrections needed.

5. The State Board of Health shall provide by rule the review process and time deadlines not exceeding twelve (12) months for approval or disapproval and resubmittal of initial, final and corrected plans and specifications. The applicant's failure to meet the review process deadlines promulgated by the Board shall render the certificate of need void.

6. The applicant must begin construction of the structure within twelve (12) months following the approval of the final plans and specifications and must proceed to complete the structure within eighteen (18) months of the approval from the beginning of construction or the certificate will be canceled. However, the Department may extend such completion day by a period not to exceed twenty-four (24) months for good cause upon the applicant's demonstration that the applicant has made a good faith effort to complete the structure or modifications and that the delay is unlikely to result in harm to the population to be served by the applicant.

B. A certificate of need issued pursuant to the provisions of this act for the acquisition of a long-term care facility shall be valid for a period of six (6) months by which time the

acquisition must be finalized, provided that the Department may extend such final date by a period not to exceed twelve (12) months for good cause.

C. Pending the appeal of an order granting a certificate of need in the district or Supreme Court, the effective dates of deadlines for submitting plans, filing reports, completion of the project and other requirements related to such project shall commence on the date of a final judicial determination of any such appeal, and any certificate of need which has been approved by the Department shall remain in effect pending such appeal. The effective date of the issuance of a certificate of need shall be the date of a final judicial determination of any such appeal. The provisions of this subsection shall have prospective and retrospective application.

Amended by Laws 1986, c. 149, § 17, emerg. eff. April 29, 1986; Laws 1987, c. 225, § 46, eff. July 5, 1987; Laws 1989, c. 227, § 13; amended by Section 2 of Enrolled House Bill No. 2604 of the 2nd Session of the 48th Oklahoma Legislature, eff. Nov. 1, 2002. Amended by Section 7 of Enrolled House Bill No. 2723 of the 2nd Session of the 49th Oklahoma Legislature, effective June 4, 2004.

§63-1-857.1. Rules and regulations - Oaths - Reports.

A. The State Board of Health shall promulgate such rules as are necessary to implement the provisions of the Long-term Care Certificate of Need Act and meet the requirements of federal regulations. The State Department of Health may administer oaths at any hearing or investigation conducted pursuant to the Long-term Care Certificate of Need Act, and receive federal grant or contract funds by complying with the requirements therefor.

B. The Department shall post on the Department's Internet site a monthly report which shall include the status of each review currently being conducted, the reviews completed since the last report issued, and a general statement of the findings and decisions made in the course of these reviews.

Laws 1980, c. 188, § 8, eff. July 1, 1980. Amended by Section 8 of Enrolled House Bill No. 2723 of the 2nd Session of the 49th Oklahoma Legislature, effective June 4, 2004.

§63-1-857.2. Decision granting or denying certificate of need for new long-term care facility - Written findings of facts, conclusions of law and explanations required.

The Department is hereby directed, with respect to any decision granting or denying a certificate of need for a new long-term care facility, to issue in writing findings of fact, conclusions of law, and explanations of any other pertinent considerations, including precedents, upon which such decision is based. The Department shall be allowed forty-five (45) days within which to issue a formal order and opinion to the applicant and any parties opposed to the application after the conclusion

of the hearing, or after the submission of additional evidence or briefs requested by the Department.

Added by Laws 1988, p. 1896, S.J.R. No. 49, § 5. Amended by Laws 1989, c. 227, § 14.

§63-1-857.6. Oklahoma Health Planning Commission - Abolition - Transfer of funds, property, etc.

A. The Oklahoma Health Planning Commission is hereby abolished, and the powers, duties and responsibilities exercised by such Commission pursuant to law are hereby transferred to the State Department of Health and the Commissioner of Health. All unexpended funds, property, records, personnel and any outstanding financial obligations and encumbrances of such office are hereby transferred to the State Department of Health and the Commissioner of Health.

B. The Director of State Finance is hereby directed to coordinate the transfer of funds, allotments, purchase orders, outstanding financial obligations or encumbrances provided for in this section.

C. Any application for a certificate of need which was duly filed with the Oklahoma Health Planning Commission prior to the effective date of the Long-term Care Certificate of Need Act or the Psychiatric and Chemical Dependency Facility Certificate of Need Act shall be reviewed and approved or disapproved pursuant to criteria and procedures in effect at the time such application was filed. Any application for Certificate of Need not scheduled for review at the regularly scheduled June, 1989, Commission meeting or by the Director before July 1, 1989, shall be considered to have been duly filed with the State Department of Health. In all appellate matters, including but not limited to reconsideration and remand, the Department shall be considered as the Commission.

D. The rules of the Oklahoma Health Planning Commission in effect on July 1, 1989, shall be enforceable by the State Department of Health and shall remain effective until the adoption of new rules by the State Board of Health.

E. Any references to the Oklahoma Health Planning Commission in the Oklahoma Statutes shall be construed to refer to the State Department of Health.

§63-1-858. Penalties.

A. Any person who offers or develops or begins to offer or develop a long-term care facility without having first obtained a certificate of need, as provided by the Long-term Care Certificate of Need Act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punishable by payment of a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Five Thousand Dollars (\$5,000.00).

B. If the State Department of Health, through one of its agents or representatives, notifies in writing, through certified

mail, return receipt requested, the person who has unlawfully commenced the offering or development of a long-term care facility to cease and desist, then each day that such person continues such offering or development shall be a separate offense. If any person continues to offer or develop an institutional health service after the issuance of a cease and desist order, the Department shall seek an injunction to prohibit the continued offering or development.

Laws 1971, c. 64, § 8, emerg. eff. April 8, 1971; Laws 1980, c. 188, § 9, eff. July 1, 1980. Amended by Section 9 of Enrolled House Bill No. 2723 of the 2nd Session of the 49th Oklahoma Legislature, effective June 4, 2004.

§63-1-859. Provisions as supplemental.

The provisions of this act shall be supplemental to any other law of this state relating to the offering and development of long-term care service, and shall repeal only those laws in direct conflict herewith.

Laws 1971, c. 64, § 9, emerg. eff. April 8, 1971; Laws 1980, c. 188, § 10, eff. July 1, 1980.