

**PSYCHIATRIC AND CHEMICAL DEPENDENCY FACILITY CERTIFICATE OF
NEED ACT**
TITLE 63 OF THE OKLAHOMA STATUTES
SECTION 1-880.1 ET SEQ.
(Current through 2000)

§63-1-880.1. Short title.

Sections 18 through 28 of this act shall be known and may be cited as the "Psychiatric and Chemical Dependency Facility Certificate of Need Act".

§63-1-880.2. Public policy - Purpose.

The Legislature hereby declares that it is the public policy of the State of Oklahoma that the offering and development of psychiatric and drug dependency 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 such services in this 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 1989, c. 227, § 19.

§63-1-880.3. Definitions.

For purposes of this act:

1. "Act" means the Psychiatric and Chemical Dependency Facility Certificate of Need Act;
2. "Board" means the State Board of Health;
3. "Commissioner" means the Commissioner of Health; and
4. "Department" means the State Department of Health.

§63-1-880.4. Department - Powers and duties - Participation in federal programs - Collection of monthly data

A. The State Department 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 this act;

5. Report to the district attorney having jurisdiction or the Attorney General any act committed by any person which may constitute a misdemeanor pursuant to the provisions of this 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 this act;

7. Develop and enforce rules and regulations subject to the approval of the Board to implement the provisions of this 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 this 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 this act;

11. Develop and administer plans for services, including manpower, 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 specifies 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 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 planning purposes;

14. Promote and maintain plans for providing services in the State of Oklahoma; and

15. Exercise all incidental powers as necessary and proper for the administration of this act.

B. The State Department of Health shall be the single state agency to participate in federal programs for planning and to apply for and administer federal funds for planning, provided, that this act, and any other law vesting planning functions in any other state agency, shall not apply to planning functions vested by law in the Department of Mental Health and the Department of Human Services.

C. The Department shall establish forms and provide for the collection of monthly data necessary for the computation

of occupancy rates from licensed psychiatric and chemical dependency facilities which do not provide services to Medicaid recipients. Data shall include licensed bed capacity, average daily census, days on which beds were reserved for residents temporarily absent, and the number, if any, of semi-private units rented as private rooms.

§63-1-880.5. Certificate of need required.

Except as otherwise provided by Section 1-880.6 of this title, no psychiatric or chemical dependency facility or unit shall be developed or offered unless a certificate of need therefor has been issued. No governmental entity shall approve any grant of funds, issue any debentures or issue or renew any license for the operation of a 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 this act has been obtained.

Added by Laws 1989, c. 227, § 22. Amended by Laws 1991, c. 241, § 2, eff. Sept. 1, 1991.

§63-1-880.6. Application for certificate of need - Exemptions.

A. Every entity desiring to establish a new psychiatric or chemical dependency service or to acquire, lease or expand an existing service whether through construction or conversion of facilities, shall make application to the State Department of Health for a certificate of need in such form and accompanied by such information, including a complete list of stockholders, partners, and owners, and any other information, as the Board shall prescribe.

B. The provisions of the Psychiatric and Chemical Dependency Facility Certificate of Need Act shall not apply to any hospital as defined by Section 1-710 of this title licensed by the State Department of Health on or before December 31, 1990, which has:

1. Construction cost overruns or capital expenditures for completion of originally approved beds or completion of previously constructed and shelled space arising out of and based only upon the original certificate of need issued by the Commissioner for said construction, when such construction costs or capital expenditures do not or will not increase the approved number of beds, allow conversion of bed use shall not be deemed new construction or increase pricing structure for treatment or services; or

2. Negotiated a contract with an agency of this state, the federal government or a Native American nation duly recognized by the federal government that specifies the number

of beds and their uses. A hospital provided for by paragraph 2 of this subsection shall be exempt from the certificate of need required by the Psychiatric and Chemical Dependency Facility Certificate of Need Act for the purposes specified in the contract. This exemption shall not apply to Medicare or Medicaid contracts or contracts for inpatient services for children or adolescents.

C. The Commissioner of Health is authorized to grant a certificate of need if the entity applying for the certificate has filed a notice on a form prescribed by the State Department of Health which shall include, but not be limited to:

1. The name and location of the entity;
2. The name and address of each person having an ownership interest in the entity;
3. The nature of the acquisition, expansion, addition or conversion, whether by sale, lease or other arrangement;
4. The parties to the sale, lease or other arrangement;
5. The size of the acquisition, expansion, addition or conversion;
6. The approximate cost of the acquisition, expansion, addition or conversion; and
7. The projected date of completion.

D. The Commissioner of Health shall be notified, on a form prescribed by the State Department of Health, of the following:

1. Any decrease in the number of beds of a hospital, facility or hospital unit; and
2. Any change in the designation for a continuum of care in psychiatric or chemical dependency treatment.

E. Psychiatric and chemical dependency service for which a certificate of need is required shall include:

1. Any capital investment or lease of Five Hundred Thousand Dollars (\$500,000.00) 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 a facility by purchase, lease, donation or through transfer of stock or corporate merger. If the Department finds that a proposed acquisition is consistent with the criteria and standards for review of such projects, then the Department shall issue a certificate of need. If the Department finds that the proposed acquisition is not consistent with the criteria, the project will be referred to the Commissioner of Health for final determination. The Department's determination to approve the proposed acquisition or to refer it to the Commissioner shall be made no later than

fifteen (15) days following the day the application is determined to be complete and review ready, or the proposed acquisition shall be automatically approved. Proposed acquisitions shall be reviewed against standards adopted by the Department which relate only to the acquirer's capability to operate a facility; or

3. Inpatient psychiatric and chemical dependency services for persons under eighteen (18) years of age offered or provided by a hospital or other health care facility, including but not limited to any conversion of existing beds, any increase in bed capacity and any new beds for the purpose of offering or providing said services, regardless of any capital or other costs of the project.

- a. The State Board of Health shall provide by rule for the temporary emergency use of beds ordinarily used for adult patients as psychiatric or chemical dependency beds for children or adolescents.
- b. Any application to establish or operate inpatient psychiatric or drug or alcohol treatment services for persons under eighteen (18) years of age shall include the establishment, operation and maintenance of a community-based service program or a day treatment program, as those terms are defined by Section 1101 of Title 10 of the Oklahoma Statutes, as an integral part of the total project.

F. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewers it may select to determine whether the application is complete. Once the Department has determined that the application is complete, it shall notify affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and appropriateness of such expanded psychiatric or chemical dependency service. The investigation made pursuant to an application for a certificate of need shall include the following:

1. The adequacy of psychiatric and chemical dependency services in relation to an optimal target ratio of psychiatric or chemical dependency beds to the population;
2. The availability of services which may serve as alternatives or substitutes;
3. The adequacy of financial resources for the new or expanded services and for the continued operation thereof;
4. The availability of sufficient manpower to properly staff and operate the proposed new or expanded service; and
5. Any other matter which the Department deems appropriate.

G. Each application for a certificate of need applied for pursuant to the provisions of this section except for those applications filed by state agencies shall be accompanied by an application fee in an amount established by the Department. *Added by Laws 1989, c. 227, § 23. Amended by Laws 1989, c. 345, § 2, eff. Oct. 1, 1989; Laws 1991, c. 241, § 3, eff. Sept. 1, 1991; Laws 1994, c. 82, § 1, eff. Sept. 1, 1994.*

§63-1-880.7. Findings as to necessity - Certain capital expenditures exempted - Criteria for approval of application - Reconsideration of determination.

A. Except as provided in subsection B of this section or Section 1-880.6 of this title no certificate of need shall be issued by the State Department of Health unless, after investigation, the Department makes the following findings:

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; and
3. The proposed action will contribute to the orderly development of services in the locality.

B. 1. An application for a certificate of need shall not be required 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.

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. Any application seeking a certificate of need for the construction of a psychiatric or chemical dependency facility in replacement of an existing facility shall be reviewed by the Department and shall be granted a certificate of need if the application meets the following criteria:

1. The replacement facility involves no increase in licensed beds; and
2. A plan for the use of the facility to be replaced is provided which assures that its use will be discontinued upon licensure of the replacement facility.

D. When the Department completes its investigation and makes a determination to issue or deny a certificate of need, it 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 Department shall adopt rules and regulations concerning the time in which a decision must be made by the Department on an application.

E. Any person may request a reconsideration of a Department determination for good cause shown, the grounds for which shall be established by the Department by rule. A request for reconsideration shall be filed within thirty (30) 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.

F. The State Department of Health shall conduct a study to determine the number and location of all inpatient and residential psychiatric services and chemical dependency services within the state that are offered or provided for persons under eighteen (18) years of age and maintain a current listing, updated monthly, of the facilities offering said services, the number of beds at each facility, and the occupancy rate at each facility.

Added by Laws 1989, c. 227, § 24; Laws 1991, c. 241, § 4, eff. Sept. 1, 1991.

§63-1-880.8. Appeal of final determination.

Any final determination by the State Department of Health under this act may be appealed by the applicant, or any other aggrieved party under the Administrative Procedures Act, Sections 301 through 326 of Title 75 of the Oklahoma Statutes; 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. The decision of the Department shall be upheld by the court unless it is arbitrary or capricious or is not in accordance with applicable law.

Laws 1989, c. 227, § 25; Laws 1994, c. 48, § 3, eff. Sept. 1, 1994.

§63-1-880.9. Term of validity of certificate - Time for submitting plans and specifications - Time for construction or modification of structure - Time for acquisition - Effective dates of deadlines.

A. A certificate of need issued pursuant to the provisions of this act for the construction or establishment of a new psychiatric or chemical dependency service or the expansion or change 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 or modified; however, the Department may extend such time by a period not to exceed six (6) months for extraordinary circumstances beyond the control of the applicant. If no such plans and

specifications are submitted and approved within the time required by this section, then such certificate shall be null and void. If plans and specifications are submitted, the Department shall approve or disapprove such plans and specifications within forty-five (45) business days of the filing or such plans and specifications shall be presumed to be approved. If the Department disapproves the plans and specifications, such disapproval shall include a detailed statement of the corrections needed. The holder of the certificate must resubmit corrected plans and specifications within forty-five (45) business days of disapproval. Failure to resubmit shall render the certificate void. The applicant must begin construction or modification of the structure within two (2) months following the approval of the plans and specifications and must proceed to complete the structure or modifications within twelve (12) months of the approval or the certificate will be canceled. However, the Department may extend such completion day by a period not to exceed six (6) months for good cause, provided that such extension shall not apply to an applicant who has been previously granted a six (6) months' extension for completion of plans and specifications.

B. A certificate of need issued pursuant to the provisions of this act for the acquisition of a psychiatric or chemical dependency 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 three (3) 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.

§63-1-880.10. Decision granting or denying certificate of need for psychiatric or chemical dependency facility - Written findings of fact, conclusions of law and explanations required.

The State Department of Health is hereby directed, with respect to any decision granting or denying a certificate of need for a new psychiatric or chemical dependency 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.

§63-1-880.11. Violations - Penalties.

Any person who offers or develops or begins to offer or develop a psychiatric or chemical dependency facility or an addition thereto without having first obtained a certificate of need, as provided by this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punishable by payment of a fine of not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00). 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 psychiatric or chemical dependency 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 such service after the issuance of a cease and desist order, the Department shall seek an injunction to prohibit the continued offering or development.

§63-1-880.12. Payment or acceptance of payment for securing or soliciting patients for psychiatric or chemical dependency facility.

A. 1. Any person who intentionally or knowingly pays to or accepts anything of value from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients for any psychiatric or chemical dependency facility in this state shall be guilty of a misdemeanor, and upon conviction shall be punishable by payment of a fine of not less than Five Hundred Dollars (\$500.00) and not more than Two Thousand Dollars (\$2,000.00).

2. In addition to any other penalties or remedies provided by law:

- a. a violation of this section shall be grounds for disciplinary action by the state agency licensing, certifying, or registering such professional or provider, and
- b. the state agency licensing, certifying, or registering such professional or provider may institute an action to enjoin a violation or

potential violation of this section. The action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

- B. This section shall not be construed to prohibit:
1. Advertising, except that advertising which:
 - a. is false, misleading or deceptive,
 - b. advertises professional superiority or the performance of a professional service in a superior manner, and
 - c. is not readily subject to verification;
 2. Remuneration for advertising, marketing or other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is:
 - a. set in advance,
 - b. consistent with the fair market value of the services, and
 - c. not based on the volume or value of any patient referrals or business otherwise generated between the parties; and
 3. Any payment, business arrangements, or payments practice not prohibited by 42 U.S.C., Section 1320a-7b(b), or any regulations promulgated pursuant thereto.

C. This section shall not apply to licensed insurers, including but not limited to, group hospital service corporations, or health maintenance organizations which reimburse, provide, offer to provide, or administer hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor when it is providing those services under a health benefits plan.

D. For purposes of this section:

1. "Health or mental health care professional" means any person who offers or provides counseling or health or mental health care under a license, certification or registration issued pursuant to Title 59 of the Oklahoma Statutes, and any drug and alcohol counselor certified by a private professional organization or association that offers drug and alcohol certification; and

2. "Health care provider" means any hospital or related institution offering or providing outpatient or inpatient psychiatric or chemical dependency care licensed pursuant to Section 1-702 of Title 63 of the Oklahoma Statutes, or private facility offering inpatient or outpatient psychiatric or chemical dependency care licensed or certified pursuant to Title 43A of the Oklahoma Statutes.

Added by Laws 1992, c. 356, § 1, emerg. eff. June 4, 1992.