

Final Rule
LSA Document #19-685(F)

DIGEST

Adds [410 IAC 40](#) concerning the certificate of need program for comprehensive care health facilities. Effective 30 days after filing with the Publisher.

[410 IAC 40](#)

SECTION 1. [410 IAC 40](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 40. CERTIFICATE OF NEED PROGRAM

Rule 1. Definitions

[410 IAC 40-1-1](#) Applicability

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 1. (a) The definitions in this rule apply throughout this article.

(b) The definitions in [IC 16-29-7](#) apply throughout this article.

(Indiana State Department of Health; [410 IAC 40-1-1](#); filed May 15, 2020, 8:35 a.m.: [20200610-IR-410190685FRA](#))

[410 IAC 40-1-2](#) "Commissioner" defined

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 2. "Commissioner" means the state health commissioner or commissioner's designee.

(Indiana State Department of Health; [410 IAC 40-1-2](#); filed May 15, 2020, 8:35 a.m.: [20200610-IR-410190685FRA](#))

[410 IAC 40-1-3](#) "Department" defined

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 3. "Department" means the Indiana state department of health.

(Indiana State Department of Health; [410 IAC 40-1-3](#); filed May 15, 2020, 8:35 a.m.: [20200610-IR-410190685FRA](#))

[410 IAC 40-1-4](#) "Review period" defined

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 4. "Review period" means the period for review of certificate of need applications beginning July 1 of each year and lasting until the following June 30.

(Indiana State Department of Health; [410 IAC 40-1-4](#); filed May 15, 2020, 8:35 a.m.:

Rule 2. Applicability

[410 IAC 40-2-1](#) Applicability

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 1. (a) Except as permitted in [IC 16-29-7](#) and this article:

(1) comprehensive care beds may not be:

(A) added;

(B) transferred; or

(C) constructed;

(2) certification of a comprehensive care bed to participate in the state Medicaid program may not be added or transferred; and

(3) beds may not be converted to comprehensive care beds.

(b) This article does not apply to the following:

(1) Replacement comprehensive care facilities that meet the requirements of [IC 16-29-7-1\(a\)\(1\)](#).

(2) For existing facilities, construction of new additions, and modification or alteration of the structure of the existing facility that meets the requirements of [IC 16-29-7-1\(a\)\(2\)](#).

(3) Transfer of comprehensive care beds to another comprehensive care facility within the same county in accordance with [IC 16-29-7-1\(a\)\(3\)](#).

(4) A comprehensive care bed owned, operated, or sponsored by a religious organization in accordance with [IC 16-29-7-1\(a\)\(4\)](#).

(5) A comprehensive care bed owned, operated, or sponsored by a fraternal organization in accordance with [IC 16-29-7-1\(a\)\(5\)](#).

(6) A small house health facility in accordance with [IC 16-29-7-1\(a\)\(6\)](#).

(7) A continuing care retirement community in accordance with [IC 16-29-7-1\(a\)\(7\)](#).

(Indiana State Department of Health; [410 IAC 40-2-1](#); filed May 15, 2020, 8:35 a.m.: [20200610-IR-410190685FRA](#))

Rule 3. Application; Public Comment

[410 IAC 40-3-1](#) Application

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 1. (a) Certificate of need applications must be submitted in accordance with [IC 16-29-7-11](#).

(b) Certificate of need applications shall be submitted on a form created by the department along with any required supporting documentation.

(c) The certificate of need applicant shall provide sufficient information to enable the commissioner to perform a thorough review of each of the criteria established by [IC 16-29-7-12](#).

(d) Certificate of need applications may be submitted each year between July 1 and July 31.

(e) The department will publish any certificate of need application accepted for review on the department's Internet website before August 15 of the review period.

(Indiana State Department of Health; [410 IAC 40-3-1](#); filed May 15, 2020, 8:35 a.m.: [20200610-IR-410190685FRA](#))

[410 IAC 40-3-2](#) Public comment

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 2. (a) The department shall accept public comment on any certificate of need application before October 15 of the review period.

(b) Public comment may be submitted by either of the following:

(1) United States Postal Service or equivalent delivery sent to the department at:

Indiana State Department of Health
2 North Meridian St.
Indianapolis, IN 46204

(2) Electronic mail submitted to providers@isdh.in.gov.

(Indiana State Department of Health; [410 IAC 40-3-2](#); filed May 15, 2020, 8:35 a.m.:
[20200610-IR-410190685FRA](#))

Rule 4. Review

[410 IAC 40-4-1](#) Applications

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 1. (a) The department will review applications submitted in accordance with this article based on the criteria established in [IC 16-29-7-12](#).

(b) The commissioner shall approve a certificate of need application for:

(1) the transfer of comprehensive care beds; or

(2) the construction of a comprehensive care health facility consisting of transferred beds; only after finding that the transfer of construction is necessary as provided in [IC 16-29-7-12](#).

(c) The department shall issue decisions on certificate of need applications accepted for review by April 30 of the review period.

(Indiana State Department of Health; [410 IAC 40-4-1](#); filed May 15, 2020, 8:35 a.m.:
[20200610-IR-410190685FRA](#))

[410 IAC 40-4-2](#) Comparative review; points value

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 2. (a) When required, the commissioner shall perform a comparative review on a certificate of need application in accordance with [IC 16-29-7-14](#).

(b) For comparative review described in subsection (a), the commissioner shall apply the following points values, with a maximum total value of one hundred (100) points, for the factors listed in [IC 16-29-7-12\(d\)](#):

(1) The need that the population served or proposed to be served has for the services to be provided upon implementation of a project detailed in the certificate of need application is weighted with fifteen (15) points.

(2) The quality of care provided in previous or existing comprehensive care health facilities owned or operated by the applicant, including responses to resident and family satisfaction surveys, is weighted with fifteen (15) points.

(3) The applicant's plan to meet the staffing requirements for the project as required by [410 IAC 16.2-](#)

3.1-2(c)(6) is weighted with ten (10) points.

(4) The short term and long term financial feasibility, the cost effectiveness of the project, and the financial impact upon the applicant, other providers, health care consumers, and the state's Medicaid program is weighted with ten (10) points.

(5) The historical, current, and projected use of the facility if the application is for a project that involves an existing comprehensive care health facility is weighted with five (5) points.

(6) The relationship of the project to the applicant's long range plan and the planning process employed is weighted with five (5) points.

(7) The effectiveness of the project in meeting the health care needs of medically underserved groups, including:

- (A) low income individuals;
- (B) individuals with disabilities; and
- (C) minorities;

and, if applicable, the applicant's historical experience in meeting the needs of the underserved groups is weighted with ten (10) points.

(8) The availability of and impact on ancillary and support services that relate to the project, including:

- (A) dental care;
- (B) diagnostics;
- (C) laboratory;
- (D) pharmaceutical;
- (E) therapy;
- (F) transportation;
- (G) vision; and
- (H) x-ray;

is weighted with five (5) points.

(9) The extent to which the project, the facility, and the applicant comply with applicable standards for licensure, certification, and other approvals is weighted with five (5) points.

(10) The historical performance of the applicant and affiliated parties in complying with previously granted certificate of need applications is weighted with five (5) points.

(11) The public comments submitted to the department under [IC 16-29-7-13](#) are weighted with five (5) points.

(12) The applicant's legal right or demonstration of a future legal right to the beds proposed to be transferred under the application is weighted with five (5) points.

(13) Any other information deemed relevant by the department concerning the need for the comprehensive care beds or the comprehensive care health facility requested on the application is weighted with five (5) points.

(Indiana State Department of Health; [410 IAC 40-4-2](#); filed May 15, 2020, 8:35 a.m.: [20200610-IR-410190685FRA](#))

Rule 5. Fees

[410 IAC 40-5-1](#) Fees

Authority: [IC 16-29-7-19](#)

Affected: [IC 16-29-7](#)

Sec. 1. (a) The fee for a certificate of need application is five thousand dollars (\$5,000).

(b) Fees imposed in this section are payable to the department for use in the administration of the certificate of need program.

(Indiana State Department of Health; [410 IAC 40-5-1](#); filed May 15, 2020, 8:35 a.m.: [20200610-IR-410190685FRA](#))

LSA Document #19-685(F)

Notice of Intent: [20191225-IR-410190685NIA](#)

Proposed Rule: [20200212-IR-410190685PRA](#)

Hearing Held: March 6, 2020

Approved by Attorney General: April 25, 2020

Approved by Governor: May 1, 2020

Filed with Publisher: May 15, 2020, 8:35 a.m.

Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Kelly MacKinnon, Indiana State Department of Health, 2 North Meridian Street, Section 3H-99, Indianapolis, IN 46204, (317) 233-7316, kmackinnon@isdh.in.gov

Posted: 06/10/2020 by Legislative Services Agency

An [html](#) version of this document.