

Filed for intro on 02/09/95  
Senate Bill \_\_\_\_\_  
By  
\_\_\_\_\_

House No. HB1020  
By Rhinehart

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 11, relative to nursing homes.

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

SECTION 1. Tennessee Code Annotated, Section 68-11-108(b), is amended by adding the following at the end of the existing language:

Notwithstanding the provision of this subsection, in the case of applications for new nursing home beds the determination required by this section shall be governed solely by the provisions of Tennessee Code Annotated, Section 68-11-121.

SECTION 2. Tennessee Code Annotated, Section 68-11-108(a), is amended by adding the following at the end of subdivision (1)(i).

Such conditions shall become a requirement of licensure and shall be enforced by the respective licensing entity.

SECTION 3. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding the following as a new section:

Section \_\_\_\_\_. Notwithstanding the provisions of the state health plan or any regulation of the commission, the provisions of this section establish the criteria for issuance of certificates of need for new nursing home beds regardless of site (including conversion of any beds to licensed nursing home beds). The commission is authorized to grant a certificate of need (CON) only if the applicant meets all of the requirements of this section.

(b) The first criterion which must be met is the need for the project.

(1) The need for nursing home beds shall be determined by applying the following population based statistical methodology:

County bed need = .0005 x population of the county sixty-five (65) years of age and under

.0120 x population age 65 - 74

.0600 x population age 75 - 84

.1500 x population age 85+

County population statistics shall be based upon official statistics provided by the department of health.

(2) The need for nursing home beds shall be projected two (2) years into the future from the current year, as calculated by the department of health, division of information resources.

(3) The actual bed need shall be derived by subtracting the projected bed need from a bed total comprised of the number of nursing home beds licensed in the county plus certificate of need approved, but yet unlicensed beds plus any beds to be added through the ten (10) bed/ten percent (10%) provision as notified to the commission prior to submission of the certificate of need application under consideration. Such notification shall include evidence that the facility intending to utilize the

ten (10) bed/ten percent (10%) provision has applied for licensure of the beds.

(4) Service area shall mean the county in which the facility is to be located.

(5) The health facilities commission may approve new nursing home beds in excess of the bed need standard for a county only under the following exception:

(i) All CON approved projects in the proposed service area resulting in an increase in beds are licensed and in operation; and,

(ii) Every nursing home in the proposed project's service area and within a thirty (30) mile radius of the proposed project is utilized at an occupancy rate of at least ninety-five percent (95%) based on the latest available data from the Nursing Home Joint Annual Report; and,

(iii) There are no projects within the service area or a thirty (30) mile radius of the proposed project for additional beds either approved or denied by the health facilities commission under appeal.

(c) The second criterion which must be met is economic feasibility.

(1) The evaluation of financial feasibility of a proposed project which will participate in the Medicaid program must include:

(i) a calculation of the annual impact of the project in the Medicaid budget in accordance with the formula, number of beds times .75 times 365 times the average per diem Medicaid cost for a nursing home patient.

(ii) a certification by the department of finance and administration as to the availability of funds in the Medicaid budget to reimburse

the proposed facility the amount calculated above (in addition to previously approved but unlicensed projects) without necessitating a change in reimbursement methodology, a reduction in patient access or services, or additional appropriations. The certification required by this subparagraph must be received prior to consideration of the application by the commission. The commission shall consider the certification in evaluating economic feasibility.

(2) The application must show and the commission must find that the project will meet or exceed the following parameters:

(i) a debt service coverage ratio greater than or equal to 1.25 by the end of the second year of projection. Debt service coverage ratio is net income before depreciation and interest expense divided by the annual debt service.

(ii) a current ratio greater than or equal to 1.25 by the end of the second year of projections. Current ratio is current assets divided by current liabilities.

(iii) day's cash on hand greater than or equal to fifteen (15) days at the end of each year of projection. Day's cash on hand is cash plus equivalents divided by net operating expenses per day minus depreciation per day.

(iv) long term debt as a percent of total capital less than or equal to 90%. Long term debt as a percent of total capital is long term debt divided by long term debt plus shareholders equity or fund balance.

(3) The applicant must show and the commission must evaluate the project with reference to:

- (i) whether sufficient financial resources are available to implement and operate the project including levels of patient charges and proof of potential capital financing.
- (ii) the long range amortization of the project plus any cost associated with the original building if the proposed project is an addition or conversion of current space.
- (iii) a comparison of the cost of similar projects, including any construction costs, during the preceding year.
- (iv) projection of total costs over expected life of facility.

(d) When considering competing applications [two (2) or more applications for nursing home beds in the same service area] the health facilities commission shall consider the following criteria in addition to need and economic feasibility:

- (1) Any unique qualities or characteristics the application exhibits that distinguishes it from other nursing homes, in the form of clientele served or services offered.
- (2) The extent to which each project proposes to meet any unmet needs of the service area's population.
- (3) The comparative costs of the projects, with a specific emphasis on the per diem costs and charges to Medicare, Medicaid, as well as impact on insurance payments and private rate charges. In competing applications the focus shall be more on comparing the cost to the patient or payment source than a comparison of per bed or per square foot costs.

(e) A CON may be granted by the health facilities commission for an application for a special demonstration or experiment project that demonstrates a new or previously never provided long term care service or system (never provided in Tennessee). The commission shall be limited to approving two (2) such experimental projects per calendar year, not to exceed a total of two hundred

forty (240) beds. Such a project may be granted even if the project does not meet the criteria for need, so long as such project has been reviewed and recommended by an expert panel in addition to the commission. Such a panel shall be convened for the sole purpose of reviewing proposals and shall be named by the commissioner of health and shall include: one (1) physician familiar with long term care (from three (3) names submitted by Tennessee medical association), one (1) nursing home industry representative (from three (3) names submitted by Tennessee health care association), one (1) member of the Health facilities commission, one (1) representative of the department of health (other than the department's health care association), one (1) member of the health facilities commission, one (1) representative of the department of health (other than the department's health facilities commission representative), one (1) citizen member with specific expertise appropriate to evaluating the proposals, and one (1) department of mental health/mental retardation representative (other than the department's health facilities commission representative) if the proposed projects include any mental health services. The panel will be appointed annually upon the receipt of such proposals. The panel shall review the proposals and make a recommendation to the health facilities commission. Any approved project shall be for a fixed demonstration period not to exceed two (2) years after beginning of operation and will be evaluated at the end of the period. The project shall be reviewed by the panel appointed at that time and a recommendation or continuation of the project shall be made to the commission. Should the project then be found not to meet its demonstration or experiment objectives or is serving a population different than in the original proposal, the CON for the project shall be revoked, the license terminated, and a new certificate of need be required to be obtained. Because of the experimental

nature of such projects and the need for a special panel review of the project, the review cycle for these projects shall be extended by ninety (90) days.

(f) The commission shall not approve the settlement of an appeal of the denial or issuance of a CON if such settlement approves a project which does not meet the requirements of this section.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.