



Illinois Planning Act Amendment modifies process for health care facility closures and ownership changes

By Valerie Breslin Montague and Jacalyn Smith

On July 16, 2019, Governor Pritzker amended the Illinois Health Facilities Planning Act (20 ILCS 3960) (the “Act”) when he signed Illinois Senate Bill 1739 into law. Effective immediately, the new law requires any organization or individual who owns a health care facility to secure a Certificate of Need (CON) prior to closing the facility. The law continues to require a Certificate of Exemption (COE) for other facility changes such as the discontinuation of a category of services or a change in ownership.

The Illinois Health Facilities Planning Act’s requirements

The Illinois Legislature enacted the CON program under the Act to protect patients from excessive competition and rapid growth in the health care industry. The Illinois CON program regulates health care entities to ensure that quality facilities and services are available for all patients. Therefore, any person or organization looking to open a health care facility must submit an application and justify the project as financially and economically reasonable. The Health Facilities and Services Review Board (the “Review Board”) reviews all applications, oversees public hearings and comments, and issues a CON when appropriate.

The Review Board also issues COEs when an owner wants to discontinue a category of services or change ownership of a health care facility. Prior to the recent amendment, the Review Board issued COEs for the closure of health care facilities. While COE applications are also subject to public comment, the organization or individual who submits the application is not required to demonstrate a financial or economic justification. Unlike CONs, if a COE application contains information required by the Review Board, the Review Board is obligated to issue the COE.

The Impact of SB 1739 on closing, discontinuing services, or changing ownership in health care facilities

Under SB 1739, any owner who wants to close a health care facility must obtain a CON, rather than a COE. The Review Board is not required to approve CON applications that contain the required elements. The Review Board may defer an application to close a facility for a maximum of six

months if litigation is pending against the facility. To trigger the six-month deferral period, the litigation must meet one of two criteria: (1) the lawsuit must name the Review Board as a party or (2) the lawsuit must include allegations of a fraud on the CON application.

Although a CON is now necessary to close a health care facility, facilities seeking to discontinue a category of services must still apply for and obtain a COE. SB 1739 limits how often a facility may discontinue categories of service within a six-month time frame. Under the new law, a facility may only discontinue a category once in a six-month period. Discontinuing any other category of service within the same six months requires the facility to obtain a CON.

COEs remain a requirement for any change of ownership of a health care facility. Although SB 1739 extends the public notice requirement from one day to three days, it does not impact any other aspects of the application.

SB 1739 affects a wide range of providers

While the new law significantly impacts the process for closing a health care facility, SB 1739 only slightly affects facilities discontinuing a category of services or changing ownership. Yet, owners must be vigilant of these changes since the Illinois CON program applies to a wide range of health care providers. All licensed and state-operated facilities, including hospitals, long-term care facilities, dialysis centers, ambulatory surgical centers, emergency centers, and birthing centers are impacted. The recent amendments are scheduled to be repealed on December 31, 2029, unless renewed by the legislature. As a result, health care facilities should understand whether to apply for a COE or CON.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Valerie Breslin Montague at vbmontague@nixonpeabody.com or 312-977-4485
- Edward Clancy at eclancy@nixonpeabody.com or 312-977-4487