

3701-12-05

Scope of review: reviewable and nonreviewable activities.

(A) Reviewable activities. The following activities are reviewable activities which shall not be conducted without a valid certificate of need.

- (1) The establishment, development, or construction of a new long-term care facility.
- (2) The replacement of an existing long-term care facility.
- (3) The renovation of a long-term care facility that involves a capital expenditure of two million dollars or more, not including expenditures for equipment, staffing, or operational costs.
- (4) ~~Any~~ Either of the following changes in long-term care bed capacity:
 - (a) An increase in bed capacity; or
 - (b) A relocation of beds from one physical facility or site to another, excluding the relocation of beds within a long-term care facility or among buildings of a long-term care facility at the same site; ~~or~~
- (5) Any change in the health services, bed capacity, or site, or any other failure to conduct the reviewable activity in substantial accordance with the approved application for which a certificate of need concerning long-term care beds was granted, if the change is made within five years after the implementation of the reviewable activity for which the certificate was granted; ~~or~~
- (6) The expenditure of more than one hundred ten per cent of the maximum expenditure specified in a certificate of need concerning long-term care beds.

~~(B) The director shall consider the factors set forth in paragraphs (B)(1) to (B)(7) of this rule in determining whether an activity is conducted on behalf of a health care facility. The existence or nonexistence of any of the factors is not necessarily determinative of whether the activity is or is not conducted on behalf of the health care facility.~~

- ~~(1) An ownership or beneficial ownership interest of twenty five per cent or more of the facility or service that results from the activity or the entity conducting the activity by the health care facility or an affiliated corporation. For the purposes of this paragraph, a health care facility is not considered to have an ownership interest in a building arising out of an interest as a lessor in a ground lease for fair market value.~~

- ~~(2) Participation by the health care facility or an affiliated corporation as a general partner in a partnership conducting the activity.~~
- ~~(3) The presence of officers, directors, members of a nonprofit corporation or association, trustees or partners of the entity operating the health care facility in a majority of similar positions with the entity conducting the activity.~~
- ~~(4) Twenty five per cent or more of the individuals employed in conducting the activity, once implemented, also will be employees of the health care facility.~~
- ~~(5) Provision by the health care facility of twenty five per cent or more of the total capital expenditure needed to implement the activity either directly or through a loan guarantee or similar arrangement.~~
- ~~(6) Location of the site of the activity on the campus of the health care facility or on property owned by the health care facility, if the real property is leased to the entity conducting the activity for substantially less than fair market value.~~
- ~~(7) Agreement by the health care facility to the use of its name as part of the name of the health care facility or service resulting from implementation of the activity or in advertising or promotional material that holds the facility or service out as being operated or offered by or on behalf of the health care facility.~~

~~(C)~~(B) Nonreviewable activities. Activities that are not described in paragraph (A) of this rule generally are not reviewable activities. Only a project or the portion of a project that meets the requirements of this paragraph is not a reviewable activity. The following activities are not reviewable activities:

- (1) Acquisition of computer hardware or software;
- (2) Acquisition of a telephone system;
- (3) Construction or acquisition of parking facilities;
- (4) Correction of cited deficiencies that are in violation of federal, state or local fire, building or safety laws or rules and that constitute an imminent threat to public health or safety;
- (5) Acquisition of an existing health care facility that does not involve a change in the number of beds, by service, or in the number or type of health services;
- (6) Correction of cited deficiencies identified by accreditation surveys of the "Joint

Commission" or the "American Osteopathic Association";

- (7) Acquisition of medical equipment to replace the same or similar equipment for which a certificate of need has been issued if the replaced equipment is removed from service;
- (8) Mergers, consolidations or other corporate reorganizations of existing health care facilities that do not involve a change in the number of beds, by service, or in the number or type of health services;
- (9) Construction, repair or renovation of bathroom facilities;
- (10) Construction of laundry facilities, waste disposal facilities, dietary department projects, heating and air conditioning projects, administrative offices and portions of medical office buildings used exclusively for physician services;
- (11) Acquisition of medical equipment to conduct research required by the United States food and drug administration or clinical trials sponsored by the national institutes of health; and
- (12) Removal of asbestos from a health care facility.

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Certification

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