

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 367

Introduced by Gloor, 35.

Read first time January 16, 2009

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health care; to amend section 71-5829.04,
2 Reissue Revised Statutes of Nebraska, and section
3 71-5829.03, Revised Statutes Cumulative Supplement, 2008;
4 to change health care certificate of need provisions; and
5 to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-5829.03, Revised Statutes
2 Cumulative Supplement, 2008, is amended to read:

3 71-5829.03 No person, including persons acting for or
4 on behalf of a health care facility, shall engage in any of the
5 following activities without having first applied for and received
6 the necessary certificate of need except as permitted under section
7 71-5829.04:

8 (1) The initial establishment of long-term care beds or
9 rehabilitation beds except as permitted under subdivisions ~~(6)~~ (4)
10 and ~~(7)~~ (5) of this section;

11 (2) An increase in the long-term care beds of a health
12 care facility by more than ten long-term care beds or more than ten
13 percent of the total long-term care bed capacity of such facility,
14 whichever is less, over a two-year period;

15 (3) An increase in the rehabilitation beds of a health
16 care facility by more than ten rehabilitation beds or more than ten
17 percent of the total rehabilitation bed capacity of such facility,
18 whichever is less, over a two-year period;

19 ~~(4) A relocation of long-term care beds from a health~~
20 ~~care facility at one physical facility or contiguous site to~~
21 ~~another noncontiguous site within the same health planning region~~
22 ~~if the relocation will cause an aggregate increase in long-term~~
23 ~~care beds between those locations of more than ten beds or more~~
24 ~~than ten percent of the total bed capacity, whichever is less, over~~
25 ~~a two-year period;~~

1 ~~(5) Any relocation of long-term care beds from a health~~
2 ~~care facility located in one health planning region to a health~~
3 ~~care facility in a different health planning region;~~

4 ~~(6) (4) Any initial establishment of long-term care beds~~
5 ~~through conversion by a hospital of any type of hospital beds to~~
6 ~~long-term care beds if the total beds converted by the hospital~~
7 ~~are more than ten beds or more than ten percent of the total~~
8 ~~bed capacity of such hospital, whichever is less, over a two-year~~
9 ~~period;~~

10 ~~(7) (5) Any initial establishment of rehabilitation beds~~
11 ~~through conversion by a hospital of any type of hospital beds to~~
12 ~~rehabilitation beds if the total beds converted by the hospital~~
13 ~~are more than ten beds or more than ten percent of the total~~
14 ~~bed capacity of such hospital, whichever is less, over a two-year~~
15 ~~period; or~~

16 ~~(8) (6) Any relocation of rehabilitation beds in Nebraska~~
17 ~~from one health care facility to another health care facility.~~

18 Sec. 2. Section 71-5829.04, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 71-5829.04 ~~(1)~~ All long-term care beds which require a
21 certificate of need under section 71-5829.03 are subject to a
22 moratorium unless one of the following exceptions applies:

23 ~~(a) (1) An exception to the moratorium may be granted if~~
24 ~~the department establishes that the needs of individuals whose~~
25 ~~medical and nursing needs are complex or intensive and are~~

1 above the level of capabilities of staff and above the services
2 ordinarily provided in a long-term care bed are not currently being
3 met by the long-term care beds licensed in the health planning
4 region; ~~or~~

5 (2) Transfer or relocation of long-term care beds from
6 one facility to another entity in any location is permitted. The
7 receiving entity shall obtain a license for the transferred or
8 relocated beds within three years of the transfer or relocation. If
9 the receiving entity is unable to obtain a license in three years,
10 the department shall extend the time for three one-year periods on
11 the condition that the receiving entity is making progress toward
12 completion of the project requiring a license; or

13 ~~(b)~~ (3) If the average occupancy for all licensed
14 long-term care beds located in a twenty-five mile radius of
15 the proposed site have exceeded ninety percent occupancy during the
16 most recent three consecutive calendar quarters as reported at the
17 time of the application filing and there is a long-term care bed
18 need as determined by the formula in this section, subdivision,
19 the department may grant an exception to the moratorium and
20 issue a certificate of need. If the department determines average
21 occupancy for all licensed long-term care beds located in a
22 twenty-five mile radius of the proposed site has not exceeded
23 ninety percent occupancy during the most recent three consecutive
24 calendar quarters as reported at the time of the application
25 filing, the department shall deny the application. The department

1 shall provide a detailed calculation of long-term care bed need
2 including all components of the long-term care bed need formula
3 as provided in this subsection. ~~(2)~~ The department shall review
4 applications which require a certificate of need under section
5 71-5829.03 and determine if there is a need for additional
6 long-term care beds based on the following formula: Long-term care
7 bed need is equal to the population, multiplied by the utilization
8 rate goal, and the result divided by the minimum occupancy rate
9 goal. No such application shall be approved if the current supply
10 of licensed long-term care beds in the health planning region of
11 the proposed site exceeds the long-term care bed need for that
12 health planning region, determined by aggregating the long-term
13 care bed need established for each sex and age group using the
14 formula.

15 In reaching this determination:

16 (a) The population includes the total population of the
17 health planning region of the proposed site, disaggregated into
18 the following age categories: Birth through sixty-four years of
19 age, sixty-five years of age through seventy-four years of age,
20 seventy-five years of age through eighty-four years of age, and
21 eighty-five years of age and over. Each listed age category shall
22 be further categorized by gender. The most recent population
23 projections available from the department for the year which is
24 closest to the fifth year following the date of the application
25 shall be used to determine the population used in the formula;

1 (b) The utilization rate goal is the number of people
2 using long-term care beds per one thousand persons living in the
3 health planning region in which the proposed project is located.
4 Such utilization rate shall be computed for each of the population
5 categories listed in subdivision ~~(2)(a)~~ (1) of this section and
6 based on the most current utilization data available from the
7 department; and

8 (c) The minimum occupancy rate goal is ninety-five
9 percent for health planning regions which are part of or contain
10 a Metropolitan Statistical Area as defined by the United States
11 Bureau of the Census. For all other health planning regions in the
12 state, the minimum occupancy rate goal is ninety percent.

13 Sec. 3. Original section 71-5829.04, Reissue Revised
14 Statutes of Nebraska, and section 71-5829.03, Revised Statutes
15 Cumulative Supplement, 2008, are repealed.