

CHAPTER NO. 627

HOUSE BILL NO. 1637

By Representative Eckles

Substituted for: Senate Bill No. 1674

By Senator Kurita

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 11, Part 1, relative to procedure for filing certificate of need applications and review thereof.

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

SECTION 1. Tennessee Code Annotated, Section 68-11-106(a)(4), is amended by adding the following language immediately after the colon, "air ambulance service,".

SECTION 2. Tennessee Code Annotated, Section 68-11-106(d)(2), is amended by deleting the sub-item in its entirety and by substituting in lieu thereof the following:

(2) Persons desiring to file a certificate of need application seeking a simultaneous review regarding a similar project for which a letter of intent has been filed, shall file with the commission a letter of intent within ten (10) days after publication of the first filed letter of intent. A copy of any letter of intent filed after the first letter of intent shall be mailed or delivered to the first filed applicant, and shall be published in a newspaper of general circulation in the proposed service area of the first filed applicant within ten (10) days after publication by the first filed applicant. The applications shall be considered and decided by the health facilities commission simultaneously. The commission may refuse to consider the applications simultaneously, if it finds that the applications do not meet the requirements of "simultaneous review" under the rules of the commission.

SECTION 3. Tennessee Code Annotated, Section 68-11-105(2)(D), is amended by deleting the words "a review by competing", and substituting in lieu thereof, the words "simultaneous review by".

SECTION 4. Tennessee Code Annotated, Section 68-11-106(d)(1), is amended by adding the following sentence at the end of the subdivision:

The published letter of intent must contain a statement (1) that any health care institution wishing to oppose the application must file written notice with the commission not later than fifteen (15) days before the commission meeting at which the application will be heard and (2) that any other person wishing to oppose the application must file a written objection with the health facilities commission at or prior to the consideration of the application by the health facilities commission.

SECTION 5. Tennessee Code Annotated, Section 68-11-106(d)(3), is amended by deleting the word "competing" in every instance in which it appears, and substituting in lieu thereof, the words "simultaneous review".

SECTION 6. Tennessee Code Annotated, Section 68-11-106(d)(4), is amended in the first sentence by deleting the language “if two (2) or more applications are competing”, and substituting in lieu thereof, the language “if there are two (2) or more applications to be reviewed simultaneously”; and in the second sentence by deleting the language “as competing”.

SECTION 7. Tennessee Code Annotated, Section 68-11-106, is amended by adding the following as a new subsection to be appropriately designated:

( ) Notwithstanding the provisions of this section to the contrary, an entity, or its successor, that was formerly licensed as a hospital, and which has received from the Commissioner of Health a written determination that it will be eligible for designation as a critical access hospital under the medicare rural hospital flexibility program, is not required to obtain a certificate of need to establish a hospital qualifying for such designation, if it meets the requirements of this subsection. In order to qualify for the exemption set forth in this subsection, the entity proposing to establish a critical access hospital must publish notice of its intent to do so in a newspaper of general circulation in the county where the hospital will be located and in contiguous counties. Such notice shall be published at least twice within a fifteen (15) day period. The written determination from the Department of Health and proof of publication required by this subsection shall be filed with the commission within ten (10) days after the last date of publication. If no health care institution within the same or contiguous counties files a written objection to the proposal with the commission within thirty (30) days of the last publication date, then the exemption set forth in this subsection shall be applicable; provided, however, this exemption shall apply only to the establishment of a hospital that qualifies as a critical access hospital under the medicare rural flexibility program and not to any other activity or service. If a written objection by a health care institution within the same or contiguous counties is filed with the commission within thirty (30) days from the last date of publication, then the exemption set forth in this subsection shall not be applicable.

SECTION 8. Tennessee Code Annotated, Section 68-11-108(a)(3), is amended by deleting the word “competing”, and substituting in lieu thereof, the words “simultaneous review”.

SECTION 9. Tennessee Code Annotated, Section 68-11-108, is amended by adding the following language as a new subsection (h) to read as follows:

(h) (1) Subject to subdivision (2) below, any health care institution wishing to oppose a certificate of need application must file a written objection with the health facilities commission and serve a copy on the contact person for the applicant, not later than fifteen (15) days before the commission meeting at which the application will be heard. An application for which the commission has received opposition shall be designated on the commission’s agenda as an opposed application.

(2) A health care institution or other person may appear before the commission and express opposition to an application without complying with the requirements of subdivision (1), provided that if a health care institution does not provide notice of its opposition as required by subdivision (1), and if such health care institution initiates a contested case pursuant to Section 68-11-109, then such health care institution shall be solely responsible for the commission’s costs of the contested case proceeding and shall reimburse to the applicant the filing fee paid by the applicant, notwithstanding any other

provision of law. Noncompliance with subdivision (1) shall not preclude a health care institution from intervening in a contested case proceeding initiated by the applicant.

SECTION 10. Tennessee Code Annotated, Section 68-11-109(a), is amended by deleting from the first sentence the phrase "or any person who filed directly with the commission a prior objection to the granting of a certificate of need," and substituting instead the phrase "any health care institution which filed a written objection in accordance with section 68-11-108(h)(1), or any other person who objected to the application pursuant to section 68-11-108(h)(2)"; and by deleting from the second sentence the phrase "or a petition for intervention".

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

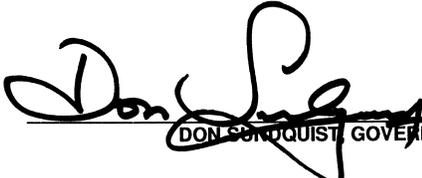
SECTION 12. This act shall take effect upon becoming law, the public welfare requiring it.

**PASSED: March 20, 2000**

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

**APPROVED this 5th day of April 2000**

  
DON SUNDQUIST, GOVERNOR