

Nursing Home Services
Certificate of Need Standards and Criteria



STATE OF TENNESSEE

STATE HEALTH PLAN
CERTIFICATE OF NEED STANDARDS AND CRITERIA

FOR

NURSING HOME SERVICES

The Health Services and Development Agency (HSDA) may consider the following standards and criteria for applications seeking to provide nursing home services as defined by Tennessee Code Annotated (TCA) Section 68-11-201(28). Rationale statements are provided for standards to explain the Division of Health Planning's (Division) underlying reasoning and are meant to assist stakeholders in responding to these Standards and to assist the HSDA in its assessment of certificate of need (CON) applications. Existing providers of nursing home services are not affected by these Standards and Criteria unless they take an action that requires a new CON for such services.

These Standards and Criteria are effective immediately upon approval and adoption by the governor. However, applications to provide nursing home services that are deemed complete by the HSDA prior to the approval and adoption of these Standards and Criteria shall be considered under the Guidelines for Growth, 2000 Edition.

NOTE: TCA Section 68-11-1622 states that the HSDA "shall issue no certificates of need for new nursing home beds, including the conversion of hospital beds to nursing home beds or swing beds," other than a designated number of such beds per fiscal year, "to be certified as Medicare skilled nursing facility (SNF) beds...." Additionally, this statute states that the number of Medicare SNF beds issued under this section shall not exceed the allotted number of such beds per applicant. The applicant should also specify in the application the skilled services to be provided and how the applicant intends to provide such skilled services.

NOTE: An applicant that is not requesting a CON to add new nursing home beds shall have its application reviewed by the HSDA staff and considered by the HSDA pursuant to TCA Section 68-11-1609.

Rationale: This Note is included to assist potential applicants in understanding the distinction in the law between a CON application for new Medicare skilled nursing facility beds (including the conversion of hospital beds to nursing home beds or swing beds) and a CON application that does not propose new beds.

Definitions

Nursing Home: Shall have that meaning set forth in Tennessee Code Annotated Section 68-11-201(28) or its successor.

Occupancy Rate: The number of patient days divided by the product of the number of licensed beds and the number of days in the calendar year. The Tennessee Department of Health (TDH) reports nursing home utilization data, including occupancy rates, on its website at: <http://health.state.tn.us/statistics/CertNeed.shtml>

Service Area: The county or counties represented on an application as the reasonable area in which a nursing home intends to provide services and/or in which the majority of its service recipients reside.

Standards and Criteria

1. Determination of Need.

The need for nursing home beds for each county in the state should be determined by applying the following population-based statistical methodology:

$$\begin{aligned} \text{Need} = & .0005 \times \text{population 65 and under, plus} \\ & .012 \times \text{population 65-74, plus} \\ & .060 \times \text{population 75-84, plus} \\ & .150 \times \text{population 85 +} \end{aligned}$$

Rationale:

The Division has analyzed the existing Guidelines for Growth compared with the statewide utilization percentages as well as occupancy rates from the nursing home Joint Annual Reports (JARs) for 2012 and has determined that grounds to update the percentages are not sufficient to justify revision of the formula. While input from stakeholders supports that the existing formula is adequate to address statewide nursing home need at present, stakeholder input further suggests that this formula may require re-evaluation based on the impact of factors such as patient participation in the TennCare CHOICES program authorized by the Long Term Care Community Choices Act of 2008, the change in Nursing Facility Level of Care Criteria for TennCare recipients in 2012, and other reimbursement and policy changes. The Division will assess the adequacy of the formula as circumstances concerning nursing homes develop.

County utilization does, of course, differ among the counties' age cohorts, and depends largely upon the availability of nursing home services as well as the availability of reimbursement for those services. The Division believes the criterion regarding the Average Daily Census of existing nursing homes in a Service Area, set forth in No. 4 will help balance any need "overstatements" that the formula might calculate.

Research published by the Henry J. Kaiser Family Foundation in 2013 (<http://kff.org/medicaid/fact-sheet/overview-of-nursing-facility-capacity-financing-and-ownership-in-the-united-states-in-2011/>) shows that a majority of people over the age of 65 will need long-term care services for an average of three years, and 20 percent of people will need more than five years of services. The percentage of the population over the age of 65 is expected to increase as the "baby boom" generation ages, and specifically the number of people 85 and older is expected to grow significantly. Tennessee's population projections are in-line with those reported nationally, if not slightly higher, for these age groups. How best to determine sufficient capacity to accommodate long-term care user choice in both institutional and community-based settings will continue to be a challenge for policy makers.

The Division recognizes that, increasingly, nursing homes are impacted by the decreases in reimbursement rates, the focus on shorter stays, and the encouragement by policies for nursing care to be provided elsewhere in the community or in the home. The result has been an overall decline in occupancy rates and an increase in the level of care required by nursing home patients.

As requested by stakeholders, the Division commits to making available to applicants a standard chart of the results of the need formula for each county as data are verified, finalized, and made available by the TDH.

2. **Planning horizon:** The need for nursing home beds shall be projected two years into the future from the current year.

Rationale: The current Guidelines for Growth use a two year planning horizon; after consideration of the impact of a three year planning horizon, the Division believes a three year planning horizon has the potential to overstate need.

3. **Establishment of Service Area:** A majority of the population of the proposed Service Area for any nursing home should reside within 30 minutes travel time from that facility. Applicants may supplement their applications with sub-county level data that are available to the general public to better inform the HSDA of granular details and trends; however, the need formula established by these Standards will use the latest available final JAR data from the Department of Health. The HSDA additionally may consider geographic, cultural, social, and other aspects that may impact the establishment of a Service Area.

Rationale: The current Guidelines for Growth also state that a majority of the population of a service area should reside within 30 minutes travel time. In many cases it is likely that a proposed nursing home's service area could draw much more significantly from a specific area of a county. However, utilization data—which are critical to the need formula—are available from the Department of Health only at the county level. When available, the Division would encourage the use of sub-county level data that are available to the general public (including utilization, demographics, etc.) to better inform the HSDA in making its decisions. Because nursing home patients often select a facility based on the proximity of caregivers and family members, as well as the proximity of the facility, factors other than travel time may be considered by the HSDA.

4. **Existing Nursing Home Capacity:** In general, the Occupancy Rate for each nursing home currently and actively providing services within the applicant's proposed Service Area should be at or above 90% to support the need for any project seeking to add new nursing home beds within the Service Area and to ensure that the financial viability of existing facilities is not negatively impacted.

When considering replacement facility or renovation applications that do not alter the bed component within the Service Area, the HSDA should consider as the primary factor whether a replacement facility's own occupancy rate could support its economic feasibility, instead of the occupancy rates of other facilities in the Service Area.

Rationale: The words "In general" are specifically included in this Standard because several factors contribute to the ability of existing nursing homes to meet need, including in particular the designation of beds by payer mix and the specific services provided. Private insurance, Medicaid (TennCare), and Medicare reimburse services at different rates and for different purposes and lengths of stay. An applicant may be able to make a case for licensed beds if, for example, specific ancillary services or bed types are lacking in a proposed Service Area, whether or not all nursing homes in a Service Area have Occupancy Rates at or above 90%. A preference should be provided to an applicant wishing to provide Medicaid (TennCare) beds. The Division is of the opinion that the following types of applications seek to increase/alter the number of nursing home beds within a Service Area:

- a. An applicant seeks to add new nursing home beds;
- b. An applicant seeks to relocate an existing facility to a new Service Area;
- c. An applicant seeks to establish a new facility not currently operating (i.e., does not seek a replacement of an existing, operating facility); and
- d. An applicant seeks to take a single existing licensed facility and divide its bed component into more than one licensed facility (this last application type should not be viewed as merely a replacement of an existing facility, and usually requires legislation authorizing this division of beds).

5. **Outstanding Certificates of Need:** Outstanding CONs should be factored into the decision whether to grant an additional CON in a given Service Area or county until an outstanding CON's beds are licensed.

Rationale: This Standard is designed to ensure that the impact of a previously approved CON for the provision of nursing home services in a given service area is taken into consideration by the HSDA.

6. **Data:** The Department of Health data on the current supply and utilization of licensed and CON-approved nursing home beds should be the data source employed hereunder, unless otherwise noted.

Rationale: Using one source for data is the best way to ensure consistency across the evaluation of all applications. The Division believes the TDH's data should be relied upon as the primary source of data for CON nursing home services applications.

7. **Minimum Number of Beds:** A newly established free-standing nursing home should have a sufficient number of beds to provide revenues to make the project economically feasible and thus is encouraged to have a capacity of least 30 beds. However, the HSDA should consider exceptions to this standard if a proposed applicant can demonstrate that economic feasibility can be achieved with a smaller facility in a particular situation.

Rationale: Quality of care is impacted by the relationship between facility size and the appropriate staffing of the facility. Assuming appropriate staffing exists, the HSDA should consider each applicant's circumstances individually regarding facility size. The Division's research in Tennessee indicates that 90-120 licensed beds may be an optimal range for ensuring both economic feasibility and the delivery of quality care. However, exceptions to this general range are certain to arise.

Two examples of such circumstances could be: 1) When a newly proposed facility is planned in conjunction with an existing continuum of services, such as the development of a continuing care campus or other type of multiple service provider, in which case a smaller number of beds may be justified; and 2) If the existing resources in a sparsely populated rural area are not sufficient and new nursing homes are needed, a smaller facility may be justified as compared to a larger facility. The State Health Plan encourages the HSDA to evaluate such applications carefully to ensure that they propose to provide services adequately to a broad population.

8. **Encouraging Facility Modernization:** The HSDA may give preference to an application that:
- a. Proposes a replacement facility to modernize an existing facility.
 - b. Seeks a certificate of need for a replacement facility on or near its existing facility operating location. The HSDA should evaluate whether the

replacement facility is being located as closely as possible to the location of the existing facility and, if not, whether the need for a new, modernized facility is being impacted by any shift in the applicant's market due to its new location within the Service Area.

- c. Does not increase its number of operating beds.

In particular, the HSDA should give preference to replacement facility applications that are consistent with the standards described in TCA §68-11-1627, such as facilities that seek to replace physical plants that have building and/or life safety problems, and/or facilities that seek to improve the patient-centered nature of their facility by adding home-like features such as private rooms and/or home-like amenities.

Rationale: The aging of nursing home facilities is an increasing concern within the industry. This standard seeks to provide support for an existing nursing home to modernize/update its facilities.

9. **Adequate Staffing:** An applicant should document a plan demonstrating the intent and ability to recruit, hire, train, assess competencies of, supervise, and retain the appropriate numbers of qualified personnel to provide the services described in the application and that such personnel are available in the proposed Service Area. However, when considering applications for replacement facilities or renovations of existing facilities, the HSDA may determine the existing facility's staff would continue without significant change and thus would be sufficient to meet this Standard without a demonstration of efforts to recruit new staff.
10. **Community Linkage Plan:** The applicant should describe its participation, if any, in a community linkage plan, including its relationships with appropriate health care system providers/services and working agreements with other related community services to assure continuity of care. If they are provided, letters from providers (including, e.g., hospitals, hospice services agencies, physicians) in support of an application should detail specific instances of unmet need for nursing home services.

Rationale: Coordinated, integrated systems of care may not be in place in much of rural Tennessee, and therefore this language has been deleted. Additionally, the Division recognizes that nursing homes may not be the primary drivers of community linkage plans, and the Division does not mean to suggest that an applicant should develop one itself; instead it should provide information on its participation in a community linkage plan, if any. However, the Division recognizes that hospitals, particularly rural ones, often encounter difficulties in discharge planning to nursing homes due to a lack of available beds. CON applications for new nursing home beds should therefore also provide letters from hospitals, hospice service agencies, physicians, or any other appropriate providers, to provide evidence of unmet need and the intent to meet that need.

11. **Access:** The applicant should demonstrate an ability and willingness to serve equally all of the Service Area in which it seeks certification. In addition to the factors set forth in HSDA Rule 0720-11-.01(1) (listing the factors concerning need on which an application may be evaluated), the HSDA may choose to give special consideration to an applicant that is able to show that there is limited access in the proposed Service Area. However, an applicant should address why Service Area residents cannot be served in a less restrictive and less costly environment and whether the applicant provides or will provide other services to residents that will enable them to remain in their homes.
12. **Quality Control and Monitoring:** The applicant should identify and document its existing or proposed plan for data reporting, quality improvement, and outcome and process monitoring systems, including in particular details on its Quality Assurance and Performance Improvement program as required by the Affordable Care Act. As an alternative to the provision of third party accreditation information, applicants may provide information on any other state, federal, or national quality improvement initiatives. An applicant that owns or administers other nursing homes should provide detailed information on their surveys and their quality control programs at those facilities, regardless of whether they are located in Tennessee.

Rationale: This section supports the State Health Plan's Principle No. 4 for Achieving Better Health regarding quality of care. Typically, nursing homes are not accredited by the Joint Commission or other accrediting bodies; applicants instead are asked and encouraged to provide information on other quality initiatives. The intent of this alternative is to permit the applicant to show its commitment to, as well as its performance regarding, quality control and improvement. Surveys and quality control programs at sister facilities may provide an indication of future quality performance at the applicant's proposed facility and are relevant to the HSDA's assessment of the application.

13. **Data Requirements:** Applicants should agree to provide the TDH and/or the HSDA with all reasonably requested information and statistical data related to the operation and provision of services at the applicant's facility and to report that data in the time and format requested. As a standard of practice, existing data reporting streams will be relied upon and adapted over time to collect all needed information.

14. Additional Occupancy Rate Standards:

- a. An applicant that is seeking to add or change bed component within a Service Area should show how it projects to maintain an average occupancy rate for all licensed beds of at least 90 percent after two years of operation.

b. There should be no additional nursing home beds approved for a Service Area unless each existing facility with 50 beds or more has achieved an average annual occupancy rate of 90 percent. In determining the Service Area's occupancy rate, the HSDA may choose not to consider the occupancy rate of any nursing home in the proposed Service Area that has been identified by the TDH Regional Administrator as consistently noncomplying with quality assurance regulations, based on factors such as deficiency numbers outside of an average range or standards of the Medicare 5 Star program.

c. A nursing home seeking approval to expand its bed capacity should have maintained an occupancy rate of 90 percent for the previous year.

Rationale: The Division believes reducing the occupancy rates from 95 to 90 percent in numbers 14b and 14c more accurately reflects overall occupancy in the state, and also would take into consideration some increasing vacancy rates that current nursing homes may be experiencing due to decreasing admissions overall and increasing patient turnover due to short-stay patients.