

## LEGISLATIVE BILL 344

Approved by the Governor May 7, 2013

Introduced by Sullivan, 41.

FOR AN ACT relating to the Nebraska Health Care Certificate of Need Act; to amend section 71-5829.04, Reissue Revised Statutes of Nebraska; to change provisions relating to the moratorium on long-term care beds; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-5829.04, Reissue Revised Statutes of Nebraska, is amended to read:

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

(a) An exception to the moratorium may be granted if the department establishes that the needs of individuals whose medical and nursing needs are complex or intensive and are above the level of capabilities of staff and above the services ordinarily provided in a long-term care bed are not currently being met by the long-term care beds licensed in the health planning region; or

(b) If the average occupancy for all licensed long-term care beds located in a ~~twenty-five mile~~ twenty-five-mile radius of the proposed site ~~have~~ has exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing and there is a long-term care bed need as determined under this section, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines average occupancy for all licensed long-term care beds located in a ~~twenty-five mile~~ twenty-five-mile radius of the proposed site has not exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing, the department shall deny the application unless the department determines that all long-term care beds in a licensed facility located in a city of the second class or village have been sold or transferred to another facility or facilities located outside of the twenty-five-mile radius of the city or village resulting in no licensed long-term care beds within the corporate limits of the city of the second class or village. In such case, the department shall waive the certificate of need limitations of this subdivision for development and licensure of a long-term care facility by a political subdivision or a nonprofit organization in such a city of the second class or village if the political subdivision or nonprofit organization agrees not to sell long-term care beds licensed under such waiver or increase the number of long-term care beds as allowed under subdivision (2) of section 71-5829.03 until five years have passed after such beds are first occupied. The number of licensed long-term care beds in the facility shall be limited to the number of long-term care beds sold or transferred as described in this subdivision.

(2) The department shall review applications which require a certificate of need under section 71-5829.03 and determine if there is a need for additional long-term care beds as provided in this section. No such application shall be approved if the current supply of licensed long-term care beds in the health planning region of the proposed site exceeds the long-term care bed need for that health planning region. For purposes of this section:

(a) Long-term care bed need is equal to the population of the health planning region, multiplied by the utilization rate of long-term care beds within the health planning region, and the result divided by the minimum occupancy rate of long-term care beds within the health planning region;

(b) Population is the most recent projection of population for the health planning region for the year which is closest to the fifth year immediately following the date of the application. The applicant shall provide such projection as part of the application using data from the University of Nebraska-Lincoln Bureau of Business Research or other source approved by the department;

(c) The utilization rate is the number of people using long-term care beds living in the health planning region in which the proposed project is located divided by the population of the health planning region; and

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

(3) To facilitate the review and determination required by this section, each health care facility with long-term care beds shall report on a quarterly basis to the department the number of residents at such facility on the last day of the immediately preceding quarter on a form provided by the department. Such report shall be provided to the department no later than ninety days after the last day of the immediately preceding quarter. The department shall provide the occupancy data collected from such reports upon request. Any facility failing to timely report such information shall be ineligible for any exception to the requirement for a certificate of need under section 71-5830.01 and any exception to the moratorium imposed under this section and may not receive, transfer, or relocate long-term care beds.

Sec. 2. Original section 71-5829.04, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.