

**No. 83. An act relating to the issuance of certificates of need for home health agencies and addressing patient transportation services in certificate of need applications.**

(H.658)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds that:

(1) The existing home health system is currently providing high levels of service to the Medicare, Medicaid, private insurance, and private pay populations in need of home health services at one of the lowest average costs per visit in the nation. It provides a comprehensive array of services reaching every town in the state, which are generally well coordinated with other community health care providers and social service agencies. It appears that the existing system has the commitment and present capacity to provide universal access to medically necessary home health services for all Vermonters regardless of ability to pay or location of residence.

(2) Vermont is a very rural state, with a population thinly distributed throughout the state, posing special challenges in the delivery of home health services.

(3) Vermont, as the rest of the nation, is facing extraordinarily difficult and fiscally challenging times; significant cuts in Medicare and Medicaid rates for home care have already taken place and even greater cuts are looming, all

requiring even greater reliance on community resources and ingenuity to do more with less.

(4) Vermont's certificate of need law as it applies to new home health services may benefit from the following:

(A) an objective definition of need and the likelihood that such need will financially support additional home health agencies;

(B) more objective criteria by which to measure the impact of any project on existing service providers and the populations they serve; and

(C) objective criteria to measure unnecessary duplication of services that would increase the costs to the system.

(5) A temporary suspension of the granting of any certificate of need for a new home health agency is warranted for the following reasons:

(A) to measure the impact of the statewide certificate of need granted to a for-profit home health agency; and

(B) to allow time for the state to consider changes to the certificate of need law and engage in long-term planning in this complex and increasingly important area of health care services.

## Sec. 2. CERTIFICATE OF NEED WORK GROUP; MORATORIUM

(a) The commissioners of banking, insurance, securities, and health care administration and of disabilities, aging, and independent living shall convene a work group comprising:

(1) representatives of Vermont's existing Medicare-certified home health agencies, including:

(A) at least one for-profit home health agency; and

(B) at least two nonprofit home health agencies, one of which serves a population base of fewer than 35,000 residents and another of which serves a population base of 35,000 residents or more; and

(2) other interested parties.

(b) The work group shall develop objective criteria for certificate of need (CON) decisions regarding home health services, including hospice. The work group shall meet at least four times per year. At a minimum, the work group shall:

(1) establish a definition of need;

(2) develop a method for measuring the impact of any proposed project on existing service providers and the populations they serve;

(3) identify standards by which to measure unnecessary duplication of services that would increase the costs to the health care system and the state;

and

(4) determine whether any additional standards to govern the approval of new home health agencies or the offering of home health services should be adopted, including whether changes should be made to the health resource allocation plan regarding home health services, including hospice.

(c) The commissioners shall report the work group's recommendations to the house committee on health care and the senate committee on health and welfare by December 15, 2011.

(d) Notwithstanding any other provision of law, no CON shall be granted for the offering of home health services, which includes hospice, or for a new home health agency during the period beginning on the effective date of this act and continuing through June 30, 2013, or until the general assembly lifts the moratorium after considering and acting on the work group's recommendations as it deems appropriate, whichever occurs first; provided, however, that the moratorium established pursuant to this subsection shall not apply to a continuing care retirement community that has been issued a certificate of authority.

(e) Notwithstanding the moratorium established in subsection (d) of this section, a CON application for a new home health agency may be considered and granted during the moratorium if the commissioners of banking, insurance, securities, and health care administration and of disabilities, aging, and independent living have each first certified that a serious and substantial lack of access to home health services exists in a particular county and the agencies presently serving that county have been given notice and a reasonable opportunity to either challenge that certification or remediate the problem.

(f) Nothing in this section shall be construed to prevent existing home health agencies from seeking approval from the department of banking, insurance, securities, and health care administration or of disabilities, aging, and independent living to expand or contract their designated geographical regions or from merging.

(g) Nothing in this section shall be construed to prevent the commissioner of banking, insurance, securities, and health care administration from granting a certificate of need to a home health agency that had filed a letter of intent or had a certificate of need application pending prior to the effective date of this act.

Sec. 3. 18 V.S.A. § 9437 is amended to read:

§ 9437. CRITERIA

A certificate of need shall be granted if the applicant demonstrates and the commissioner finds that:

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(6) the project will serve the public good; ~~and~~

(7) the applicant has adequately considered the availability of affordable, accessible patient transportation services to the facility; and

~~(7)~~(8) if the application is for the purchase or lease of new health care information technology, it conforms with the health information technology plan established under section 9351 of this title.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

Approved: April 21, 2010