
PRELIMINARY DRAFT
No. 3494

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2004 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 16-18-2; IC 16-21-1-7; IC 16-28-1-7;
IC 16-29.

Synopsis: Certificate of need requirements for health facilities. Establishes a two year moratorium on the construction of hospitals, ambulatory outpatient surgical centers, and health facilities. Requires the hospital council and the Indiana health facilities council to review certificate of need applications and allows the state department of health to establish fees for the application.

Effective: Upon passage; July 1, 2004.



A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-14 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. "Ambulatory
3 outpatient surgical center", for purposes of IC 16-21 **and IC 16-29-1.5**,
4 means a public or private institution that meets the following
5 conditions:

6 (1) Is established, equipped, and operated primarily for the
7 purpose of performing surgical procedures and services.

8 (2) Is operated under the supervision of at least one (1) licensed
9 physician or under the supervision of the governing board of the
10 hospital if the center is affiliated with a hospital.

11 (3) Permits a surgical procedure to be performed only by a
12 physician, dentist, or podiatrist who meets the following
13 conditions:

14 (A) Is qualified by education and training to perform the
15 surgical procedure.

16 (B) Is legally authorized to perform the procedure.

17 (C) Is privileged to perform surgical procedures in at least one
18 (1) hospital within the county or an Indiana county adjacent to
19 the county in which the ambulatory outpatient surgical center
20 is located.

21 (D) Is admitted to the open staff of the ambulatory outpatient
22 surgical center.

23 (4) Requires that a licensed physician with specialized training or
24 experience in the administration of an anesthetic supervise the
25 administration of the anesthetic to a patient and remain present in
26 the facility during the surgical procedure, except when only a
27 local infiltration anesthetic is administered.

28 (5) Provides at least one (1) operating room and, if anesthetics
29 other than local infiltration anesthetics are administered, at least
30 one (1) postanesthesia recovery room.

31 (6) Is equipped to perform diagnostic x-ray and laboratory



- 1 examinations required in connection with any surgery performed.
 2 (7) Does not provide accommodations for patient stays of longer
 3 than twenty-four (24) hours.
 4 (8) Provides full-time services of registered and licensed nurses
 5 for the professional care of the patients in the postanesthesia
 6 recovery room.
 7 (9) Has available the necessary equipment and trained personnel
 8 to handle foreseeable emergencies such as a defibrillator for
 9 cardiac arrest, a tracheotomy set for airway obstructions, and a
 10 blood bank or other blood supply.
 11 (10) Maintains a written agreement with at least one (1) hospital
 12 for immediate acceptance of patients who develop complications
 13 or require postoperative confinement.
 14 (11) Provides for the periodic review of the center and the center's
 15 operations by a committee of at least three (3) licensed physicians
 16 having no financial connections with the center.
 17 (12) Maintains adequate medical records for each patient.
 18 (13) Meets all additional minimum requirements as established by
 19 the state department for building and equipment requirements.
 20 (14) Meets the rules and other requirements established by the
 21 state department for the health, safety, and welfare of the patients.

22 SECTION 2. IC 16-18-2-67 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 67. (a) "Comprehensive
 24 care bed", for purposes of ~~IC 16-29-1~~, **IC 16-29-1.7**, has the meaning
 25 set forth in ~~IC 16-29-1-1~~. **IC 16-29-1.7-1**.

26 (b) "Comprehensive care bed", for purposes of IC 16-29-2, has the
 27 meaning set forth in IC 16-29-2-1.

28 SECTION 3. IC 16-18-2-179, AS AMENDED BY P.L.162-1999,
 29 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2004]: Sec. 179. (a) "Hospital", except as provided in
 31 subsections (b) through (f), means a hospital that is licensed under
 32 IC 16-21-2.

33 (b) "Hospital", for purposes of IC 16-21 **and IC 16-29-1.5**, means
 34 an institution, a place, a building, or an agency that holds out to the
 35 general public that it is operated for hospital purposes and that it
 36 provides care, accommodations, facilities, and equipment, in
 37 connection with the services of a physician, to individuals who may
 38 need medical or surgical services. The term does not include the
 39 following:

- 40 (1) Freestanding health facilities.
 41 (2) Hospitals or institutions specifically intended to diagnose,
 42 care, and treat the following:
 43 (A) Mentally ill individuals (as defined in IC 12-7-2-131).
 44 (B) Individuals with developmental disabilities (as defined in
 45 IC 12-7-2-61).
 46 (3) Offices of physicians where patients are not regularly kept as



1 bed patients.

2 (4) Convalescent homes, boarding homes, or homes for the aged.

3 (c) "Hospital", for purposes of IC 16-22-8, has the meaning set forth
4 in IC 16-22-8-5.

5 (d) "Hospital" or "tuberculosis hospital", for purposes of IC 16-24,
6 means an institution or a facility for the treatment of individuals with
7 tuberculosis.

8 (e) "Hospital", for purposes of IC 16-34, means a hospital (as
9 defined in subsection (b)) that:

10 (1) is required to be licensed under IC 16-21-2; or

11 (2) is operated by an agency of the United States.

12 (f) "Hospital", for purposes of IC 16-41-12, has the meaning set
13 forth in IC 16-41-12-6.

14 SECTION 4. IC 16-21-1-7 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) Except as
16 provided in subsection (b), the council shall propose and the executive
17 board may adopt rules under IC 4-22-2 necessary to protect the health,
18 safety, rights, and welfare of patients, including the following:

19 (1) Rules pertaining to the operation and management of hospitals
20 and ambulatory outpatient surgical centers.

21 (2) Rules establishing standards for equipment, facilities, and
22 staffing required for efficient and quality care of patients.

23 (b) The state department may request the council to propose a new
24 rule or an amendment to an existing rule necessary to protect the
25 health, safety, rights, and welfare of patients. If the council does not
26 propose a rule within ninety (90) days of the department's request, the
27 department may propose its own rule.

28 (c) The state department shall consider the rules proposed by the
29 council and may adopt, modify, remand, or reject specific rules or parts
30 of rules proposed by the council.

31 **(d) The council shall review applications for certificate of need**
32 **submitted under IC 16-29-1.5. The council shall propose and the**
33 **executive board may adopt rules under IC 4-22-2 necessary to**
34 **carry out this subsection.**

35 SECTION 5. IC 16-28-1-7 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. The council shall do
37 the following:

38 (1) Propose the adoption of rules by the department under
39 IC 4-22-2 governing the following:

40 (A) Health and sanitation standards necessary to protect the
41 health, safety, security, rights, and welfare of patients.

42 (B) Qualifications of applicants for licenses issued under this
43 article to assure the proper care of patients.

44 (C) Operation, maintenance, management, equipment, and
45 construction of facilities required to be licensed under this
46 article if jurisdiction is not vested in any other state agency.



- 1 (D) Manner, form, and content of the license, including rules
 2 governing disclosure of ownership interests.
 3 (E) Levels of medical staffing and medical services in
 4 cooperation with the office of Medicaid policy and planning,
 5 division of family and children, and other agencies authorized
 6 to pay for the services.
 7 (2) Recommend to the fire prevention and building safety
 8 commission fire safety rules necessary to protect the health,
 9 safety, security, rights, and welfare of patients.
 10 (3) Classify health facilities in health care categories.
 11 (4) Encourage the development of social and habilitative
 12 programs in health facilities, as recommended by the community
 13 residential facilities council.
 14 (5) Act as an advisory body for the division, commissioner, and
 15 state department.
 16 (6) **Review applications for certificate of need under**
 17 **IC 16-29-1.7.**
 18 (7) Adopt rules under IC 4-22-2, as provided in ~~IC 16-29-1-13.~~
 19 **IC 16-29-1.7.**

20 SECTION 6. IC 16-29-1.5 IS ADDED TO THE INDIANA CODE
 21 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2004]:

23 **Chapter 1.5. Certificate of Need: Hospitals and Ambulatory**
 24 **Outpatient Surgical Centers**

25 **Sec. 1. The hospital council created by IC 16-21-1-1 shall review**
 26 **the following applications for a certificate of need:**

- 27 (1) **Applications for a certificate of need to construct or add**
 28 **a hospital required to be licensed under IC 16-21-2.**
 29 (2) **Applications to construct or add an ambulatory outpatient**
 30 **surgical center required to be licensed under IC 16-21-2.**

31 **Sec. 2. (a) The hospital council shall make a finding on an**
 32 **application for a certificate of need based on information prepared**
 33 **by the state department in accordance with IC 16-30 and any other**
 34 **relevant information as to the need for an entity described in**
 35 **section 1 of this chapter as requested in the application.**

36 (b) **The hospital council shall recommend and the state**
 37 **department shall approve a certificate of need for a hospital or an**
 38 **ambulatory outpatient surgical center only after finding the**
 39 **following:**

- 40 (1) **The addition of a hospital or an outpatient surgical center**
 41 **in the county:**
 42 (A) **is necessary;**
 43 (B) **will meet an unmet need in the proposed area to be**
 44 **served; and**
 45 (C) **is the most efficient and effective method of meeting**
 46 **that unmet need.**



1 **(2) The applicant for the certificate of need has illustrated or**
 2 **documented the applicant's experience or capacity to provide**
 3 **quality, effective, and efficient care that includes a description**
 4 **of any past or current adverse licensure action against any**
 5 **facility owned, operated, or managed by the applicant.**

6 **Sec. 3. (a) An entity described in section 1 of this chapter may**
 7 **not be constructed or added without the review and approval of an**
 8 **application for a certificate of need required under this chapter.**

9 **(b) The review and approval of an application for a certificate**
 10 **of need required under this chapter is a condition to the licensure**
 11 **of the entity.**

12 **Sec. 4. A certificate of need for a project to construct or add an**
 13 **entity described in section 1 of this chapter that receives final**
 14 **approval of the state department under this chapter becomes void**
 15 **eighteen (18) months after the determination becomes final unless:**

16 **(1) construction plans for the project are approved by the**
 17 **state department and the department of fire and building**
 18 **safety;**

19 **(2) the applicant has completed construction of the project's**
 20 **foundation in conformity with the approved plans as certified**
 21 **by an independent architect licensed under IC 25-4 or an**
 22 **independent professional engineer licensed under IC 25-31;**
 23 **and**

24 **(3) construction work on the project is continuous and in**
 25 **conformity with the approved plans.**

26 **Sec. 5. (a) Unless a certificate of need expires or is voided, the**
 27 **certificate of need once issued is the personal property of the owner**
 28 **and is transferable or alienable, except that the certificate of need**
 29 **may not be used outside the county with respect to which the**
 30 **certificate of need was issued.**

31 **(b) A person that is granted a certificate of need after the review**
 32 **and approval required under this chapter is the owner of the**
 33 **certificate of need until the person transfers or alienates the**
 34 **ownership interest in the certificate.**

35 **Sec. 6. (a) The state department shall adopt rules under**
 36 **IC 4-22-2 to implement this chapter and to establish a reasonable**
 37 **fee for the filing and review of an application under this chapter.**
 38 **A rule adopted under this chapter may not be waived.**

39 **(b) Fees imposed in connection with the review of an application**
 40 **for a certificate of need under this chapter are payable to the state**
 41 **department for use in administration of the certificate of need**
 42 **program under this chapter.**

43 **Sec. 7. A decision by the hospital council or state department**
 44 **under this chapter is subject to review under IC 4-21.5.**

45 **Sec. 8. This chapter expires June 30, 2006.**

46 **SECTION 7. IC 16-29-1.7 IS ADDED TO THE INDIANA CODE**



1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2004]:

3 **Chapter 1.7. Certificate of Need: Health Facilities**

4 **Sec. 1. (a) As used in this chapter, "comprehensive care bed"**
5 **means a bed in a comprehensive care facility that:**

- 6 (1) is licensed or is to be licensed under IC 16-28-2; or
7 (2) functions as a bed licensed under IC 16-28-2.

8 (b) The term does not include a comprehensive care bed that
9 will be used solely to provide specialized services. The state
10 department shall review applications for a certificate of need for
11 a comprehensive care bed used solely to provide specialized
12 services under IC 16-29-2.

13 **Sec. 2. Except as provided in IC 16-29-2, the Indiana health**
14 **facilities council shall review the following applications for a**
15 **certificate of need:**

- 16 (1) Applications for a certificate of need for comprehensive
17 care beds that are to be certified for participation in a state or
18 federal reimbursement program, including programs under
19 Title XVIII or Title XIX of the federal Social Security Act (49
20 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.).
21 (2) Applications for a certificate of need to construct or add
22 comprehensive care beds or to convert beds to comprehensive
23 care beds.

24 **Sec. 3. Except as provided by IC 16-29-2, the Indiana health**
25 **facilities council shall make a finding based on information**
26 **prepared by the state department in accordance with IC 16-30 and**
27 **any other relevant information as to the need for an entity**
28 **described in section 2 of this chapter as requested in the**
29 **application for a certificate of need. The council shall recommend**
30 **and the state department shall approve a certificate of need for**
31 **additional comprehensive care beds or the certification of**
32 **comprehensive care beds only after finding the following:**

- 33 (1) The certification or addition of comprehensive care beds
34 in the county:
35 (A) is necessary;
36 (B) will meet an unmet need in the proposed area to be
37 served; and
38 (C) is the most efficient and effective method of meeting
39 that unmet need.
40 (2) The applicant for a certificate of need has illustrated or
41 documented the applicant's experience or capacity to provide
42 quality, effective, and efficient care that includes a description
43 of any past or current adverse licensure action against any
44 facility owned, operated, or managed by the applicant.

45 **Sec. 4. The Indiana health facilities council shall presume that**
46 **additional comprehensive care beds are not needed in the county**



1 of application if:

- 2 (1) the existing utilization rate for all certified comprehensive
 3 care beds is less than ninety percent (90%); or
 4 (2) the addition of the certified beds proposed in the
 5 application for a certificate of need will reduce the existing
 6 utilization rate for all certified comprehensive care beds
 7 below ninety percent (90%).

8 Sec. 5. (a) Except as provided in IC 16-29-2, IC 16-29-3, and
 9 IC 16-29-4:

- 10 (1) a comprehensive care bed may not be constructed or
 11 added; and
 12 (2) a bed may not be converted to a comprehensive care bed;
 13 without the review and approval of a certificate of need required
 14 under this chapter.

15 (b) Comprehensive care beds that are not certified for
 16 participation in a state or federal reimbursement program,
 17 including programs under Title XVIII or Title XIX of the federal
 18 Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et
 19 seq.) may not be certified without the review and approval
 20 required under this chapter.

21 (c) The review and approval of a certificate of need required in
 22 this chapter is a condition to the licensure of the facility.

23 Sec. 6. A certificate of need for a project to construct, add, or
 24 convert beds that receives final approval of the state department
 25 under this chapter or IC 16-29-1 (before its repeal) becomes void
 26 eighteen (18) months after the determination becomes final unless:

- 27 (1) construction plans for the project are approved by the
 28 state department and the department of fire and building
 29 safety;
 30 (2) the applicant has completed construction of the project's
 31 foundation in conformity with the approved plans as certified
 32 by an independent architect licensed under IC 25-4 or an
 33 independent professional engineer licensed under IC 25-31;
 34 and
 35 (3) construction work on the project is continuous and in
 36 conformity with the approved plans.

37 Sec. 7. This chapter does not apply to comprehensive care beds
 38 that are:

- 39 (1) owned, operated, or sponsored by a religious organization
 40 that:
 41 (A) is an Indiana nonprofit corporation;
 42 (B) was exempt, by virtue of the religious organization's
 43 status as a religious organization, from adjusted gross
 44 income taxation under IC 6-3-2-2.8 on or before December
 45 31, 2003;
 46 (C) is operated for bona fide religious purposes; and



1 **(D) is not controlled, owned, or operated by a hospital**
 2 **licensed under IC 16-21-2; or**
 3 **(2) owned or operated by an Indiana nonprofit corporation**
 4 **that is owned by a religious organization described in**
 5 **subdivision (1);**
 6 **if the comprehensive care beds are used to serve members of the**
 7 **religious organization.**

8 **Sec. 8. This chapter does not apply to comprehensive care beds**
 9 **that are owned, operated, or sponsored by a fraternal organization**
 10 **that:**

11 **(1) was exempt from adjusted gross income taxation under**
 12 **IC 6-3-2-2.8 on or before December 31, 2003; and**
 13 **(2) owned, operated, or sponsored a health facility licensed**
 14 **under IC 16-28-2 on December 31, 2003;**
 15 **if the comprehensive care beds are used to serve members of the**
 16 **fraternal organization.**

17 **Sec. 9. (a) Except as provided in subsection (b), beds exempt**
 18 **from review by the Indiana health facilities council under sections**
 19 **7 and 8 of this chapter may not be sold, leased, or otherwise**
 20 **conveyed to any person for ten (10) years after the date the beds**
 21 **are licensed. Violation of this subsection results in loss of eligibility**
 22 **for participation in state or federal reimbursement programs**
 23 **under Title XVIII or Title XIX of the federal Social Security Act**
 24 **(42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.).**

25 **(b) Subsection (a) does not prohibit the sale, lease, or**
 26 **conveyance of comprehensive care beds described in section 7 of**
 27 **this chapter to another:**

28 **(1) religious organization described in section 7(1) of this**
 29 **chapter; or**
 30 **(2) nonprofit corporation that is owned by a religious**
 31 **organization.**

32 **However, beds sold, leased, or conveyed under this subsection must**
 33 **be used to serve the members of either the religious organization**
 34 **or the religious organization's nonprofit corporation to whom the**
 35 **beds are conveyed or that conveys the bed.**

36 **(c) Subsection (a) does not prohibit the sale, lease, or conveyance**
 37 **of comprehensive care beds described in section 8 of this chapter**
 38 **to another fraternal organization described in section 8 of this**
 39 **chapter. However, beds sold, leased, or conveyed under this**
 40 **subsection must be used to serve members of either the fraternal**
 41 **organization to whom the beds are conveyed or the fraternal**
 42 **organization that conveys the bed.**

43 **Sec. 10. (a) Unless the certificate of need expires or is voided, the**
 44 **certificate of need is the personal property of the owner once issued**
 45 **and is transferable or alienable, except that the certificate of need**
 46 **may not be used outside the county with respect to which the**



1 certificate of need was issued.

2 (b) A person that is granted a certificate of need after the review
3 and approval required under this chapter is the owner of the
4 certificate of need until the person transfers or alienates the
5 ownership interest in the certificate.

6 Sec. 11. (a) The state department shall adopt rules under
7 IC 4-22-2 to implement this chapter and to establish a reasonable
8 fee for the filing and review of an application under this chapter.
9 A rule adopted under this chapter may not be waived.

10 (b) Fees imposed in connection with the review of an application
11 for a certificate of need under this chapter are payable to the state
12 department for use in administration of the certificate of need
13 program created by this chapter.

14 Sec. 12. The Indiana health facilities council shall consider the
15 following when determining whether to recommend the issuance
16 of a certificate of need:

17 (1) Information, if available, regarding whether the applicant
18 has provided quality care services.

19 (2) The costs the applicant has incurred to provide services.

20 Sec. 13. A decision by the Indiana health facilities council under
21 this chapter is subject to review under IC 4-21.5.

22 Sec. 14. This chapter expires June 30, 2006.

23 SECTION 8. IC 16-29-3-1 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. Notwithstanding
25 ~~IC 16-29-1~~, IC 16-29-1.7, a hospital licensed under IC 16-21-2 may
26 convert:

27 (1) beginning January 1, 1986, not more than thirty (30) acute
28 care beds to skilled care comprehensive long term care beds; and

29 (2) beginning June 1, 1989, not more than an additional twenty
30 (20) acute care beds to either intermediate care comprehensive
31 long term care beds or skilled care comprehensive long term care
32 beds;

33 that are to be certified for participation in a state or federal
34 reimbursement program, including programs under Title XVIII or Title
35 XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C.
36 1396 et seq.), if those beds will function essentially as beds licensed
37 under IC 16-28.

38 SECTION 9. [EFFECTIVE UPON PASSAGE] (a)
39 Notwithstanding IC 16-29-1.7, as added by this act, a health facility
40 (as defined in IC 16-18-2-167) is not required to obtain a certificate
41 of need to construct comprehensive care beds (as defined in
42 IC 16-29-1.7-1, as added by this act) if:

43 (1) construction plans for the project are approved by the
44 state department of health and the department of fire and
45 building safety not later than May 15, 2004;

46 (2) the applicant has completed construction of the project's



1 **foundation not later than July 1, 2004, in conformity with the**
2 **approved plans as certified by an independent architect**
3 **licensed under IC 25-4 or an independent professional**
4 **engineer licensed under IC 25-31; and**
5 **(3) construction work on the project is continuous and in**
6 **conformity with the approved plans.**
7 **(b) This SECTION expires July 1, 2005.**
8 **SECTION 10. An emergency is declared for this act.**

