Illinois Health and Hospital Association

July 29, 2015

Healthcare facilities need increased flexibility to consolidate affiliations and improve efficiencies. IHA worked with the Health Facilities and Services Review Board to streamline Section 8.5 of the Health Facilities Planning Act dealing with:

- Change of ownership of a healthcare facility;
- Closure of a healthcare facility; and
- Discontinuation of a category of service, other than a healthcare facility maintained by the State or a county nursing home.

Change of Ownership

Previously, to initiate an application for a Certificate of Exemption (COE) for a change of ownership, an applicant was required to submit completed and signed transaction documents before the Board's review process could even begin. This unnecessarily delayed the progress of the transaction.

PA 99-0154 allows the applicant to submit to the Board "key terms" of the transaction in lieu of completed and signed transaction documents. The COE is contingent upon the applicant submitting a statement to the Board within 90 days after the closing date of the transaction, certifying that the change of ownership has been completed in accordance with the key terms.

If such key terms change, a new application is required. Key terms include:

- Names and background of the parties;
- Structure of the transaction;
- Person who will be the licensed or certified entity after the transaction;
- Ownership or membership interests in such licensed or certified entity prior to and after the transaction;
- Fair market value of assets to be transferred; and
- Purchase price or other form of consideration to be provided for those assets.

The applicant will pay the Board's cost to publish notice of the application in the newspaper for one day, rather than three days, and the public will continue to have the opportunity to request a public hearing on the application.

Change of Ownership Among Related Persons

Under PA 99-0154, the process is even more streamlined for changes of ownership among related persons, such as where the parties to the transaction are under common control or ownership before and after the transaction is completed.

If there are no other changes proposed that would otherwise require a permit or exemption, the applicant must submit an application consisting of a standard notice in a form set forth by the Board briefly explaining the reasons for the proposed change of ownership. Once submitted to the Board and reviewed by Board staff, the Board Chair shall take action within 45 days after the application has been deemed complete, provided the application meets the applicable standards. If the Chair has a conflict of interest or for other good cause, the Chair may request review by the Board.

Limitations Imposed on a Change of Ownership

Applicants seeking a change of ownership for a hospital must still certify that for a period of two years the hospital shall not

adopt a charity care policy that is more restrictive than the policy in effect during the year prior to the transaction.

PA 99-0154 restricts the Board from imposing additional conditions, obligations or limitations when issuing a COE for a change of ownership. For example, the Board may no longer limit the time period before which a subsequent change of ownership of the healthcare facility could be sought, or require the commitment to continue to offer for a specified time period any services currently offered by the healthcare facility.

This new provision should remove the Board's imposing time barriers on new owners who wish to create efficiencies by eliminating a service or more rapidly effecting further consolidation. While such limitations may no longer be imposed as a condition of a COE for a change of ownership, any action that would otherwise require a CON, regardless of timing, will still require one.

Closure of Healthcare Facility

For a proposed healthcare facility closure, the requirement of the Board to publish a legal notice on three consecutive days has not changed and the public maintains the opportunity to request a public hearing on any proposed closure.

Under PA 99-0154, an applicant proposing to close a healthcare facility may obtain a Certificate of Exemption (COE) rather than a Certificate of Need (CON). Current law requires the Board to establish by regulation the procedures and requirements regarding issuance of exemptions and to approve a COE when information required by the Board by rule is submitted (20 ILCS 3960/6). Therefore, the specific information that the Board will require for a COE to close a facility may be developed by rule.

Discontinuation of a Category of Service

PA 99-0154 states, "Upon a finding that an application to discontinue a category of service is complete and provides the requested information as specified by the State Board, an exemption shall be issued. No later than 30 days after the issuance of the exemption, the healthcare facility must give written notice of the discontinuation of the category of service to the State Senator and State Representative serving the legislative district in which the health care facility is located."

Because the procedures and requirements regarding issuance of exemptions must be established by regulation, the specific information that the Board will require for a COE to discontinue a category of service may be developed by rule.

PA 99-0154 Provisions at a Glance

Change of Ownership (CHOW)	Old	New
Notice Requirements	- Publication for 3 days - Board pays for publication - Opportunity for public hearing - Notify State Senator/Representative	- 1 day - Applicant pays for publication - Opportunity for public hearing - Notify State Senator/Representative
Application Components	Complete and signed transcation documents	- "Key terms" of CHOW transaction - Certification within 90 days of closing that CHOW was completed in accordance with Key Terms - If Key Terms change, new application is required

Limitations	Board may impose limitations via affirmations at 1130.520	Review Board may not impose limitations other than those required by this Section, including, but not limited to: time period for subsequent CHOW; commitment to continue to offer current services	Read about PA 99-0114 for the administrative and procedural requirements of the Health Facilities Planning Act.
CHOWS Among Related Persons	- CHOW application - Chair may approve unopposed applications for exemption that meet criteria within 60 days of being declared complete/hearing transcripts received; or refer them to the full Board	- Standard notice explaining reasons - Board Chair shall take action within 45 days after application is deemed complete and standards met, unless conflict of interest or other good cause, then Chair may send to Board	
Closure of Healthcare Facility	Old	New	
Publication of Notice	- 3 days - Board pays for notice - Opportunity for public hearing	No change	
Required Document	Certificate of Need	Certificate of Exemption, except for State facility, county nursing home	
Discontinuation of a Category of Service	Old	New	
Notice	Required as above	Not Required	
Required Document	Certificate of Need	COE, except for State facilities and county nursing homes	
Notice to State Legislators	Within 30 days of reduction in service of 50% or more	Within 30 days after issuance of the COE	

Your trusted voice and resource

COMPdata Informatics

Insurance Solutions

IPC Group Purchasing

Midwest Alliance for Patient Safety