



Client Alert



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DCH to Accept CON Applications for New or Expanded SNFs and ICFs

The Department of Community Health (DCH), Division of Health Planning, recently issued a Certificate of Need (CON) batching review cycle notice announcing that it will accept CON applications for new and expanded skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) that meet certain regulatory exceptions. The notice represents a rare opportunity for SNFs and ICFs that meet the requirements because other recent notices have typically not allowed CON applications from these provider types.

To participate in the CON process for this batching review cycle, providers must submit a notice of intent to the Division by Saturday, April 23, 2011.¹ Providers that fail to meet this deadline will be automatically disqualified from submitting CON applications during the batching cycle. Additionally, the Division will only accept applications that are filed pursuant to the exceptions to the CON need methodology specified in DCH Rule 111-2-2-.30(3)(d). To qualify, the CON applicant must either:

1. Propose to establish a new Medicare distinct part skilled nursing unit that will be located in a county that does not have an existing Medicare unit.² In this case, the applicant must also document that there is "limited access" in the proposed planning area for skilled nursing services for Medicare patients.³ The rule also stipulates that the CON will only be valid if the proposed beds will be limited to Medicare recipients.⁴

OR

2. Propose to establish a new or expanded nursing facility and show that there is "limited access" in the proposed geographic service area for special groups, such as, but not limited to, medically fragile children and HIV/AIDS patients.⁵

In both of the above cases, "limited access" means that "existing nursing facilities have not provided the proposed services in response to a demonstrated demand for the services over the three (3) most recent years."⁶

1 Because the deadline falls on a Saturday, the Division has indicated that it will accept notices of intent that are received by the Division no later than 5:00 p.m. on Tuesday, April, 26, 2011.

2 This exception is available to existing nursing facilities and hospitals (DCH Rule 111-1-1-.30(3)(d)(1)).

3 DCH Rule 111-1-1-.30(3)(d)(1)

4 *Id.*

5 DCH Rule 111-1-1-.30(3)(d)(2)

6 DCH Rule 111-1-1-.30(3)(d)(1) and (2)



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Applicants that meet one of the above criteria and timely submit a notice of intent will be eligible to participate in the Division's upcoming CON review cycle. CON applications from eligible participants for this cycle are due by noon on Monday, May 23, 2011. For more details on the required application materials and associated fees, please refer to the Division's review cycle notice, available [here](#).⁷ SNFs and ICFs that have pending projects requiring CON approval should review the criteria and determine whether their projects might be eligible during the upcoming review cycle. The Division has specified that it will not allow any exceptions to the notice of intent deadline, so interested providers should act quickly.

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This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.
7 <http://www.agg.com/media/interior/publications/DCH-Nursing-Home-Batching-Notice-March-24-2011.pdf>