

House File 422 - Introduced

HOUSE FILE 422

BY R. TAYLOR

A BILL FOR

1 An Act relating to certificates of need.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135.61, subsection 1, paragraphs c and d,
2 Code 2017, are amended to read as follows:

3 c. Each institutional health facility ~~or health maintenance~~
4 ~~organization~~ which is located in the geographic area which
5 would appropriately be served by the new institutional
6 health service proposed in the application. The appropriate
7 geographic service area of each institutional health facility
8 ~~or health maintenance organization~~ shall be determined on a
9 uniform basis in accordance with criteria established in rules
10 adopted by the department.

11 d. Each institutional health facility ~~or health maintenance~~
12 ~~organization~~ which, prior to receipt of the application by
13 the department, has formally indicated to the department
14 pursuant to [this division](#) an intent to furnish in the future
15 institutional health services similar to the new institutional
16 health service proposed in the application.

17 Sec. 2. Section 135.61, subsections 3, 14, 15, 18, and 19,
18 Code 2017, are amended to read as follows:

19 3. "Consumer" means any individual whose occupation is other
20 than health services, who has no fiduciary obligation to an
21 institutional health facility, ~~health maintenance organization~~
22 ~~or other facility~~ primarily engaged in delivery of services
23 provided by persons in health service occupations, and who has
24 no material financial interest in the providing of any health
25 services.

26 14. "Institutional health facility" means ~~any of the~~
27 following an assisted living program or a nursing facility,
28 without regard to whether the facilities referred to are
29 publicly or privately owned or are organized for profit or not
30 or whether the facilities are part of or sponsored by a health
31 maintenance organization:

32 a. ~~A hospital.~~

33 b. ~~A health care facility.~~

34 c. ~~An organized outpatient health facility.~~

35 d. ~~An outpatient surgical facility.~~

1 ~~e. A community mental health facility.~~

2 ~~f. A birth center.~~

3 15. "Institutional health service" means any health service
4 furnished in or through institutional health facilities ~~or~~
5 ~~health maintenance organizations~~, including mobile health
6 services.

7 18. "New institutional health service" or "changed
8 institutional health service" means any of the following:

9 a. The construction, development or other establishment of a
10 new institutional health facility regardless of ownership.

11 b. Relocation of an institutional health facility.

12 c. Any capital expenditure, lease, or donation by or on
13 behalf of an institutional health facility in excess of one
14 million five hundred thousand dollars within a twelve-month
15 period.

16 d. A permanent change in the bed capacity, as determined
17 by the department, of an institutional health facility. For
18 purposes of this paragraph, a change is permanent if it is
19 intended to be effective for one year or more.

20 e. Any expenditure in excess of five hundred thousand
21 dollars by or on behalf of an institutional health facility for
22 health services which are or will be offered in or through an
23 institutional health facility at a specific time but which were
24 not offered on a regular basis in or through that institutional
25 health facility within the twelve-month period prior to that
26 time.

27 f. The deletion of one or more health services, previously
28 offered on a regular basis by an institutional health facility
29 ~~or health maintenance organization~~ or the relocation of one or
30 more health services from one physical facility to another.

31 ~~g. Any acquisition by or on behalf of a health care provider~~
32 ~~or a group of health care providers of any piece of replacement~~
33 ~~equipment with a value in excess of one million five hundred~~
34 ~~thousand dollars, whether acquired by purchase, lease, or~~
35 ~~donation.~~

1 ~~h.~~ Any acquisition by or on behalf of a health care provider
2 or group of health care providers of any piece of equipment
3 with a value in excess of one million five hundred thousand
4 dollars, whether acquired by purchase, lease, or donation,
5 which results in the offering or development of a health
6 service not previously provided. A mobile service provided
7 on a contract basis is not considered to have been previously
8 provided by a health care provider or group of health care
9 providers.

10 ~~i.~~ g. Any acquisition by or on behalf of an institutional
11 health facility or a health maintenance organization of any
12 piece of replacement equipment with a value in excess of one
13 million five hundred thousand dollars, whether acquired by
14 purchase, lease, or donation.

15 ~~j.~~ h. Any acquisition by or on behalf of an institutional
16 health facility or health maintenance organization of any
17 piece of equipment with a value in excess of one million five
18 hundred thousand dollars, whether acquired by purchase, lease,
19 or donation, which results in the offering or development of
20 a health service not previously provided. A mobile service
21 provided on a contract basis is not considered to have been
22 previously provided by an institutional health facility.

23 ~~k.~~ Any air transportation service for transportation of
24 patients or medical personnel offered through an institutional
25 health facility at a specific time but which was not offered
26 on a regular basis in or through that institutional health
27 facility within the twelve-month period prior to the specific
28 time.

29 ~~l.~~ i. Any mobile health service with a value in excess of
30 one million five hundred thousand dollars.

31 ~~m.~~ Any of the following:

32 (1) ~~Cardiac catheterization service.~~

33 (2) ~~Open heart surgical service.~~

34 (3) ~~Organ transplantation service.~~

35 (4) ~~Radiation therapy service applying ionizing radiation~~

~~1 for the treatment of malignant disease using megavoltage
2 external beam equipment.~~

3 19. "Offer", when used in connection with health services,
4 means that an institutional health facility, ~~health maintenance~~
5 ~~organization, health care provider, or group of health care~~
6 ~~providers~~ holds itself out as capable of providing, or as
7 having the means to provide, specified health services.

8 Sec. 3. Section 135.61, Code 2017, is amended by adding the
9 following new subsections:

10 NEW SUBSECTION. 1A. "*Assisted living program*" means as
11 defined in section 231C.2.

12 NEW SUBSECTION. 18A. "*Nursing facility*" means as defined
13 in section 135C.1.

14 Sec. 4. Section 135.61, subsections 2, 20, 21, and 22, Code
15 2017, are amended by striking the subsections.

16 Sec. 5. Section 135.63, subsections 1 and 2, Code 2017, are
17 amended to read as follows:

18 1. A new institutional health service or changed
19 institutional health service shall not be offered or developed
20 in this state without prior application to the department
21 for and receipt of a certificate of need, pursuant to this
22 division. The application shall be made upon forms furnished
23 or prescribed by the department and shall contain such
24 information as the department may require under [this division](#).
25 The application shall be accompanied by a fee equivalent
26 to three-tenths of one percent of the anticipated cost of
27 the project with a minimum fee of six hundred dollars and a
28 maximum fee of twenty-one thousand dollars. The fee shall be
29 remitted by the department to the treasurer of state, who shall
30 place it in the general fund of the state. If an application
31 is voluntarily withdrawn within thirty calendar days after
32 submission, seventy-five percent of the application fee shall
33 be refunded; if the application is voluntarily withdrawn more
34 than thirty but within sixty days after submission, fifty
35 percent of the application fee shall be refunded; if the

1 application is withdrawn voluntarily more than sixty days
2 after submission, twenty-five percent of the application fee
3 shall be refunded. ~~Notwithstanding the required payment of~~
4 ~~an application fee under this subsection, an applicant for a~~
5 ~~new institutional health service or a changed institutional~~
6 ~~health service offered or developed by an intermediate care~~
7 ~~facility for persons with an intellectual disability or an~~
8 ~~intermediate care facility for persons with mental illness as~~
9 ~~defined pursuant to section 135C.1 is exempt from payment of~~
10 ~~the application fee.~~

11 2. This division shall not be construed to augment, limit,
12 contravene, or repeal in any manner any other statute of this
13 state which may authorize or relate to licensure, regulation,
14 supervision, or control of, nor to be applicable to:

15 a. ~~Private offices and private clinics of an individual~~
16 ~~physician, dentist, or other practitioner or group of~~
17 ~~health care providers, except as provided by section 135.61,~~
18 ~~subsection 18, paragraphs "g", "h", and "m", and section 135.61,~~
19 ~~subsections 20 and 21.~~

20 b. ~~Dispensaries and first aid stations, located within~~
21 ~~schools, businesses, or industrial establishments, which are~~
22 ~~maintained solely for the use of students or employees of those~~
23 ~~establishments and which do not contain inpatient or resident~~
24 ~~beds that are customarily occupied by the same individual for~~
25 ~~more than twenty-four consecutive hours.~~

26 c. ~~Establishments such as motels, hotels, and boarding~~
27 ~~houses which provide medical, nursing personnel, and other~~
28 ~~health related services as an incident to their primary~~
29 ~~business or function.~~

30 d. ~~The remedial care or treatment of residents or patients~~
31 ~~in any home or institution conducted only for those who~~
32 ~~rely solely upon treatment by prayer or spiritual means in~~
33 ~~accordance with the creed or tenets of any recognized church or~~
34 ~~religious denomination.~~

35 e. b. A health maintenance organization or combination

1 of health maintenance organizations or an institutional
2 health facility controlled directly or indirectly by a health
3 maintenance organization or combination of health maintenance
4 organizations, except when the health maintenance organization
5 or combination of health maintenance organizations ~~does any of~~
6 ~~the following:~~

7 ~~(1) Constructs~~ constructs, develops, renovates, relocates,
8 or otherwise establishes an institutional health facility.

9 ~~(2) Acquires major medical equipment as provided by section~~
10 ~~135.61, subsection 18, paragraphs "i" and "j".~~

11 ~~f. A residential care facility, as defined in section~~
12 ~~135C.1, including a residential care facility for persons with~~
13 ~~an intellectual disability, notwithstanding any provision in~~
14 ~~this division to the contrary.~~

15 ~~g. c.~~ (1) A reduction in bed capacity of an institutional
16 health facility, notwithstanding any provision in this division
17 to the contrary, if all of the following conditions exist:

18 (a) The institutional health facility reports to the
19 department the number and type of beds reduced on a form
20 prescribed by the department at least thirty days before the
21 reduction. In the case of a health care nursing facility, the
22 new bed total must be consistent with the number of licensed
23 beds at the facility. ~~In the case of a hospital, the number~~
24 ~~of beds must be consistent with bed totals reported to the~~
25 ~~department of inspections and appeals for purposes of licensure~~
26 ~~and certification.~~

27 (b) The institutional health facility reports the new bed
28 total on its next annual report to the department.

29 (2) If these conditions are not met, the institutional
30 health facility is subject to review as a "new institutional
31 health service" or "changed institutional health service" under
32 section 135.61, subsection 18, paragraph "d", and subject to
33 sanctions under section 135.73. If the institutional health
34 facility reestablishes the deleted beds at a later time,
35 review as a "new institutional health service" or "changed

1 institutional health service" is required pursuant to section
2 ~~135.61, subsection 18, paragraph "d"~~.

3 ~~h.~~ d. (1) The deletion of one or more health services,
4 previously offered on a regular basis by an institutional
5 health facility ~~or health maintenance organization,~~
6 notwithstanding any provision of **this division** to the contrary,
7 if all of the following conditions exist:

8 (a) The institutional health facility ~~or health maintenance~~
9 ~~organization~~ reports to the department the deletion of the
10 service or services at least thirty days before the deletion on
11 a form prescribed by the department.

12 (b) The institutional health facility ~~or health maintenance~~
13 ~~organization~~ reports the deletion of the service or services on
14 its next annual report to the department.

15 (2) If these conditions are not met, the institutional
16 health facility ~~or health maintenance organization~~ is subject
17 to review as a "new institutional health service" or "changed
18 institutional health service" ~~under section 135.61, subsection~~
19 ~~18, paragraph "f"~~, and subject to sanctions under section
20 135.73.

21 (3) If the institutional health facility ~~or health~~
22 ~~maintenance organization~~ reestablishes the deleted service
23 or services at a later time, review as a "new institutional
24 health service" or "changed institutional health service" may
25 be required pursuant to **section 135.61, subsection 18.**

26 ~~i.~~ A residential program exempt from licensing as a health
27 care facility under **chapter 135C** in accordance with section
28 ~~135C.6, subsection 8.~~

29 ~~j.~~ e. The construction, modification, or replacement
30 of nonpatient care services, including parking facilities,
31 heating, ventilation and air conditioning systems, computers,
32 telephone systems, ~~medical office buildings,~~ and other projects
33 of a similar nature, notwithstanding any provision in this
34 division to the contrary.

35 ~~k.~~ (1) ~~The redistribution of beds by a hospital within the~~

1 ~~acute care category of bed usage, notwithstanding any provision~~
2 ~~in [this division](#) to the contrary, if all of the following~~
3 ~~conditions exist:~~

4 ~~(a) The hospital reports to the department the number and~~
5 ~~type of beds to be redistributed on a form prescribed by the~~
6 ~~department at least thirty days before the redistribution.~~

7 ~~(b) The hospital reports the new distribution of beds on its~~
8 ~~next annual report to the department.~~

9 ~~(2) If these conditions are not met, the redistribution~~
10 ~~of beds by the hospital is subject to review as a new~~
11 ~~institutional health service or changed institutional health~~
12 ~~service pursuant to [section 135.61, subsection 18](#), paragraph~~
13 ~~"d", and is subject to sanctions under [section 135.73](#).~~

14 ~~*i. f.* The replacement or modernization of any institutional~~
15 ~~health facility if the replacement or modernization does~~
16 ~~not add new health services or additional bed capacity for~~
17 ~~existing health services, notwithstanding any provision in this~~
18 ~~division to the contrary. With respect to a nursing facility,~~
19 ~~"replacement" means establishing a new facility within the same~~
20 ~~county as the prior facility to be closed. With reference to~~
21 ~~a hospital, "replacement" means establishing a new hospital~~
22 ~~that demonstrates compliance with all of the following criteria~~
23 ~~through evidence submitted to the department:~~

24 ~~(1) Is designated as a critical access hospital pursuant to~~
25 ~~42 U.S.C. §1395i-4.~~

26 ~~(2) Serves at least seventy-five percent of the same service~~
27 ~~area that was served by the prior hospital to be closed and~~
28 ~~replaced by the new hospital.~~

29 ~~(3) Provides at least seventy-five percent of the same~~
30 ~~services that were provided by the prior hospital to be closed~~
31 ~~and replaced by the new hospital.~~

32 ~~(4) Is staffed by at least seventy-five percent of the~~
33 ~~same staff, including medical staff, contracted staff, and~~
34 ~~employees, as constituted the staff of the prior hospital to be~~
35 ~~closed and replaced by the new hospital.~~

1 ~~m. Hemodialysis services provided by a hospital or~~
2 ~~freestanding facility, notwithstanding any provision in this~~
3 ~~division to the contrary.~~

4 ~~n. Hospice services provided by a hospital, notwithstanding~~
5 ~~any provision in this division to the contrary.~~

6 ~~o. g.~~ The change in ownership, licensure, organizational
7 structure, or designation of the type of institutional health
8 facility if the health services offered by the successor
9 institutional health facility are unchanged. This exclusion
10 is applicable only if the institutional health facility
11 consents to the change in ownership, licensure, organizational
12 structure, or designation of the type of institutional health
13 facility and ceases offering the health services simultaneously
14 with the initiation of the offering of health services by the
15 successor institutional health facility.

16 ~~p. The conversion of an existing number of beds by an~~
17 ~~intermediate care facility for persons with an intellectual~~
18 ~~disability to a smaller facility environment, including but not~~
19 ~~limited to a community-based environment which does not result~~
20 ~~in an increased number of beds, notwithstanding any provision~~
21 ~~in this division to the contrary, including subsection 4, if~~
22 ~~all of the following conditions exist:~~

23 ~~(1) The intermediate care facility for persons with an~~
24 ~~intellectual disability reports the number and type of beds to~~
25 ~~be converted on a form prescribed by the department at least~~
26 ~~thirty days before the conversion.~~

27 ~~(2) The intermediate care facility for persons with an~~
28 ~~intellectual disability reports the conversion of beds on its~~
29 ~~next annual report to the department.~~

30 Sec. 6. Section 135.63, subsection 4, Code 2017, is amended
31 by striking the subsection.

32 Sec. 7. Section 135.64, subsection 1, paragraphs o and q,
33 Code 2017, are amended to read as follows:

34 o. The impact of relocation of an institutional health
35 facility ~~or health maintenance organization~~ on other

1 institutional health facilities ~~or health maintenance~~
2 ~~organizations~~ and on the needs of the population to be served,
3 or which was previously served, or both.

4 *g.* In the case of a proposal for the addition of beds to a
5 ~~health care~~ nursing facility or assisted living program, the
6 consistency of the proposed addition with the plans of other
7 agencies of this state responsible for provision and financing
8 of long-term care services, including home health services.

9 Sec. 8. Section 135.64, subsection 1, paragraphs m and n,
10 Code 2017, are amended by striking the paragraphs.

11 Sec. 9. Section 135.64, subsection 2, Code 2017, is amended
12 to read as follows:

13 2. In addition to the findings required with respect to
14 any of the criteria listed in subsection 1 of this section,
15 the council shall grant a certificate of need for a new
16 institutional health service or changed institutional health
17 service only if it finds in writing, on the basis of data
18 submitted to it by the department, that all of the following
19 conditions are met:

20 *a.* Less costly, more efficient, or more appropriate
21 alternatives to the proposed institutional health service are
22 not available and the development of such alternatives is not
23 practicable~~†~~.

24 *b.* Any existing facilities providing institutional health
25 services similar to those proposed are being used in an
26 appropriate and efficient manner~~†~~.

27 *c.* In the case of new construction, alternatives including
28 but not limited to modernization or sharing arrangements have
29 been considered and have been implemented to the maximum extent
30 practicable~~†~~.

31 *d.* Patients will experience serious problems in obtaining
32 care of the type which will be furnished by the proposed new
33 institutional health service or changed institutional health
34 service, in the absence of that proposed new service.

35 Sec. 10. Section 135.64, subsection 3, Code 2017, is amended

1 by striking the subsection.

2 Sec. 11. Section 135.131, subsection 1, paragraph a, Code
3 2017, is amended to read as follows:

4 a. *"Birth center"* means ~~birth center as defined in section~~
5 ~~135.61~~ a facility or institution, which is not an ambulatory
6 surgical center or a hospital or in a hospital, in which
7 births are planned to occur following a normal, uncomplicated,
8 low-risk pregnancy.

9 Sec. 12. Section 135H.6, Code 2017, is amended to read as
10 follows:

11 **135H.6 Inspection — conditions for issuance.**

12 The department shall issue a license to an applicant under
13 this chapter if all the following conditions exist:

14 1. The department has ascertained that the applicant's
15 medical facilities and staff are adequate to provide the care
16 and services required of a psychiatric institution.

17 2. The proposed psychiatric institution is accredited
18 by the joint commission on the accreditation of health
19 care organizations, the commission on accreditation of
20 rehabilitation facilities, the council on accreditation of
21 services for families and children, or by any other recognized
22 accrediting organization with comparable standards acceptable
23 under federal regulation.

24 3. The applicant complies with applicable state rules
25 and standards for a psychiatric institution adopted by the
26 department in accordance with federal requirements under [42](#)
27 [C.F.R. §441.150 - 441.156](#).

28 4. ~~The applicant has been awarded a certificate of need~~
29 ~~pursuant to [chapter 135](#), unless exempt as provided in this~~
30 ~~section.~~

31 5. ~~The department of human services has submitted written~~
32 ~~approval of the application based on the department of human~~
33 ~~services' determination of need. The department of human~~
34 ~~services shall identify the location and number of children in~~
35 ~~the state who require the services of a psychiatric medical~~

1 institution for children. Approval of an application shall be
2 based upon the location of the proposed psychiatric institution
3 relative to the need for services identified by the department
4 of human services and an analysis of the applicant's ability to
5 provide services and support consistent with requirements under
6 chapter 232, particularly regarding community-based treatment.
7 If the proposed psychiatric institution is not freestanding
8 from a facility licensed under [chapter 135B](#) or [135C](#), approval
9 under [this subsection](#) shall not be given unless the department
10 of human services certifies that the proposed psychiatric
11 institution is capable of providing a resident with a living
12 environment similar to the living environment provided by a
13 licensee which is freestanding from a facility licensed under
14 chapter 135B or [135C](#).

15 ~~6.~~ 5. The department of human services shall not give
16 approval to an application which would cause the total number
17 of beds licensed under [this chapter](#) for services reimbursed by
18 the medical assistance program under [chapter 249A](#) to exceed
19 four hundred thirty beds.

20 ~~7.~~ 6. In addition to the beds authorized under subsection
21 6, the department of human services may establish not more than
22 thirty beds licensed under [this chapter](#) at the state mental
23 health institute at Independence. ~~The beds shall be exempt
24 from the certificate of need requirement under [subsection 4](#).~~

25 ~~8.~~ 7. The department of human services may give approval to
26 conversion of beds approved under [subsection 6](#), to beds which
27 are specialized to provide substance abuse treatment. However,
28 the total number of beds approved under [subsection 6](#) and this
29 subsection shall not exceed four hundred thirty. ~~Conversion
30 of beds under [this subsection](#) shall not require a revision of
31 the certificate of need issued for the psychiatric institution
32 making the conversion.~~ Beds for children who do not reside
33 in this state and whose service costs are not paid by public
34 funds in this state are not subject to the limitations on the
35 number of beds ~~and certificate of need requirements~~ otherwise

1 applicable under [this section](#).

2 ~~9.~~ 8. The proposed psychiatric institution is under
3 the direction of an agency which has operated a facility
4 licensed under [section 237.3, subsection 2](#), paragraph "a", as
5 a comprehensive residential facility for children for three
6 years or of an agency which has operated a facility for three
7 years providing psychiatric services exclusively to children or
8 adolescents and the facility meets or exceeds requirements for
9 licensure under [section 237.3, subsection 2](#), paragraph "a", as a
10 comprehensive residential facility for children.

11 ~~10.~~ 9. A psychiatric institution licensed prior to July 1,
12 1999, may exceed the number of beds authorized under subsection
13 6 if the excess beds are used to provide services funded from a
14 source other than the medical assistance program under chapter
15 249A. Notwithstanding ~~subsections 4, subsection 5, and 6,~~ the
16 provision of services using those excess beds does not require
17 ~~a certificate of need or~~ a review by the department of human
18 services.

19 ~~11.~~ 10. If a child has an emotional, behavioral, or mental
20 health disorder, the psychiatric institution does not require
21 court proceedings to be initiated or that a child's parent,
22 guardian, or custodian must terminate parental rights over
23 or transfer legal custody of the child for the purpose of
24 obtaining treatment from the psychiatric institution for the
25 child. Relinquishment of a child's custody shall not be a
26 condition of the child receiving services.

27 Sec. 13. Section 135P.1, subsection 3, Code 2017, is amended
28 to read as follows:

29 3. "*Health facility*" means ~~an institutional~~ a hospital, a
30 health care facility as defined in [section 135.61](#), an organized
31 outpatient health facility, an outpatient surgical facility, a
32 community mental health facility, a birth center as defined in
33 [section 135.131](#), a hospice licensed under [chapter 135J](#), home
34 health agency as defined in [section 144D.1](#), assisted living
35 program certified under [chapter 231C](#), clinic, or community

1 health center, and includes any corporation, professional
2 corporation, partnership, limited liability company, limited
3 liability partnership, or other entity comprised of such health
4 facilities.

5 Sec. 14. Section 231C.3, subsection 2, Code 2017, is amended
6 to read as follows:

7 2. Each assisted living program operating in this state
8 shall be certified by the department. If an assisted living
9 program is voluntarily accredited by a recognized accrediting
10 entity, the department shall certify the assisted living
11 program on the basis of the voluntary accreditation. An
12 assisted living program that is certified by the department on
13 the basis of voluntary accreditation shall not be subject to
14 payment of the certification fee prescribed in [section 231C.18](#),
15 but shall be subject to an administrative fee as prescribed by
16 rule. ~~An assisted living program certified under this section
17 is exempt from the requirements of [section 135.63](#) relating to
18 certificate of need requirements.~~

19

EXPLANATION

20 The inclusion of this explanation does not constitute agreement with
21 the explanation's substance by the members of the general assembly.

22 This bill relates to certificates of need. The bill
23 redefines "institutional health facility" to mean only
24 an assisted living program or a nursing facility, thereby
25 eliminating the application of certificate of need requirements
26 to any other institutional health facility that furnishes new
27 or changed institutional health services. The bill amends the
28 definition of "new institutional health service" or "changed
29 institutional health service" to retain services applicable to
30 an assisted living program or a nursing facility and eliminates
31 definitions and other provisions no longer necessary to the
32 certificate of need provisions. The bill also makes conforming
33 changes throughout the Code.