

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.22225 Demonstration of need for proposed project; additional requirements.

Sec. 22225. (1) In order to be approved under this part, an applicant for a certificate of need shall demonstrate to the satisfaction of the department that the proposed project will meet an unmet need in the area proposed to be served. An applicant shall demonstrate the need for a proposed project by credible documentation of compliance with the applicable certificate of need review standards. If no certificate of need review standards are applicable to the proposed project or to a portion of a proposed project that is otherwise governed by this part, the applicant shall demonstrate to the satisfaction of the department that an unmet need for the proposed project or portion of the proposed project exists by credible documentation that the proposed project will be geographically accessible and efficiently and appropriately utilized, in light of the type of project and the existing health care system. Whether or not there are applicable certificate of need review standards, in determining compliance with this subsection, the department shall consider approved projects that are not yet operational, proposed projects under appeal from a final decision of the department, or proposed projects that are pending final department decision.

(2) If, and only if, the requirements of subsection (1) are met, in order for an application to be approved under this part, an applicant shall also demonstrate to the reasonable satisfaction of the department all of the following:

(a) With respect to the method proposed to meet the unmet need identified under subsection (1), that the applicant has considered alternatives to the proposed project and that, in light of the alternatives available for consideration, the chosen alternative is the most efficient and effective method of meeting that unmet need.

(b) With respect to the financial aspects of the proposed project, that each of the following is met:

(i) The capital costs of the proposed project will result in the least costly total annual operating costs.

(ii) Funds are available to meet the capital and operating needs of the proposed project.

(iii) The proposed project utilizes the least costly method of financing, in light of available alternatives.

(iv) In the case of a construction project, the applicant stipulates that the applicant will competitively bid capital expenditures among qualified contractors or alternatively, the applicant is proposing an alternative to competitive bidding that will achieve substantially the same results as competitive bidding.

(c) The proposed project will be delivered in compliance with applicable operating standards and quality assurance standards approved under section 22215(1)(b), including 1 or more of the following:

(i) Mechanisms for assuring appropriate utilization of the project.

(ii) Methods for evaluating the effectiveness of the project.

(iii) Means of assuring delivery of the project by qualified personnel and in compliance with applicable safety and operating standards.

(iv) Evidence of the current and historical compliance with federal and state licensing and certification requirements in this state by the applicant or the applicant's owner, or both, to the degree determined appropriate by the commission in light of the subject of the review standard.

(v) Other criteria approved by the commission as appropriate to evaluate the quality of the project.

(d) The health services proposed in the project will be delivered in a health facility that meets the criteria, if any, established by the commission for determining health facility viability, pursuant to this subdivision. The criteria shall be proposed by the department and the office, and approved or disapproved by the commission. At a minimum, the criteria shall specify, to the extent applicable to the applicant, that an applicant shall be considered viable by demonstrating at least 1 of the following:

(i) A minimum percentage occupancy of licensed beds.

(ii) A minimum percentage of combined uncompensated discharges and discharges under title XIX in the health facility's planning area.

(iii) A minimum percentage of the total discharges in the health facility's planning area.

(iv) Evidence that the health facility is the only provider in the health facility's planning area of a service that is considered essential by the commission.

(v) An operating margin in an amount determined by the commission.

(vi) Other criteria approved by the commission as appropriate for statewide application to determine health facility viability.

(e) In the case of a nonprofit health facility, the health facility is in fact governed by a body composed of a majority consumer membership broadly representative of the population served. In the case of a health facility sponsored by a religious organization, or if the nature of the nonprofit health facility is such that the legal rights of its owners or sponsors might be impaired by a requirement as to the composition of its governing body, an advisory board with majority consumer membership broadly representative of the population served

may be construed by the department to be equivalent to the governing board described in this subdivision, if the advisory board meets all of the following requirements:

- (i) The role assigned to the advisory board is meaningful, as determined by the department.
- (ii) The functions of the advisory board are clearly prescribed.
- (iii) The advisory board is given an opportunity to influence policy formulation by the legally recognized governing body, as determined by the department.

History: Add. 1988, Act 332, Eff. Oct. 1, 1988;—Am. 1993, Act 88, Imd. Eff. July 9, 1993.

Popular name: Act 368