

**PUBLIC HEALTH CODE (EXCERPT)**  
**Act 368 of 1978**

**333.22209 Activities requiring certificate of need; exceptions; requirements; acquisition of existing health facility; relocation; "sharing agreement" defined.**

Sec. 22209.

(1) Except as otherwise provided in this part, a person shall not do any of the following without first obtaining a certificate of need:

(a) Acquire an existing health facility or begin operation of a health facility at a site that is not currently licensed for that type of health facility.

(b) Make a change in the bed capacity of a health facility.

(c) Initiate, replace, or expand a covered clinical service.

(d) Make a covered capital expenditure.

(2) A certificate of need is not required for a reduction in licensed bed capacity or services at a licensed site.

(3) Subject to subsection (9) and if the relocation does not result in an increase of licensed beds within that health service area, a certificate of need is not required for any of the following:

(a) The physical relocation of licensed beds from a hospital site licensed under part 215 to another hospital site licensed under the same license as the hospital seeking to transfer the beds if both hospitals are located within a 2-mile radius of each other.

(b) Subject to subsections (7) and (8), the physical relocation of licensed beds from a hospital licensed under part 215 to a freestanding surgical outpatient facility licensed under part 208 if that freestanding surgical outpatient facility satisfies each of the following criteria on December 2, 2002:

(i) Is owned by, is under common control of, or has as a common parent the hospital seeking to relocate its licensed beds.

(ii) Was licensed before January 1, 2002.

(iii) Provides 24-hour emergency care services at that site.

(iv) Provides at least 4 different covered clinical services at that site.

(c) Subject to subsection (8), the physical relocation of licensed beds from a hospital licensed under part 215 to another hospital licensed under part 215 within the same health service area if the hospital receiving the licensed beds is owned by, is under common control of, or has as a common parent the hospital seeking to relocate its licensed beds.

(4) Subject to subsection (5), a hospital licensed under part 215 is not required to obtain a certificate of need to provide 1 or more of the covered clinical services listed in section 22203(10) in a federal veterans' health care facility or to use long-term care unit beds or acute care beds that are owned and located in a federal veterans' health care facility if the hospital satisfies each of the following criteria:

(a) The hospital has an active affiliation or sharing agreement with the federal veterans' health care facility.

(b) The hospital has physicians who have faculty appointments at the federal veterans' health care facility or has an affiliation with a medical school that is affiliated with a federal veterans' health care facility and has physicians who have faculty appointments at the federal veterans' health care facility.

(c) The hospital has an active grant or agreement with the state or federal government to provide 1 or more of the following functions relating to bioterrorism:

(i) Education.

(ii) Patient care.

(iii) Research.

(iv) Training.

(5) A hospital that provides 1 or more covered clinical services in a federal veterans' health care facility or uses long-term care unit beds or acute care beds located in a federal veterans' health care facility under subsection (4) may not utilize procedures performed at the federal veterans' health care facility to demonstrate need or to satisfy a certificate of need review standard unless the covered clinical service provided at the federal veterans' health care facility was provided under a certificate of need.

(6) If a hospital licensed under part 215 had fewer than 70 licensed beds on December 1, 2002, that hospital is not required to satisfy the minimum volume requirements under the certificate of need review standards for its existing operating rooms as long as those operating rooms continue to exist at that licensed hospital site.

(7) Before relocating beds under subsection (3)(b), the hospital seeking to relocate its beds shall provide the information requested by the department of licensing and regulatory affairs that will allow the department of licensing and regulatory affairs to verify the number of licensed beds that were staffed and available for patient care at that hospital as of December 2, 2002.

(8) The licensed beds relocated under subsection (3)(b) or (c) must not be included as new beds in a hospital or

as a new hospital under the certificate of need review standards for hospital beds. One of every 2 beds transferred under subsection (3)(b) up to a maximum of 100 must be beds that were staffed and available for patient care as of December 2, 2002. A hospital relocating beds under subsection (3)(b) shall not reactivate licensed beds within that hospital that were unstaffed or unavailable for patient care on December 2, 2002 for a period of 5 years after the date of the relocation of the licensed beds under subsection (3)(b).

(9) Licensed beds must not be physically relocated under subsection (3) if 7 or more members of the commission, after the appointment and confirmation of the 6 additional commission members under section 22211 but before June 15, 2003, determine that relocation of licensed beds under subsection (3) may cause great harm and detriment to the access and delivery of health care to the public and the relocation of beds should not occur without a certificate of need.

(10) An applicant seeking a certificate of need for the acquisition of an existing health facility may file a single, consolidated application for the certificate of need if the project results in the acquisition of an existing health facility but does not result in an increase or relocation of licensed beds or the initiation, expansion, or replacement of a covered clinical service. Except as otherwise provided in this subsection, a person acquiring an existing health facility is subject to the applicable certificate of need review standards in effect on the date of the transfer for the covered clinical services provided by the acquired health facility. The department may except 1 or more of the covered clinical services listed in section 22203(10)(b), except the covered clinical service listed in section 22203(10)(b)(iv), from the minimum volume requirements in the applicable certificate of need review standards in effect on the date of the transfer, if the equipment used in the covered clinical service is unable to meet the minimum volume requirements due to the technological incapacity of the equipment. A covered clinical service excepted by the department under this subsection is subject to all the other provisions in the applicable certificate of need review standards in effect on the date of the transfer, except minimum volume requirements.

(11) An applicant seeking a certificate of need for the relocation or replacement of an existing health facility may file a single, consolidated application for the certificate of need if the project does not result in an increase of licensed beds or the initiation, expansion, or replacement of a covered clinical service. A person relocating or replacing an existing health facility is subject to the applicable certificate of need review standards in effect on the date of the relocation or replacement of the health facility.

(12) As used in this section, "sharing agreement" means a written agreement between a federal veterans' health care facility and a hospital licensed under part 215 for the use of the federal veterans' health care facility's beds or equipment, or both, to provide covered clinical services.

**History:** Add. 1988, Act 332, Eff. Oct. 1, 1988 ;-- Am. 1990, Act 260, Imd. Eff. Oct. 15, 1990 ;-- Am. 1993, Act 88, Imd. Eff. July 9, 1993 ;-- Am. 2002, Act 619, Eff. Mar. 31, 2003 ;-- Am. 2022, Act 265, Imd. Eff. Dec. 22, 2022

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