

Florida Administrative Rules

Certificate of Need Rules, Chapter 59C-1

59C-1.008 Certificate of Need Application Procedures.

(1) Letters of Intent and applications subject to comparative review shall be accepted in two batching cycles annually each for hospital beds and facilities and for other beds and programs, as specified in paragraph (g) of this subsection. The category “hospital beds and facilities” includes proposals for new hospital facilities, replacement hospital facilities if being replaced more than a mile away, the establishment of new neonatal level II and level III programs unless otherwise exempt pursuant to Section 408.036(3)(l), F.S., and comprehensive medical rehabilitation beds unless otherwise exempt pursuant to Section 408.036(3)(j), F.S., and except as provided in Section 408.037(2), F.S., for a general hospital. Unless otherwise directed by Section 408.037(2), F.S., general hospital applications shall conform to the schedules in this rule and will use all the applications and schedules described in paragraph (1)(f). The category “other beds and programs” includes proposals for pediatric open heart surgery, pediatric cardiac catheterization, organ transplantation, community nursing home projects, hospice programs, hospice inpatient facilities, and intermediate care facilities for the developmentally disabled.

(a) Letter of Intent. A letter of intent shall state with specificity the type of project proposed with sufficient clarity to notify the public of the intention to file a Certificate of Need application. A separate letter of intent is required for each type of project and for each type of bed or service having a separate need methodology, proposed to be located in a different planning area as defined for each program under this chapter, or licensing category, even if the projects are within the same facility. At least 30 days prior to the applicable batching cycle application due date, an applicant shall file a letter of intent respecting the development of a proposal in the following manner:

1. The letter of intent must be actually received by the agency by 5:00 p.m. local time. The original of the letter of intent must be submitted to the agency.
2. A letter of intent is for a specific project within a specific geographic planning area as defined by rule or statute for an established planning horizon. When no planning area is defined, the district should be specified.
3. A prospective applicant submitting a letter of intent is solely responsible for its conformity with any and all statutory and rule criteria.
4. If an application is not filed on or before the earliest subsequent due date for filing applications of the same type as that specified in the letter of intent, the letter of intent will be considered invalid and a new letter of intent must be timely filed in a subsequent batching cycle before an application may be filed.

(b) The contents of the letter of intent shall be consistent with Section 408.039(2)(c), F.S., and must be a written communication with an original signature. The applicant is solely responsible for the content and clarity of the letter of intent. The agency shall not assume any facts not clearly stated. Applications should be submitted with one bound copy and one unbound print copy.

(c) As to content, the letter of intent shall describe the proposal with specificity by indicating clearly and unequivocally the following information:

1. Identification of the applicant means the legal name, mailing address, and telephone number of the applicant.
 - a. If an existing health care facility or hospice seeks to undertake a project subject to a comparative review, then the legal name of the license holder must be stated and the license holder must be the applicant except when the applicant has a pending application to become the new licensee of the existing health care facility or hospice filed with the applicable licensure unit within the agency’s Bureau of Health Facility Regulation. In addition, the license number and date of expiration must be stated. It is the responsibility of the person issued a license to keep licensure information current. If agency records indicate information different from that presented in the letter of intent with respect to the identification of the holder of the license and the licensure status, then the agency records

create a rebuttable presumption as to the correctness of those records and therefore the letter of intent is not valid.

- b. If the proposal is for a project which will result in licensure of a new health care facility or hospice, the applicant seeking the certificate of need must be in existence at the time the letter of intent is submitted. If the applicant is a corporation, Limited Partnership, or otherwise organized, it must have filed an application with the Florida Department of State authorizing the applicant to conduct business in Florida.
 2. The letter of intent must identify the type of project proposed and shall contain only one project type as described in Section 408.036(1), F.S.
 3. The number of beds sought is indicated by the numerical representation of how many beds of a specific type will compose the proposed project.
 4. Services is the type of health care service sought and shall be indicated by describing the specific service requested.
 5. Location refers to the health planning subdistricts adopted in Chapter 59C-2, F.A.C., in each program rule under this chapter, or the service districts. The applicant must indicate the subdistrict by name or number. Applicants must also give the name of the county where the proposed project will be located, as provided in Chapter 59C-2, F.A.C.
- (d) Letter of Intent Deadline Extension. In order to provide for a mechanism by which applications may be filed to compete with the proposals described in filed letters of intent the following provisions apply:
1. In cases where a letter of intent for a specific type of project has been received by the agency 30 calendar days or more prior to the appropriate application filing due date as set forth in paragraph 59C-1.008(1)(g), F.A.C., and been initially accepted by the agency, a grace period shall be established.
 2. The grace period provides an opportunity for applicants applying for beds, services, or programs having the same Certificate of Need methodology or health service licensing category proposed in the initially accepted letter of intent in the same applicable subdistrict, district or region to file a proposed competing letter of intent. Under this grace period, a competing letter of intent must be filed not later than 16 days after the letter of intent deadline promulgated under paragraph 59C-1.008(1)(g), F.A.C.
 3. It shall be the sole responsibility of the agency to determine if a letter of intent is competing with any other letter of intent.
 4. The application filing due date shall not be extended for any applicant filing a letter of intent under the requirements of this paragraph.
 5. The agency shall publish notices of filing of letters of intent in the Florida Administrative Weekly in accordance with Section 408.039(2)(d), F.S.
- (e) Failure to comply with the applicable provisions of subsection (1) of this rule will result in the agency's rejecting the submitted document as a letter of intent. If rejected by the agency, the submitted document may not be amended or corrected but a new proposed letter of intent may be submitted if time allows. An application will not be accepted for review in a batching cycle for which a letter of intent has not been accepted by the agency.
- (f) Certificate of Need Application Submission.
- An application for a certificate of need shall be submitted on AHCA Forms 3150-0001, March 2009 Application For A Certificate Of Need, which includes a Cover Page, Schedules A, B, C, D, D-1, 1, 2, 3, 4, 5, 6, 6A, 7, 7A, 7B, 8, 8A, 9, 10, and 11, which are incorporated by reference herein. An application for a transfer of a certificate of need shall be submitted on AHCA Form 3150-0003, March 2009 Transfer Of A Certificate of Need which includes Schedules 1(TRN), 10(TRN), 12(TRN), B(TRN), D-1, in addition to a Cover (TRN) Page, which are incorporated by reference herein. An application for a general hospital shall be submitted on AHCA Form 3150-0002, March 2009 Application for a General Hospital Certificate of Need which includes Schedules 11, A(H), B(H), C, D(H) in addition to a Cover (H) Page, which are incorporated by reference herein. Paper copies or copies on electronic media of AHCA Form 3150-0001, March 2009 Application For A Certificate of Need, AHCA Form 3150-0002, March 2009 Application For A General Hospital Certificate of Need or AHCA Form 3150-0003, March 2009 Transfer of A Certificate of Need, and the Schedules may be obtained from:

Agency for Health Care Administration
Certificate of Need

2727 Mahan Drive, Mail Stop 28
Tallahassee, FL 32308

Electronic versions of AHCA Forms 3150-0001, 3150-0002 and 3150-0003 and the Schedules are also available at http://ahca.myflorida.com/MCHO/CON_FA/Application/index.shtml.

1. The application must be actually received by the agency by 5:00 p.m. local time on or before the application due date.
 2. Applications for projects which exceed the proposed number of beds contained in the letter of intent shall not be deemed complete for review by the agency and shall be withdrawn from further review.
 3. Applications may propose a lesser number of beds than that contained in the letter of intent.
- (g) Applications Subject to Comparative Review – Batching Cycles. In order that applications pertaining to similar types of services or facilities affecting the same service district or subdistrict may be considered in relation to each other for purposes of comparative review, letters of intent and applications shall be received by the agency no later than dates prescribed in the following schedule:

Hospital Beds and Facilities
2nd Batching Cycle – 2011

Summary Need Projections Published in F.A.W.	7-22-11
Letter of Intent Deadline	8-08-11
Application Deadline	9-07-11
Completeness Review Deadline	9-14-11
Application Omissions Deadline	10-12-11
Agency Initial Decision Deadline	12-09-11

Hospital Beds and Facilities
1st Batching Cycle – 2012

Summary Need Projections Published in F.A.W.	1-20-12
Letter of Intent Deadline	2-06-12
Application Deadline	3-07-12
Completeness Review Deadline	3-14-12
Application Omissions Deadline	4-11-12
Agency Initial Decision Deadline	6-08-12

Hospital Beds and Facilities
2nd Batching Cycle – 2012

Summary Need Projections Published in F.A.W.	7-20-12
Letter of Intent Deadline	8-06-12
Application Deadline	9-05-12
Completeness Review Deadline	9-12-12
Application Omissions Deadline	10-10-12
Agency Initial Decision Deadline	12-07-12

Hospital Beds and Facilities
1st Batching Cycle – 2013

Summary Need Projections Published in F.A.W.	1-18-13
Letter of Intent Deadline	2-04-13
Application Deadline	3-06-13
Completeness Review Deadline	3-13-13
Application Omissions Deadline	4-10-13
Agency Initial Decision Deadline	6-07-13

Hospital Beds and Facilities
2nd Batching Cycle – 2013

Summary Need Projections Published in F.A.W.	7-19-13
Letter of Intent Deadline	8-05-13
Application Deadline	9-04-13
Completeness Review Deadline	9-11-13
Application Omissions Deadline	10-09-13
Agency Initial Decision Deadline	12-06-13

Other Beds and Programs
1st Batching Cycle – 2011

Summary Need Projections Published in F.A.W.	4-01-11
Letter of Intent Deadline	4-18-11
Application Deadline	5-18-11
Completeness Review Deadline	5-25-11
Application Omissions Deadline	6-22-11
Agency Initial Decision Deadline	8-19-11

Other Beds and Programs
2nd Batching Cycle – 2011

Summary Need Projections Published in F.A.W.	9-30-11
Letter of Intent Deadline	10-17-11
Application Deadline	11-16-11
Completeness Review Deadline	11-23-11
Application Omissions Deadline	12-21-11
Agency Initial Decision Deadline	2-17-12

Other Beds and Programs
1st Batching Cycle – 2012

Summary Need Projections Published in F.A.W.	3-30-12
Letter of Intent Deadline	4-16-12
Application Deadline	5-16-12
Completeness Review Deadline	5-23-12
Application Omissions Deadline	6-20-12
Agency Initial Decision Deadline	8-17-12

Other Beds and Programs
2nd Batching Cycle – 2012

Summary Need Projections Published in F.A.W.	9-28-12
Letter of Intent Deadline	10-15-12
Application Deadline	11-14-12
Completeness Review Deadline	11-21-12
Application Omissions Deadline	12-19-12
Agency Initial Decision Deadline	2-15-13

Other Beds and Programs
1st Batching Cycle – 2013

Summary Need Projections Published in F.A.W.	3-29-13
Letter of Intent Deadline	4-15-13
Application Deadline	5-15-13
Completeness Review Deadline	5-22-13
Application Omissions Deadline	6-19-13
Agency Initial Decision Deadline	8-16-13

Other Beds and Programs
2nd Batching Cycle – 2013

Summary Need Projections Published in F.A.W.	9-27-13
Letter of Intent Deadline	10-14-13
Application Deadline	11-13-13
Completeness Review Deadline 13	11-20-
Application Omissions Deadline 13	12-18-
Agency Initial Decision Deadline	2-14-14

- (h) An applicant for a project subject to Certificate of Need review which affects an existing licensed health care facility, an existing licensed hospice, or an existing licensed intermediate care facility for the developmentally disabled must be the license holder. The legal name of the license holder must be stated. In addition, the license number and date of expiration must be stated. It is the responsibility of the person issued a license to keep licensure information current. If agency records indicate information different from that presented in the letter of intent with respect to the identification of the holder of the license and the licensure status, then the agency records create a rebuttable presumption as to the correctness of those records and therefore the application will be rejected.
- (i) The applicant for a project shall not change from the time a letter of intent is filed, or from the time an application is filed in the case of an expedited review project, through the time of the actual issuance of a Certificate of Need. Properly executed corporate mergers or changes in the corporate name are not a change in the applicant.

(2) Fixed Need Pools.

(a) Publication of Fixed Need Pools.

1. The agency shall publish in the Florida Administrative Weekly at least 15 days prior to the letter of intent deadline for a particular batching cycle the fixed need pools for the applicable planning horizon specified for each service in applicable agency rules contained in Rules 59C-1.031 to 59C-1.044, F.A.C.
2. Any person who identifies an error in the fixed need pool numbers must advise the agency of the error within 10 days of the date the fixed need pool was published in the Florida Administrative Weekly. If the agency concurs in the error, the fixed need pool number will be adjusted and re-published in the first available edition of the Florida Administrative Weekly. Failure to notify the agency of the error during this time period will result in no adjustment to the fixed need pool number for that batching cycle.
3. Except as provided in subparagraph 2. above, the batching cycle specific fixed need pools shall not be changed or adjusted in the future regardless of any future changes in need methodologies, population estimates, bed inventories, or other factors which would lead to different projections of need, if retroactively applied.

(b) Counting Beds and Services. For the purpose of establishing a fixed need pool, all existing and approved beds at the time the fixed need pool is computed will be included in the beds or services inventory. If a specific substantive rule addresses the date upon which existing and approved beds and services will be counted, those rules will take precedence over this rule. In all other cases:

1. Beds and services will be counted as approved on the date a Certificate of Need is issued or a written decision of intent to award a Certificate of Need is made, whichever occurs first.
2. Beds or services initially denied by the agency and subsequently granted in administrative hearing or by stipulated agreement will be counted as approved when the final order granting them is rendered. No beds or services previously denied will be included in the inventory based on a recommended order.

(c) Deleting Beds or Services. Beds or services will be included in the inventory as long as there is a valid intent to grant or a valid certificate of need outstanding. Beds or services will not be deleted from the inventory until an intent to grant is overturned in a final order or judicial review of the final order. Beds or services will not be deleted from the inventory until a Certificate of Need is rescinded, revoked, modified, voided, or voluntarily surrendered by an applicant. Licensed beds and services will be deleted when the license is no longer in effect. The effective date for the deletion will be the date the license was

voluntarily surrendered by the license holder, the date of final agency action in the case of a final order or the date of a court order if a final order is appealed.

- (d) The agency will follow these procedures when awarding beds or services identified in a fixed need pool:
 - 1. Beds or services will be awarded based on the availability of a qualified applicant and proposed project which meets statutory review criteria.
 - 2. In the absence of a qualified applicant and a project which meets statutory review criteria, the agency may elect not to approve any applications for beds or services.
 - 3. If a qualified applicant exists but the proposed project exceeds the beds or services identified in the fixed need pool, the agency may award beds or services in excess of the pool when warranted by special circumstances as defined in the applicable section of Chapter 59C-1, F.A.C., for the particular type of bed or service.
- (e) Comparative Review. Applications submitted to the agency in the same batching cycle for the same service or beds having the same Certificate of Need methodology in the same district or subdistrict, as defined in applicable rules, shall be comparatively reviewed through final agency action against the same fixed need pools in existence at the initial review. The fixed need pools and other relevant planning information shall be used by the agency to review the application against all applicable statutory review criteria contained in Section 408.035, F.S., and applicable rules, and policies. If an agency need methodology does not exist for the proposed project:
 - 1. The agency will provide to the applicant, if one exists, any policy upon which to determine need for the proposed beds or service. The applicant is not precluded from using other methodologies to compare and contrast with the agency policy.
 - 2. If no agency policy exists, the applicant will be responsible for demonstrating need through a needs assessment methodology which must include, at a minimum, consideration of the following topics, except where they are inconsistent with the applicable statutory or rule criteria:
 - a. Population demographics and dynamics;
 - b. Availability, utilization and quality of like services in the district, subdistrict or both;
 - c. Medical treatment trends; and
 - d. Market conditions.
 - 3. The existence of unmet need will not be based solely on the absence of a health service, health care facility, or beds in the district, subdistrict, region or proposed service area.
- (3) Filing Fees. Certificate of need applications shall not be accepted by the agency at the time of filing unless accompanied by the minimum base certificate of need application filing fee in accordance with Section 408.038, F.S. The minimum base fee shall be \$10,000. In addition to the base fee of \$10,000, the fee shall be 0.015 of each dollar of the proposed expenditure, except that no fee shall exceed \$50,000.
 - (a) For the sole purpose of calculating the application fee, the proposed expenditure includes only the items of cost contributing to the capital expenditures of the proposed project. An application filing fee is non-refundable, unless the application is not accepted by the agency; or unless an accepted application is deemed incomplete and withdrawn by the agency as a result of the omissions review, and the withdrawal is not challenged by the applicant, in which case all but the \$10,000 base fee shall be refunded. No fees shall be refunded for applications deemed complete by the agency but subsequently voluntarily withdrawn by the applicant, or for applications deemed incomplete as a result of a legal challenge.
 - (b) The agency will review the application to determine if the fee is correct.
 - 1. If the check for an application is insufficient to cover the fee, the agency staff will notify the applicant in the omissions request letter.
 - 2. If the correct fee is not received by the agency staff by the close of business on the promulgated applicant omissions deadline, the application will be deemed incomplete and deemed withdrawn from further review.
 - 3. If the check was for more than the correct amount, the agency staff will process a request for a refund to be returned to the applicant with a letter explaining the refunded amount.
 - (c) Checks that are returned by the bank for insufficient funds will be received by the agency staff.
 - 1. For an expedited review application, the agency or designee will send the check back to the applicant, stating that the application is incomplete due to failure to pay the Certificate of Need filing fee and that, until the appropriate fee is received, the application cannot be further processed. Notification to the applicant will also state that a service charge of \$10 or 5% of the face amount of the check, whichever is less, must be added to the amount due pursuant to Section

832.07, F.S. The application will be returned to the applicant if the correct fee is not received thirty days from the date of the letter informing the applicant of the insufficient fee.

2. For a batched review application, the agency or designee will send the applicant a letter returning the check along with the application, and advising the applicant that the application is incomplete and is deemed withdrawn from review.

(4) Certificate of Need Application Contents. An application for a certificate of need shall contain the following items:

(a) All requirements set forth in Sections 408.037(1), (2) and (3), F.S.;

(b) The correct application fee;

(c) With respect to Section 408.037(1)(c), F.S., which requires an audited financial statement of the applicant the following provisions apply:

1. The audited financial statement of the applicant must be for the most current fiscal year. If the most recent fiscal year ended within 120 days prior to the application filing deadline and the audited financial statements are not yet available, then the prior fiscal year will be considered the most recent.

2. Existing health care facilities must provide audited financial statements for the two most recent consecutive fiscal years in accordance with subparagraph 1. above.

3. Only audited financial statements of the applicant will be accepted. Audited financial statements of any part of the applicant, including but not limited to subsidiaries, divisions, specific facilities or cost centers, will not qualify as an audit of the applicant. Nor shall the audited financial statements of the applicant's parent corporation qualify as an audit of the applicant.

(d) To comply with Section 408.037(1)(b)1., F.S., which requires a listing of all capital projects, the applicant shall provide the total approximate amount of anticipated expenditures for capital projects which meet the definition in subsection 59C-1.002(7), F.A.C., at the time of initial application submission, or state that there are none. An itemized list or grouping of capital projects is not required, although an applicant may choose to itemize or group its capital projects. The applicant shall also indicate the actual or proposed financial commitment to those projects, and include an assessment of the impact of those projects on the applicant's ability to provide the proposed project; and

(e) Responses to applicable questions contained in the application forms.

(5) Identifiable Portions. If an applicant would like to be considered for an award of an identifiable portion of the project, the application, at the time of submission, must include responses to the applicable questions on the identifiable portion. The agency may make a partial award only if the applicant included responses to the applicable questions in the application.

Rulemaking Authority 408.034(6), 408.15(8) FS. Law Implemented 408.033, 408.034, 408.036(2), 408.037, 408.038, 408.039, 408.042 FS. History—New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 2-1-81, 4-1-82, 7-29-82, 9-6-84, Formerly 10-5.08, Amended 11-24-86, 3-2-87, 6-11-87, 11-17-87, 3-23-88, 5-30-90, 12-20-90, 1-31-91, 9-9-91, 5-12-92, 7-1-92, 8-9-92, Formerly 10-5.008, Amended 4-19-93, 6-23-94, 10-12-94, 10-18-95, 2-12-96, 7-18-96, 9-16-96, 11-4-97, 7-21-98, 12-12-00, 4-2-01, 1-10-02, 6-26-03, 12-13-04, 9-28-05, 10-9-07, 4-21-10, 2-13-12.