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CON for SNF Beds: New Opportunities for ALF Operators



After a 13 year moratorium on issuing Certificates of Need for new Skilled Nursing Facility beds, Florida is poised for the return of nursing home CON beginning in October. This will present new opportunities for owners and operators of Assisted Living Facilities.

Those existing ALFs that would like to obtain approval to offer Skilled Nursing Facility services should be making plans now. It is expected that the competition for approval of new SNF beds will be substantial. But for those who plan ahead and develop a strong argument for need to offer SNF services as part of an overall continuum of care, the rewards can be well worth the effort.

Nursing Home CON Return

Under 2014-174, Laws of Florida, the Legislature has lifted the 13 year ban on CON for skilled nursing facility beds. The imposition of the moratorium was first put in place in 2001 as a Medicaid cost saving measure. The moratorium was originally intended to last 5 years but was extended in 2006 and again in 2011. In recent years, there has been growing pressure to lift the moratorium and to begin preparing for the aging of the baby boomers. Responding to calls to allow for new development of Skilled Nursing Facilities and beds, the legislature authorized the return of CON.

The legislation lifting the moratorium includes new exemptions and expedited reviews for current owners and operators of SNF facilities. For a full summary of the provisions in the bill, please see: www.smithlawtlh.com, and click on Articles.

Opportunities for ALF Operators

It's certainly no secret that many ALF operators are seeing increasing acuity among their resident populations. This is especially true for those ALF providers with Limited Nursing Services and Extended Congregate Care licenses. Indeed, many ALF operators have complained that the moratorium on SNF beds has resulted in increased pressure to care for higher acuity residents who, in many instances, might be better served in a SNF setting if beds were available.

The lifting of the moratorium will allow some ALF operators to expand the scope of services they offer to include a broader continuum of care. For some, this may be the addition of a SNF unit to their existing ALF facility; for others, it may mean the conversion of an existing ALF to SNF. Ultimately, some providers may seek to offer a full continuum of independent living, Assisted Living, and SNF on one single campus.

Different Architectural and License Requirements

Those interested in seeking SNF beds should thoroughly investigate the differences between SNF and ALF services in terms of the architectural and physical plant requirements as well as the operational and licensure requirements. A full discussion is beyond the scope of this Article, but generally SNF facilities will be evaluated under Florida Building Code requirements for institutional construction and, of course, will be subject to the provisions of Chapter 400, Florida Statutes and Chapter 59A-4, Florida Administrative Code. A CON Application must document the applicant's ability to meet these standards.

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The Upcoming Time Line to Seek SNF Approvals Launches in October

Under existing Rules, AHCA has a schedule that governs the procedures and a detailed time-line for applying for a Certificate of Need. Applications for new skilled nursing facilities and bed additions may be submitted two times per year in the “batching cycle” for “other beds and programs.” A “batching cycle” review is required for any party that wishes to obtain a CON for a new facility or bed addition that is not authorized under an exemption or expedited review. The key dates for the next available batching cycle are as follows:

Fixed Need Pool Projections	10/03/14
10 Days to File Notice of Errors in a Fixed Need Pool	10/13/14
21 Days to File Formal Challenge to Fixed Need Pool	10/24/14
Letter of Intent Filing Deadline	10/20/14
16-day Grace Period Letter of Intent Filing Deadline	11/05/14
CON Initial Application Filing Deadline	11/19/14
Request Public Hearing	14 Days After Publication Of Application Filing in Florida Administrative Register
CON Application Omissions Response Deadline	12/24/14
State Agency Action Reports (SAARs) Issued	2/20/15
Deadline to File Petition for Formal Administrative Hearing to Challenge a SAAR	21 Days After Publication of the SAAR Results in the Florida Administrative Register

Based on the schedule for the next batching cycle, any party wishing to submit a CON Application should immediately begin the process of putting together a “CON Application Team” consisting of at least the following members:

- Key management for owner/operators;
- Experienced CON counsel;
- Experienced health planner;
- Experienced financial planner; and
- A health care architect.



Conclusion

Those interested in expanding their scope of services to include SNF beds should pay careful attention to the CON process that will begin in the next several weeks. Letters of Intent must be filed by October 20th for an applicant to be considered in the upcoming batching cycle.

Geoffrey D. Smith is a shareholder in the law firm of Smith & Associates, and has practiced in the area of health care law and CON regulation for over 20 years.