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CHAPTER 135 – DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER VI

HEALTH FACILITIES COUNCIL

Referred to in §249K.2

135.61 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Affected persons"* means, with respect to an application for a certificate of need:

a. The person submitting the application.

b. Consumers who would be served by the new institutional health service proposed in the application.

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

d. Each institutional health facility or health maintenance organization which, prior to receipt of the application by the department, has formally indicated to the department pursuant to this subchapter an intent to furnish in the future institutional health services similar to the new institutional health service proposed in the application.

e. Any other person designated as an affected person by rules of the department.

f. Any payer or third-party payer for health services.

2. *"Birth center"* means a facility or institution, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur following a normal, uncomplicated, low-risk pregnancy.

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

4. *"Council"* means the state health facilities council established by this subchapter.

5. *"Department"* means the Iowa department of public health.

6. *"Develop"*, when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

7. *"Director"* means the director of public health, or the director's designee.

8. *"Financial reporting"* means reporting by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of services.

9. *"Health care facility"* means health care facility as defined in section 135C.1.

10. *"Health care provider"* means a person licensed or certified under chapter 147, 148, 148A, 148C, 149, 151, 152, 153, 154, 154B, 154F, or 155A to provide in this state professional health

care service to an individual during that individual's medical care, treatment, or confinement.

11. *"Health maintenance organization"* means health maintenance organization as defined in section 514B.1, subsection 6.

12. *"Health services"* means clinically related diagnostic, curative, or rehabilitative services, and includes alcoholism, drug abuse, and mental health services.

13. *"Hospital"* means hospital as defined in section 135B.1, subsection 3.

14. *"Institutional health facility"* means any of the following, without regard to whether the facilities referred to are publicly or privately owned or are organized for profit or not or whether the facilities are part of or sponsored by a health maintenance organization:

a. A hospital.

b. A health care facility.

c. An organized outpatient health facility.

d. An outpatient surgical facility.

e. A community mental health facility.

f. A birth center.

15. *"Institutional health service"* means any health service furnished in or through institutional health facilities or health maintenance organizations, including mobile health services.

16. *"Mobile health service"* means equipment used to provide a health service that can be transported from one delivery site to another.

17. *"Modernization"* means the alteration, repair, remodeling, replacement or renovation of existing buildings or of the equipment previously installed therein, or both.

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

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

b. Relocation of an institutional health facility.

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

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

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

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

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

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

providers.

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

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

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

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

m. Any of the following:

(1) Cardiac catheterization service.

(2) Open heart surgical service.

(3) Organ transplantation service.

(4) Radiation therapy service applying ionizing radiation for the treatment of malignant disease using megavoltage external beam equipment.

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

20. *"Organized outpatient health facility"* means a facility, not part of a hospital, organized and operated to provide health care to noninstitutionalized and nonhomebound persons on an outpatient basis; it does not include private offices or clinics of individual physicians, dentists or other practitioners, or groups of practitioners, who are health care providers.

21. *"Outpatient surgical facility"* means a facility which as its primary function provides, through an organized medical staff and on an outpatient basis to patients who are generally ambulatory, surgical procedures not ordinarily performed in a private physician's office, but not requiring twenty-four hour hospitalization, and which is neither a part of a hospital nor the private office of a health care provider who there engages in the lawful practice of surgery. *"Outpatient surgical facility"* includes a facility certified or seeking certification as an ambulatory surgical center, under the federal Medicare program or under the medical assistance program established pursuant to chapter 249A.

22. *"Technologically innovative equipment"* means equipment potentially useful for diagnostic or therapeutic purposes which introduces new technology in the diagnosis or treatment of disease, the usefulness of which is not well enough established to permit a specific plan of need to be developed for the state.

[C79, 81, §135.61; 82 Acts, ch 1194, §1, 2]

87 Acts, ch 215, §39; 91 Acts, ch 225, §1; 97 Acts, ch 93, §1, 2; 2002 Acts, ch 1162, §77; 2008 Acts, ch 1088, §86; 2019 Acts, ch 24, §104

Referred to in §135.63, 135.131, 135P.1, 505.27, 708.3A

Code editor directive applied

135.62 Department to administer subchapter — health facilities council established — appointments — powers and duties.

1. This subchapter shall be administered by the department. The director shall employ or cause to be employed the necessary persons to discharge the duties imposed on the department by this subchapter.

2. There is established a state health facilities council consisting of five persons appointed by the governor. The council shall be within the department for administrative and budgetary purposes.

a. Qualifications. The members of the council shall be chosen so that the council as a whole is broadly representative of various geographical areas of the state and no more than three of its members are affiliated with the same political party. Each council member shall be a person who has demonstrated by prior activities an informed concern for the planning and delivery of health services. A member of the council and any spouse of a member shall not, during the time that member is serving on the council, do either of the following:

(1) Be a health care provider nor be otherwise directly or indirectly engaged in the delivery of health care services nor have a material financial interest in the providing or delivery of health services.

(2) Serve as a member of any board or other policymaking or advisory body of an institutional health facility, a health maintenance organization, or any health or hospital insurer.

b. Appointments. Terms of council members shall be six years, beginning and ending as provided in section 69.19. A member shall be appointed in each odd-numbered year to succeed each member whose term expires in that year. Vacancies shall be filled by the governor for the balance of the unexpired term. Each appointment to the council is subject to confirmation by the senate. A council member is ineligible for appointment to a second consecutive term, unless first appointed to an unexpired term of three years or less.

c. Chairperson. The governor shall designate one of the council members as chairperson. That designation may be changed not later than July 1 of any odd-numbered year, effective on the date of the organizational meeting held in that year under paragraph *"d"*.

d. Meetings. The council shall hold an organizational meeting in July of each odd-numbered year, or as soon thereafter as the new appointee or appointees are confirmed and have qualified. Other meetings shall be held as necessary to enable the council to expeditiously discharge its duties. Meeting dates shall be set upon adjournment or by call of the chairperson upon five days' notice to the other members.

e. Duties. The council shall do all of the following:

(1) Make the final decision, as required by section 135.69, with respect to each application for a certificate of need accepted by the department.

(2) Determine and adopt such policies as are authorized by law and are deemed necessary to the efficient discharge of its duties under this subchapter.

(3) Have authority to direct staff personnel of the department assigned to conduct formal or summary reviews of applications for certificates of need.

(4) Advise and counsel with the director concerning the provisions of this subchapter and the policies and procedures adopted by the department pursuant to this subchapter.

(5) Review and approve, prior to promulgation, all rules adopted by the department under this subchapter.

[C79, 81, §135.62]

86 Acts, ch 1245, §1109; 88 Acts, ch 1277, §26; 90 Acts, ch 1256, §30; 91 Acts, ch 225, §2, 3;

97 Acts, ch 93, §3; 2009 Acts, ch 41, §40; 2019 Acts, ch 24, §104; 2019 Acts, ch 85, §83
Confirmation, see §2.32
Code editor directive applied
Subsection 2, paragraph e stricken and former paragraph f redesignated as e

135.63 Certificate of need required — exclusions.

1. A new institutional health service or changed institutional health service shall not be offered or developed in this state without prior application to the department for and receipt of a certificate of need, pursuant to this subchapter. The application shall be made upon forms furnished or prescribed by the department and shall contain such information as the department may require under this subchapter. The application shall be accompanied by a fee equivalent to three-tenths of one percent of the anticipated cost of the project with a minimum fee of six hundred dollars and a maximum fee of twenty-one thousand dollars. The fee shall be remitted by the department to the treasurer of state, who shall place it in the general fund of the state. If an application is voluntarily withdrawn within thirty calendar days after submission, seventy-five percent of the application fee shall be refunded; if the application is voluntarily withdrawn more than thirty but within sixty days after submission, fifty percent of the application fee shall be refunded; if the application is withdrawn voluntarily more than sixty days after submission, twenty-five percent of the application fee shall be refunded. Notwithstanding the required payment of an application fee under this subsection, an applicant for a new institutional health service or a changed institutional health service offered or developed by an intermediate care facility for persons with an intellectual disability or an intermediate care facility for persons with mental illness as defined pursuant to section 135C.1 is exempt from payment of the application fee.

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

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

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

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

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

e. A health maintenance organization or combination of health maintenance organizations or an institutional health facility controlled directly or indirectly by a health maintenance organization or combination of health maintenance organizations, except when the health maintenance organization or combination of health maintenance organizations does any of the following:

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

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

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

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

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

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

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

h. (1) The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization, notwithstanding any provision of this subchapter to the contrary, if all of the following conditions exist:

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

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

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

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

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

j. The construction, modification, or replacement of nonpatient care services, including parking facilities, heating, ventilation and air conditioning systems, computers, telephone systems, medical office buildings, and other projects of a similar nature, notwithstanding any provision in this subchapter to the contrary.

k. (1) The redistribution of beds by a hospital within the acute care category of bed usage, notwithstanding any provision in this subchapter to the contrary, if all of the following conditions exist:

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

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

(2) If these conditions are not met, the redistribution of beds by the hospital is subject to review

as a new institutional health service or changed institutional health service pursuant to section 135.61, subsection 18, paragraph *"d"*, and is subject to sanctions under section 135.73.

l. The replacement or modernization of any institutional health facility if the replacement or modernization does not add new health services or additional bed capacity for existing health services, notwithstanding any provision in this subchapter to the contrary. With respect to a nursing facility, *"replacement"* means establishing a new facility within the same county as the prior facility to be closed. With reference to a hospital, *"replacement"* means establishing a new hospital that demonstrates compliance with all of the following criteria through evidence submitted to the department:

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

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

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

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

m. Hemodialysis services provided by a hospital or freestanding facility, notwithstanding any provision in this subchapter to the contrary.

n. Hospice services provided by a hospital, notwithstanding any provision in this subchapter to the contrary.

o. The change in ownership, licensure, organizational structure, or designation of the type of institutional health facility if the health services offered by the successor institutional health facility are unchanged. This exclusion is applicable only if the institutional health facility consents to the change in ownership, licensure, organizational structure, or designation of the type of institutional health facility and ceases offering the health services simultaneously with the initiation of the offering of health services by the successor institutional health facility.

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

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

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

3. This subchapter shall not be construed to be applicable to a health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, and which was in operation prior to July 1, 1986. However, this subchapter is applicable to such a facility if the facility is involved in the offering or developing of a new or changed institutional health service on or after July 1, 1986.

4. A copy of the application shall be sent to the department of human services at the time the application is submitted to the Iowa department of public health. The department shall not process applications for and the council shall not consider a new or changed institutional health service for an intermediate care facility for persons with an intellectual disability unless both of the following

conditions are met:

a. The new or changed beds shall not result in an increase in the total number of medical assistance certified intermediate care facility beds for persons with an intellectual disability in the state, exclusive of those beds at the state resource centers or other state institutions, beyond one thousand six hundred thirty-six beds.

b. A letter of support for the application is provided by the county board of supervisors, or the board's designee, in the county in which the beds would be located.

[C79, 81, §135.63; 82 Acts, ch 1194, §3]

86 Acts, ch 1150, §1; 86 Acts, ch 1245, §1110; 91 Acts, ch 225, §4; 92 Acts, ch 1043, §1; 92 Acts, ch 1206, §1; 95 Acts, ch 120, §1; 96 Acts, ch 1129, §113; 97 Acts, ch 93, §4 – 8; 2002 Acts, ch 1120, §10; 2006 Acts, ch 1184, §78; 2008 Acts, ch 1191, §47; 2009 Acts, ch 184, §38; 2012 Acts, ch 1019, §7 – 10; 2019 Acts, ch 24, §104

Referred to in §135.66, 135B.5A, 135C.2, 231C.3

Code editor directive applied

135.64 Criteria for evaluation of applications.

1. In determining whether a certificate of need shall be issued, the department and council shall consider the following:

a. The contribution of the proposed institutional health service in meeting the needs of the medically underserved, including persons in rural areas, low-income persons, racial and ethnic minorities, persons with disabilities, and the elderly, as well as the extent to which medically underserved residents in the applicant's service area are likely to have access to the proposed institutional health service.

b. The relationship of the proposed institutional health services to the long-range development plan, if any, of the person providing or proposing the services.

c. The need of the population served or to be served by the proposed institutional health services for those services.

d. The distance, convenience, cost of transportation, and accessibility to health services for persons who live outside metropolitan areas.

e. The availability of alternative, less costly, or more effective methods of providing the proposed institutional health services.

f. The immediate and long-term financial feasibility of the proposal presented in the application, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

g. The relationship of the proposed institutional health services to the existing health care system of the area in which those services are proposed to be provided.

h. The appropriate and efficient use or prospective use of the proposed institutional health service, and of any existing similar services, including but not limited to a consideration of the capacity of the sponsor's facility to provide the proposed service, and possible sharing or cooperative arrangements among existing facilities and providers.

i. The availability of resources, including, but not limited to, health care providers, management personnel, and funds for capital and operating needs, to provide the proposed institutional health services and the possible alternative uses of those resources to provide other health services.

j. The appropriate and nondiscriminatory utilization of existing and available health care providers. Where both allopathic and osteopathic institutional health services exist, each application shall be considered in light of the availability and utilization of both allopathic and

osteopathic facilities and services in order to protect the freedom of choice of consumers and health care providers.

k. The relationship, including the organizational relationship, of the proposed institutional health services to ancillary or support services.

l. Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the immediate geographic area in which the entities are located, which entities may include but are not limited to medical and other health professional schools, multidisciplinary clinics, and specialty centers.

m. The special needs and circumstances of health maintenance organizations.

n. The special needs and circumstances of biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages.

o. The impact of relocation of an institutional health facility or health maintenance organization on other institutional health facilities or health maintenance organizations and on the needs of the population to be served, or which was previously served, or both.

p. In the case of a construction project, the costs and methods of the proposed construction and the probable impact of the proposed construction project on total health care costs.

q. In the case of a proposal for the addition of beds to a health care facility, the consistency of the proposed addition with the plans of other agencies of this state responsible for provision and financing of long-term care services, including home health services.

r. The recommendations of staff personnel of the department assigned to the area of certificate of need, concerning the application, if requested by the council.

2. In addition to the findings required with respect to any of the criteria listed in subsection 1 of this section, the council shall grant a certificate of need for a new institutional health service or changed institutional health service only if it finds in writing, on the basis of data submitted to it by the department, that:

a. Less costly, more efficient, or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;

b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;

c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;

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

3. In the evaluation of applications for certificates of need submitted by the university of Iowa hospitals and clinics, the unique features of that institution relating to statewide tertiary health care, health science education, and clinical research shall be given due consideration. Further, in administering this subchapter, the unique capacity of university hospitals for the evaluation of technologically innovative equipment and other new health services shall be utilized.

[C79, 81, §135.64]

91 Acts, ch 225, §5; 92 Acts, ch 1043, §2; 96 Acts, ch 1129, §113; 2002 Acts, ch 1120, §11; 2014 Acts, ch 1026, §29; 2019 Acts, ch 24, §104

Referred to in §135.65, 135.66, 135.72

Code editor directive applied

135.65 Letter of intent to precede application — review and comment.

1. Before applying for a certificate of need, the sponsor of a proposed new institutional health service or changed institutional health service shall submit to the department a letter of intent to offer or develop a service requiring a certificate of need. The letter shall be submitted as soon as possible after initiation of the applicant's planning process, and in any case not less than thirty days before applying for a certificate of need and before substantial expenditures to offer or develop the service are made. The letter shall include a brief description of the proposed new or changed service, its location, and its estimated cost.

2. Upon request of the sponsor of the proposed new or changed service, the department shall make a preliminary review of the letter for the purpose of informing the sponsor of the project of any factors which may appear likely to result in denial of a certificate of need, based on the criteria for evaluation of applications in section 135.64. A comment by the department under this section shall not constitute a final decision.

[C79, 81, §135.65]

91 Acts, ch 225, §6; 97 Acts, ch 93, §9

Referred to in §135.67

135.66 Procedure upon receipt of application — public notification.

1. Within fifteen business days after receipt of an application for a certificate of need, the department shall examine the application for form and completeness and accept or reject it. An application shall be rejected only if it fails to provide all information required by the department pursuant to section 135.63, subsection 1. The department shall promptly return to the applicant any rejected application, with an explanation of the reasons for its rejection.

2. Upon acceptance of an application for a certificate of need, the department shall promptly undertake to notify all affected persons in writing that formal review of the application has been initiated. Notification to those affected persons who are consumers or third-party payers or other payers for health services may be provided by distribution of the pertinent information to the news media.

3. Each application accepted by the department shall be formally reviewed for the purpose of furnishing to the council the information necessary to enable it to determine whether or not to grant the certificate of need. A formal review shall consist at a minimum of the following steps:

a. Evaluation of the application against the criteria specified in section 135.64.

b. A public hearing on the application, to be held prior to completion of the evaluation required by paragraph *"a"*, shall be conducted by the council.

4. When a hearing is to be held pursuant to subsection 3, paragraph *"b"*, the department shall give at least ten days' notice of the time and place of the hearing. At the hearing, any affected person or that person's designated representative shall have the opportunity to present testimony.

[C79, 81, §135.66]

91 Acts, ch 225, §7

Referred to in §135.70

135.67 Summary review procedure.

1. The department may waive the letter of intent procedures prescribed by section 135.65 and substitute a summary review procedure, which shall be established by rules of the department,

when it accepts an application for a certificate of need for a project which meets any of the criteria in paragraphs *"a"* through *"e"*:

a. A project which is limited to repair or replacement of a facility or equipment damaged or destroyed by a disaster, and which will not expand the facility nor increase the services provided beyond the level existing prior to the disaster.

b. A project necessary to enable the facility or service to achieve or maintain compliance with federal, state, or other appropriate licensing, certification, or safety requirements.

c. A project which will not change the existing bed capacity of the applicant's facility or service, as determined by the department, by more than ten percent or ten beds, whichever is less, over a two-year period.

d. A project the total cost of which will not exceed one hundred fifty thousand dollars.

e. Any other project for which the applicant proposes and the department agrees to summary review.

2. The department's decision to disallow a summary review shall be binding upon the applicant.

[C79, 81, §135.67]

91 Acts, ch 225, §8 – 10; 2009 Acts, ch 41, §191

Referred to in §135.72

135.68 Status reports on review in progress.

While formal review of an application for a certificate of need is in progress, the department shall upon request inform any affected person of the status of the review, any findings which have been made in the course of the review, and any other appropriate information concerning the review.

[C79, 81, §135.68]

135.69 Council to make final decision.

1. The department shall complete its formal review of the application within ninety days after acceptance of the application, except as otherwise provided by section 135.72, subsection 4. Upon completion of the formal review, the council shall approve or deny the application. The council shall issue written findings stating the basis for its decision on the application, and the department shall send copies of the council's decision and the written findings supporting the decision to the applicant and to any other person who so requests.

2. Failure by the council to issue a written decision on an application for a certificate of need within the time required by this section shall constitute denial of and final administrative action on the application.

[C79, 81, §135.69]

91 Acts, ch 225, §11; 2018 Acts, ch 1041, §127

Referred to in §135.62, 135.70, 135.72

135.70 Appeal of certificate of need decisions.

The council's decision on an application for certificate of need, when announced pursuant to section 135.69, is a final decision. Any dissatisfied party who is an affected person with respect to the application, and who participated or sought unsuccessfully to participate in the formal review procedure prescribed by section 135.66, may request a rehearing in accordance with chapter 17A and rules of the department. If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken in the manner provided by chapter 17A.

Notwithstanding the Iowa administrative procedure Act, chapter 17A, a request for rehearing is not required, prior to appeal under section 17A.19.

[C79, 81, §135.70]

91 Acts, ch 225, §12

135.71 Period for which certificate is valid — extension or revocation.

1. A certificate of need shall be valid for a maximum of one year from the date of issuance. Upon the expiration of the certificate, or at any earlier time while the certificate is valid the holder thereof shall provide the department such information on the development of the project covered by the certificate as the department may request. The council shall determine at the end of the certification period whether sufficient progress is being made on the development of the project. The certificate of need may be extended by the council for additional periods of time as are reasonably necessary to expeditiously complete the project, but may be revoked by the council at the end of the first or any subsequent certification period for insufficient progress in developing the project.

2. Upon expiration of certificate of need, and prior to extension thereof, any affected person shall have the right to submit to the department information which may be relevant to the question of granting an extension. The department may call a public hearing for this purpose.

[C79, 81, §135.71]

97 Acts, ch 93, §10; 2018 Acts, ch 1041, §127

135.72 Authority to adopt rules.

The department shall adopt, with approval of the council, such administrative rules as are necessary to enable it to implement this subchapter. These rules shall include:

1. Additional procedures and criteria for review of applications for certificates of need.

2. Uniform procedures for variations in application of criteria specified by section 135.64 for use in formal review of applications for certificates of need, when such variations are appropriate to the purpose of a particular review or to the type of institutional health service proposed in the application being reviewed.

3. Uniform procedures for summary reviews conducted under section 135.67.

4. Criteria for determining when it is not feasible to complete formal review of an application for a certificate of need within the time limits specified in section 135.69. The rules adopted under this subsection shall include criteria for determining whether an application proposes introduction of technologically innovative equipment, and if so, procedures to be followed in reviewing the application. However, a rule adopted under this subsection shall not permit a deferral of more than sixty days beyond the time when a decision is required under section 135.69, unless both the applicant and the department agree to a longer deferment.

[C79, 81, §135.72]

91 Acts, ch 225, §13; 2019 Acts, ch 24, §104

Referred to in §135.69

Code editor directive applied

135.73 Sanctions.

1. Any party constructing a new institutional health facility or an addition to or renovation of an existing institutional health facility without first obtaining a certificate of need or, in the case of a mobile health service, ascertaining that the mobile health service has received certificate of need approval, as required by this subchapter, shall be denied licensure or change of licensure by the

appropriate responsible licensing agency of this state.

2. A party violating this subchapter shall be subject to penalties in accordance with this section. The department shall adopt rules setting forth the violations by classification, the criteria for the classification of any violation not listed, and procedures for implementing this subsection.

a. A class I violation is one in which a party offers a new institutional health service or changed institutional health service modernization or acquisition without review and approval by the council. A party in violation is subject to a penalty of three hundred dollars for each day of a class I violation. The department may seek injunctive relief which shall include restraining the commission or continuance of an act which would violate the provisions of this paragraph. Notice and opportunity to be heard shall be provided to a party pursuant to

rule of civil procedure 1.1507

and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section.

b. A class II violation is one in which a party violates the terms or provisions of an approved application. The department may seek injunctive relief which shall include restraining the commission or continuance of or abating or eliminating an act which would violate the provisions of this subsection. Notice and opportunity to be heard shall be provided to a party pursuant to

rule of civil procedure 1.1507

and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section. A class II violation shall be abated or eliminated within a stated period of time determined by the department and specified by the department in writing. The period of time may be modified by the department for good cause shown. A party in violation may be subject to a penalty of five hundred dollars for each day of a class II violation.

3. Notwithstanding any other sanction imposed pursuant to this section, a party offering or developing any new institutional health service or changed institutional health service without first obtaining a certificate of need as required by this subchapter may be temporarily or permanently restrained from doing so by any court of competent jurisdiction in any action brought by the state, any of its political subdivisions, or any other interested person.

4. The sanctions provided by this section are in addition to, and not in lieu of, any penalty prescribed by law for the acts against which these sanctions are invoked.

[C79, 81, §135.73]

91 Acts, ch 225, §14; 2019 Acts, ch 24, §104

Referred to in §135.63

Code editor directive applied

135.74 Uniform financial reporting.

1. The department, after study and in consultation with any advisory committees which may be established pursuant to law, shall promulgate by rule pursuant to chapter 17A uniform methods of financial reporting, including such allocation methods as may be prescribed, by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of service, according to functional activity center. These uniform methods of financial reporting shall not preclude a hospital or health care facility from using any accounting methods for its own purposes provided these accounting methods can be

reconciled to the uniform methods of financial reporting prescribed by the department and can be audited for validity and completeness. Each hospital and each health care facility shall adopt the appropriate system for its fiscal year, effective upon such date as the department shall direct. In determining the effective date for reporting requirements, the department shall consider both the immediate need for uniform reporting of information to effectuate the purposes of this subchapter and the administrative and economic difficulties which hospitals and health care facilities may encounter in complying with the uniform financial reporting requirement, but the effective date shall not be later than January 1, 1980.

2. In establishing uniform methods of financial reporting, the department shall consider all of the following:

a. The existing systems of accounting and reporting currently utilized by hospitals and health care facilities.

b. Differences among hospitals and health care facilities, respectively, according to size, financial structure, methods of payment for services, and scope, type and method of providing services.

c. Other pertinent distinguishing factors.

3. The department shall, where appropriate, provide for modification, consistent with the purposes of this subchapter, of reporting requirements to correctly reflect the differences among hospitals and among health care facilities referred to in subsection 2, and to avoid otherwise unduly burdensome costs in meeting the requirements of uniform methods of financial reporting.

4. The uniform financial reporting methods, where appropriate, shall be structured so as to establish and differentiate costs incurred for patient-related services rendered by hospitals and health care facilities, as distinguished from those incurred in the course of educational, research and other nonpatient-related activities including but not limited to charitable activities of these hospitals and health care facilities.

[C79, 81, §135.74]

2013 Acts, ch 30, §27; 2019 Acts, ch 24, §104

Referred to in §135.78, 135.79

Code editor directive applied

135.75 Annual reports by hospitals, health care facilities.

1. Each hospital and each health care facility shall annually, after the close of its fiscal year, file all of the following with the department:

a. A balance sheet detailing the assets, liabilities and net worth of the hospital or health care facility.

b. A statement of its income and expenses.

c. Such other reports of the costs incurred in rendering services as the department may prescribe.

2. Where more than one licensed hospital or health care facility is operated by the reporting organization, the information required by this section shall be reported separately for each licensed hospital or health care facility. The department shall require preparation of specified financial reports by a certified public accountant, and may require attestation of responsible officials of the reporting hospital or health care facility that the reports submitted are to the best of their knowledge and belief prepared in accordance with the prescribed methods of reporting. The department shall have the right to inspect the books, audits and records of any hospital or health care facility as reasonably necessary to verify reports submitted pursuant to this subchapter.

3. In obtaining the reports required by this section, the department and other state agencies shall

coordinate their reporting requirements.

4. All reports filed under this section, except privileged medical information, shall be open to public inspection.

[C79, 81, §135.75]

2013 Acts, ch 30, §28; 2019 Acts, ch 24, §104

Referred to in §135.78, 135.79

Code editor directive applied

135.76 Analyses and studies by department.

1. The department shall from time to time undertake analyses and studies relating to hospital and health care facility costs and to the financial status of hospitals or health care facilities, or both, which are subject to the provisions of this subchapter. It shall further require the filing of information concerning the total financial needs of each individual hospital or health care facility and the resources currently or prospectively available to meet these needs, including the effect of proposals made by health systems agencies. The department shall also prepare and file such summaries and compilations or other supplementary reports based on the information filed with it as will, in its judgment, advance the purposes of this subchapter.

2. The analyses and studies required by this section shall be conducted with the objective of providing a basis for determining whether or not regulation of hospital and health care facility rates and charges by the state of Iowa is necessary to protect the health or welfare of the people of the state.

3. In conducting its analyses and studies, the department should determine whether:

a. The rates charged and costs incurred by hospitals and health care facilities are reasonably related to the services offered by those respective groups of institutions.

b. Aggregate rates of hospitals and of health care facilities are reasonably related to the aggregate costs incurred by those respective groups of institutions.

c. Rates are set equitably among all purchasers or classes of purchasers of hospital and of health care facility services.

d. The rates for particular services, supplies or materials established by hospitals and by health care facilities are reasonable. Determination of reasonableness of rates shall include consideration of a fair rate of return to proprietary hospitals and health care facilities.

4. All data gathered and compiled and all reports prepared under this section, except privileged medical information, shall be open to public inspection.

[C79, 81, §135.76]

2019 Acts, ch 24, §104

Referred to in §135.78, 135.79, 135.83

Code editor directive applied

135.77 Report to governor and legislature. Repealed by 97 Acts, ch 203, §18.

135.78 Data to be compiled.

The department shall compile all relevant financial and utilization data in order to have available the statistical information necessary to properly monitor hospital and health care facility charges and costs. Such data shall include necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment

involved. The department shall also obtain from each hospital and health care facility a current rate schedule as well as any subsequent amendments or modifications of that schedule as it may require. In collection of the data required by this section and sections 135.74 through 135.76, the department and other state agencies shall coordinate their reporting requirements.

[C79, 81, §135.78]

2002 Acts, ch 1119, §14; 2003 Acts, ch 108, §34

Referred to in §135.79, 135.83

135.79 Civil penalty.

Any hospital or health care facility which fails to file with the department the financial reports required by sections 135.74 to 135.78 is subject to a civil penalty of not to exceed five hundred dollars for each offense.

[C79, 81, §135.79]

135.80 and 135.81 Reserved.

135.82 Review forms. Repealed by 91 Acts, ch 225, §15.

135.83 Contracts for assistance with analyses, studies, and data.

In furtherance of the department's responsibilities under sections 135.76 and 135.78, the director may contract with the Iowa hospital association and third-party payers, the Iowa health care facilities association and third-party payers, or leading age Iowa and third-party payers for the establishment of pilot programs dealing with prospective rate review in hospitals or health care facilities, or both. Such contract shall be subject to the approval of the executive council and shall provide for an equitable representation of health care providers, third-party payers, and health care consumers in the determination of criteria for rate review. No third-party payer shall be excluded from positive financial incentives based upon volume of gross patient revenues. No state or federal funds appropriated or available to the department shall be used for any such pilot program.

[C79, 81, §135.83]

98 Acts, ch 1100, §13; 2001 Acts, ch 74, §2; 2002 Acts, ch 1050, §16; 2013 Acts, ch 30, §29

135.84 through 135.89 Reserved.