

Summary

On Oct. 28, 2016, the Health Facilities and Services Review Board (HFSRB) posted final rules in the Illinois Register ([pages 14647-14750](#)) making several changes, including the implementation of [Public Act 99-154](#), the permitting process for changes of ownership among related persons and applications to close healthcare facilities or discontinue a category of service.

These rules also identify facilities under the ID/DD (Intellectual Disability/Developmental Disability) Community Care Act or the MC/DD (Medically Complex/Developmental Disability) Act now subject to the Certificate of Need process:

- Specialized mental health rehabilitation facilities; and
- Skilled and intermediate-care facilities licensed.

The rules make various changes and clarifications related to written notifications, extension of the financial commitment period and capital expenditure minimum.

HFSRB adopted several positive changes that IHA had recommended in our [comment letter](#), including:

- Preventing the doubling of fees in the exemption process; and
- Ensuring that Certificates of Exemption remain in place for the expansion of a Neonatal Intensive Care Unit.

Change of Ownership Streamlined

Public Act 99-154 made application for a change of ownership easier by removing the requirement that final signed transaction documents be included in the application, as long as the new key terms of transaction are submitted. Those key terms were added in the legislative changes and can be found on pages 14694-14695. However, HFSRB notes that “if the transaction is not completed according to the key terms submitted in the exemption application, a new application is required.”

Requirements for Exemptions Involving the Discontinuation of a Healthcare Facility or Category of Service

As required under PA 99-154, HFSRB has added section 1130.525, which sets forth rules on how a facility may apply for exemption involving the discontinuation of a healthcare facility or category of service. The requirements under this section include the following:

- An application for exemption and application-processing fee must be submitted to HFSRB and that application must receive approval from HFSRB;
- The application is subject to approval and must include a written response addressing the review criteria contained in 77 Ill. Adm. Code 1110.130. That application must be available for review on the premises of the healthcare facility.
- Opportunity for public hearing must be made available once the application is complete, which includes publishing a legal notice in general circulation newspapers and notice to the State Senator and State Representative of the district where the healthcare facility is located.

Application for Exemption Among Related Persons

PA 99-154 reduced the burden in cases of change of ownership of a healthcare facility among related persons when no other changes are proposed. In these cases, the applicant shall only submit an application consisting of a standard notice in a form set forth by the Board briefly explaining the reasons for the proposed change.

Authority of HFSRB Chairman

The law also included steps to further expedite the approval processes in certain areas by requiring the board chair to act on an exemption application for a change of ownership among related persons within 45 days after HFSRB staff deems the application complete. Additionally, the chair is to act upon an exemption application for the discontinuation of a healthcare facility or category of service, or a change of ownership that is not among related persons, after board staff finds that the application is complete.

In both cases the chair may request the board consider the application if there is a conflict of interest.

Definition of Discontinuation

For purposes of this rule as it applies to discontinuation of a healthcare facility or category of service, discontinuation is defined as “the date the entire healthcare facility or category of service ceases operation, such as when the facility stops providing services to patients or surrenders its license to the Department.”

Requirements for Exemption Holders

Rules were clarified for the types of documentation that exemption holders must submit to HFSRB. That documentation includes:

- For discontinuations, notice of project completion no later than 90 days following the project completion date;
- For changes of ownership in which the applicant submitted key terms of the transaction, certification that the transaction was either completed or not completed according to the key terms in the application. The exemption holder must submit the certification within 90 days after the closing date of the transaction; and
- For changes of ownership in which the applicant submitted the final transaction documents, notice of project completion, no later than 90 days after the change of ownership.
 - Note: IHA’s comments on the proposed rules recommended clarity in the exemption and reporting requirements. The clarification says an applicant for a change of ownership only needs to submit the key terms of the agreement or the final transaction documents, not both.

In cases of an applicant submitting key terms of the transaction rather than final transaction documents, “an exemption for a change of ownership of a healthcare facility shall be invalid if the exemption holder fails to submit a statement to the board within 90 days after the closing date of the transaction, or such longer period as provided by the board, certifying that the change of ownership has been completed in accordance with the key terms contained in the applications. If such key terms of the transaction change, a new application is required.”

Deletion of the Permit Acceptance Agreement

These rules remove the permit acceptance agreement in the Approval of Application portion. In its place, HFSRB states that a permit holder’s failure to comply with any conditions within the prescribed time frames, without a previously authorized extension, creates a basis for HFSRB to invalidate the permit, or issue conditions, fines or other penalties or sanctions mandated in the statute or the rules.

Penalties, Fines and Sanctions

Rules were also updated pertaining to fines for permit holders who fail to comply with the post-permit and reporting requirements. In these cases, HFSRB can levy fines—not to exceed \$10,000, plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues. These fines will accrue until the board receives all reports. The board is required to notify the permit holder no later than 30 days before the due date of these reports. These fines were added as a result of passage of [PA 99-0527](#).

Updated Capital Expenditure Minimums/Review Thresholds

HFSRB updated the various capital expenditure thresholds in compliance with PA 96-0031 as follows:

Hospitals: \$12,797,313	(Previously \$12,182,576)
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Long-Term Care: \$7,233,262	(Previously \$6,885,803)
All Other Applicants: \$3,338,430	(Previously \$3,178,064)

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