

2020 Regular Session

SENATE BILL NO. 169

BY SENATOR FRED MILLS

HEALTH SERVICES. Provides relative to facility need review. (8/1/20)

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AN ACT

To enact R.S. 40:2116.1, relative to facility need review; to provide for legislative authority for facility need review; to provide for healthcare provider types subject to facility need review; to provide for the facility need review council; to provide for compliance with the Open Meetings Law; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:2116.1 is hereby enacted to read as follows:

§2116.1. Facility need review; applicability; committee

A. The Louisiana Department of Health shall implement a facility need review process in accordance with the provisions of this Section. No healthcare provider shall be subject to facility need review unless authorized by the legislature and identified in R.S. 40:2116(B)(1) or (2), or Subsection B of this Section.

B. The following healthcare providers shall be subject to facility need review to determine the need for a new or additional facility, provider, program, service, or bed:

(1) Home- and community-based service providers. However, certain

1 services or modules of a home- and community-based service provider may be
2 excluded from the facility need review process at the discretion of the secretary
3 of the Louisiana Department of Health.

4 (2) Adult day healthcare providers.

5 (3) Hospice providers or inpatient hospice facilities.

6 (4) Pediatric day healthcare facilities.

7 (5) Behavioral health services providers that provide psychosocial
8 rehabilitation or community psychiatric support and treatment services.

9 (6) Opioid treatment programs licensed under a behavioral health
10 services provider license.

11 C. (1) The Louisiana Department of Health shall appoint a facility need
12 review committee, "FNR committee", that shall consist of the following
13 members:

14 (a) The secretary of the Louisiana Department of Health or his designee.

15 (b) The assistant secretary of the office of behavioral health of the
16 Louisiana Department of Health or his designee.

17 (c) The assistant secretary of the office for citizens with developmental
18 disabilities of the Louisiana Department of Health or his designee.

19 (d) The assistant secretary of the office of aging and adult services of the
20 Louisiana Department of Health or his designee.

21 (e) The assistant secretary of the office of public health of the Louisiana
22 Department of Health or his designee.

23 (f) The Medicaid director of the Louisiana Department of Health or his
24 designee.

25 (g) The Medicaid medical director of the Louisiana Department of
26 Health or his designee.

27 (2) In addition the members set forth in Paragraph (1) of this Subsection,
28 the secretary of the Louisiana Department of Health may appoint additional
29 members to the FNR committee when necessary in reviewing applications of

1 opioid treatment programs. When such additional members are appointed, all
2 additional members shall be listed in any request for proposal or request for
3 applications issued by the Louisiana Department of Health or shall be posted
4 on the website of the Louisiana Department of Health.

5 (3) No FNR committee member shall have a proprietary or financial
6 interest in any facility subject to facility need review.

7 (4) The FNR committee shall issue a decision on a facility need review
8 application within ninety days from receipt of application or within the
9 deadlines established in a request for proposal or request for application.

10 (5) An applicant for facility need review shall provide all written
11 application materials and documentation as may be required by rule. The
12 applicant may include any written documentation or written evidence that
13 supports the application for facility need review.

14 (a) Unless otherwise stated in a specific request for proposal or request
15 for applications, the initial review and decision by the FNR committee shall
16 consider all written materials and documentation submitted by the applicant
17 and shall be conducted as a paper review.

18 (b) Unless otherwise stated in a specific request for proposal or request
19 for applications, if the initial decision is to reject or deny the facility need review
20 application, then the applicant may request to supplement his application and
21 may request an in-person presentation before the FNR committee as part of its
22 supplemental application review.

23 (c) If the facility need review application is rejected or denied after the
24 supplemental application review, the applicant may request an administrative
25 appeal of the FNR committee's decision with the Division of Administrative Law
26 in accordance with the Administrative Procedure Act. The applicant is not
27 required to request a supplemental review and can elect to proceed directly to
28 the administrative appeal.

29 (6) If the FNR committee approves the facility need review application,

1 then the applicant may proceed with seeking licensure.

2 D. The Louisiana Department of Health shall promulgate rules and
3 regulations in accordance with the Administrative Procedure Act to implement
4 the provisions of this Section. The rules and regulations shall include but not be
5 limited to the following:

6 (1) Criteria for review of healthcare provider applications for facility
7 need review, including provisions for review pursuant to requests for proposals
8 or requests for applications.

9 (2) Criteria for review to determine if there is a need for a new or
10 additional facility, provider, program, service, or bed.

11 (3) Procedures for review of applications by the FNR committee,
12 including specific duties of the department and the FNR committee relative to
13 review of applications.

14 (4) Appropriate methodology for the collection of data necessary for the
15 administration of the program.

16 (5) Procedures for the FNR committee to approve, reject, or deny
17 applications.

18 (6) In accordance with the authority granted in R.S. 40:2116 (B)(6),
19 establish an application fee.

20 (7) Procedures to request a supplemental review and procedures to
21 request an administrative appeal.

22 (8) Provisions for judicial review from the decision rendered after an
23 administrative appeal.

24 (9) Establishment of services and modules of a home- and
25 community-based service provider that will be subject to the facility need
26 review process.

27 E. No healthcare provider identified in Subsection B of this Section shall
28 be licensed or be certified to participate in the Title XIX Program without first
29 obtaining the facility need review approval required by this Section, the rules

1 **promulgated pursuant to this Section, and complying with any and all licensing**
 2 **regulations promulgated by the department. Any person establishing,**
 3 **managing, or operating a new facility, provider, program, service, or bed**
 4 **without the approval required by this Section and the rules promulgated**
 5 **pursuant to this Section shall be prohibited from being licensed by the**
 6 **department and shall be prohibited from participating in the Title XIX**
 7 **program.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Christine Arbo Peck.

DIGEST

SB 169 Original

2020 Regular Session

Fred Mills

Proposed law provides that LDH shall implement a facility need review process for home- and community-based service providers, adult day healthcare providers, hospice providers or inpatient hospice facilities, pediatric day healthcare facilities, behavioral health services providers that provide psychosocial rehabilitation or community psychiatric support and treatment services, and opioid treatment programs licensed under a behavioral health services provider license.

Proposed law establishes an FNR committee comprised of the secretary of LDH, the assistant secretary of the office of behavioral health of LDH, the assistant secretary of the office for citizens with developmental disabilities of LDH, the assistant secretary of the office of aging and adult services of LDH, the assistant secretary of the office of public health of LDH, the Medicaid director of LDH, the Medicaid medical director of LDH. Proposed law allows committee members to appoint a designee.

Proposed law provides for the facility need review application process and FNR committee procedure, including the right to request an in-person presentation if an applicant is initially rejected or denied or the opportunity to appeal to the division of administrative law.

Proposed law provides that if the FNR committee approves the facility need review application, then the applicant may proceed with seeking licensure.

Proposed law provides for rulemaking by LDH to include requirements and criteria for both the applicant to follow in seeking facility need review and the FNR committee in determining whether to approve, reject, or deny the application.

Proposed law provides that no healthcare provider subject to facility need review shall be licensed or be certified to participate in the Medicaid program without first obtaining facility need review approval. Proposed law provides that any person establishing, managing, or operating a new facility, provider, program, service, or bed without facility need review approval shall be prohibited from being licensed by the department and shall be prohibited from participating in the Medicaid program.

Effective August 1, 2020.

(Adds R.S. 40:2116.1)