

Certificate of Need Bulletin 003

Temporary Waiver of the Requirement for a Certificate of Need for Certain COVID-19 Pandemic-Related Projects

Background

On Friday, March 13, 2020, Governor Scott declared a state of emergency for Vermont in response to the COVID-19 pandemic. Executive Order 01-02, <https://governor.vermont.gov/content/declaration-state-emergency-response-covid-19-and-national-guard-call-out-eo-01-20>. On March 25, 2019, the Green Mountain Care Board (GMCB) approved Certificate of Need Bulletin 002 to establish procedures that will apply to applications for an emergency certificate of need for new health care projects that will support or enhance the State's ability to manage this declared public health emergency. Effective March 30, 2020, H.742 (An act relating to Vermont's response to COVID-19) was enacted to allow the State to respond to the pandemic as efficiently as possible. Pursuant to the GMCB's authority granted in Sec. 5 of H.742, this Bulletin temporarily waives the requirement for health care facilities to obtain a certificate of need from the GMCB for certain types of new health care projects related to COVID-19.

Temporary Waiver of CON Requirements for Certain COVID-19-Related Projects

Notwithstanding the requirements of Title 18, Chapter 221, Subchapter 5, GMCB Rule 4.000, and GMCB Certificate of Need Bulletin 002, and pursuant to its authority under H.742 (2020), the GMCB hereby temporarily waives the requirement that a health care facility obtain a certificate of need (CON) for the following:

Any new health care project which enhances or supports the State's ability to respond to the COVID-19 public health emergency, and where:

- a. The health care facility has sought and obtained an 1135 Waiver from the Centers for Medicare and Medicaid Services (CMS) to implement the project; or
- b. The project is to (a) use non-hospital buildings/space for patient care and quarantine sites or (b) increase a health care facility's bed capacity for patient care or quarantine sites, to the extent such a project is permitted under CMS' COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (see <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>) (which also requires that the project is "not inconsistent with a state's emergency preparedness or pandemic plan"); or
- c. The project is part of the State's coordinated response to the COVID-19 pandemic and is directed by the Vermont Department of Public Safety or the Vermont Agency of Human Services; or



- d. The project is for the development of a hospital constructed or operated by the U.S. government or a duly authorized agent thereof in response to the COVID-19 pandemic.

Duration of Temporary Waiver

Temporary waivers under this Bulletin shall be in effect for the duration of the declared state of emergency under Executive Order 01-02 and a period of six (6) months thereafter. Prior to the conclusion of the temporary waiver period, a health care facility wishing to continue the new health care project must submit a CON application to the GMCB as required under Title 18, Chapter 221, Subchapter 5 and GMCB Rule 4.000. Unless specified otherwise by the GMCB, the health care facility may continue to operate the project while the CON application is pending.

Notification and Documentation Requirements during Temporary Waiver Period

Notice of Waiver

Except for new health care projects described in paragraphs (c) and (d) above, prior to implementing the project, a health care facility must submit a Notice of Waiver to the GMCB that contains the following information:

1. The name of the health care facility and the name, mailing address, email address, and telephone number(s) of the individual that will serve as the applicant's point of contact.
2. A brief description of the project, including the type of new or expanded services to be provided, the number of new beds (if applicable) and the location of services/beds.
3. The anticipated start date and expected end date of the project.
4. Confirmation whether the waiver is based on: (a) 1135 waiver or (b) blanket CMS waiver.
5. The estimated cost of the project, if known, and the funding source(s), if known.

Documentation in lieu of Notice of Waiver

1. Health care facilities that have obtained an 1135 waiver for the project from CMS may provide a copy of their waiver application and CMS approval to the GMCB in lieu of providing the above Notice of Waiver.
2. Health care facilities that have obtained approval by the State Survey Agency (Vermont Division of Licensing and Protection) may provide a copy of their application for state approval in lieu of providing the above Notice of Waiver.

Project Updates

Health care facilities must provide updates on the above information if requested by GMCB staff during the temporary waiver period.



Notice of Intent to Apply for a CON

A health care facility must notify the GMCB as soon as practicable of its intent to apply for a CON to operate a new health care project covered by the temporary waiver after the declared state of emergency under Executive Order 01-02 is terminated.

Questions

For any questions please contact Donna Jerry, Senior Health Policy Analyst, at 802-828-2918 or donna.jerry@vermont.gov. You may also contact Michael Barber, General Counsel, at 802-585-4829 or michael.barber@vermont.gov.

Dated: April 9, 2020 at Montpelier, Vermont.

s/ Kevin Mullin, Chair)
) GREEN MOUNTAIN
s/ Jessica Holmes) CARE BOARD
) OF VERMONT
s/ Robin Lunge)
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s/ Maureen Usifer)
)
s/ Tom Pelham)

