



Department
of Health

NURSING HOME CERTIFICATE OF NEED FINANCIAL REVIEW

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CERTIFICATE OF NEED FINANCIAL REVIEW

- The Certificate of Need (CON) financial review is required in accordance with **Public Health Law 2801-a (3)(c) (establishment)** and **Public Health Law 2802(3)(d) (construction)**.
- In addition to the statute, some regulations further define the financial review for Certificate of Need applications:
 - 10 NYCRR § 710.2; 10 NYCRR § 600.2
- The financial review includes assessing both financial capability and financial feasibility.

CERTIFICATE OF NEED FINANCIAL REVIEW

The statute and regulations focus the Department's financial review on capability and feasibility.

Financial capability focuses on the applicant's ability to obtain initial funding.

Financial feasibility is a long-term assessment of the project's economic sustainability.

PUBLIC HEALTH LAW 2801-a(3)

Public Health Law 2801-a Establishment or Incorporation of Hospitals

“(3) The Public Health and Health Planning Council shall not approve a certificate of incorporation, articles of organization, or application for establishment unless it is satisfied, insofar as applicable, as to . . .

(c) the financial resources of the proposed institution and its sources of future revenues; . . .”

This has historically been interpreted to mean the financial resources needed to acquire, build or lease and operate the proposed facility and the financial feasibility of future operations.

PUBLIC HEALTH LAW 2802(3)

Public Health Law 2802(3) states: “[T]he commissioner, in approving the construction of a hospital, shall take into consideration and be empowered to request information and advice as to . . .

- (d) the adequacy of financial resources and sources of future revenue;. . .”

This has historically been interpreted the same as establishment applications.

NEW YORK CODES, RULES, AND REGULATIONS (NYCRR)

NYCRR Title 10 Section 600.2 (b)(3) Requirement for approval (establishment)

"The applicant must satisfactorily demonstrate to the [Public Health and Health Planning Council] . . . that there are adequate finances to properly establish and conduct the proposed facility."

NEW YORK CODES, RULES, AND REGULATIONS (NYCRR)

NYCRR Title 10 Section 710.2(b)(4) and (6) Application; project scope and concept (construction)

The application setting forth the scope and concept of the project shall include the following, if applicable:

- An estimate of the total project costs of construction predicated upon a construction schedule,
- An outline of the proposed financing of the of the total project costs, including the source of any Federal or State financial support.

FINANCIAL REVIEW

The review includes a three-year analysis of projected costs and revenues. Factors considered include:

- **Resources:** Operators must certify that they have or will have sufficient resources to meet facility expenses and resident needs.
- **Direct care spending:** 70% of revenue on direct resident care, with at least 40% on resident-facing staff.
- **Operating history:** Applicants must show a track record of financial viability, with positive working capital and net assets.

FINANCIAL CAPABILITY

To prove **financial capability**, applicants must provide documentation that covers all aspects of the project's financing. The financial review entails evaluating the applicant's ability to fund the project and manage the resulting operations. The review examines several key areas:

- Financing structure,
- Capital contribution,
- Source of funds, and
- The business plan.

FINANCIAL FEASIBILITY

Financial feasibility evaluates:

- Reasonableness of projected revenues and expenses,
- Ability to sustain operations, and
- Capacity to retire debt.

Key requirements include detailed revenue and expense projections and proof of working capital to demonstrate that the project is financially feasible and can be sustained into the future.

FINANCIAL REVIEW PROCESS

The Applicant:

- Provides the current year's revenues and expenses and a projection for the first and the third year of operation after the proposed change(s) (establishment, construction, or both),
- Provides the certified financial statements that correspond with the current year,
- Provides the proposed method of financing for any purchase price or construction cost, and
- Provides the proposed method of funding for any working capital needs.

FINANCIAL REVIEW PROCESS

The Department evaluates the budget for financial feasibility by:

- Reconciling the current year revenue and expenses to the audited financial statements.
- Reviewing the budget for years one and three by:
 - Analyzing the change in reimbursement rates over the current year and assessing for reasonableness,
 - Analyzing growth in the revenues and expenses from the current year and assessing for reasonableness,

FINANCIAL REVIEW PROCESS

Reviewing the budget for years one and three by (cont.):

- Analyzing changes in utilization from the current year and assessing for reasonableness,
- Engaging the applicant regarding the assumptions they used in preparing the budget and on any observations the Department has made during our review of the budget, and
- Ensuring that all the above align with the proposed application and that everything makes sense with the proposed project.

FINANCIAL REVIEW PROCESS

The Department evaluates the proposed financing plan by:

- Determining how the project is going to be financed (cash, bonds, grants, fundraising, commercial borrowing, or any combination of these).
- Once financing has been determined, the Department will verify that the applicant has access to that capital via proof of equity, an executed grant contract, documentation of a bond issuance, fundraising, or an executed loan commitment.

FINANCIAL REVIEW PROCESS

In the event of a lease, the Department will:

- Evaluate the relationship between the landlord and tenant,
- Ensure that the landlord is financially capable of acquiring the property if they don't already own it,
- Obtain two letters from licensed real estate agents attesting to the fair market value of the rent, and
- Ensure that the cost associated with the lease is included in the budget and that the applicant remains operationally feasible.



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