**Section 1125.140 Definitions**

"Act" means the Illinois Health Facilities Planning Act [20 ILCS 3960].

"Adverse Action" means a disciplinary action taken by Department of Public Health, Centers for Medicare and Medicaid Services (CMMS), or any other State or federal agency against a person or entity that owns and/or operates a licensed or Medicare or Medicaid certified LTC facility in the State of Illinois. These actions include, but are not limited to, all Type A and Type AA violations. As defined in Section 1-129 of the Nursing Home Care Act [210 ILCS 45]*, a "Type A violation" means a violation of* the *Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that the risk of death or serious mental or physical harm to a resident will result therefrom or has resulted in actual physical or mental harm to a resident.* As defined in Section 1-128.5 of the Nursing Home Care Act, *a "Type AA violation" means a violation of* the *Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death.*

"Agency" or "IDPH" means the Illinois Department of Public Health.

"Applicant" means one or more persons, as defined in the Act, who apply for a permit or exemption. See 77 Ill. Adm. Code 1130.220 to determine what parties are necessary for an application.

"Authorized Representative" means a person who has authority to act on behalf of the legal entity or person that is the applicant or permit holder. Authorized representatives are: in the case of a corporation, any of its officers or members of its board of directors; in the case of a limited liability company, any of its managers or members (or the sole manager or member when two or more managers or members do not exist); in the case of a partnership, any of its general partners (or the sole general partner when two or more general partners do not exist); in the case of estates and trusts, any of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and in the case of a sole proprietor, the individual who is the proprietor.

"Capital Expenditure" *means an expenditure made by or on behalf of* an LTC *facility (as such a facility is defined in* the *Act), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, or is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part and which exceeds the capital expenditure minimum. For purposes of this* definition*, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if such expenditure exceeds the capital expenditure minimum. Donations of equipment or facilities to* an LTC *facility which if acquired directly by such facility would be subject to review under* the *Act shall be considered capital expenditures, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review.* [20 ILCS 3960/3]

"Capital Expenditure Minimum" means the dollar amount or value that would require a permit for capital projects and major medical equipment. Capital expenditure minimums are annually adjusted to reflect the increase in construction costs due to inflation under 77 Ill. Adm. Code 1130.310.

"Category of Service" means a grouping by generic class of various types or levels of support functions, equipment, care or treatment provided to patients/residents. A category of service may include subcategories or levels of care that identify a particular degree or type of care within the category of service.

"CMMS" means the federal Centers for Medicare and Medicaid Services.

"Chairman" means the presiding officer of HFSRB.

"Change of Ownership" means a change in the person who has operational control of an existing LTC facility or *a change in the person who has ownership or control of* an LTC *facility's physical plant and capital assets. A change of ownership is indicated by, but not limited to, the following transactions: sale, transfer, acquisition, leases, change of sponsorship or other means of transferring control.* [20 ILCS 3960/3] Examples of change of ownership include:

a transfer of stock or assets resulting in a person obtaining majority interest (i.e., over 50%) in the person who is licensed or certified (if the facility is not subject to licensure), or in the person who owns or controls the LTC facility's physical plant and capital assets; or

the issuance of a license by IDPH to a person different from the current licensee; or

a change in the membership or sponsorship of a not-for-profit corporation; or

a change of 50% or more of the voting members of a not-for-profit corporation's board of directors, during any consecutive 12 month period, that controls an LTC facility's operations, license, certification (when the facility is not subject to licensing) or physical plant and capital assets; or

a change in the sponsorship or control of the person who is licensed or certified (when the facility is not subject to licensing) to operate, or who

owns the physical plant and capital assets of a governmental LTC facility; or

any other transaction that results in a person obtaining control of an LTC facility's operations or physical plant and capital assets, including leases.

"Change in the Bed Count of a Long-Term Care Facility" means a change in an LTC facility's authorized bed capacity, including reductions, increases with permit or allowable increases without permit. *A permit or exemption shall be obtained prior to the construction or modification of* an LTC *facility which: changes the bed capacity of* an LTC *facility by increasing the total number of beds or by distributing beds among various categories of service or by relocating beds from one physical facility to another by more than 20 beds or 10% of total bed capacity as defined by the State Board, whichever is less, over a 2-year period.* [20 ILCS 3960/5]

"Charity Care" *means care provided by* an LTC *facility for which the provider does not expect to receive payment from the patient*/resident *or a third party payer*. [20 ILCS 3960/3]

"Clinical Service Area" means a department and/or service that is directly *related to the diagnosis, treatment, or rehabilitation of persons receiving services from the* LTC *facility* [20 ILCS 3960/3]. A clinical service area's physical space shall include those components required under the facility's licensure or Medicare and/or Medicaid certification, and/or as outlined by documentation from the facility as to the physical space required for appropriate clinical practice.

"Combined Service Area Project" means a project that consists of both clinical service areas and non-clinical service areas.

"Completion" or "Project Completion" means that the project has been brought to a conclusion as evidenced by one or more of the following events:

For projects with no cost that are limited to a substantial change in beds in licensed LTC facilities, the date IDPH issues a revised license; or

For projects with no cost that are limited to a substantial change in beds in LTC facilities or in State-operated facilities, the date the first patient is treated; or

For projects limited to the establishment of a category of service, the date the first patient is treated; or

For projects limited to the establishment of an LTC facility, the date the LTC facility is licensed or, if licensure is not required, the date the facility receives Medicare/Medicaid certification; or

For all other projects including modernization of existing facilities, project completion occurs when all components of the project are fulfilled as stated in the application for permit or exemption; or

For projects with permits issued with conditions, the date HFSRB deems the conditions have been met.

"Completion Date" or "Project Completion Date" means the date established by the applicant for the completion of the project in the approval of the permit or subsequent renewal, as evidenced by one or more of the events cited in the definition of "Completion".

"Construction" or "Modification" *means the establishment, erection, building, alteration, reconstruction, modernization, improvement, extension, discontinuation, change of ownership of or by* an LTC *facility, or the purchase or acquisition by or through* an LTC *facility of equipment or service for diagnostic or therapeutic purposes or for facility administration or operation or any capital expenditure made by or on behalf of* an LTC *facility which exceeds the capital expenditure minimum; however, any capital expenditure made by or on behalf of an LTC facility for the construction or modification of a facility licensed under the Assisted Living and Shared Housing Act* [210 ILCS 9] *or a conversion project undertaken in accordance with Section 30 of the Older Adult Services Act* [320 ILCS 42] *shall be excluded from any obligations under the Act.* [20 ILCS 3960/3]

"Contested Case" is defined in Section 1-30 of the Illinois Administrative Procedure Act. [5 ILCS 100/1-30].

"Control" means a person possesses any of the following discretionary and non-ministerial rights or powers:

In the case of an entity, the ability to direct the management and policies of the entity, whether through the voting of securities, corporate membership, contract or otherwise. Examples of control include, without limitation:

holding 50% or more of the outstanding voting securities of an issue;

in the case of an entity that has no outstanding voting securities, having the right to 50% or more of the profits or, in the event of dissolution, the right to 50% or more of the assets of the entity;

having the power to appoint or remove 50% or more of the governing board members of an entity;

having the power to require or approve the use of funds or assets of the entity; or

having the power to approve, amend or modify the entity's bylaws or other governance documents.

In the case of capital assets or real property, the power to direct or cause the direction of the personal property, real property or capital assets that are components of the project (i.e., fixed equipment, mobile equipment, buildings and portions of buildings). Examples of control include, without limitation:

ownership of 50% or more in the property or asset;

serving as lessee or sub-lessee.

"Conversion" means a change in the control of an existing LTC facility's physical plant, assets, or operations by such methods as, but not limited to, a change in ownership, acquisition, merger, consolidation, lease, stock transfer, or change in sponsorship. Types of conversion include:

consolidation by combining two or more existing LTC facilities into a new LTC facility, terminating the existence of the existing or original facilities (A + B = C). Consolidation results in the establishment of an LTC facility within the meaning of the Act and in the discontinuation of the existing facilities, resulting in termination of license for facilities subject to licensing or the loss of certification for facilities not subject to licensing;

merger by the absorption of one or more existing LTC facilities into another existing LTC facility. The result of the absorption is that only one facility survives (A + B = B). Merger results in the modification (e.g., expansion of beds or services) of the survivor facility and the discontinuation of the facility being absorbed.

"Director" means the Director of the Department of Public Health.

"Due Diligence" means to take such actions toward the completion of a project for which a permit has been issued with that diligence and foresight that persons of ordinary prudence and care commonly exercise under like circumstances. An accidental or unavoidable cause that cannot be avoided by the exercise of due diligence is a cause that reasonably prudent and careful persons, under like circumstances, do not and would not ordinarily anticipate, and whose effects under similar circumstances they do not and would not ordinarily avoid.

"Entity" means any corporation, company, partnership, joint venture, association, trust, foundation, fund or other legally recognized organization, public body or municipality.

"Establish" or "Establishment" *means the construction of a* newLTC *facility,* the licensing of unlicensed buildings or structures as an LTC facility, the *replacement of an existing* LTC *facility on another site, or* *the initiation of a category of service defined by the Board.* [20 ILCS 3960/3]

"Estimated Project Cost" or "Project Cost" means the sum of all costs, including the fair market value of any equipment or other real property (whether acquired by lease, donation, or gift) necessary to complete a project, including:

preplanning costs;

site survey and soil investigation fees;

site preparation costs;

off-site work;

construction contracts and contingencies (including demolition);

capital equipment included in construction contracts;

architectural and engineering fees;

consultants and other professional fees that are related to the project;

capital equipment not in construction contracts;

bond issuance expenses;

net interest expense during construction; and

all other costs that are to be capitalized.

"Exemption" means the classification of projects that are exempt from the Certificate of Need permit review process, but are reviewed under *the procedures and requirements* of HFSRB *regarding issuance of exemptions. An exemption shall be approved when information required by the Board by rule is submitted.* [20 ILCS 3960/6(b)]

"Existing Long-Term Care Facility" means any LTC facility subject to the Act that:

has a license issued by IDPH and has provided services within the past 12 months, unless the failure to provide that service is the result of pending license revocation procedures, and has not surrendered or abandoned its license or had its license revoked or voided or otherwise deemed invalid by IDPH; or

is certified under Title XVIII or XIX of the Social Security Act (42 USC 1395); or

is a facility operated by the State of Illinois.

HFSRB NOTE: Projects approved by HFSRB for establishment of an LTC facility that have not been deemed complete in accordance with this Part shall not be considered existing facilities, but the approved number of beds or services shall be recorded in the HFSRB Inventory of Health Care Facilities and Services and Need Determinations, located at the HFSRB website (www.hfsrb.illinois.gov), and shall be counted against any applicable need estimate.

"Ex parte Communication" *means a communication between a person who is not a State Board member or employee that reflects on the substance of a* formally filed *State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of a pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. Technical assistance with respect to an application, not intended to influence any decision on the application, may be provided by employees to the applicant. Once an application is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed, standardized format, and shall be included in the application file.* [20 ILCS 3960/4.2]

"Fair Market Value" means the dollar value of a project or any component of a project that is accomplished by lease, donation, gifts or any other means that would have been required for purchase, construction or acquisition. Fair market value is documented as follows:

for equipment that is to be leased, statements from the manufacturers as to the purchase price of the equipment;

for equipment or other real property that will be a gift or donated, a statement from the donor attesting to the dollar value reported to the Internal Revenue Service pursuant to IRS Document 170;

for existing property (other than equipment) that is to be leased or otherwise acquired, copies of an appraisal performed by a certified appraiser or copies of financial statements detailing actual construction costs if the property is less than three years old; or

for property (other than equipment) that is being or will be constructed and then leased, a statement from the lessor as to the anticipated costs of construction.

"Final Decision" or "Final Administrative Decision" or "Final Determination" means:

the decision by HFSRB to approve or deny an application for permit. Action taken by HFSRB to deny an application for permit is subsequent to an administrative hearing or to the waiver of an administrative hearing; or

the decision by HFSRB on all matters other than the issuance of a permit.

HFSRB NOTE: The decision is final at the close of business of the HFSRB meeting at which the action is taken.

"Final Realized Costs" means all costs that are normally capitalized under generally accepted accounting principles that have been incurred to complete a project for which a permit or exemption was issued. These costs include all expenditures and the dollar or fair market value of any component of the project, whether acquired through lease, donation or gift.

"Hearing Officer" means the person with authority to conduct public hearings and to take all necessary steps to assure the proper completion of public hearings and to assure compliance with requirements of the Act. Responsibilities include: determining the order and time allotment for public testimony; maintaining order; setting and announcing new hearing dates, times and places, as necessary; determining the conclusion of the hearing and assuring that all documents, exhibits and other written materials presented or requested at the hearing are in the hearing officer's custody; and preparing a report for submittal to HFSRB.

"HFSRB " or "State Board" means the Illinois Health Facilities and Services Review Board.

"HFSRB Inventory" or "Inventory" means the HFSRB Inventory of Health Care Facilities and Services and Need Determinations, located at HFSRB's website (www.hfsrb.illinois.gov).

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Intent to Deny" means the negative decision of HFSRB, following its initial

consideration of an application for permit that failed to receive the number of

affirmative votes required by the Act.

"Long-Term Care" or "LTC" means care for patients/residents in a general long-term care or specialized long-term care facility under the jurisdiction of the Board.

General LTC includes the nursing category of service, which provides inpatient treatment for convalescent or chronic disease patients/residents and includes the skilled nursing level of care and/or the intermediate nursing level of care, defined in 77 Ill. Adm. Code 300.

Specialized LTC means a classification of categories of service that provide inpatient care primarily for children (ages 0 through 21) or inpatient care for adults who require specialized treatment and care because of mental or developmental disabilities. Specialized LTC includes the following categories of services:

Chronic Mental Illness (MI) Category of Service.  The Chronic MI category of service includes levels of care provided to severely mentally ill clients in a structured setting in a psychiatric unit of a general hospital, in a private psychiatric hospital, or in a State-operated facility primarily in order to facilitate the improvement of their functioning level, to prevent further deterioration of their functioning level, or, in some instances, to maintain their current level of functioning.

Long-Term Care for the Developmentally Disabled-Adult (DD-Adult) category of service. This category of service includes levels of care for DD-Adults as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5] (including those facilities licensed as ICF/DD) that provide an integrated, individually-tailored program of services for developmentally disabled adults and provide an active, aggressive and organized program of services directed toward achieving measurable behavioral and learning objectives.

Long-Term Care for the Developmentally Disabled-Children category of service. This category of service includes levels of care for DD-Children (those residents age 0 through 21 years) as defined in the Illinois Mental Health and Developmental Disabilities Code).

Long-Term Medical Care for Children Category of Service. This category of service includes long-term medical services that are provided to those patients/residents age 0-18 years and that provides for residents suffering from chronic medical disabilities.

"Major Construction Project" means:

*Projects for the construction of new buildings;*

*Additions to existing facilities;*

*Modernization projects whose cost is in excess of $1,000,000 or 10% of the facility's operating revenue, whichever is less; and*

*such projects as the State Board shall define and prescribe pursuant to* the *Act.* [20 ILCS 3960/5]

"Major Medical Equipment" *means medical equipment* that *is used for the provision of medical and other health services and* that *costs in excess of the capital expenditure minimum, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act* (42 USC 1395x) *to meet the requirements of section 1861(S)(10) and (11) of* that *Act. In determining whether medical equipment has a value in excess of the capital expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included*. [20 ILCS 3906/3]

"Medicaid Certified" or "Medicare Certified" or "Medicaid Certification" or "Medicare Certification" means approval for a facility to receive reimbursement under Title XVIII (Medicare) and/or XIX (Medicaid) of the Social Security Act (42 USC 1395).

"Modification of an Application" or "Modification" means any change to an application during the review period (i.e., prior to a final HFSRB action). These changes include, but are not limited to: changing the proposed project's physical size or gross square feet, the site within a planning area, the operating entity when the operating entity is not the applicant, the number of proposed beds, the categories of service to be provided, the cost, the method of financing, the proposed project completion date, the configuration of space within the building, or any change in the person who is the applicant, including the addition or deletion of one or more persons as co-applicants.

HFSRB NOTE: A change of site to a site outside the planning area originally identified in the application is not considered a modification and invalidates the application.

"Newspaper of General Circulation" means newspapers other than those intended to serve a particular, defined population, such as the publications of professional and trade associations.

"Newspaper of Limited Circulation" means a newspaper intended to serve a particular or defined population of a specific geographic area within a Metropolitan Statistical Area such as a municipality, town, village, township or community area, but does not include publications of professional and trade associations. [20 ILCS 3960/8.5(a)]

"Non-clinical Service Area" *means an area for the benefit of the patients*/residents*, visitors, staff or employees of an LTC facility and not directly related to the diagnosis, treatment, or rehabilitation of persons receiving services from the* LTC *facility. "Non-clinical service areas" include, but are not limited to, chapels; gift shops; news stands; computer systems; tunnels, walkways, and elevators; telephone systems; projects to comply with life safety codes; educational facilities; student housing; patient*/resident*, employee, staff, and visitor dining areas; administration and volunteer offices; modernization of structural components (such as roof replacement and masonry work); boiler repair or replacement; vehicle maintenance and storage facilities; parking facilities; mechanical systems for heating, ventilation, and air conditioning; loading docks; and repair or replacement of carpeting, tile, wall coverings, window coverings or treatments, or furniture. Solely for the purpose of this definition, "non-clinical service area" does not include health and fitness centers.* [20 ILCS 3960/3]

"Non-Substantive Projects" means certain projects that have been defined in 77 Ill. Adm. Code 1110.40, with a review period of 60 days.

"Notification of HFSRB Action" means the transmittal of HFSRB decisions to the applicant or permit or exemption holder. Notification shall be given to the applicant's or permit holder's designated contact person, legal representative or chief executive officer.

"Obligation" means the commitment of at least 33% of total funds assigned to cover total project cost, which occurs by:

The actual expenditure of 33% or more of the total project cost; or

The commitment to expend 33% or more of the total project cost by signed contracts or other legal means.

"Operational" means that a permit holder is providing the services approved by HFSRB and, for a new LTC facility or a new category of service, licensure or Medicare and/or Medicaid certification has been obtained and residents/patients are utilizing the facility or equipment or are receiving service.

"Permit" means authorization to execute and complete a project related to an LTC facility, as reviewed and approved by HFSRB and as specified in the Act.

"Person" *means any one or more natural persons, legal entities, governmental bodies other than federal, or any combination thereof.* [20 ILCS 3960/3]

"Project Obligation Date" means the date on which the permit holder expended or committed to expend by contract or other legal means at least 33% of the total project cost.

"Proposal" or "Project" means any proposed construction or modification of an LTC facility or any proposed acquisition of equipment to be undertaken by an applicant.

"Related Person" means *any person that:*

*is at least 50% owned, directly or indirectly, by either the* LTC *facility or a person owning, directly or indirectly, at least 50% of the*

LTC *facility;* or

*owns, directly or indirectly, at least 50% of the* LTC *facility*; [20 ILCS 3960/3] or

is otherwise controlled or managed by one or more LTC facilities; or

controls or manages the LTC facility; or

otherwise controls or manages the LTC facility; or

is otherwise, directly or indirectly, under common management or control with one or more LTC facilities.

"Review Period" means the time from the date an application for permit or exemption is deemed complete until HFSRB renders its final decision.

"Site" means the physical location of a proposed project and is identified by address or legal property description.

"Square Feet" or "SF" or "Square Footage" means a unit of measure of physical service areas or buildings considered by HFSRB. Departmental Gross Square Feet (DGSF) means the designation of physical areas for departments and services. It consists of the entirety of space dedicated to the use of that department or service, including walls, shafts and circulation. Building Gross Square Feet (BGSF) means the designation of physical area of an entire building. It includes all exterior walls and space within those walls.

"Subcommittee" means the HFSRB Long-Term Care Facility Advisory Subcommittee.

"Subcommittee Chairperson" means the chairperson of the Subcommittee.

"Substantially Changes the Scope or Changes the Functional Operation of the

Facility" means:

the addition of a category of service;

a change of a material representation made by the applicant in an application for permit or exemption subsequent to receipt of a permit that is relied upon by HFSRB in making its decision. Material representations are those that provide a factual basis for issuance of a permit or exemption and include:

withdrawal or non-participation in the Medicare and/or Medicaid programs;

charge information;

requirements of variances pursuant to Section 1125.560;

other representations made to HFSRB as stipulated or agreed upon in the public record and specified in the application or the permit or exemption approval letter.

"Substantive Projects" means types of projects that are defined in the Act and classified as substantive. *Substantive projects shall include no more than the following:*

*Projects to construct a new or replacement facility located on a new site or a replacement facility located on the same site as the original facility and the costs of the replacement facility exceed the capital expenditure minimum.*

*Projects proposing a new service or discontinuation of a service, which shall be reviewed by the Board within 60 days.*

*Projects proposing a change in the bed capacity of* an LTC *facility by an increase in the total number of beds or by a redistribution of beds among various categories of service or by a relocation of beds from one facility to another by more than 20 beds or more than 10% of total bed capacity, as defined by the State Board, whichever is less, over a 2 year period.* [20 ILCS 3960/12]

"Technical Assistance" means help provided by an employee of HFSRB to a person, LTC facility or HFSRB, and is not considered ex parte communication as defined in Section 4.2 of the Act. Technical assistance may be provided to any person regarding pre-application conferences, the filing of an application, or other request to HFSRB provided that the communication is *not intended to influence any decision on the application.*  Technical assistance may be provided for the benefit of HFSRB to clarify issues relevant to an application or other business of HFSRB. The assistance may be in the form of written correspondences, conversations, site visits, meetings, and/or consultations with independent experts. *Once an application or exemption is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed, standardized format, and shall be included in the application file*, within 10 business days after the assistance is provided*.* [20 ILCS 3960/4.2]

"Temporary Suspension of Facility or Category of Service" means a facility has ceased operation or has ceased to provide a category of service due to unanticipated or unforeseen circumstances (such as the loss of appropriate staff or a natural or unnatural disaster). A facility shall file notice to HFSRB of a temporary suspension of service. See 77 Ill. Adm. Code 1130.240(d).