

FLORIDA CERTIFICATE OF NEED APPLICATION BATCHING CYCLES

The Second Batching Cycle for Certificate of Need (“CON”) Applications for Nursing Homes and Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) is quickly approaching. Each Batching Cycle, two each for Hospices and two each for Nursing Homes and ICF/DD starts with publication of summary need projections in the Florida Administrative Register (“FAR”). The summary need projections are referred to as the Fixed Need Pool, which is the numerical need for new beds or services for the applicable planning horizon established by the Agency for Health Care Administration (“AHCA”) in accordance with need methodologies established by rule at the time of publication.

Once the Fixed Need Pool is published, existing providers or potential CON applicants have ten days from the date of publication to inform AHCA of any mathematical or input errors. Because the data submitted by providers is used to determine whether need exists for another facility or service, it is important to review the publication(s), which can be downloaded from the following webpage: https://ahca.myflorida.com/MCHQ/CON_FA/Publications/index.shtml

Keep in mind the term “error” does not include inaccuracies in reports which provide the underlying data required to calculate Fixed Need Pool numbers if such reports were not provided by AHCA.

In accordance with Rule 59C-1.008(2)(a), Florida Administrative Code, the Fixed Need Pool must be published at least fifteen days before the date a letter of intent is due, notwithstanding the schedule set forth in Rule 59C-1.008(1)(g), Florida Administrative Code. In case of a conflict between these two rule sections, 59C-1.008(2)(a) prevails. Letters of Intent for the Second Batching Cycle for Nursing Homes and ICF/DD are due on October 17, 2022, which is the third Monday in October 2022. Other than the due date for publication of the Fixed Need Pool, the due dates set forth 59C-1.008(1)(g) should prevail.

AHCA is required to publish due dates applicable to the CON applications for comparative review on its website by January 1 of each calendar year. These dates may be accessed at the following webpage: https://ahca.myflorida.com/MCHQ/CON_FA/Batching/index.shtml

Certificates of Need applications subject to comparative review (sometimes referred to as “competitive review”) must be submitted to AHCA in one of the batching cycles for hospice programs, freestanding inpatient hospice facilities, nursing homes and ICF/DD. A letter of intent will need to state with specificity the type of project proposed to allow for public notification of the intention to file a Certificate of Need. If an application is not filed on or before the earliest subsequent due date for filing applications of the same type as that specified in the letter of intent, the letter of intent will be considered invalid and a new letter of intent must be timely filed in a subsequent batching cycle before an application may be filed.

If a potential applicant misses the Letter of Intent Deadline but other applicants have timely filed letters of intent for the same facility or service type, the potential applicant may avail itself of the Letter of Intent Deadline Extension or grace period as explained below:

1. If a letter of intent for a specific type of project has been received by the Agency 30 calendar days or more prior to the appropriate application filing due date, and been initially accepted by the Agency, a grace period will be established.
2. The grace period provides an opportunity for applicants applying for beds, programs or facilities having the same Certificate of Need methodology or health care facility licensing category proposed in the initially accepted letter of intent in the same applicable subdistrict or district to file a proposed competing letter of intent. Under this grace period, a competing letter of intent must be filed not later than 16 days after the letter of intent deadline.

Letters of intent and applications will be received by the Agency no later than dates prescribed in the following schedule, unless the date is a designated state holiday then it will be received by the Agency the next business day:

Hospice - 1st Batching Cycle	
Summary Need Projections Published in the F.A.R.	First Friday in February
Letter of Intent Deadline	Fourth Monday in February
Application Deadline	Last Wednesday in March
Completeness Review Deadline	First Wednesday in April
Application Omissions Deadline	Fourth Wednesday in April
Agency Initial Decision Deadline	Third Friday in June

Hospice - 2nd Batching Cycle	
Summary Need Projections Published in the F.A.R.	First Friday in August
Letter of Intent Deadline	Fourth Monday in August
Application Deadline	Last Wednesday in September
Completeness Review Deadline	First Wednesday in October
Application Omissions Deadline	Fourth Wednesday in October
Agency Initial Decision Deadline	Third Friday in December

Nursing Homes and ICF/DDs - 1st Batching Cycle	
Summary Need Projections Published in the F.A.R.	First Friday in April
Letter of Intent Deadline	Third Monday in April
Application Deadline	Third Wednesday in May
Completeness Review Deadline	Fourth Wednesday in May
Application Omissions Deadline	Third Wednesday in June
Agency Initial Decision Deadline	Second Friday in August

Nursing Homes and ICF/DDs - 2nd Batching Cycle	
Summary Need Projections Published in the F.A.R.	First Friday in October
Letter of Intent Deadline	Third Monday in October
Application Deadline	Third Wednesday in November
Completeness Review Deadline	Fourth Wednesday in November
Application Omissions Deadline	Third Wednesday in December
Agency Initial Decision Deadline	Second Friday in February

In months when the application deadline is less than thirty days from the letter of intent deadline, the application, completeness review, and application omissions deadlines will be extended by one week. AHCA’s initial decision deadline will remain the same.

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Should you have any questions regarding the above or would like assistance in preparing or filing Certificate of Need applications, please contact Susan St. John at 754-228-3853 or stjohn@garfunkelwild.com, or your primary [Garfunkel Wild attorney](#).

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