

**PROPOSED RULES  
OF  
DEPARTMENT OF COMMUNITY HEALTH**

**SYNOPSIS**

**Rule 111-2-2-.34**

**STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE**

The purpose of this proposed amendment is to modify an existing regulation in light of changes in the nature and delivery of traumatic brain injury services. The rule modifies the standards that would be applicable to the review of applications for certificate of need for the establishment of new traumatic brain injury facilities or the expansion of existing facilities. The proposed rule defines a need methodology to determine when such facilities are needed and expounds upon the general statutory review considerations relating to relationship to the existing healthcare delivery system, existing alternatives, financial accessibility, costs to payors, financial feasibility, and consistency with the State Health Plan and modifies the existing service-specific review considerations relating to traumatic brain injury facilities.

**DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES**

The existing regulation, 111-2-2-.34 is modified as described in the following table:

<b>Traumatic Brain Injury Facilities</b>			
<b>Proposed</b>		<b>Current</b>	
<b>Rule 111-2-2-34(1) Applicability</b>			
	<p>Applicability considerations for obtaining a Certificate of Need; Traumatic Brain Injury Facilities (TBIF) defined as providing transitional living and/or life long living programs, and following rules apply to these programs; all reviewed under the General Review Considerations of Rule 111-2-2-.09 and the service-specific considerations of this Rule</p>		<p>Traumatic Brain Injury Facilities defined as providing transitional living and/or life long living programs, and following rules apply to these programs; any facilities providing these programs prior to adoption of Rules shall not be considered a TBIF until CON received; deleted requirement that CON shall indicate which type of program TBIF is approved for, and to add new program not previously approved requires CON</p>
(a)	New or expanded Transitional Living Programs require a CON		
(b)	New or expanded Life Long Living Programs require a CON		
<b>Rule 111-2-2-.34(2) Definitions</b>			
(a) 'Expansion' or 'Expanded Service'	New definition; increase of the number of beds, make expenditures which exceed capital expenditure threshold, or add a new program not currently offered in an existing TBIF or program		No Definition of "Expansion"
(b) "Life Long Living Program"	Same definition as (a) in existing rule	(a) "Life Long Living Program"	Same definition as (b) in proposed rule
(c) 'New'	New definition; facility that has not operated as a TBIF in previous 12 months; an existing TBIF or program that proposes to relocate more than 3 miles from its present location		No Definition of "New"

**CERTIFICATE OF NEED**

**111-2-2**

(d) "Official State Health Component Plan"	Same definition as (b) in existing rule	(b) "Official State Health Component Plan"	Same definition as (d) in proposed rule
(e) 'Planning Region'	Defines the planning regions as the twelve state service delivery regions established by O.C.G.A. § 50-4-7	(c) "Service Areas"	Deleted; instead of the 11 sub-state regions for TBIF as defined in most recent Official State Health Component Plan for Traumatic Brain Injury Facilities, new rule uses "Planning Region"
(f) 'Transitional Living Program'	Same definition as (d) in existing rule	(d) 'Transitional Living Program'	Same definition as (f) in proposed rule
(g) "Traumatic Brain Injury"	Same definition as (e) in existing rule	(e) "Traumatic Brain Injury"	Same definition as (g) in proposed rule
(h) "Traumatic Brain Injury Facility"	Same definition as (f) in existing rule	(f) "Traumatic Brain Injury Facility"	Same definition as (f) in proposed rule

**Rule 111-2-2-.34(3) Standards**

<p>(a)</p>	<p>Establishes the need for a new or expanded Transitional Living Program based on a demand-based need methodology (based on calculation of projected number of transitional living program clients, days of care, and projected number of beds).</p> <p>The projected number of transitional living program clients in the horizon year is determined by multiplying the number of projected TBI discharges by 2% utilization factor (projected discharges X .02). Determine the number of projected days of care for transitional living programs by multiplying the projected clients by the expected average length of stay for transitional living. Expected ALOS is 300 days under the current rules, but the TAC agreed that the ALOS should be updated to 50, which represents the average of the two existing providers of transitional living in the most recent year. Determine the projected number of beds needed for transitional living programs by dividing the projected client days by 365 and then divide by .85 to reflect an 85% occupancy standard.</p>		<p>(b)</p> <p>Deleted; Instead of referring to the need method described in most recent Official State Health Component Plan for Traumatic Brain Injury Facilities, the new proposed rule actually delineates the need methodology (however, the need methodology is the same as was used before, except the planning regions have changed slightly). The need methodology as described in the Component Plan: Need for TBI services is determined using specific demand-based formulas for Transitional Living Programs and Life Long Living Programs. The specific methodologies used for each type of TBI service differ, but each begins by identifying the number of potential cases which may benefit from a TBI bed in the horizon year. The current TBI utilization rate is determined by capturing the number of discharges with a TBI diagnosis and dividing by the Resident population divided by 1,000. The current rate is then multiplied by the horizon year's projected Resident population to determine the projected number of TBI discharges. Note: TBI diagnosis codes were detailed in the CIPR Component Plan (ICD-9 Codes 800.1 to 800.4, 800.6 to 800.9, 801, 803.1 to 803.4, 803.6 to 803.9, 804.1 to 804.41, 804.6 to 804.9, 850.1 to 850.9, 851, 852, 853, 854, 907.0 to 907.11, 907.3 to 907.9).</p>
<p>(b)</p>	<p>Establishes the need for a new or expanded Life Long Living Program by a demand-based need methodology (based on estimation of current life long living program client candidates, projection of new clients for life long living programs, adjustment of annual attrition, and estimation of life long living clients for following years).</p> <p><u>Potential Life Long Living Clients Currently</u> Determine the TBI prevalence rate per 1,000 by multiplying the TBI discharge rate for the most recent year available by 4, because prevalence rate is assumed to be 4 times the incidence rate. To determine the number of potential life long living program clients the prevalence rate is adjusted by a demand factor of .5% (TBI prevalence rate X .005).</p> <p><u>Potential Clients in Year One, Two, and Three</u> Determine the Life Long Living clients expected in the 1st, 2nd, and 3rd years of horizon period by multiplying the projected Resident population by the TBI incidence rate (actual discharge rate per 1,000) and then adjusting for the .5% Life Long</p>		

	<p>Living demand factor. Finally, apply a 10% adjustment for losses due to attrition.  <math>((\text{Year 1 Pop} \times \text{TBI Incidence Rate}) \times .005) \times .10</math></p> <p><u>Sum of Clients in Each Year</u>                  Add the number of clients currently to the number of clients in Year 1, Year 2, and Year 3 to determine the projected number of clients in the horizon year.</p>		
(c)	<p>Added specifications of how an applicant for a new/expanded TBIF will not adversely impact existing and approved facilities or programs; a decreased annual utilization of an existing and approved facility that was at or above 85% to less than 75%, and a decreased annual utilization by 10% to existing facilities/programs whose current utilization is below 85%, is considered an adverse impact; sufficient evidence includes existing planning region market shares and current population</p>	(c)	<p>The current standard requires that an applicant shall document existing and approved TBIFs will not be adversely impacted as a result of new or expanded facility; the proposed rule adds more specificity</p>
(d)	<p>Added allowance of exceptions to need methodologies of (a) and (b) , to remedy an atypical barrier to TBIF services based on cost, quality, financial access or geographic accessibility; this is standard language in all DCH CON rules</p>		<p>No explicit exceptions</p>
(e)	<p>Sets minimum bed size for TBIF or program to be 6 beds; specifies that just Life Long Living Programs may not exceed 30 beds, except if applicant provides satisfactory documentation that program designs, including staffing patterns and physical plant, promotes high quality services that are cost-effective and consistent with client needs</p>	(d)  (e)	<p>Minimum bed size for TBIF is 6 beds, maximum size is 30 beds</p> <p>Allowed exception to maximum bed size to TBIF in general</p>
(f)	<p>Added specifications of how an applicant shall demonstrate intent to meet CARF standards which apply to post acute brain injury programs and residential services; an applicant for a new TBIF or program shall meet standards within 24 months of accepting first patient, and an applicant for an expanded TBIF or program shall be currently certified and shall furnish proof as part of CON process</p>	(i)	<p>Required applicant to demonstrate that they had intent to meet CARF and licensure standards</p>

(g)	Added specifications for Licensure Rules of Georgia Department of Human Resources; an applicant for a new TBIF or program shall demonstrate intent to meet rules and an applicant for an expanded TBIF or program shall demonstrate a lack of uncorrected deficiencies		
(h)	Substantially the same as (j) in existing rule	(j)	Substantially the same as (h) in existing rule
(i)	Added specifications for documentation of referral arrangements of TBIF; TBIF referral arrangements, including transfer agreements, are to be with acute-care general hospitals in the same planning region, or with the nearest acute-care hospital in an adjacent planning region, to provide emergency medical treatment	(k)	Applicant must document existence of referral arrangements with acute care general hospital to provide acute and emergency medical treatment
(j)	Added specifications that an applicant shall foster an environment that assures access to services to individuals unable to pay and regardless of payment source/circumstances, based on the following standards: evidence of policies related to nondiscrimination; a written commitment that 3% of service adjusted gross revenue be offered for indigent/charity care services (providers offering both Life Long and Transitional Living Programs may make 1 commitment); documentation of demonstrated performance for Medicare, Medicaid, indigent/charity care; documentation of current/proposed policies regarding expected pay from charity, self-pay, and uninsured patients; agreement to participate in Medicare and Medicaid programs if applicable	(g)	Generally requires that an applicant must provide evidence of written policies regarding provision of services regardless of race, age, sex creed, religion, or ability to pay
(k)	Reserved for future use.		
(l)	Substantially the same as (m) in existing rule	(m)	Substantially the same as (l) in proposed rule

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|---|-----|--|
|  | (a) | Deleted: requirements for a CON                            |
|   | (f) | Deleted: Geographic location (incorporated into exception) |
|   | (l) | Deleted: Demonstrate Favorable Charges                     |

**PROPOSED RULES  
OF  
DEPARTMENT OF COMMUNITY HEALTH**

**111-2  
HEALTH PLANNING**

**111-2-2  
Certificate of Need**

**111-2-2-.34 Specific Review Considerations for Traumatic Brain Injury Facilities.**

(1) **Applicability.** The following Rules apply to Traumatic Brain Injury Facilities defined herein as providing transitional living programs and/or life long living programs.

(a) A Certificate of Need shall be required prior to the establishment of a new or the expansion of an existing Transitional Living Program. An application for Certificate of Need for a new or expanded Transitional Living Program shall be reviewed under the General Review Considerations of Rule 111-2-2-.09 and the service-specific review considerations of this Rule.

(b) A Certificate of Need shall be required prior to the establishment of a new or the expansion of an existing Life Long Living Program. An application for Certificate of Need for a new or expanded Life Long Living Program shall be reviewed under the General Review Considerations of Rule 111-2-2-.09 and the service-specific review considerations of this Rule.

(2) **Definitions.**

(a) 'Expansion' or 'Expanded Service' means increasing the number of beds in an existing Traumatic Brain Injury Facility or program; or an existing Traumatic Brain Injury Facility or program which makes expenditures which exceed the capital expenditure threshold; or an existing Traumatic Brain Injury Facility or program which seeks to add a program which it currently does not offer.

(b) "Life Long Living Program" means such treatment and rehabilitative care as shall be delivered to traumatic brain injury clients who have been discharged from a more intense level of rehabilitation, but who cannot live at home independently, and who require ongoing lifetime support. Such clients are medically stable, may have special needs, but need less than 24 hour per day medical support.

(c) 'New' means a facility that has not operated as a Traumatic Brain Injury Facility in the previous twelve months. For purposes of these rules, an existing Traumatic Brain Injury Facility or program which proposes to be relocated to a location more than three miles from its present location shall be considered "new".

(d) "Official State Health Component Plan" means the document related to Traumatic Brain Injury Facilities developed by the Department, established by the Georgia State Health Strategies Council and signed by the Governor of Georgia.

(e) "Planning Region" means one of the twelve state service delivery regions established by O.C.G.A. § 50-4-7.

(f) "Transitional Living Program" means such treatment and rehabilitative care as shall be delivered to traumatic brain injury clients who require education and training for independent living with a focus on compensation for skills which cannot be restored. Such care prepares clients for maximum independence, teaches necessary skills for community interaction, works with clients on pre-vocational and vocational training and stresses cognitive, speech, and behavioral therapies structured to the individual needs of clients. Such clients are medically stable, may have special needs, but need less than 24 hour per day medical support.

(g) "Traumatic Brain Injury" means a traumatic insult to the brain and its related parts resulting in organic damage thereto that may cause physical, intellectual, emotional, social, or vocational changes in a person. It shall also be recognized that a person having a traumatic brain injury may have organic damage or physical or social disorders, but shall not be considered mentally ill.

(h) "Traumatic Brain Injury Facility" means a building or place which is devoted to the provision of residential treatment and rehabilitative care in a transitional living program or a life long living program for periods continuing for 24 hours or longer for persons who have traumatic brain injury. Such a facility is not classified by the Office of Regulatory Services of the Georgia Department of Human Resources or the Department as a hospital, nursing home, intermediate care facility or personal care home.

**(3) Standards.**

(a) The need for a new or expanded transitional living program shall be established through the application of the demand-based need methodology as follows:

1. Step 1 – Calculate the Projected Number of Transitional Living Program Clients

(i) Projected Total TBI Discharges - Project the number of TBI discharges in the planning horizon year (the third year) by multiplying the projected resident population in the service area by the statewide hospital discharge rate for acute care hospitals for patients with traumatic brain injury (TBI) diagnoses as determined by using the following ICD-9 diagnosis codes or by using updated codes if applicable: 800.1 to 800.4, 800.6 to 800.9, 801, 803.1 to 803.4, 803.6 to 803.9, 804.1 to 804.41, 804.6 to 804.9, 850.1 to 850.9, 851, 852, 853, 854, 907.0 to 907.11, 907.3 to 907.9.

[Projected Resident Population X TBI Discharge Rate = Projected TBI Discharges]

(ii) Projected Transitional Living Clients - Project the number of clients for Transitional Living Programs in the planning horizon year by multiplying the projected total TBI discharges by the estimated percent demand for transitional living which is two percent.

[Projected TBI Discharges X .02 = Projected Transitional Living Clients]

2. Step 2 – Calculate the Projected Transitional Living Program Client Days of Care. The Projected Transitional Living Clients from Step 1 are multiplied by the expected average length of stay for a Transitional Living Program which is 300 days.

[Projected Transitional Living Clients X 300 Days = Projected Transitional Living Program Days of Care]

3. Step 3 – Calculate the Projected Number of Beds Needed for Transitional Living Programs

(i) Projected Transitional Living Program Clients' Average Daily Census – Divide the Transitional Living Program client days from Step 2 by 365 days per year.

[Transitional Living Client Days / 365 = Projected Average Daily Census]

(ii) Projected Number of Transitional Living Program Beds Needed – Divide the Average Daily Census by the Optimal Occupancy rate of 85 percent to determine the number of beds. Round fractions up to a whole bed.

[Projected Average Daily Census / .85 = Projected Transitional Living Program Beds]

(b) The need for a new or expanded Life Long Living Program shall be determined through the application of the demand-based need methodology as follows:

1. Step 1 – Estimate the number of Current Life Long Living Program Client Candidates

(i) Estimated Prevalence Rate for TBI Clients Currently - Multiply the TBI discharge rate by 4. The TBI discharge rate should be determined by using the following ICD-9 diagnosis codes or by using updated codes if applicable: 800.1 to 800.4, 800.6 to 800.9, 801, 803.1 to 803.4, 803.6 to 803.9, 804.1 to 804.41, 804.6 to 804.9, 850.1 to 850.9, 851, 852, 853, 854, 907.0 to 907.11, 907.3 to 907.9.

(ii) Estimated Current Life Long Living Candidates - Multiply the current estimated population in the service area by the estimated prevalence rate for TBI clients and then apply the demand factor for Life Long Living by multiplying by 0.5.

2. Step 2 – Project the number of New Clients for Life Long Living Programs. For each service area, project new clients for life long living for year one of the three

hospital discharge rate for Georgia acute care hospitals for patients with traumatic brain injury (TBI) diagnoses as determined using the following ICD-9 diagnosis codes or by using updated codes if applicable: 800.1 to 800.4, 800.6 to 800.9, 801, 803.1 to 803.4, 803.6 to 803.9, 804.1 to 804.41, 804.6 to 804.9, 850.1 to 850.9, 851, 852, 853, 854, 907.0 to 907.11, 907.3 to 907.9

3. Step 3 – Make an Annual Attrition Adjustment. Adjust for annual attrition due to death or discharge to another setting. The estimated existing clients (Step 1) are added to the projected new clients (Step 2) for life long living to determine clients for year one. This number is multiplied by a ten percent attrition rate to account for death of clients or discharge to another setting.

4. Steps 4 and 5 – Estimating Clients for Life Long Living in Following Years. Estimate client numbers for year two of the planning period by repeating Steps 1 through 3 using projected population figures provided by the Office of Planning and Budget. Estimate client numbers for year three of the planning period by repeating Steps 1 through 3 using the appropriate population estimates.

(c) An applicant for a new or expanded Traumatic Brain Injury Facility or program shall document that the establishment or expansion of its Facility or program will not have an adverse impact on existing and approved programs of the same type in its Planning Region . An applicant for a new or expanded Traumatic Brain Injury Facility or program shall have an adverse impact on existing and approved facilities or programs of the same type if it will:

1. decrease annual utilization of an existing facility or program, whose current utilization is at or above 85%, to a projected annual utilization of less than 75% within the first twelve months following the acceptance of the applicant's first patient; or

2. decrease annual utilization of an existing facility or program, whose current utilization is below 85%, by ten percent over the twelve months following the acceptance of the applicant's first patient.

The applicant shall provide evidence of projected impact by taking into account existing planning region market share of facilities or programs of the same type and future population growth or by providing sufficient evidence that the current population is underserved by the existing Traumatic Brain Injury facility or program of the same type within the planning region.

(d) The Department may grant an exception to the need methodologies of 111-2-2-.34(3)(a) and (3)(b) to remedy an atypical barrier to the services of a Traumatic Brain Injury Facility or program based on cost, quality, financial access or geographic accessibility.

(e) Minimum bed size for a Traumatic Brain Injury Facility or program is six beds; A Life Long Living Program may not exceed thirty beds, except that an applicant for a new or expanded Life Long Living Program may be approved for total beds to exceed 30 beds only if the applicant provides documentation satisfactory to the Department that the program design, including staffing patterns and the physical plant, are such as to

promote services which are of high quality, are cost-effective and are consistent with client needs.

(f) An applicant for a new or expanded Traumatic Brain Injury Facility shall demonstrate the intent to meet the standards of the Commission on Accreditation of Rehabilitation Facilities (CARF) which apply to post acute brain injury programs and residential services within twenty-four (24) months of accepting its first patient. An applicant for an expanded Traumatic Brain Injury Facility or program shall be CARF-certified as of the date of its application and shall furnish proof of the certification as a part of the Certificate of Need application process.

(g) An applicant for a new or expanded Traumatic Brain Injury Facility shall demonstrate the intent to meet the licensure Rules of the Georgia Department of Human Resources for such facilities. An applicant for an expanded Traumatic Brain Injury Facility or program shall demonstrate a lack of uncorrected deficiencies as documented by letter from the Georgia Department of Human Resources.

(h) An applicant for a new or expanded Traumatic Brain Injury Facility shall have written policies and procedures for utilization review. Such review shall consider the rehabilitation necessity for the service, quality of client care, rates of utilization and other considerations generally accepted as appropriate for review.

(i) An applicant for a new or expanded Traumatic Brain Injury Facility shall document the existence of referral arrangements, including transfer agreements, with an acute care hospital within the planning region to provide emergency medical treatment to any patient who requires such care. If the nearest acute-care hospital is in an adjacent planning region, the applicant may document the existence of transfer agreements with that hospital in lieu of such agreements with a hospital located within the planning region.

(j) An applicant for a new or expanded Traumatic Brain Injury Facility shall document that the Facility will be financially accessible by:

1. providing sufficient documentation that un-reimbursed services for indigent and charity patients in a new or expanded Facility shall be offered at a standard which meets or exceeds three percent of annual gross revenues for the Facility after provisions have been made for bad debt and Medicaid/Medicare contractual adjustments have been deducted. If an applicant, or any facility owned or operated by the applicant's parent organization, received a Certificate of Need (CON) for a Traumatic Brain Injury Facility and the CON included an expectation that a certain level of un-reimbursed indigent and/or charity care would be provided in the Facility(ies), the applicant shall provide sufficient documentation of the Facility's provision of such care. An applicant's history, or the history of any facility owned or operated by the applicant's parent organization, of not following through with a CON expectation of providing indigent and/or charity care at or above the level agreed to will constitute sufficient justification to deny an application; and

2. agreeing to participate in the Medicare and Medicaid programs, whenever these programs are available to the Facility.

(k) RESERVED.

(l) An applicant for a new or expanded Traumatic Brain Injury Facility shall document an agreement to provide the Department requested information and statistical data related to the operation of such a Facility and to report that information and statistical data to the Department on a yearly basis, and as needed, in a format requested by the Department and in a timely manner.