

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 410 Department or Agency State Health Planning and Development
Agency (Certificate of Need Review Board)
Rule No. 410-1-3-.11
Rule Title: Submission of Mandatory Reports; Administrative Reports
X New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? YES

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama, 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Alva M. Lambert

Date Jan. 21, 2016

DATE FILED
(STAMP)

ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23 (f))

Control No. _____ Department or Agency State Health Planning and Development Agency
Certificate of Need Review Board

Rule No & Title:
410-1-3-.11 Submission of Mandatory Reports; Administrative Penalties

New X Amend _____ Repeal _____ Adopt by Reference _____

_____ This rule has no economic impact.

X This rule has an economic impact, as explained below:*

1. NEED/EXPECTED BENEFIT OF RULE:

This rule provides for the imposition of a fee utilized to fund the State Health Planning and Development Agency's operations. The fee is authorized by Act 2015-471, which was signed into law by Governor Robert Bentley on June 11, 2015.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

Not Applicable

3. EFFECT OF THIS RULE ON COMPETITION:

None

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

None

* The rule imposes a small penalty on health care providers that fail to comply with mandatory filing requirements after a sixty-day grace period. It is not anticipated that the fee will have a material economic impact on health care delivery.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

None

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

Not Applicable

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

None

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

None

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

None

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

None



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

NOTICE OF INTENDED ACTION

AGENCY NAME: STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
(Certificate of Need Review Board)

RULE NO. & TITLE: 410-1-3-.11 Submission of Mandatory Reports; Administrative Penalties

INTENDED ACTION:

The State Health Planning and Development Agency and the Certificate of Need Review Board propose to adopt the above-styled section of the *Alabama Certificate of Need Program Rules and Regulations*.

SUBSTANCE OF PROPOSED ACTION:

This new rule establishes penalties for non-compliance with the filing requirements imposed for certain mandatory reports to SHPDA after a sixty-day grace period, as authorized under ALA. ACT 2015-471.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

In response to this Proposed Rule, all interested persons are invited to submit data, views, comments and/or arguments, orally or in writing. Any and all such data, comments, arguments and/or requests to orally address the Certificate of Need Review Board shall be made in writing on or before March 7, 2016, and shall be made to:

Nicole Horn, Executive Secretary
State Health Planning and Development Agency
P. O. Box 303025
Montgomery, Alabama 36130-3025

On March 16, 2016, at 10:00 a.m., the Certificate of Need Review Board shall conduct a public hearing in the State Capitol, Capitol Auditorium, 600 Dexter Avenue, Montgomery, Alabama, at which time it shall consider the Proposed Amendment, along with all written and oral submissions respecting the Proposed Amendment. Only those interested persons who have made timely written requests will be afforded the opportunity to speak.

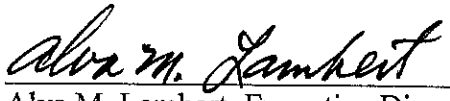
Copies of the proposed changes are available for review at 100 North Union Street, RSA Union Building, Suite 870, Montgomery, Alabama. Phone (334) 242-4103 or visit the office Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

March 7, 2016

CONTACT PERSON AT AGENCY:

Nicole Horn
100 North Union Street
RSA Union, STE 870
Montgomery, AL 36104
(334) 242-4103


Alva M. Lambert, Executive Director

410-1-3-.11 Submission of Mandatory Reports; Administrative Penalties

(1) For purposes of this rule:

(a) the term "Mandatory Report" shall include every annual report required to be filed with SHPDA by statute or rule and any other reporting requirement imposed by these rules or the State Health Plan that is not clearly identified therein as optional. The term shall not include discovery that may be authorized by the Certificate of Need Review Board or an Administrative Law Judge as part of a contested case proceeding or fair hearing, which shall be subject to such requirements as authorized under the Alabama Administrative Procedure Act or other regulations.

(b) For purposes of this rule only:

(1) a "rural health care provider" is a provider or applicant or hospital which is designated by the United States government Health Care Financing Administration (now Centers for Medicare and Medicaid Services) as rural, as specified in the SHPDA statutes at Ala. Code § 22-21-260(12); and

(2) a "small provider" is:

(i) a hospital or other health care provider providing in-patient care which is not a rural provider and has less than 65 licensed beds;

(ii) a health care provider holding CON authority solely to provide in-home services, such as in-home hospice or home health service, which holds CON authority to provide such in-home care in (a) an area of six counties or less, which does not include Jefferson, Madison, Mobile or Montgomery County; or (b) three counties or less, which includes Jefferson, Madison, Mobile or Montgomery County; or

(iii) any ambulatory surgery center, multi- or single specialty, performing procedures four (4) days a week or less;

(iv) any other health care provider which does not provide in-patient care and which holds a CON authorizing health care services to be provided at a single location.

(v) For purposes of this subsection (2), a health care provider's CON authority shall be aggregated with all other CON authority held by entities under common ownership and control, as defined in Ala. Code § 22-21-270(e). In addition, a health care provider shall not be considered a "small provider" if any entity under common ownership and control holds CON authority for a facility or service that would not qualify for the small provider exception on a standalone basis. For illustration only:

1. A business entity holds a CON to provide home health care services in six counties, which do not include Jefferson, Madison, Mobile or Montgomery County. It is under common ownership and control with

two other business entities which each hold CON authority in two counties to provide the same service. None of these affiliated entities would be considered a "small provider" for purposes of the rule.

2. A business entity holding a CON to provide methadone treatment at a single location in Alabama is under common control and ownership with another methadone clinic holding CON authority. None of these affiliated entities would qualify as a "small provider" under this rule.
3. A non-rural hospital with less than 65 licensed beds is under common ownership and control with a business entity holding CON authority to provide ambulatory surgical service. None of these affiliated entities would be considered a "small provider" for purposes of this rule.

(c) When computing any time period stated in days or a longer unit of time, the Agency or health care reporter shall, for the purposes of this rule:

(i) exclude the day of the event that triggers the period;

(ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) The filing of a Mandatory Report shall be deemed received and filed on the date of electronic submission to the Agency, pursuant to SHPDA Rule 410-1-3-.09.

(a) Failure to File or Filing Incomplete Report: Any health care reporter failing to meet a filing deadline for a Mandatory Report, or who files a Mandatory Report deemed to be materially incomplete by the State Agency, shall be notified by the State Agency staff that they are not in compliance with this rule within seven (7) days of the filing deadline (in the case of a failure to file) or within seven (7) days of the date of receipt of the filing (in the case of a report deemed materially incomplete by Agency staff). Such health care reporter shall have sixty (60) days from the original due date of the report to correct the deficiency. Any facility that is noncompliant under this rule, either due to failure to file or due to a filing being deemed materially incomplete, shall be deemed to be in a probationary status in regard to the enforcement of penalties under this section for a period not to exceed sixty (60) days from the date of filing deadline.

(b) Failure of the health care reporter to bring its report into compliance within the required sixty (60) days will result in the report being deemed not properly filed and subject the health care reporter to the administrative penalty provisions of Section 3 applicable to delinquent filings, with such penalties to apply from the original due date of the report.

(c) SHPDA shall track the total number of Mandatory Reports that are not filed on or before the initial deadline, as well as the total number of Mandatory Reports deemed materially

incomplete when initially filed. This information, which shall include the names of the non-compliant health care reporters, shall be reported to the Certificate of Need Review Board, the Health Care Information and Data Advisory Council and the Statewide Health Coordinating Council at their regularly scheduled meetings immediately following the end of the grace period.

(3) In addition to any other provisions contained in these rules or the *State Health Plan*, a health care reporter that fails to submit a compliant Mandatory Report within any applicable probationary period under subsection (2)(a), shall be assessed a penalty equal to:

(a) A flat fee of \$1,000 for a non-rural health care provider and \$500 for a rural health care provider or small provider, plus

(b) An additional penalty of \$100 for non-rural health care providers and \$50 for rural and small health care providers for each day of delinquency, calculated from the day after the due date for filing (without regard to any probationary period) through the date of filing, up to a maximum penalty of \$10,000 for non-rural health care providers (except for small providers) and \$5,000 for rural health care providers and small providers.

(4) A delinquent Mandatory Report must meet the requirements of Section 2 above and be accompanied by payment of any administrative penalty prescribed in Section 3 above in order to be deemed received and filed with the Agency. Such payment shall be submitted in accordance with SHPDA Rule 410-1-3-.09, including the provisions related to the submission of fees.

(5) The Executive Director may waive imposition of a penalty under this rule only upon a written finding that a timely filing was rendered impossible due to an act of God comparable to (a) an electrical outage or weather emergency applicable to all businesses in the area of the health care reporter; (b) the unanticipated closure of SHPDA offices (other than state holidays or weekends); or (c) an outage rendering SHPDA's filing system inoperable. Any such waiver shall extend only to the period of time that the filing was rendered impossible by the qualifying circumstances. The Executive Director shall advise the Certificate of Need Review Board of the status of all waiver requests at its regular monthly meeting.

(6) A health care provider who is non-compliant under the terms of this rule may not participate in the Certificate of Need review process, either as an applicant for a Certificate of Need or in opposition to a Certificate of Need application (through intervention or other statements in opposition), (without regard to the probationary period set forth in Section 2(a)). A health care provider shall maintain compliance from the date of the initial filing of such provider's application or opposition and for the duration of such provider's participation in the administrative and/or judicial process. A provider deemed non-compliant due to a Mandatory Report being deemed materially incomplete by Agency staff or for filing after the due date shall have seven (7) days from the date of notification of such deficiency to bring such report into compliance prior to being disqualified from any pending proceeding in which the provider is a party.

(7) A health care reporter required to file a Mandatory Report shall maintain a current listing with the Agency of the name, title, phone number and e-mail address of at least two individuals designated as the contact of record for purposes of all reports filed with the Agency and shall designate at least one such contact person as the primary contact in each report that is filed. The failure to maintain a current contact listing shall not constitute grounds for the waiver of any penalties imposed under this rule.

Author: Alva M. Lambert

Statutory Authority: § 22-21-271(c), Code of Alabama, 1975

History: New Rule