



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: 410-1-10-.01 Emergency Review

INTENDED ACTION:

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

SUBSTANCE OF PROPOSED ACTION:

This amendment would ensure that notice is given to affected parties of an emergency request for a certificate of need (CON) and provide for a fifteen (15) day comment period prior to issuance of the CON, unless the Chairman and Vice-Chairman deem a shorter period is necessary to protect the health and safety of patients. The amendment provides that the emergency CON request may be approved by either the Chairman or Vice-Chairman if the other officer is recused from participation in the matter and memorializes the existing practice of allowing an appeal of an emergency CON to a fair hearing officer, which SHPDA has deemed required under current law.

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 May 6, 2015, and shall be made to:

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

On May 20, 2015, 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:
May 6, 2015

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-I-10-.01 Emergency Review

- (1) Any person may apply independently and without notice for an emergency Certificate of Need for the authorization of capital expenditures made necessary by unforeseen events which endanger the health and safety of the patients. Emergency capital expenditures include, but are not necessarily limited to, emergency expenditures to maintain quality care, overcome failure of fixed equipment, including heating and air conditioning equipment, elevators, electrical transformers, and switch gear, sterilization equipment, emergency generators, water supply and other utility connections and damage caused by natural or manmade disaster.
 - (a) The applicant must notify the state agency in writing, describing the nature of the emergency, the probable amount of the emergency expenditure and the anticipated date that the emergency expenditure would be obligated. The applicant must clearly demonstrate that an emergency exists. A copy of the application shall be served on any party that has a pending application seeking a Certificate of Need for similar authority in the same health service area.
 - (b) The executive director shall publish notice of the application on the agency's website and provide general notice to the general distribution list maintained by the agency and notify the Chairman and the Vice Chairman of the Certificate of Need Review Board of the stated emergency, who may, upon a determination that an emergency actually exists, order that a Certificate of Need be issued. The Chairman and Vice-Chairman may approve an application for an emergency Certificate of Need prior to the fifteen (15) comment period referenced in paragraph (c) below upon a finding that a fifteen day (15) delay in issuance of the emergency Certificate of Need would result in direct and immediate danger to the health and safety of patients. Should the Chairman or Vice-Chairman recuse himself or herself from consideration of the application, it may be approved with the signature of the remaining officer.
 - (c) ~~Each Emergency Certificate of Need which has been issued by the Chairman and vice chairman without review by the Certificate of Need Review Board shall be ratified by the Certificate of Need Review Board at its next regularly scheduled meeting. Failure to ratify the emergency Certificate of Need shall render the Certificate of Need null and void. Within fifteen (15) days of publication pursuant to (b) above, any affected person may file with the agency written comments regarding the application, regardless of whether it has been approved by the Chairman and Vice-Chairman.~~
 - (d) ~~A firm commitment or obligation shall be incurred pursuant to the emergency Certificate of Need within 90 days from the date of issuance~~

thereof. The Executive Director, prior to the meeting of the Certificate of Need Review Board ("Board") where ratification is to be considered, shall provide copies of any written comments to the Certificate of Need Review Board members for their consideration.

- (e) No extensions of emergency Certificates of Need will be authorized. An emergency Certificate of Need which has been issued by the Chairman and Vice-Chairman shall be voted upon and ratified or disapproved by the Board at the next regularly scheduled meeting in which a quorum exists to consider the matter. Failure to ratify the emergency Certificate of Need at such meeting shall render the Certificate of Need null and void.
- (f) The applicant or intervenor may appeal the Board's grant or denial of an Emergency Certificate of Need to a Fair Hearing. Such appeal shall be conducted in accordance with the provisions of ALA. ADMIN. CODE r. 410-1-8-.16 applicable to regular Certificate of Need applications; provided, however, that the Fair Hearing Officer shall conduct a hearing on an expedited basis and shall issue an order within two (2) weeks of the filing of the appeal, unless this period is extended by consent of all parties. There is no right to a Fair Hearing appeal for an emergency Certificate of Need request not signed by the Chairman and Vice-Chairman pursuant to paragraph (b) above.
- (g) A firm commitment or obligation shall be incurred pursuant to the emergency Certificate of Need within ninety (90) days from the date of issuance thereof. No extensions of Emergency Certificates of Need will be authorized.