

APA-1
6/93

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Department or Agency Alabama Department of Public Health

Rule Number 420-5-7-.02
Rule Title The License

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? n/a

Are all facts 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? No

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 §41-22-23, Code of Alabama, 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been 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 Pamela Stue Date 5/17/2013

FORM APA2
11/96

STATE BOARD OF HEALTH
NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Public Health

RULE NUMBER AND TITLE: 420-5-7-.02 The License

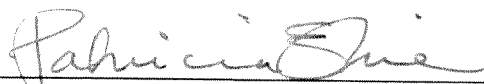
INTENDED ACTION: Amendment to Rule number 420-5-7-.02

SUBSTANCE OF PROPOSED ACTION: This change clarifies the application process to address both authorized and licensed beds and clarifies the payment of fees for changes in bed count.

TIME, PLACE, AND MANNER OF PRESENTING VIEWS: A public hearing will be held on June 11, 2013, at 201 Monroe Street, RSA Tower, Suite 1586, The Board Room, Montgomery, AL 36104, at 2:30 p.m.

FINAL DATE FOR COMMENTS AND COMPLETION OF NOTICE: Written or oral comments will be received until the close of the record at 5:00 p.m. on July 5, 2013. All comments and requests for copies of the proposed rule should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Walter T. Geary, Jr., M.D., Director, Bureau of Health Provider Standards, Department of Public Health, 201 Monroe Street, Suite 710, Montgomery, Alabama 36104, telephone number (334) 206-5366.



Patricia E. Ivie, Agency Secretary

420-5-7-.02 The License.

(1) Classifications of Licenses. All licenses are granted for the calendar year and shall expire on December 31 unless renewed by the owner for the succeeding year.

(a) Unrestricted License. An unrestricted license may be granted by the Board after it has determined that the hospital is willing and capable of maintaining compliance with these rules.

(b) Probational License. At its discretion, the Board may grant a probational license when it determines that both of the following conditions exist:

1. The hospital has engaged in one or more deficient practices which are serious in nature, chronic in nature, or which the hospital has failed to correct.

2. The hospital's current governing authority has demonstrated the capability and willingness to correct cited problems and to maintain compliance.

(c) A probational license shall be granted for a specific period which may be extended but which shall in no case exceed one year.

(2) Application.

(a) Application. An applicant for initial licensure shall provide all information on the application form prescribed by the Department, including all information required by law, these rules, and the policies and procedures of the Department, and shall submit such additional information as shall be required by the Department in its discretion to demonstrate that the applicant has the ability and the willingness to comply with these rules. Each application shall be signed by the applicant, if the applicant is a natural person, or, if the applicant is not a natural person, shall be signed by a natural person who is authorized to bind the applicant to the representations in the application and any supporting documentation.

(b) Fee. An initial license application, an application for license renewal, an application for an increase in the number of authorized or licensed beds, or an application for a change in ownership, shall be accompanied by the application fee specified in §22-21-24, Code of Ala. 1975. An application for a name change, an application for ~~change~~ a decrease in authorized or licensed bed capacity, or an application for a relocation is not subject to a license application fee. An application fee is non-refundable. Any application fee submitted in the incorrect amount shall nevertheless be deposited. If the fee submitted is too large, a refund for the difference shall be processed using the Department's usual procedures. If the fee submitted is too small, the applicant shall be notified and the application shall not be considered until the difference is received. Any application submitted without any fee shall be returned to the applicant. If an incomplete application is submitted, the application fee shall be deposited, and the applicant shall be notified in writing of the defects in the application. If the applicant fails to submit all required additional information within 10 working days of the date of the notice, the application shall be denied. The Department may in its discretion extend the deadline for

submitting additional information. Denial of an application as incomplete shall not prejudice the applicant from submitting a new application, accompanied by the requisite fee, at a future date.

(c) Name of Facility. Every hospital shall have a unique name. No hospital shall change its name without first applying for a change of name approval nor shall it change its name until such approval is granted. The Department may in its discretion deny an initial hospital application or an application for a change of name if the Department determines that the proposed name is misleading to the public or that the name is overly similar to the name of an already licensed hospital. Separately licensed hospitals owned by the same governing authority may have names that are similar to one another and distinguished from one another in some other manner, such as a geographic description. No hospital licensed on the date these rules are adopted shall be required to change its name as a result of this rule provision. If an initial hospital application is denied under this rule provision, the applicant shall be provided a reasonable period of time to submit a revised application with a different name.

(d) Number of Beds. Each application for license shall specify the bed capacity the facility seeks to have approved by the Department.

1. A hospital shall specify on an application for licensure its licensed bed capacity and its designated authorized bed capacity. The designated authorized bed capacity shall not exceed the licensed bed capacity.

2. A hospital shall have available for inpatient care at all times the total number of beds designated as its authorized bed capacity.

3. A hospital desiring to change its authorized bed capacity shall submit an application to the Department.

4. The hospital's license certificate from the Department shall set forth its licensed bed capacity and its authorized bed capacity.

5. No hospital may have licensed beds in excess of those specified on its certificate of need.

6. In the event of a natural disaster or other catastrophic emergency, the Department may grant a temporary bed increase to any hospital for reasons of public health or public safety. A temporary bed increase may be granted only for a specified number and shall expire by its terms after a specific, finite period of time.

(e) How to Obtain Applications. Information on how to obtain applications and where to submit applications is contained in the appendix to these rules.

(3) Licensing.

(a) License. If an applicant submits a timely and complete application accompanied by the appropriate license fee and any supporting documentation that may be required by the Department, and if the Department is satisfied on the basis of the application that the applicant is

willing and capable of compliance with these rules, and if granting such a license would not violate any other state or federal law or regulation, then the Department, as agent for the Board, may grant a license to the applicant. All licenses granted shall expire at midnight on December 31 of the year in which the license is granted. The Department, as agent for the Board, may deny a license. A license shall only be valid at the licensed premises and for the individual or business entity licensed. It is a condition of licensure that the licensee must continuously occupy the licensed premises and remain open to the public as a hospital, fully staffed and otherwise capable of admitting and treating patients. If a hospital fails to remain open and staffed as required for 30 days, its license shall become void. If a licensee abandons the licensed premises, the license shall immediately become void.

(b) License Renewal. Licenses may be renewed by the applicant as a matter of course upon submission of a completed renewal application and payment of the required fee. When the Department has served written notice on the hospital of its intent to revoke or downgrade the license, a renewal application shall be filed but does not affect the proposed adverse licensure action.

(c) License Certificate. A license certificate shall be issued by the Department to every successful initial licensure applicant and to every successful renewal applicant. It shall set forth the name and physical address of the hospital, the name of the governing authority, the type of hospital, the expiration date of the license, the hospital's licensed bed capacity, and its authorized bed capacity.

(d) Change of Ownership. A hospital license is not transferrable. In the event that the legal ownership of the right to occupy a hospital's premises is transferred to an individual or entity other than the licensee, the hospital license shall become void and continued operation of the hospital shall be unlawful pursuant to §22-21-22, Code of Ala. 1975, and subject to penalties as provided in §22-21-33, Code of Ala. 1975, unless an application for a change of ownership has been submitted to and approved by the Department prior to the transfer of legal ownership. An application for change of ownership shall be submitted on the form prescribed by the Department, shall be accompanied by the requisite application fee set forth in §22-21-24, Code of Ala. 1975, and shall be subject to the same requirements and considerations as are set forth above for initial license applications. An application for a change of ownership shall be submitted and signed by the prospective new licensee, or its agent, and also either signed by the current licensee or its agent, or accompanied by a court order demonstrating that the current licensee has been dispossessed of the legal right to occupy the premises and that the prospective new licensee has been awarded the legal right to occupy the premises. Upon approval of a change of ownership, the Department shall notify the current licensee and the new license applicant, and shall issue a license certificate to the new licensee. Indicia of ownership of a hospital include the right to hire, terminate, and to determine the compensation and benefits paid to the hospital's administrator and other staff, the right to receive payment from patients and third parties for services provided by the hospital, the right to establish and to change the policies, procedures, and protocols under which the hospital operates, and the right to overrule operational decisions made by the hospital administrator and other staff.

(e) Change in Bed Capacity. A hospital may apply for a change in licensed bed capacity or authorized bed capacity by submitting a completed application on a form prescribed by the Department and, for a change in licensed bed capacity, accompanied by the fee prescribed in §22-21-24, Code of Ala. 1975, together with such other documentation as the Department may require, which shall include Certificate of Need approval or a letter of non-reviewability if the application is for an increase in the number of licensed beds. Upon approval of a change of bed capacity, the Department shall notify the licensee and shall issue a revised license certificate to the licensee, which may be predicated on the return of the old license certificate.

(f) Change of Name. A hospital may apply for a change of name by submitting a completed application on a form prescribed by the Department. There is no application fee for a change of name application. The Department may in its discretion deny an application for a change of name if the Department determines that the proposed name is misleading to the public or that the name is overly similar to the name of an already licensed hospital. Separately licensed hospitals owned by the same governing authority may have names that are similar to one another and distinguished from one another in some other manner, such as a geographic description. Upon approval of a change of name, the Department shall notify the licensee and shall issue a revised license certificate to the licensee, which may be predicated on the return of the old license certificate.

(g) Relocation. A hospital license is valid only at the premises stated on the most recent license application or renewal application, and recited as a physical address on the current hospital license certificate. Prior to physically relocating a hospital, the licensee of the hospital shall submit a relocation application to the Department on a form prescribed by the Department. Upon approval of a change of address, the Department shall notify the licensee and shall issue a revised license certificate to the licensee, which may be predicated on the return of the old license certificate.

(h) Single Campus Requirement. A hospital's campus shall consist of the premises occupied by the hospital's largest building together with all parcels of property that the hospital's governing authority owns or has the legal right to occupy and which are not separated from the remainder of the campus by anything other than a public right of way. All hospital services required by these rules shall be offered on-campus. So long as it does not violate any other law or legal requirement, a hospital's governing authority may offer any health care services other than a reference laboratory on the hospital campus without the need for additional licensure from the Board, even if such services would require licensure if offered by a free-standing facility. A hospital may, however, elect to seek licensure for such a facility located on its campus. Such services shall remain under the control and supervision of the governing authority. All on-campus facilities and services are subject to the rules of the Board, including applicable life safety code, building, and plan review requirements. If the hospital operates a facility away from its campus that would require separate licensure if not provider-based, such as an end stage renal dialysis center or a rehabilitation center, then that facility must be separately licensed and meet all licensure requirements for that type of facility. A hospital may operate any facility that does not require separate licensure away from its campus, but if the hospital bills Medicare or Medicaid under its hospital provider number for services provided in the off-campus facility, that off-campus facility shall be deemed to be part of the hospital for licensure purposes and shall be

subject to the rules of the Board, including applicable life safety code, building, and plan review requirements. No part of a hospital may be more than 35 miles from its campus. Provided, however, that this subsection is not intended to authorize the operation of an off-campus emergency department or multiple non-contiguous hospitals to operate under a single license.

(i) Denial of a License

1. The Board may deny a license to any applicant on grounds of insufficient evidence of the willingness or ability to comply with §§ 22-21-20 through 22-21-34, Code of Ala. 1975, or these rules, including the following reasons:

a. The applicant or any principal associated with the applicant has violated any provision of §§ 22-21-20 through 22-21-34, Code of Ala. 1975.

b. The applicant or any principal associated with the applicant has been convicted of engaging in, permitting, aiding, or abetting the commission of an illegal act in the hospital or in any other licensed health care facility.

c. The applicant or any principal associated with the applicant has engaged in conduct or practices deemed by the Board to be detrimental to the welfare of the patients of the institution.

d. Conduct and practices deemed detrimental to the welfare of patients of a hospital or provide grounds pursuant to this subsection for denial of a license include:

i. The applicant or an agent authorized by the applicant has deliberately falsified any material information or record submitted as part of the application for licensure.

ii. The applicant has changed its corporate name, charter, entity, or its partnership name or composition to avoid the imposition of liens or court action.

iii. The applicant or any principal associated with the applicant has been convicted of engaging in the physical, mental, or sexual abuse or in the financial exploitation of a patient or patients.

iv. The applicant or any principal associated with the applicant has operated a health care facility in Alabama or in any other jurisdiction in a manner that resulted in one or more violations of applicable laws or other requirements and as a result caused death, injury, disability, or serious risk of death, injury, or disability to any patient or patients of the facility and such past conduct causes the Department to reasonably believe that granting a license to the applicant would likely be detrimental to the life, health, or safety of prospective patients of the hospital for which licensure is sought.

v. The applicant or any principal associated with the applicant has been convicted of fraud in this or any other jurisdiction.

vi. The applicant or any principal associated with the applicant has in the past deliberately falsified records or has otherwise made a deliberate and material misrepresentation of facts to an employee of the Department in an attempt to influence the outcome of a survey or some other regulatory compliance determination by the Department.

vii. The applicant or any principal associated with the applicant has in the past induced or attempted to induce a subordinate employee to falsify records or to otherwise make a deliberate and material misrepresentation of facts to an employee of the Department in an attempt to influence the outcome of a survey or some other regulatory compliance determination by the Department.

viii. The applicant or any principal associated with the applicant is operating, or has in the past operated, an unlicensed health care facility.

ix. The applicant or any principal associated with the applicant has at any time been debarred from participation in the Medicare or Medicaid programs.

x. Other serious misconduct which, in the judgment of the Board, poses a serious risk to patient health or safety.

2. An applicant may appeal the denial of a license pursuant to the provisions of the Alabama Administrative Procedure Act, §41-22-1, et seq., Code of Ala. 1975, and the Board's Rules for Hearing of Contested Cases, Chapter 420-1-3, Ala. Admin. Code.

(j) Revocation of a License.

1. The Board may revoke a license to operate a hospital if it finds any of the following:

a. Violations of any of the provisions of §22-21-20, et seq., Code of Ala. 1975, or these rules.

b. Permitting, aiding or abetting the commission of any illegal act in the institution.

c. Conduct or practices deemed by the Board to be detrimental to the welfare of the patients in the institution.

2. Conduct and practices deemed detrimental to the welfare of patients of a hospital include:

a. The administrator of the hospital, the governing authority of a hospital, or an agent authorized by the governing authority of the hospital has deliberately falsified any material information or record submitted as part of the application for licensure or on a Department survey.

b. The hospital or its governing authority has changed its corporate name, charter, entity, or its partnership name or composition to avoid the imposition of liens or court action.

c. The governing authority or any principal associated with the governing authority has been found to have engaged in the physical, mental, or sexual abuse or in the financial exploitation of a patient or patients.

d. The hospital has been operated in a manner that resulted in one or more violations of applicable laws or other requirements and as a result caused death, injury, disability, or serious risk of death, injury, or disability to any patient or patients of the facility and such conduct causes the Department to reasonably believe that continued licensure of the facility to its current governing authority would likely be detrimental to the life, health, or safety of patients of the hospital.

e. The hospital is unable to meet its financial obligations and as a result its patients are at risk, as evidenced by more than one utility cut-off notices for non-payment, food vendors or medical supply vendors or both placing the hospital on cash on delivery only status due to non-payment of prior invoices, or the failure of banks to honor employee payroll checks due to insufficient funds on deposit.

f. The governing authority or any principal associated with the governing authority has been found to have committed fraud in this or any other jurisdiction.

g. The governing authority or any principal associated with the governing authority has falsified records or otherwise made a deliberate and material misrepresentation of facts to an employee of the Department in an attempt to influence the outcome of a survey or some other regulatory compliance determination by the Department.

h. The governing authority or any principal associated with the governing authority has induced or attempted to induce a subordinate employee to falsify records or to otherwise make a deliberate and material misrepresentation of facts to an employee of the Department in an attempt to influence the outcome of a survey or some other regulatory compliance determination by the Department.

i. The governing authority or any principal associated with the governing authority is operating, or has in the past operated, an unlicensed health care facility.

j. Other serious misconduct or failure which, in the judgment of the Board, poses a serious risk to patient health or safety.

3. The proposed revocation of a license shall be governed by the provisions of the Alabama Administrative Procedure Act, §41-22-1, et seq., Code of Ala. 1975, and the Board's Rules for Hearing of Contested Cases, Chapter 420-1-3, Ala. Admin. Code.

(4) Failure to Renew a License. Any licensee who fails to renew a license on or before the close of business on the last business day in December shall be assessed a late fee

equal to the amount of the original license fee. A license may only be renewed with the payment of a late fee before the close of business on the last business day in January of any calendar year. A license which has not been renewed by the end of January has expired and shall be void.

(5) Compliance with federal, state, and local laws. A hospital shall be in compliance with applicable federal, state and local laws.

(a) Licensing of Staff. Staff of the facility shall be currently licensed, certified or registered in accordance with applicable laws.

(b) Compliance with Other Laws. A hospital shall comply with laws relating to fire and life safety, sanitation, communicable and reportable diseases, Certificate of Need review and approval, reporting of health care acquired infections, adverse event reporting, and other relevant health and safety requirements. If a hospital utilizes the services of a clinical laboratory located outside the State of Alabama, the hospital shall ensure that, in connection with any work performed for the hospital, the laboratory complies with the requirements for the reporting of notifiable diseases to the Department, as set forth in state law and the rules of the Board.

(6) A hospital shall promptly notify the Department in writing when there is any change in its accrediting organization or deemed status.

Authors: W. T. Geary, Jr., M.D., Carter Sims

Statutory Authority: Code of Ala. 1975, §§22-21-20, et seq.

History: Filed September 1, 1982. **Repealed and New Rule:** Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed June 20, 1997; effective July 25, 1997.

Amended: Filed December 16, 1999; effective January 20, 2000. **Repealed and New Rule:** Filed August 24, 2012; effective September 28, 2012.