

**CERTIFICATION OF EMERGENCY RULES
FILED WITH LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

Pursuant to Code of Alabama 1975, §§41-22-5(b) and 41-22-6(c)(2)a. and b.

I certify that the attached emergency (amendment, new rule, new chapter, repeal or adoption by reference) is a correct copy as promulgated and adopted on the 19th day of August, 2020.

AGENCY NAME: State Health Planning and Development Agency (Certificate of Need Review Board)

RULE NO. AND TITLE: 410-1-10-.05-E, Emergency Provisions Related to COVID-19 Emergency

EFFECTIVE DATE OF RULE: August 19, 2020

EXPIRATION DATE (If less than 120 days): The lesser of 120 days or the adoption of a superseding permanent rule.

NATURE OF EMERGENCY:

To continue to declare need for any proposed new institutional health service, including new and expanded services, beds, facilities, equipment and other resources without respect to health planning areas, related to the treatment of patients potentially affected by the appearance of COVID-19; and to provide the granting of a temporary waiver on behalf of any such service provided pursuant to this proposal until such time as the normal rulemaking process to adopt a proposed permanent rule can be completed. The previous emergency rule expired on August 5, 2020.

STATUTORY AUTHORITY: §§ 41-22-5, 22-21-264 and -275, Code of Alabama, 1975

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS YES NO


NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

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REC'D & FILED

AUG 19 2020

LEGISLATIVE SVC AGENCY


Signature of officer authorized to promulgate and adopt rules and regulations or his or her deputy

FILING DATE
(For APA Use Only)

**RESOLUTION OF CERTIFICATE OF NEED REVIEW BOARD ADOPTING
EMERGENCY RULE**

WHEREAS, the Certificate of Need Review Board (“Board”) previously adopted an emergency rule providing for the grant of temporary waivers of Certificate of Need requirements related to the treatment of patients affected by COVID-19; and

WHEREAS, such emergency rule expired on August 5, 2020; and

WHEREAS, at the time of adoption of such prior emergency rule, the Board could not have reasonably foreseen that the current emergency would extend beyond the 120-day term, and there has been insufficient time to complete a normal rulemaking process to adopt a permanent rule; and

WHEREAS, the Board finds that that the same circumstances that justified adoption of the April 7, 2020 emergency rule, exist today;

IT IS THEREFORE, RESOLVED, that the Board does hereby adopt the Emergency Rule, 410-1-10-.05-E, attached to this resolution.

410-1-10-.05-E EMERGENCY PROVISIONS RELATED TO COVID-19 EMERGENCY

(1) On March 13, 2020, pursuant to the Alabama Emergency Management Act of 1955, Governor Ivey proclaimed a State of Emergency related to the appearance of the 2019 novel coronavirus known as COVID-19. In the declaration, the Governor found that "COVID-19 cases could overwhelm the health care facilities and personnel of this State and undermine their ability to deliver patient care in the traditional, normal, and customary manner or using the traditional, normal, and customary standards of care. (Governor Ivey Emergency Proclamation, March 13, 2020). An April 2, 2020 supplement to the declaration directed the State Planning and Development Agency, Statewide Health Coordinating Council ("SHCC") and the Certificate of Need Review Board to provide for temporary waivers to the Certificate of Need ("CON") requirements to permit new services, facilities and other resources needed for the treatment of patients affected by appearance of COVID-19, or to free up bed or treatment space at existing health care facilities to permit such treatment. The State of Emergency Declaration, and all current and future supplements, are collectively referenced herein as the "Declaration."

(2) The SHCC has found that existing health care resources may not be enough to handle the needs of the public during this crisis, and that additional resources are likely to be required, on an urgent and temporary basis, to address the public health needs of the citizens of the State. The emergency resulting from COVID-19, as described in the Declaration, constitutes an unforeseen event which constitute an immediate danger for the health and safety of patients, and the adoption of this emergency rule is necessary to address such threat.

(3) Any provider submitting an application for a waiver of CON requirements that meets the requirements of Section 410-2-5-.09-E of the State Health Plan ("SHP"), or any applicable successor rule, shall comply with the filing requirements set forth in such rule. The Agency shall create an abbreviated form meeting the requirements of this section. A provider shall agree to the requirements and limitations of this rule and the applicable provisions of the SHP as a condition for a waiver.

(4) Any waiver issued pursuant to this emergency rule shall automatically terminate on the earlier of: (i) as applicable, the discontinuation of services or closure of facilities subject to the waiver; or (ii) sixty (60) days following the termination of the State of Emergency as recognized in the Declaration. Any continued operation of institutional health services authorized under a waiver granted pursuant to this section will require a CON, which shall be subject to existing CON criteria and procedures, including compliance with the State Health Plan, without regard to emergency rules adopted by the CON Board or SHCC in response to the Declaration. It is the intent of this subsection that services, facilities or other new institutional health services established as a result of a waiver be considered "new" for purposes of an application for CON authority to extend such new institutional health services beyond the deadlines in this subsection. Any waiver of ordinary CON requirements shall not be considered to be a waiver of any requirements related to the Alabama Department of Public Health or any other regulatory Agency.

(5) Notwithstanding the provisions of ALA. ADMIN. CODE r. 410-1-7-.06, any application filed pursuant to this rule shall be subject to a special filing fee of \$50.00. *See: Ala. Op. Att'y Gen. No. 2001-070 (Jan. 16, 2001).*

(6) The period of suspension of the operation of a facility or service due to the COVID-19 emergency shall not be counted for purposes of the twelve-month abandonment provision of ALA. ADMIN. CODE r. 410-1-11-.08 (b).

(7) The grant of a waiver under this rule for the temporary relocation of beds, equipment or other resources shall automatically authorize the return of such beds, equipment or other resources to their original location after the emergency, without the need for further authorization. Providers shall notify SHPDA of the effective date of such relocation in such manner as prescribed by the Executive Director.

(8) This emergency rule is adopted to replace a prior emergency rule which was effective on April 7, 2020 and expired on August 5, 2020. At the time of adoption of such prior emergency rule, the CON Board could not have reasonably foreseen that the emergency would extend beyond the 120-day term, and there has been insufficient time to complete a normal rulemaking process to adopt a permanent rule. This replacement rule shall be effective upon its filing with the Legislative Reference Service and shall extend for the lesser of 120 days or the adoption of a superseding permanent rule.

Statutory Authority: Code of Ala. 1975, §§ 41-22-5, 22-21-260(6), -264 and -275.
History: New Emergency Rule filed and effective August 19, 2020.