

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. 410-1-10-.03
Rule Title: Project Modification After Issuance of Certificate of Need
 New X 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 4-21-14

DATE FILED
(STAMP)
REC'D & FILED
APR 21 2014
LEGISLATIVEREFSERVICE

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: 410-1-10-.03 Project Modification After Issuance of Certificate of Need

New _____ Amend X 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 amendment clarifies the circumstances where authorization is required for a change in a project, not yet constructed or operational, for which a Certificate of Need has been granted, and specifically excludes changes resulting from cost overruns under a specified threshold. It memorializes the rights of those aggrieved by a decision by the CON Board to grant or deny a modification to obtain a Fair Hearing, and clarifies that the grant of a project modification does not result in a recalculation of applicable statutory time periods. It also provides for the imposition of an increase in the filing fee for project modifications from twenty-five percent (25%) of the original CON application fee for the project to thirty-five percent (35%) of such fee. The fee is authorized by Ala. Code § 22-21-271(c), which became effective on May 8, 2012.

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

Providers and interested parties will benefit from greater clarity as to the circumstances in which SHPDA approval is required in the event of changes in a CON authorized project.

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 filing fee on certain health care providers; however, by providing greater clarity regarding the need for approval certain providers may avoid having to make a filing. It is not anticipated that the fee will have a material economic impact on health care delivery.

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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:

None

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:

No material impact.

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: 410-1-10-.03 Project Modification After Issuance of Certificate of Need

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 will require any change in project involving the increase in cost in excess of ten percent (10%) of the total project cost to require an application for a project modification. A change in project involving the addition of beds, change in bed classification, or the provision of new health services not specified in the original CON application will require a new CON application. The amendment provides that any adverse decision on a project modification heard by the CON Review Board may be submitted to a Fair Hearing and imposes an increase in the filing fee from twenty-five percent (25%) of the original CON application fee for the project to thirty-five percent (35%) of such fee.

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 June 4, 2014, and shall be made to:

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

On June 18, 2014, 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.

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025
PHONE: (334) 242-4103 FAX: (334) 242-4113

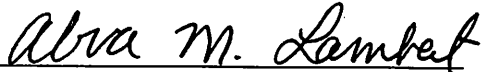
Copies of the proposed changes are available for review at 100 North Union Street, RSA Union Building, Suite 870, Montgomery, Alabama. Phone (334) 242-4103 or visit the office Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

June 4, 2014

CONTACT PERSON AT AGENCY:

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


Alva M. Lambert
Alva M. Lambert, Executive Director

410-1-10-.03 Project Modifications After Issuance of Certificate of Need

- (1) A proposed change in a project for which the State Agency has previously issued a Certificate of Need will require approval by the Certificate of Need Review Board or the Executive Director of the State Agency, as specified below. Approval is required whether or not a capital expenditure is associated with the proposed change.
 - (a) A “change in project” shall include, but not be limited to, any change in the bed capacity or bed use (i.e., conversion of beds) of a facility, the addition of a health service or services, or an increase in the cost of the project ~~or in excess of ten percent (10%) of the total project cost, including, without limitation,~~ a change in financing methods which results in an increase in the cost of the project.
 - (b) An application for a change in a project must be made in writing to the State Agency and shall include information and any supporting data deemed necessary by the Executive Director relevant to the merits of the application. Such application shall be accompanied by a fee of ~~twenty~~ thirty-five percent (2535%) of the original Certificate of Need application fee for the project. The party seeking approval for such change must certify that a copy of such request has been served on all parties of record in the underlying administrative proceeding or who have filed letters in opposition thereto.
- (2) Any change in project involving the addition of beds, change in bed classification (conversion of beds) or the provision of new health services not specified in the original CON application shall require the filing of a new CON application. ~~Any other~~ proposed change in a project which falls below the financial thresholds for review provided in Section 410-1-4-.01 and does not involve a physical relocation of the facility to a location other than that specifically designated in the application or CON, ~~a change in bed capacity or the provision of new services~~ shall be reviewable by the Executive Director of the agency. Otherwise, a project modification that meets the requirements of this rule shall be reviewable by the full Certificate of Need Review Board. No project modification will be granted prior to ten (10) business days after publication of the project modification request through notice provided on SHPDA’s web site. No more than two project modifications per project may be approved pursuant to this rule.
- (3) No project modification shall be granted during the pendency of an appeal of the Agency order granting the underlying CON. ~~In the event of a project modification, the effective date of the CON shall be recalculated to run from the date of the effective date of the modification.~~
- (4) The Agency shall be notified in writing of the termination of a health service or of one or more beds; provided, however, that such termination shall not require Agency review or approval.
- (5) Any adverse decision on a project modification heard by the Certificate of Need Review Board is subject to the Fair Hearing provisions of these rules, 410-1-8-.16, et seq.

Author: Alva M. Lambert

Statutory Authority: § 22-21-267,-271, Code of Alabama, 1975.

History: March 21, 1985; Amended: Filed May 3, 2005; effective June 7, 2005. Amended: Filed July 24, 2012; effective August 28, 2012.