Title 15: Mississippi State Department of Health

Part 9: Health Systems Planning & Policy Division

Subpart 91: Planning & Resource Development

MISSISSIPPI CERTIFICATE OF NEED REVIEW MANUAL

Adopted pursuant to Miss. Code Ann. §§ 41-3-15 and 41-7-171 through 41-7-209, as amended

Incorporating Amendments Made by H.B. 3, H.B. 1622, and S.B. 2474, 2026 Regular Session

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CHAPTER 1 — GENERAL PROVISIONS

Rule 1.1	**Authority.** The Mississippi State Department of Health adopts this Certificate of Need Review Manual pursuant to Miss. Code Ann. §§ 41-3-15 and 41-7-171 through 41-7-209, as amended, and all other applicable provisions of law. Nothing in this Manual shall be construed to expand, limit, modify, or alter the jurisdiction of the Department, the scope of certificate of need review established by statute, or rights of judicial review established by law.
Source: Miss. Code Ann. §§ 41-3-15; 41-7-171 et seq.	
Rule 1.2	**Purpose.** This Manual governs the administration of the Mississippi Certificate of Need Program by MSDH. The purpose of this Manual is to establish procedures, administrative standards, review criteria, and interpretive provisions for the administration of the Certificate of Need Program. This Manual is intended to: 1. Provide orderly procedures for filing, reviewing, and deciding CON applications; 2. Establish procedures for Determinations of Reviewability, Emergency Certificates of Need, Change of Ownership Reviews, and other administrative determinations; 3. Provide procedures for public notice, public comment, hearings, appeals, and post-approval administration; 4. Establish general review criteria applicable to CON applications; 5. Clarify administrative interpretations necessary for consistent application of the CON statutes; and 6. Distinguish administrative rules and procedures from planning methodologies and service-specific standards contained in the State Health Plan.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 1.3	**Applicability.** This Manual applies to all persons and entities seeking, holding, opposing, or otherwise participating in matters involving: a Certificate of Need; a

	Determination of Reviewability; a Change of Ownership Review; an Emergency CON; a request for extension, modification, withdrawal, revocation, rescission, or other post-approval action; a public hearing, administrative appeal, or judicial review arising under the CON Program; or any other approval, determination, or administrative action administered by the Department under the CON Program.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 1.4	**Construction.** This Manual shall be construed consistently with applicable federal law, Mississippi law, and the State Health Plan. Nothing in this Manual shall be construed to expand, limit, modify, create, or eliminate any requirement, exemption, exception, moratorium, prohibition, right, or remedy established by statute. If any provision of this Manual conflicts with applicable statute, the statute controls. The omission from this Manual of statutory text, statutory exemptions, statutory moratoria, or statutory requirements shall not be construed as eliminating, limiting, or modifying any such statutory provision.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 1.5	**Relationship to State Health Plan.** The State Health Plan establishes planning methodologies, inventories, need methodologies, utilization methodologies, planning districts, service-specific criteria, and other planning standards applicable to Certificate of Need review. This Manual establishes administrative procedures, general review criteria, and interpretive rules governing administration of the CON Program. An applicant shall demonstrate consistency with the State Health Plan in effect on the date the application is deemed complete, unless otherwise required by law.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 1.6	**Severability.** If any provision of this Manual, or the application of any provision to any person or circumstance, is held invalid, the invalidity shall not affect other provisions or applications of the Manual that can be given effect without the invalid provision or application. The provisions of this Manual are severable.
Source: Miss. Code Ann. § 41-7-171 et seq.	

Rule 1.7 **Definitions.**

For purposes of this Manual, unless the context clearly requires otherwise, the following terms have the meanings set forth below. Terms defined by Miss. Code Ann. §§ 41-7-171 through 41-7-209 retain the meanings assigned by statute; the definitions below supply administrative interpretations necessary for implementation and do not modify statutory definitions.

1. Affected Person — a person or entity entitled by applicable law to notice, participation, hearing, appeal, or other procedural rights in connection with a CON matter, including: (i) the applicant; (ii) a person residing within the geographic area to be served by the applicant's proposal; (iii) a person who regularly uses health care facilities or health maintenance organizations located in the geographic area of the proposal that provide similar services to those proposed; (iv) health care facilities and health maintenance organizations that, before receipt of the application under review, have formally indicated an intention to provide services similar to those of the proposal; (v) third-party payers who reimburse health care facilities located in the geographical area of the proposal; and (vi) any agency that establishes rates for health care services or health maintenance organizations located in the geographic area of the proposal.

2. Aggrieved Party — a person or entity that has actively participated in proceedings before the Department, including by requesting a hearing during the course of review or by the timely filing of written comments that completely and formally set out objections to the application and the reasons therefor, and otherwise meets the requirements of applicable law for administrative or judicial review.

3. Applicant — any person or entity seeking a CON, Determination of Reviewability, Change of Ownership Review, Emergency CON, exemption determination, extension, modification, or other approval or determination administered under the CON Program.

4. Application — a request submitted to the Department seeking a CON or other approval administered under the CON Program, including all required forms, attachments, supporting documentation, certifications, and fees.

5. Bed Abeyance — the voluntary temporary removal from active licensure of one or more licensed beds without relinquishment of the facility's ability to seek their return to active licensure as authorized by law.

6. By or On Behalf of — a capital expenditure, acquisition, lease, financing arrangement, construction activity, contractual commitment, or other transaction undertaken directly or indirectly for the benefit of a health care facility.

7. Capital Expenditure — has the meaning assigned by Miss. Code Ann. § 41-7-173, including the administrative interpretations set forth in Chapter 2 of this Manual. ***NOTE:*** The capital expenditure thresholds were amended by H.B. 3, 2026 Regular Session, effective February 4, 2026. Current statutory thresholds: major medical equipment — exceeds Three Million Dollars ($3,000,000.00); clinical health services other than major medical equipment — exceeds Ten Million Dollars ($10,000,000.00); nonclinical health services other than major medical equipment — exceeds Twenty Million Dollars ($20,000,000.00). These thresholds are subject to annual adjustment as provided by applicable law; the Department publishes current adjusted thresholds annually on its website.

8. Certificate of Need or CON — a written order issued by the State Health Officer setting forth the affirmative finding that a proposal in prescribed application form sufficiently satisfies the plans, standards, and criteria prescribed for such service or other project by Miss. Code Ann. §§ 41-7-171 et seq. and by rules and regulations promulgated thereunder.

9. Change in Project Scope — any material change to an approved project, including a substantial change in construction, renovation, capital expenditure, services to be offered, bed capacity, project location, ownership, major medical equipment, or other approved project characteristics.

10. Change of Ownership — a transaction or series of transactions resulting in a transfer of ownership, operation, management, control, controlling interest, assets, or other interest in a health care facility, health service, institutional health service, or major medical equipment.

11. Commencement of Construction — substantial initiation of approved construction, renovation, remodeling, alteration, replacement, or expansion activities, as documented by the evidence described in Chapter 6 of this Manual.

12. Complete Application — an application containing the information required by statute, this Manual, applicable State Health Plan provisions, Department forms and instructions, and any required filing fee, sufficient for the Department to begin substantive review.

13. Department — the Mississippi State Department of Health ("MSDH"). References to the "Division" or the "Division of Health Planning and Resource Development" in this Manual refer to an organizational unit of the Department; all such references are to the Department acting through that Division.

14. Determination of Reviewability — a written determination issued by the Department under Miss. Code Ann. § 41-7-205 regarding whether a proposed activity is subject to CON review.

15. Electronic Filing — filing by electronic mail, electronic portal, or other electronic method authorized by the Department.

16. Emergency Certificate of Need — a CON issued on an emergency basis in accordance with applicable law and Chapter 3 of this Manual.

17. Final Order — the written decision of the State Health Officer approving, approving with conditions, denying, revoking, rescinding, withdrawing, or otherwise finally disposing of a matter under the CON Program. The Final Order constitutes final agency action from which appeal rights under Miss. Code Ann. § 41-7-201 and Chapter 5 of this Manual run.

18. Good Faith Effort — objective action taken by a CON holder to implement an approved project, including expenditures, contracts, design work, financing commitments, site development, licensure activities, staffing preparation, or acquisition of equipment.

19. Health Care Facility — has the meaning assigned by Miss. Code Ann. § 41-7-173.

20. Health Service — has the meaning assigned by applicable law.

21. Institutional Health Service — has the meaning assigned by applicable law.

22. Major Medical Equipment — has the meaning assigned by Miss. Code Ann. § 41-7-173.

23. Material Project Modification — a change to an approved project that materially affects the project's nature, scope, location, cost, service capacity, ownership, timetable, equipment, bed complement, or consistency with the findings supporting approval. *See also* Chapter 6.

24. Notice of Intent — a filing submitted to the Department before submission of an application when required by applicable law or this Manual.

25. Person — has the meaning assigned by Miss. Code Ann. § 41-7-173.

26. Project — the activity, service, facility, equipment, expenditure, transaction, or undertaking proposed in an application or approved by a CON.

27. Similar Equipment — equipment having substantially comparable clinical function, purpose, capability, and use, even if differing in manufacturer, model, capacity, generation, or technical specifications.

28. Small Community Hospital — has the meaning assigned by applicable law. *See* H.B. 1622 § 1 and S.B. 2474 § 8, 2026 Regular Session, and Chapter 9 of this Manual.

29. State Health Officer — the State Health Officer of the Mississippi State Department of Health or the State Health Officer's authorized designee.

30. State Health Plan — the officially adopted State Health Plan in effect for purposes of CON review.

31. Substantial Progress — objective progress toward implementation of an approved project sufficient to demonstrate that the CON-holder is actively and materially pursuing completion of the approved project.

32. Working Day or Business Day — a day on which the Department is open for official business, excluding Saturdays, Sundays, legal holidays, and days on which the Department is closed.

Source: Miss. Code Ann. §§ 41-7-173 and 41-7-191; H.B. 3 § 2, 2026 Reg. Sess.; H.B. 1622 § 1, 2026 Reg. Sess.; S.B. 2474 § 8, 2026 Reg. Sess.

Rule 1.8 **Use of Department Forms and Instructions.**

The Department may prescribe forms, formats, filing instructions, checklists, and other administrative materials necessary to implement this Manual. Applicants and other persons filing materials with the Department shall use Department-prescribed forms and comply with Department filing instructions. Department forms and instructions shall not supersede applicable statutes, this Manual, or the State Health Plan.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 1.9 **Computation of Time.**

Unless otherwise required by law:

1. The day of the act, event, decision, notice, or filing from which a period begins to run is not included;

2. The last day of the period is included;

3. If the last day falls on a Saturday, Sunday, legal holiday, or a day on which the Department is closed, the period extends to the next business day; and

4. A filing received after the close of business on a business day may be deemed filed on the next business day.

	Where a statute expressly measures a period in calendar days, this Rule shall not be construed to extend or modify the statutory period.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 1.10	**Filing and Service.** Filings shall be submitted in the manner prescribed by the Department. The Department may accept filings by electronic means, mail, hand delivery, courier, or other approved method. A filing is not complete until received by the Department in the required form and accompanied by any required fee. Electronic submissions shall be deemed filed when successfully received by the Department.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 1.11	**Public Records and Confidential Information.** Records maintained by the Department in connection with the Certificate of Need Program shall be available in accordance with the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1 et seq., and other applicable law. A person submitting information claimed to be confidential shall clearly identify the information and provide the legal basis for the claim. The Department shall determine whether information is subject to disclosure in accordance with applicable law. Nothing in this Manual requires disclosure of records or information made confidential or privileged by law.
Source: Miss. Code Ann. § 25-61-1 et seq.	
Rule 1.12	**Notices.** Unless a specific method of notice is required by law, the Department may provide notice by website posting, electronic mail, mail, publication, electronic publication, or any other method reasonably calculated to provide notice to affected persons or interested persons.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 1.13	**Waiver of Non-Statutory Procedural Requirements.** The Department may waive formatting, filing, service, or other ministerial procedural requirements that do not affect substantive rights, notice, public participation, or statutory review requirements. The Department may not waive statutory requirements.

Source: Miss. Code Ann. § 41-7-171 et seq.

CHAPTER 2 — SCOPE OF COVERAGE

Rule 2.1	**Administrative Interpretation.** In administering the Certificate of Need Program, the Department may consider the substance of a transaction, project, expenditure, acquisition, relocation, ownership arrangement, contractual relationship, or other activity in addition to its form. The Department may examine all relevant facts and circumstances to determine whether a proposed activity is subject to CON review. Nothing in this rule shall be construed to expand the scope of activities subject to CON review beyond those identified by applicable law.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 2.2	**Aggregation of Related Expenditures.** For purposes of determining whether a proposed activity exceeds an applicable capital expenditure threshold, the Department may aggregate expenditures associated with related activities. Transactions separated in time but planned to be undertaken within twelve (12) months of one another and constituting components of an overall plan to accomplish a common project or patient care objective shall be evaluated collectively and not individually. In determining whether expenditures should be aggregated, the Department may consider whether the expenditures involve the same project or service; whether they are part of a common development plan; whether they are undertaken by related persons or entities; whether they are dependent upon one another; and whether they serve a common operational purpose. Nothing in this rule shall be construed to subject to CERTIFICATE OF NEED review any transaction or expenditure that is not independently subject to review under Miss. Code Ann. §§ 41-7-173(c) and 41-7-191. The twelve-month aggregation standard is an administrative interpretation of the statutory definition. Where application of this rule's aggregation analysis would produce a result inconsistent with applicable statute, the statute controls.
Source: Miss. Code Ann. § 41-7-173	
Rule 2.3	**Split-Party Capital Expenditures.** Where a health care facility, health service provider, physician group, management company, developer, lessor, affiliate, related organization, or other

	person proposes to provide or support a health service and the capital expenditure necessary to provide the service is divided among multiple persons or entities, the Department may consider the total capital expenditure required to implement the service. The Department may consider expenditures associated with facilities and equipment to provide services in Mississippi regardless of: (1) the location where the expenditure is incurred; (2) the location of the equipment or facility at the time of acquisition; (3) the domicile of the person making the expenditure; or (4) the form of the transaction. Nothing in this rule shall be construed to require Certificate of Need review of an expenditure that does not independently trigger review under applicable law solely by reason of its association with another party's expenditure. Where application of this rule would produce a result inconsistent with Miss. Code Ann. § 41-7-173(c), the statute controls.
Source: Miss. Code Ann. § 41-7-173	
Rule 2.4	**Acquisitions Other Than Purchase.** A capital expenditure may include acquisition by lease, gift, donation, devise, legacy, trust distribution, assignment, transfer, merger, consolidation, or other means. An acquisition for less than fair market value may be evaluated based upon fair market value when determining whether review is required. In determining fair market value, the Department may consider the following: 1. Independent Appraisals; 2. Market Data; 3. Industry Valuation Standards; 4. Purchase Agreements; 5. Lease Agreements; 6. Financing Documents; 7. Tax Records; 8. Asset Valuations; and 9. Other Relevant Information Deemed Appropriate by the Department.
Source: Miss. Code Ann. § 41-7-173	

Rule 2.5	**Capital Expenditures By or On Behalf of a Health Care Facility.** In determining whether an activity is undertaken by or on behalf of a health care facility, the Department may consider all relevant facts and circumstances. Factors that may be considered include, but are not limited to: 1. Ownership of land by a health care facility, or construction on land adjacent to a health care facility; 2. Leasing arrangements involving a health care facility, including leasing of land from a health care facility; 3. Options to purchase a structure or property retained by a health care facility; 4. Authority to approve tenants or occupants of a structure; 5. Rights to assume control of a structure or to collect rent; 6. Shared infrastructure, governance, management, branding, staffing, or patient services; 7. Revenue-sharing or financial support arrangements; and 8. Any other comparable factor demonstrating that the activity is undertaken primarily for the benefit of a health care facility. No single factor shall be dispositive.
Source: Miss. Code Ann. § 41-7-191	
Rule 2.6	**Date Capital Expenditure Incurred.** Unless otherwise required by law, a capital expenditure shall be deemed incurred upon the earliest of: 1. Execution of an enforceable contract for construction, acquisition, lease, or financing of a capital asset; 2. Formal action by the governing body of a health care facility committing its own funds to a project undertaken by facility personnel (force account expenditure); or 3. In the case of donated property, the date on which the gift is complete under applicable state law. The Department may consider additional facts demonstrating commitment to a project.

Source: Miss. Code Ann. § 41-7-173

Rule 2.7	**Relocation.** Relocation of a health care facility means the physical movement of a health care facility from one location or site to another. A portion of a health care facility, for purposes of relocation review, includes a wing, unit, department, service line, clinical program, patient care area, or licensed beds. Relocation of major medical equipment includes movement of such equipment from one physical facility to another physical facility. The Department may evaluate whether a proposed activity constitutes relocation subject to review under applicable law, considering the physical movement of operations, movement of licensed beds or health services, closure of one location and opening of another, transfer of patient care functions, continuity of operations, and other relevant factors.

Source: Miss. Code Ann. § 41-7-191

Rule 2.8	**Determinations of Reviewability — Administrative Framework.** Any person may request a written Determination of Reviewability concerning whether a proposed activity is subject to Certificate of Need review. Requests shall be submitted and processed in accordance with Chapter 3 of this Manual. A Determination of Reviewability is an administrative determination concerning the applicability of CON review requirements to a proposed activity based upon the facts presented to the Department. A Determination of Reviewability does not constitute approval of a project and does not authorize commencement of any activity requiring a CON. The rights, obligations, limitations, reliance provisions, and procedures governing Determinations of Reviewability are set forth in Chapter 3 of this Manual.

Source: Miss. Code Ann. § 41-7-205

Rule 2.9	**UMMC Academic Exemption.** The University of Mississippi Medical Center is subject to the Certificate of Need requirements of Miss. Code Ann. §§ 41-7-171 et seq., except as provided in Miss. Code Ann. § 41-7-191(22), as enacted by H.B. 3, 2026 Regular Session, effective February 4, 2026.

	Pursuant to § 41-7-191(22): 1. UMMC need not obtain a CON for hospital beds, services, health care facilities, or medical equipment that have been approved and continuously operated under a CON exemption for a teaching hospital, or that are approved or applied for before February 4, 2026, so long as they do not undergo a physical relocation; and 2. From and after February 4, 2026, UMMC has an academic exemption from the CON requirements of Miss. Code Ann. §§ 41-7-171 et seq. only within the geographic boundary described in Miss. Code Ann. § 41-7-191(22). To qualify for the academic exemption, the State Health Officer must determine that the proposed equipment or facility fulfills a substantial and meaningful academic function. Any activity by UMMC that falls outside the geographic boundary described in Miss. Code Ann. § 41-7-191(22) and that is not covered by item 1 of this rule remains subject to CON review under applicable law. Persons proposing activities at UMMC that may otherwise be subject to CON review should contact the Department for a written Determination of Reviewability before proceeding.
Source: Miss. Code Ann. § 41-7-191; H.B. 3 § 1, 2026 Reg. Sess.	
Rule 2.10	**Geographically Limited Statutory Exemptions.** Certain statutory exemptions apply on a geographic basis. Nothing in this Manual expands or limits the scope of any geographically limited statutory exemption. Persons proposing activities in counties or areas subject to a geographically limited statutory exemption should contact the Department for a written Determination of Reviewability before proceeding. ***NOTE:*** *Effective upon passage of H.B. 1622, 2026 Regular Session, Miss. Code Ann. § 41-7-191(24) exempts from CON review any activity in Issaquena County or Humphreys County that would otherwise require a CON, subject to the continued application of the statutory moratoria under § 41-7-191. The exemption does not apply to any entity seeking to establish a licensed hospital within thirty-five (35) miles of another licensed hospital, or if the exemption would jeopardize a licensed hospital's federal critical access hospital designation.*
Source: Miss. Code Ann. § 41-7-191; H.B. 1622 § 3, 2026 Reg. Sess.	

Rule 2.11	**Statutory Moratoria and Exemptions — General Principle.** Statutory moratoria and exemptions established by Miss. Code Ann. §§ 41-7-171 through 41-7-209 govern the issuance of Certificates of Need notwithstanding any provision of this Manual. The omission from this Manual of a specific moratorium or exemption does not eliminate or modify that moratorium or exemption. Where a statutory amendment modifies the scope of review, a moratorium, or an exemption, the amendment shall control notwithstanding any prior Department interpretation or determination.
Source: Miss. Code Ann. § 41-7-191	
Rule 2.12	**Dissemination of Scope of Coverage.** Before reviewing new institutional health services or other proposals not previously within the scope of the Certificate of Need Program, the Department shall make available a description of the scope of coverage of the Certificate of Need Program in accordance with applicable law. The Department shall publish such information on its official website and may disseminate such information through additional methods authorized by applicable law. Whenever the scope of coverage is revised, the Department shall publish a revised description on its official website and may disseminate the revised description through additional methods authorized by applicable law. The Department may publish guidance, notices, policy statements, frequently asked questions, and other informational materials concerning the scope of CON review. Such materials shall not supersede applicable law, this Manual, or the State Health Plan.
Source: Miss. Code Ann. § 41-7-191	
Rule 2.13	**Financing Prohibition Prior to Certificate of Need.** No person may enter into any financing arrangement or commitment for financing a new institutional health service or any other project requiring a Certificate of Need unless a CON has been granted for such purpose. This prohibition applies regardless of whether the person proposing the financing arrangement is the health care facility, an affiliate, a developer, a lender, or any other entity, if the financing arrangement or commitment is for a project that would require a CON.

	A Determination of Reviewability or other informal guidance from the Department does not constitute a CON and does not satisfy this prohibition. Only a CON issued pursuant to applicable law and this Manual satisfies the requirement of § 41-7-193(1).
Source: Miss. Code Ann. § 41-7-193	
Rule 2.14	**Ownership Concentration Limitation.** Miss. Code Ann. § 41-7-190 prohibits any corporation, partnership, individual, or association of persons from owning, possessing, or exercising control over, in any manner, more than twenty percent (20%) of the beds in health care facilities defined as skilled nursing facilities under § 41-7-173(h)(iv) and intermediate care facilities under § 41-7-173(h)(vi) in any defined health service area of the State of Mississippi. Health care facilities owned, operated, or under control of the United States government, the State government, or a political subdivision of either are excluded from the limitation of this rule. The ownership concentration limitation of § 41-7-190 operates independently of the Certificate of Need review process. A CON issued pursuant to this Manual does not authorize or excuse a violation of § 41-7-190. The Department shall consider compliance with § 41-7-190 in reviewing applications for Certificates of Need involving skilled nursing facilities and intermediate care facilities. Nothing in this rule limits the authority of the Department to take action under Miss. Code Ann. § 41-7-209 against any person violating § 41-7-190.
Source: Miss. Code Ann. § 41-7-190	
Rule 2.15	**Swing Bed Program.** The Department may issue a Certificate of Need to any hospital in the State to utilize a portion of its beds for the swing bed concept, pursuant to Miss. Code Ann. § 41-7-191(7). Any such hospital must be in conformance with the federal regulations regarding the swing bed concept at the time it submits its CON application, except that such hospital may have more licensed beds or a higher average daily census than the maximum number specified in federal regulations for participation in the swing bed program. Any hospital meeting all federal requirements for participation in the swing bed program that receives a CON shall render services provided under the swing bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services.

	No such hospital shall permit any patient who is eligible for both Medicaid and Medicare, or eligible only for Medicaid, to stay in the swing beds of the hospital for more than thirty (30) days per admission unless the hospital receives prior approval from the Division of Medicaid, Office of the Governor. Any hospital having more licensed beds or a higher average daily census than the maximum number specified in federal regulations for participation in the swing bed program that receives a CON shall develop a procedure to ensure that before a patient is allowed to stay in the swing beds of the hospital, there are no vacant nursing home beds available for that patient within a fifty (50) mile radius of the hospital. When any such hospital has a patient staying in its swing beds and the hospital receives notice from a nursing home within that radius that a vacant bed is available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice. Any hospital subject to the requirements of the two (2) preceding paragraphs may be suspended from participation in the swing bed program for a reasonable period of time if the Department, after a hearing complying with due process, determines that the hospital has failed to comply with any of those requirements. Suspension from the swing bed program shall be in the form of a written order. The hearing and appeal procedures of Chapter 5 of this Manual shall apply to such proceedings to the extent consistent with applicable law.
Source: Miss. Code Ann. § 41-7-191	

CHAPTER 3 — APPLICATIONS AND ADMINISTRATIVE DETERMINATIONS

Rule 3.1	**Department Forms.** Applications, requests, notices, reports, certifications, and other submissions required under this Manual shall be submitted on forms prescribed by the Department. The Department may revise forms, instructions, filing formats, and submission requirements as necessary. Department forms and instructions shall not supersede applicable statutes, this Manual, or the State Health Plan.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 3.2	**Notice of Intent.** A Notice of Intent outlining the general scope of a planned project requiring a Certificate of Need shall be submitted to the Department as early as possible in the course of planning, but no later than fifteen (15) calendar days before any person files a CON application. A Notice of Intent shall be valid for six (6) months from the date of receipt.

	Review of an application filed by a person who has not submitted a Notice of Intent at least fifteen (15) calendar days before the application shall be deferred until the fifteen (15) calendar day notice requirement is met. Under no circumstances shall a CON application be reviewed unless a Notice of Intent has been filed first. Submission of a Notice of Intent does not constitute approval of a project and creates no vested right in the applicant.
Source: Miss. Code Ann. § 41-7-191	
Rule 3.3	**Certificate of Need Applications.** Applications shall be submitted on forms prescribed by the Department and shall include all information required by applicable law, this Manual, the State Health Plan, Department forms and instructions, and any applicable Department requests for information. Pursuant to Miss. Code Ann. § 41-7-193(2), every application for a Certificate of Need shall specify the time, within the period that would be granted, during which the proposed project shall be functional or operational, according to a time schedule submitted with the application. The time schedule shall be realistic, consistent with the proposed capital expenditure, and sufficient to allow the Department to periodically review the progress of the project if a CON is issued. The Applicant shall certify the accuracy and completeness of all information submitted. An application may be submitted by an authorized representative; the Department may require documentation of authority to act on behalf of the Applicant.
Source: Miss. Code Ann. § 41-7-193	
Rule 3.4	**Completeness Review.** Within fifteen (15) calendar days of receipt, each Certificate of Need application shall be reviewed to determine whether sufficient information required to conduct substantive review is contained in the application and whether the required processing fee has been paid. If these criteria are met, the application shall be deemed complete. ***NOTE:*** *A shell application — one that lacks sufficient information to begin processing at the time of original filing — shall not be treated as an incomplete application. Shell applications shall not be accepted. Within fifteen (15) calendar days of receipt, a shell application shall be returned to the submitter along with the fee. The applicant may resubmit a completed application at any time.*

	A determination that an application is complete does not constitute a determination that the application satisfies applicable review criteria or that the project is entitled to approval.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 3.5	**Incomplete Applications.** If the Department determines that an application is incomplete, the information required to render it complete shall be requested of the Applicant in writing within fifteen (15) calendar days of the application's filing. The request shall specify what additional information is required. Failure to provide the requested information within fifteen (15) calendar days of the request shall result in administrative withdrawal of the application unless the Applicant has timely requested a deferral. Notice of administrative withdrawal or deferral shall be published on the Department's website. When an application is administratively withdrawn, the Applicant may not proceed with the proposed project until a new application is submitted, deemed complete, reviewed, and a Certificate of Need is issued.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 3.6	**Public Notice of Complete Applications.** Upon deeming an application complete, the Department shall publish notice on its website that the application has been accepted and entered into review, that the public is invited to submit written comments for a period of fifteen (15) calendar days from the deemed-complete date, and that the deadline for submission is clearly specified. Notification to Affected Persons shall be made on the day an application is deemed complete. The notice shall: A. State the date of entry into review; B. Identify the Applicant and provide a general description of the proposal; C. State the proposed schedule for review; D. Specify the public comment period begin and end dates; E. Identify the approximate date of publication of the staff analysis; F. Specify how a copy of the staff analysis may be obtained; and

G. Advise that a hearing may not be requested until the staff analysis is published, that any Affected Person may request a hearing within ten (10) calendar days of the date of publication of the staff analysis, and specify the manner in which notice of any scheduled hearing will be provided.

Notification to the public and third-party payors shall be by website posting. Notification to the Applicant shall be by electronic correspondence. The date of notification is the date on which notice is sent electronically and posted on the Department's website.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 3.7 **Requests for Additional Information.**

A. The Department may request additional or clarifying information at any time during review. If additional information is requested after review has begun, the Applicant shall have fifteen (15) calendar days to respond. Upon request of the Applicant, the review period shall be extended fifteen (15) calendar days.

Until an application is deemed complete, the Applicant may submit additional material. Members of the public, third-party payors, and other Affected Persons may submit material to the Department at any time during the first fifteen (15) calendar days following the deemed-complete date. Failure to provide requested information may result in suspension of review, delay in processing, administrative closure, or dismissal without prejudice.

B. Failure to provide requested information may result in:

1. Suspension of review;
2. Delay in processing;
3. Administrative closure; or
4. Dismissal without prejudice.

Before taking such action, the Department may provide notice and an opportunity to cure deficiencies.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 3.8 **Withdrawal of Applications.**

An Applicant may request withdrawal of an application at any time before issuance of a final decision. The Department may establish procedures governing

	withdrawal requests. Unless otherwise required by law, withdrawal terminates review of the application.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 3.9	**Determinations of Reviewability.** Any person may request a written Determination of Reviewability concerning whether a proposed activity is subject to Certificate of Need review. The request shall be submitted in writing, identify the requesting party, describe the proposed activity, include all relevant facts and supporting documentation, and include the required fee specified in Rule 3.10. A person seeking a determination that an activity is exempt from review, not subject to review, or otherwise outside the scope of CON review shall provide all information reasonably necessary for the Department to evaluate the request. Upon receipt of a request, notification to Affected Persons shall be made within five (5) business days by publication on the Department's website. The Department shall issue its written determination within forty-five (45) calendar days after receipt of a complete request. A request for additional information tolls the response period until the requested information is received. The Department may request additional information reasonably necessary to evaluate the request and may decline to issue a determination where sufficient information is not provided. Applicants proposing certification as a Single Specialty Ambulatory Surgery Center, a Distinct Part Skilled Nursing Facility, or a Geropsychiatric Distinct Part Unit shall obtain a written Determination of Reviewability before proceeding. A Determination of Reviewability: 1. Applies only to the facts presented to the Department; 2. Does not constitute approval of a project; 3. Does not authorize commencement of any activity requiring a CON; 4. Does not supersede applicable law; and 5. May be relied upon only with respect to the facts presented to the Department.

	A Determination of Reviewability may be modified, withdrawn, superseded, or deemed inapplicable where: 1. Material facts were omitted; 2. Material facts were inaccurately represented; 3. Circumstances materially change; 4. Applicable law changes; 5. The Department determines that continued reliance upon the determination would be inconsistent with law; or 6. The requesting party fails to provide notice of a material change as required by this Rule. A person who has requested or received a Determination of Reviewability shall notify the Department in writing within ten (10) business days after becoming aware of any material change in the facts upon which the determination was requested or issued.
Source: Miss. Code Ann. §§ 41-7-205; 25-43-2.103	
Rule 3.10	**Determination of Reviewability Processing Fee.** A fee of Two Thousand Five Hundred Dollars ($2,500.00) shall accompany each application for a Determination of Reviewability and is payable to the Department by check, draft, or money order. No application for a Determination of Reviewability shall be processed until the required fee is received.
Source: Miss. Code Ann. § 41-7-205	
Rule 3.11	**Change of Ownership Review.** Any person proposing a transaction that may constitute a Change of Ownership of an existing health care facility, major medical equipment, a health service, or an institutional health service shall submit a written Notice of Intent to Change Ownership to the Department at least thirty (30) days prior to the proposed date of the change. For proposed Changes of Ownership of a skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded, the Executive Director of the Division of Medicaid, Office of the Governor, must certify in writing that there will be no increase in allowable costs to Medicaid from

	revaluation of assets or from increased interest and depreciation resulting from the proposed change, consistent with Miss. Code Ann. § 41-7-191(1)(i). The Department may require information concerning ownership and management structure, financing arrangements, operational control, asset transfers, lease arrangements, licensure implications, Medicaid implications, and other matters relevant to review.
Source: Miss. Code Ann. § 41-7-191(1)	
Rule 3.12	**Change of Ownership Processing Fee.** A fee of Two Thousand Five Hundred Dollars ($2,500.00) shall accompany each Notice of Intent to Change Ownership and is payable to the Department by check, draft, or money order. No Notice of Intent to Change Ownership shall be processed until the required fee is received.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 3.13	**Transfer of Home Health Agency County.** The Department is authorized to issue an approval to an existing home health agency for the transfer of a county from that agency to another existing home health agency, and to charge a fee not to exceed one-half of the authorized fee assessed for the original agency application. The fee shall be calculated as 0.25 of 1% of the capital expenditure stated in the notice of transfer. The fee shall not exceed Twelve Thousand Five Hundred Dollars ($12,500.00) and shall not be less than Two Thousand Five Hundred Dollars ($2,500.00). The Transfer of Home Health Agency County form must be filed with the Department thirty (30) calendar days before the transition. During that thirty-day period, the matter shall be presented to the State Health Officer for a final decision. If the Department denies the request, it shall notify the Applicant and follow the same procedures applicable to denial of an extension request.
Source: Miss. Code Ann. § 41-7-191	
Rule 3.14	**Emergency Certificate of Need — Eligibility and Procedures.** Any health care facility that finds it a matter of immediate necessity to make a capital expenditure for replacement of or repair to equipment or a facility caused by unforeseen or unpredictable events that may jeopardize the health or safety of its patients may file a request for an Emergency Certificate of Need. Emergency expenditures include those required for repair of fixed equipment to maintain the

provision of quality care, including but not limited to heating and air conditioning equipment, elevators, electrical transformers and switch gear, sterilization equipment, emergency generators, water supply, and other utility connections.

A request shall be initiated by the facility's administrative executive officer (or a designated administrative assistant) contacting a member of the Department's staff responsible for administration of the CON Program. Justification shall be fully explained, including: the nature of the incurred loss or damage; the result or probable result of such loss or damage; the estimated cost or expenditure contemplated; the anticipated commencement date; the anticipated completion date; and such other information as requested by Department staff. Written notification confirming the emergency and all pertinent details shall be submitted to the Department as soon as possible following the initial contact.

A nonrefundable fee of Five Thousand Dollars ($5,000.00) shall accompany each request for an Emergency CON. The fee shall be payable to the Department in a form approved by the Department. The Department shall not be required to process an Emergency CON request until the required fee has been received; provided, however, that the State Health Officer may waive the requirement that the fee accompany the initial request when necessary to address an immediate threat to the health or safety of patients. In such cases, the fee shall be submitted within five (5) business days of the Department's acceptance of the request unless otherwise authorized by the Department.

The State Health Officer, after obtaining required information, shall grant or deny the Emergency CON as expeditiously as possible and shall provide timely public notice of the decision.

An Emergency CON shall not be valid for more than ninety (90) calendar days. A recipient must submit a formal CON application within fifteen (15) calendar days of the effective date of the Emergency CON addressing the same project. Normal CON procedures apply to such subsequent applications, except that no Notice of Intent shall be required.

If the Department determines that the alleged emergency did not exist, that material facts were misrepresented, or that there was an intent to commit fraud, any Emergency CON previously granted may be revoked or rescinded by the State Health Officer.

Source: Miss. Code Ann. § 41-7-207

Rule 3.15 **Emergency Replacement Procedure.**

Pursuant to Miss. Code Ann. § 41-7-207, when the need for an emergency replacement occurs involving a health care facility or equipment, the Certificate of Need review process shall be expedited by the promulgation and application

	of administrative procedures for expenditures necessary to alleviate an emergency condition and restore health care access. For purposes of this rule, emergency replacement means the replacement, and/or necessary relocation, of all or the damaged part of facilities or equipment, the replacement of which is not otherwise exempt from CON review under the medical equipment replacement exemption in Miss. Code Ann. § 41-7-191(1)(f), without which the operation of the facility and the health and safety of patients would be immediately jeopardized and health care access would be denied to such patients. Expenditures under this rule shall be limited to the replacement of those necessary facilities or equipment the loss of which constitutes the emergency; however, in the case of the destruction or major damage to a health care facility, the Department is authorized to issue a CON to address the current and future health care needs of the community, including but not limited to the expansion or relocation of the health care facility. A health care facility whose repair or rebuilding qualifies for the exemption provided by Miss. Code Ann. § 41-7-191(13) (natural disaster exemption) may apply for relief under that exemption rather than under this rule. Application Fee Waiver. The Department may waive all or part of the required CON application fee for any application filed under this rule if the payment of the fee would create a further hardship or undue burden on the health care facility. A request for fee waiver shall be submitted in writing to the Department concurrently with or before the filing of the application and shall include documentation sufficient to demonstrate the claimed hardship. Expedited Procedures. The Department shall establish and apply expedited review procedures for applications filed under this rule. Expedited procedures may differ from standard review procedures to the extent necessary to address the emergency circumstances. The Department shall communicate the applicable expedited procedures to the applicant upon receipt of the application.
Source: Miss. Code Ann. § 41-7-207	
Rule 3.16	**Certificate of Need Processing Fee.** Pursuant to Miss. Code Ann. § 41-7-188, the Certificate of Need processing fee shall be calculated as follows: 1. CON Fee = 0.50 × 1% of proposed capital expenditure. 2. Minimum fee: Five Thousand Dollars ($5,000.00).

3. Maximum fee: Twenty-Five Thousand Dollars ($25,000.00).

If the capital expenditure stated in the application differs from that in the Notice of Intent, the Applicant must adjust the fee payment to conform to the amount stated in the application. Fee payment shall accompany the CON application and is payable to the Department by check, draft, or money order. The assessed CON fee, once paid, is non-refundable.

When an application is received, the Department shall determine the capital expenditure and the applicable fee. If the Applicant has overpaid, the overpayment shall be refunded. If partial payment has been submitted, the balance due must be received within fifteen (15) calendar days of receipt of partial payment. No application shall be deemed complete for purposes of review until the required fee is received.

No filing fee shall be required for:

A. Any application submitted by an agency, department, institution, or facility operated, owned, or controlled by the State of Mississippi that receives operating or capital funds solely by legislative appropriation; or

B. Any application submitted by a health care facility for repairs or renovation determined in writing by the Health Facilities Licensure and Certification Division to be necessary to avoid revocation of license or loss of Medicare or Medicaid certification, provided that any expenditure in excess of the amount determined necessary shall be subject to applicable fee requirements.

Source: Miss. Code Ann. § 41-7-188

Rule 3.17 **Small Community Hospital Pilot Program — Referral to Chapter 9.**

Requests for exemptions under the Small Community Hospital Pilot Program established by H.B. 1622, 2026 Regular Session, as amended by S.B. 2474, 2026 Regular Session, shall be submitted and processed in accordance with Chapter 9 of this Manual. Such requests shall not be processed under the standard Certificate of Need application procedures of this Chapter.

Source: H.B. 1622 § 1, 2026 Reg. Sess.; S.B. 2474 § 8, 2026 Reg. Sess.

Rule 3.18 **Applications Unacceptable for Review.**

An application for a Certificate of Need shall not be accepted from the same person for a proposal in a health planning area from which a previously submitted application for the same or a substantially similar service or equipment, as

	determined by the Department, has been disapproved, unless one or more of the following conditions exist: 1. A substantial change has occurred in the existing or proposed health services of the type proposed by the applicant; 2. A substantial change has occurred in the need for the health service proposed by the applicant; or 3. At least one (1) year has elapsed from the date of the finding that resulted in disapproval of the previous application. A substantial change in existing or proposed services or facilities means the closure of a facility or service, or revocation of a CON, for that facility or service, which when taken into account results in an actual need for the proposed facility or service. Actual need means need as reflected by the appropriate plans, standards, or criteria in the most recent or current version of the State Health Plan. A substantial change in the need for a facility or service means an amendment, correction, or replacement of a standard, criterion, or plan of the Department that, when taken into account, results in an actual need for the type of service or facility proposed. The Department shall determine whether a substantial change has occurred as a threshold matter before accepting an otherwise barred application for review. A determination that a substantial change has occurred shall be made in writing and shall be included in the administrative record.
Source: Miss. Code Ann. § 41-7-171 et seq.	

CHAPTER 4 — APPLICATION REVIEW PROCEDURES

Rule 4.1	**Scope of Review.** The Department shall review each application to determine whether the proposed project satisfies applicable statutory requirements, this Manual, the State Health Plan, and other applicable requirements of law. Review shall be based upon the administrative record developed during the review process.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.2	**Staff Analysis.**

	Each application shall be assigned to a member of the Department's staff responsible for administration of the Certificate of Need Program for analysis and review. Applications shall be reviewed for consistency with the State Health Plan and the criteria contained in Chapter 7 of this Manual. A written staff analysis and recommendation with respect to approval or disapproval shall be prepared and made available on the Department's website and shall be transmitted by electronic mail to the Applicant and to those persons who have filed a written request for the specific staff analysis in response to the notice to Affected Persons. The Department shall not delay review of an application. The Department shall prepare its staff analysis and recommendation approving or disapproving a complete application within forty-five (45) calendar days of the date the application was filed, or within fifteen (15) calendar days of receipt of any additional information requested by the Department, whichever is later. Any request by the Department for additional information shall be made within fifteen (15) calendar days of the filing of the application. If the staff recommendation is disapproval, the Applicant shall have five (5) calendar days from the date of publication of the staff analysis on the Department's website to submit additional material relating to its application for further analysis that may resolve the basis for the recommendation of disapproval. The Applicant shall be notified of the deadline. Additional material submitted by an Applicant that was not requested by the Department, and any material submitted after the fifth (5th) calendar day following publication of a recommendation of disapproval, shall not be considered during the review process. Nothing in this Rule shall be construed to modify any review period established by applicable law. ***NOTE:*** *Only one submission of additional information in response to a recommendation of disapproval is permitted, and only by the Applicant. No additional submissions from the public shall be accepted in response to a recommendation of disapproval.*
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.3	**State Health Officer Decision.** Unless a hearing is requested under Miss. Code Ann. § 41-7-197, the State Health Officer's final order approving or disapproving an application shall be issued within ninety (90) calendar days of the date the application was filed.

	The State Health Officer shall consider the Department's staff analysis before making a decision. The decision shall be based on whether the proposal substantially complies with the plans, standards, and criteria established by the Department and substantially complies with the projection of need as reported in the State Health Plan in effect at the time the application was submitted. If the staff recommends approval and the State Health Officer does not concur, the Applicant shall have one opportunity only to submit additional information, and the State Health Officer shall delay the decision until evaluation of that information is completed. Additional information must be received within fifteen (15) calendar days of the date the applicant is notified. The State Health Officer may approve a proposal, approve it with conditions, approve it by modification (by reduction only, with written agreement of the applicant), or disapprove it. The decision shall be published on the Department's website and followed by written notice to the Applicant within ten (10) calendar days of the announcement. When a hearing has been held, the completed record shall be certified to the State Health Officer, who shall consider only the record in making the decision. The State Health Officer's written decision shall constitute the final order of the Department and shall be the final agency action from which appeal rights run.
Source: Miss. Code Ann. § 41-7-193	
Rule 4.4	**Maximum Capital Expenditure Specification.** Pursuant to Miss. Code Ann. § 41-7-193(2), each Certificate of Need issued by the Department shall specify the maximum amount of capital expenditure that may be obligated under the CON. The maximum capital expenditure stated in the CON constitutes the authorized ceiling for expenditures under that Certificate. Any proposed expenditure in excess of the authorized ceiling shall require cost overrun approval in accordance with Chapter 6 of this Manual. The Department shall state the maximum authorized capital expenditure on the face of each CON issued.
Source: Miss. Code Ann. § 41-7-193	
Rule 4.5	**Review Standards.** Applications shall be evaluated under applicable statutes, this Manual, the State Health Plan, applicable federal requirements, and other applicable requirements of law. No Certificate of Need shall be issued unless the proposed project

	substantially complies with the projection of need as reported in the State Health Plan in effect at the time the application was submitted to the Department.
Source: Miss. Code Ann. § 41-7-193	
Rule 4.6	**Burden of Demonstration.** The Applicant bears the burden of demonstrating that the proposed project satisfies applicable review criteria. The Department is not required to establish the absence of need or the inadequacy of a proposal.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.7	**Public Comment Period.** The Department shall provide an opportunity for public comment as required by applicable law. Members of the public, third-party payors, and other Affected Persons may submit written material during the first fifteen (15) calendar days following the deemed-complete date. The Department may consider public comments submitted during review and may assign such weight as deemed appropriate based upon relevance, reliability, and consistency with the administrative record.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.8	**Ex Parte Communications.** After publication of a staff analysis and before a written decision by the State Health Officer, there shall be no ex parte contacts between: (a) any person acting on behalf of the Applicant, any CON-holder, or any person opposed to or in favor of the issuance or withdrawal of a Certificate of Need; and (b) the State Health Officer, the Chief of Staff, the hearing officer, or Department staff responsible for administration of the CON Program. This prohibition does not apply to communications between and among Department staff members, the hearing officer, the Director, the Chief of Staff, the State Health Officer, and the staff of the Mississippi Attorney General's Office. Violations may be subject to penalties authorized by applicable law.
Source: Miss. Code Ann. § 41-7-197	

Rule 4.9	**Verification and Independent Evaluation.** The Department may independently evaluate information submitted by an applicant and may consider information obtained from public records, governmental sources, published studies, surveys, utilization data, licensure records, accreditation records, and other reliable sources. The Department may conduct site visits, inspections, meetings, conferences, or other investigative activities reasonably necessary to evaluate an application, and may consult with experts, advisors, governmental agencies, and other qualified individuals.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.10	**Conditions of Approval.** The Department may recommend or impose conditions reasonably necessary to ensure compliance with applicable law and project parameters, protect the public interest, promote access to care, ensure project implementation, or address issues identified during review. Conditions shall be stated in writing. Failure to comply with conditions may constitute grounds for enforcement action, revocation, rescission, denial of future requests, or other action authorized by law.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.11	**Competing Applications.** Where multiple applications involve substantially similar projects, services, or service areas, the Department may evaluate the applications comparatively to the extent permitted by law. In conducting a comparative review, the Department may consider each Applicant's ability to meet the criteria of need, access, relationship to the existing health care system, availability of resources, and financial feasibility, and may use statistical methodologies including but not limited to market share analysis and patient origin data.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.12	**Required Findings on Access.** Findings on access shall be included in the written findings of the Department for each project approved, except where: 1. The project is undertaken to eliminate or prevent imminent safety hazards or to comply with licensure or accreditation standards regarding life safety codes;

	2. The project proposes a capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or 3. The project is proposed by or on behalf of a health care facility controlled directly or indirectly by a health maintenance organization. In making written findings on access, the Department shall take into account the current accessibility of the facility as a whole. The Department may impose a condition requiring affirmative steps to meet access criteria where a project does not fully satisfy those criteria. The Department shall state in its written findings if a project is disapproved for failure to meet need and access criteria.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.13	**Misrepresentation.** If the Department determines that an application contains material misrepresentations or omissions, the Department may request corrective information, suspend review, deny the application, revoke an approval, refer the matter for investigation, or take other action authorized by law.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.14	**Notification of Status of Review.** The Department, upon request by persons subject to review, shall provide timely notification of the status of review, the Department's findings, and other appropriate information respecting the review.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 4.15	**Closure of Administrative Record.** The Department may establish a date upon which the administrative record shall close for purposes of review. The Department shall notify Affected Persons of the record closure date in accordance with Chapter 3 of this Manual. Information submitted after closure of the administrative record may be excluded from consideration unless otherwise permitted by the Department for good cause shown. Upon closure of the administrative record, the Department shall transmit the complete administrative record and any staff recommendation to the State Health Officer or authorized decision-maker.

	Pursuant to Miss. Code Ann. § 41-7-197(2), the State Health Officer shall consider only the record in making the decision and shall not consider any evidence or material not included therein.
Source: Miss. Code Ann. § 41-7-197	
Rule 4.16	**Effective Date of Approval.** A Certificate of Need approval shall become effective upon issuance of the State Health Officer's written final order, subject to any applicable stay of proceedings under Miss. Code Ann. § 41-7-201(2)(a) and Rules 5.19 and 5.20 of this Manual, and subject to any conditions of approval requiring completion of specified actions before the approval becomes operative. The validity period of a CON shall be computed from the effective date of approval in accordance with Miss. Code Ann. § 41-7-195(2) and Chapter 6 of this Manual.
Source: Miss. Code Ann. §§ 41-7-195 and 41-7-201	

CHAPTER 5 — HEARINGS, APPEALS, AND JUDICIAL REVIEW

Rule 5.1	**Right to Hearing.** Any Affected Person may, within ten (10) calendar days of publication of the staff analysis, request a public hearing during the course of review. A request for hearing must be received by the Department no later than 5:00 p.m. on the tenth (10th) calendar day after the date the staff analysis is published. If the tenth (10th) calendar day falls on a Saturday, Sunday, or legal holiday when the Department is closed for business, the request must be received by 5:00 p.m. on the next business day. An Applicant may request a hearing on its own application only if the staff recommendation is disapproval. If no request for a hearing is received, the State Health Officer may take action on the application. Nothing in this Manual creates a right to a hearing where no such right exists under applicable law.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.2	**Hearing Request — Requirements.** A request for a hearing during the course of review shall be submitted in writing and shall:

	1. Identify the party requesting the hearing; 2. Identify the application or action being challenged; 3. State the basis for the request; 4. Include sufficient information to identify the issues to be considered; and 5. Be accompanied by the required hearing fee deposit specified in Rule 5.3. A request not accompanied by the required fee deposit shall not be deemed timely filed.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.3	**Hearing Fee.** The fee assessed to cover the cost of conducting a public hearing during the course of review shall be Three Thousand Dollars ($3,000.00) per day. A deposit of Six Thousand Dollars ($6,000.00), payable by the requestor (or shared equally by all requestors), shall accompany the request for hearing. The deposit covers the cost of a hearing for a two-day period only. When a hearing exceeds two days, an additional fee of Three Thousand Dollars ($3,000.00) per additional day shall be assessed to the requestor or shared equally by all requestors. If fees collected exceed actual costs, the remaining funds shall be refunded once all invoices are paid. If fees collected are insufficient to cover actual reasonable costs, the requestor(s) shall be responsible for remitting additional fees. In the case of multiple requestors, remaining funds shall be divided equally. Refund of fees shall be made as follows: A. When an application is withdrawn by the Applicant and a pending hearing has not yet commenced, the requestor(s) must request a refund within five (5) business days of the withdrawal. B. When the person or entity requesting the hearing withdraws the request, the withdrawal must be received no later than five (5) business days before the day on which the hearing was scheduled. Any notice of withdrawal received later than five (5) business days before the scheduled hearing date shall not entitle the requestor to a refund. C. When an application is administratively withdrawn by the Department before commencement of the hearing, a full refund of the hearing fee deposit shall be made.

	D. In all other refund situations, a minimum of One Thousand Dollars ($1,000.00) shall be retained by the Department. Any extraordinary expenses incurred — such as publication costs, court reporter fees, and extraordinary administrative time — shall be deducted at a reasonable rate before any refund is made.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.4	**Designation and Authority of Hearing Officer.** If a public hearing is requested, the Department shall designate an independent hearing officer who shall not be an employee of the Department and who shall be a licensed attorney in the State of Mississippi. A public hearing shall be commenced by the designated hearing officer within sixty (60) calendar days of the filing of the hearing request unless all parties agree to extend the time for commencement. A hearing officer may: 1. Administer oaths and affirmations; 2. Establish schedules; 3. Conduct pre-hearing conferences; 4. Rule upon procedural matters; 5. Regulate the course of proceedings; 6. Receive evidence; 7. Rule upon evidentiary issues; 8. Establish deadlines; 9. Issue procedural orders; 10. Encourage stipulations; 11. Address discovery matters authorized by law; and 12. Take all actions necessary for the orderly conduct of proceedings. The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of relevant documents and things.
Source: Miss. Code Ann. § 41-7-197	

Rule 5.5	**Notice of Hearing.** Notification of the time, date, and place of the hearing shall be given to all affected parties and the public no later than fifteen (15) calendar days before the hearing. Notice shall identify the date, time, and location of the hearing; the nature of the proceeding; and the matters to be considered. The general public shall be notified through the Department's website.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.6	**Conduct of Hearings.** All Certificate of Need hearings are open to the public. To expedite the conduct of the hearing, persons attending should sign in, listing their name, address, and organization. The hearing officer shall open the hearing, identify the participants responsible for recording, administer oaths, and admit into the record as Exhibit One the legal notice, as Exhibit Two the Department's file, and as Exhibit Three the staff analysis. The hearing officer shall advise those present that the hearing is being conducted to discuss the merits of the application under consideration and that evidence concerning other pending or yet-to-be-offered applications not relevant to the matter in issue shall not be presented. Any Affected Person shall have the right to be represented by counsel, to present oral or written arguments and evidence relevant to the matter, and to conduct reasonable questioning of persons who make relevant factual allegations. A record of the hearing shall consist of a transcript of all testimony received, all documents and other material introduced by any interested person, the staff analysis and recommendation, and such other material as the hearing officer considers relevant, including the hearing officer's recommendation.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.7	**Order of Proof.** Unless otherwise determined by the hearing officer, the order of proof shall be as follows: 1. A member of the Department's staff, who may give a brief summary of the staff analysis and recommendation and may be questioned by any Affected Person and by the hearing officer. 2. The Applicant.

3. Opponent(s), if any, in an order established by agreement between the opponent(s), or if no agreement is reached, by the hearing officer. If no opponent(s) are present, the Department may present witnesses, exhibits, and testimony, conduct questioning of the Applicant's witnesses, make objections, argue, and submit proposed findings and conclusions. In this instance the Department should be represented by a staff attorney, who may be an employee of the Mississippi Attorney General's Office.

4. Persons who wish to give evidence for themselves or on behalf of a group or organization.

5. Persons who wish to give evidence but are not listed on the sign-in sheet and who have not been sworn, who shall be sworn before giving testimony.

6. Rebuttal by the Applicant, limited to matters raised during the opponent's case in chief.

7. Closing statements or arguments of counsel or Affected Persons. Waiver of closing statements at the hearing shall not entitle any party or Affected Person to argument before the State Health Officer. Argument shall normally be by simultaneous briefs submitted to the hearing officer within thirty (30) calendar days of the close of the hearing.

8. The hearing officer shall then close the hearing.

All persons giving testimony shall state their name and organizational affiliation.

Source: Miss. Code Ann. § 41-7-197

Rule 5.8 **Comparative Hearings.**

The conduct of a comparative hearing shall differ from a non-comparative hearing only in the following respects:

1. Applicants shall present their cases in the order in which their requests for hearing were received by the Department;

2. Rebuttal proof shall be offered by the Applicants in the order in which they presented their cases in chief; and

3. Opponents shall present in the order specified in Rule 5.7(3).

All other procedures for conducting a non-comparative hearing during the course of review apply to comparative hearings.

Source: Miss. Code Ann. § 41-7-197

Rule 5.9	**Pre-Hearing Procedures and Discovery.** Parties to a hearing shall exchange in writing the following information on or before the fortieth (40th) calendar day before the first date of the hearing: A. A list of proposed issues that the parties reasonably believe shall be the subject of the hearing; B. A list of witnesses, including full name, address, telephone number, whether fact or expert, and a brief summary of the matters on which the witness is expected to testify; C. A true and correct copy of every document anticipated to be introduced at the hearing (except those introduced solely for rebuttal); D. Copies of underlying documentation supporting the admissibility of charts, graphs, compilations, and professional and expert reports (except where privileged), produced for inspection if reasonable and exchanged if reasonably necessary; and E. A true and correct copy of every subpoena sought from non-parties, with documents received from non-parties in response to subpoenas to be furnished to all other parties no later than twenty (20) calendar days before the hearing. All documents should be pre-marked for admission into evidence. Parties are under a continuing duty to supplement this exchange; final supplementation shall be completed no later than the twentieth (20th) calendar day before the first day of the hearing. On or before the twentieth (20th) calendar day before the first day of the hearing, parties shall exchange proposed pre-hearing orders. The pre-hearing order shall be agreed upon and entered by the hearing officer on or before the tenth (10th) calendar day before the hearing. If agreement cannot be reached, the hearing officer shall adjudicate a pre-hearing order by the same deadline. The pre-hearing order shall include: the order of proof; a list of witnesses for each party; a statement that the parties have reached agreement as to pre-marked documents and that there is no question as to their authenticity and admissibility; a brief list and summation of the issues to be tried; any stipulations; and any other matters the parties agree upon or the hearing officer requires.
Source: Miss. Code Ann. § 41-7-197	

Rule 5.10	**Motions.** Motions may be heard at any time after receipt of a valid request for hearing, at a date and time selected at the discretion of the hearing officer. Except for motions to quash subpoenas, motions in limine, motions for protective order, and other evidentiary motions, all pretrial motions shall be noticed for and heard no less than ten (10) calendar days before the hearing. Motions to quash subpoenas, motions in limine, motions for protective order, and other evidentiary motions shall be noticed for and heard no less than twenty (20) calendar days before the hearing. Except for good cause shown, no motion shall be served on opposing parties less than three (3) business days before the scheduled motion hearing. Opposing parties may serve a written response to the motion before the scheduled hearing time. The hearing officer's ruling on a motion, whether oral or in writing, shall be entered into the record and shall be final as to all matters regarding the conduct of the hearing.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.11	**Subpoenas.** A duly appointed hearing officer may issue subpoenas *sua sponte* or upon application by any party. Except for good cause shown, no subpoena shall be issued less than thirty-five (35) calendar days, nor served less than thirty (30) calendar days, before the date of the hearing for which it is sought. Any subpoena duces tecum shall specify a date, time, and place for the production of documents or things no less than twenty (20) calendar days before the hearing, unless the hearing officer orders otherwise. The person to whom a subpoena is directed may, no less than twenty-five (25) calendar days before the first day of the hearing, serve upon the parties and the hearing officer a written objection together with a notice of a motion on the objection, in which case attendance or production shall not be compelled except pursuant to an order of the hearing officer. At least twenty (20) calendar days before the hearing, the hearing officer shall hear motions concerning issued subpoenas. The hearing officer's rulings shall be entered into the record and shall be final as to all matters involving subpoenas. If a party refuses to comply with a subpoena, the hearing officer shall certify such facts and enter them into the record, at which point any party may move the appropriate court for relief. The hearing shall not be delayed while such a matter is being resolved in court.
Source: Miss. Code Ann. § 41-7-197	

Rule 5.12	**Consolidation of Hearings.** When applications involving a common question of law or fact, or multiple proceedings involving the same or related parties, are pending before a hearing officer, the hearing officer may — on the motion of any party, the Department's motion, or the hearing officer's own motion — order a joint hearing on any or all matters and issues. The hearing officer may order cases consolidated and may make such other orders as may tend to avoid unnecessary cost or delay.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.13	**Sanctions.** Upon the motion of any party, a hearing officer may impose reasonable sanctions on parties who fail or refuse to comply with the rules and regulations of the Department or who violate a hearing officer's order. Reasonable sanctions may also be imposed upon parties or non-parties who fail or refuse to comply with subpoenas. Reasonable sanctions include, but are not limited to, denial or exclusion of information or documents, exclusion from the record of testimony of witnesses, or other reasonable measures. Sanctions shall not be imposed to punish but to compel fairness and to deny any advantage gained by non-compliance.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.14	**Evidence and Official Notice.** The hearing officer may receive evidence commonly relied upon by reasonably prudent persons in the conduct of serious affairs and may exclude evidence that is irrelevant, immaterial, unduly repetitive, unreliable, or otherwise inappropriate. Official notice may be taken of statutes, regulations, public records, State Health Plan provisions, Department records, government publications, and other matters appropriate for official notice. Parties shall be afforded an opportunity to contest matters officially noticed.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.15	**Service of Documents and Copies.** One copy of each document — including pleadings, motions, briefs, and letters — shall be served on each attorney of record in a particular matter, on the hearing officer, and one copy furnished to the Department for inclusion in the file. Any

	document furnished to the Department for filing shall plainly state on its face or in an accompanying letter that it is being furnished for filing. Any document sought to be introduced into the record shall be accompanied by sufficient copies for all other counsel, the hearing officer, and the court reporter. Submittals shall be on paper not less than 8.5" x 11", shall have margins of not less than 1" at top and bottom, not less than 1.5" on the left, and not less than 0.5" on the right, shall be of good quality and easily readable, and shall not exceed five (5) pages per exhibit unless designated as a bulky exhibit.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.16	**Hearing Officer Recommendation.** After the hearing is closed and after the hearing officer has had an opportunity to review, study, and analyze the evidence, the hearing officer shall prepare a written recommendation. The recommendation shall be issued no later than forty-five (45) calendar days after the hearing is closed. A copy of the hearing officer's recommendation shall be sent to the parties before the State Health Officer's decision is announced.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.17	**Withdrawal of a Certificate of Need — Revocation Procedures.** If commencement of construction or other preparation is not substantially undertaken during a valid Certificate of need period, or if the Department determines that the CON-holder is not making a good faith effort to obligate the approved expenditure, the Department shall have the right to withdraw, revoke, or rescind the Certificate pursuant to Miss. Code Ann. § 41-7-195. In considering such action, the Department shall: 1. Notify the Applicant, Affected Persons, and the general public by appropriate means that withdrawal is under consideration and the reasons therefor; 2. Afford the Applicant thirty (30) calendar days from the date of written notice to respond and, if desired, to request a public hearing. If no response is received during the thirty-day period, the Department may conclude that the Applicant concurs with the proposed action; 3. If a public hearing is requested by any Affected Party, conduct the hearing within forty-five (45) calendar days of receipt of the written request; and 4. Issue a written decision within thirty (30) calendar days following conclusion of any hearing on withdrawal.

	Written notice of any hearing on withdrawal shall be provided to Affected Persons at least five (5) calendar days before the hearing and shall be published on the Department's website. Action taken to revoke, withdraw, or rescind a CON shall be in the form of a final written order. The same appeal rights that apply to initial review of applications apply to hearings or reviews to withdraw an existing CON.
Source: Miss. Code Ann. § 41-7-195	
Rule 5.18	**Final Administrative Decision.** The State Health Officer shall issue a written final decision after reviewing the administrative record. The decision may affirm, reverse, modify, remand, dismiss, or otherwise dispose of the matter. The State Health Officer's decision shall be published on the Department's website and followed by written notice to the Applicant.
Source: Miss. Code Ann. § 41-7-197	
Rule 5.19	**Stay of Proceedings.** There shall be a stay of proceedings of any final order issued by the Department pertaining to the issuance of a Certificate of Need for the establishment, construction, expansion, or replacement of a health care facility (other than a home health agency) for a period of thirty (30) days from the date of the order, if an existing provider located in the same service area has requested a hearing during the course of review in opposition to the issuance of the CON. The stay shall expire at the termination of thirty (30) days; however, no construction, renovation, or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued, and no certification to participate in the Medicare or Medicaid programs shall be granted, until all statutory appeals have been exhausted or the time for those appeals has expired. The filing of an appeal shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in the CON.
Source: Miss. Code Ann. § 41-7-201	
Rule 5.20	**Stay of Proceedings — Home Health Agency Certificates of Need.** Pursuant to Miss. Code Ann. § 41-7-202, there shall be a stay of proceedings of any written decision of the Department pertaining to a Certificate of Need for a home health agency, as defined in Miss. Code Ann. § 41-7-173, for a period of thirty (30) days from the date of that decision.

	The stay shall expire at the termination of thirty (30) days; however, no license to operate any such home health agency that is the subject of the decision shall be issued by the licensing agency, and no certification for such home health agency to participate in the Title XVIII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for such appeals has expired. The stay of proceedings provided by this rule applies exclusively to home health agency CON decisions under § 41-7-202. It does not apply to final orders pertaining to CONs for any other health care facility, which are governed by Rule 5.19 of this Manual. The two stay provisions are separate and independent.
Source: Miss. Code Ann. § 41-7-202	
Rule 5.21	**Judicial Review — Health Care Facilities Other Than Home Health Agencies** Any party aggrieved by a final order of the Department pertaining to a Certificate of Need for any health care facility other than a home health agency shall have the right of direct appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi. The appeal must be filed within twenty (20) days after the date of the final order. An appeal of an order disapproving an application may alternatively be made to the chancery court of the county where the proposed construction, expansion, or alteration was to be located or the new service was to be provided and must be filed within twenty (20) days. Any appeal shall state briefly the nature of the proceedings before the Department and shall specify the order complained of. Any person whose rights may be materially affected may appear and become a party, or the court may order that such person be joined as a necessary party. Upon filing of an appeal, the clerk of the chancery court shall serve notice upon the Department, whereupon the Department shall, within thirty (30) days, or within such additional time as the court may allow for cause, certify to the chancery court the complete record in the case, including a transcript of all testimony, all exhibits or copies thereof, all pleadings, proceedings, orders, findings, and opinions. The parties and the Department may stipulate that only a specified portion of the record shall be certified. The chancery court shall give preference to appeals from CON proceedings and shall render a final order no later than one hundred twenty (120) days from the date of the Department's final order. If the chancery court has not rendered a final order within the one hundred twenty (120)-day period, the Department's final order shall be deemed affirmed and any party shall have the right to appeal to the Supreme Court on the record certified by the Department. Awards of costs,

	fees, reasonable expenses, and attorney fees arising from such proceedings shall be governed by Rule 5.23 of this Manual and applicable law. Any appeal shall require the giving of a bond approved by the chancery court within five (5) days of the filing of the appeal. The bond shall secure obligations imposed pursuant to Rule 5.23 of this Manual and applicable law. No new or additional evidence shall be introduced in the chancery court. The case shall be determined upon the certified record. The court may sustain or dismiss the appeal, or modify or vacate the order complained of, in whole or in part. Awards of costs, fees, reasonable expenses, and attorney fees shall be governed by Rule 5.23 of this Manual and applicable law. The order shall not be vacated or set aside, except for errors of law, unless the court finds that the order of the Department is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the Department, or violates vested constitutional rights of a party. An order reversing the denial of a Certificate of Need shall not entitle the applicant to effectuate the Certificate of Need until either: 1. The order of the chancery court has become final and has not been appealed to the Supreme Court; or 2. The Supreme Court has entered a final order affirming the chancery court. Appeals in accordance with law may be had to the Supreme Court from any final judgment of the chancery court. The Supreme Court shall give preference to and conduct expedited review of such appeals and shall render a final order no later than one hundred twenty (120) days from the date the final judgment of the chancery court is certified to the Supreme Court. Within thirty (30) days after a final order of the Supreme Court, or a final order of the chancery court that is not appealed to the Supreme Court, modifying or vacating a Department order granting a Certificate of Need, the Department shall issue a further order in conformity with the court's decision.
Source: Miss. Code Ann. § 41-7-201	
Rule 5.22	**Judicial Review — Home Health Agencies.** Judicial review of final orders pertaining to a Certificate of Need for a home health agency, as defined in Miss. Code Ann. § 41-7-173, shall be governed by Miss. Code Ann. § 41-7-201(1). Appeals shall be filed within thirty (30) days after the date of the final order in the Chancery Court of the First Judicial District of Hinds County, Mississippi,

	or, in the case of an order disapproving an application, in the chancery court of the county where the proposed service was to be provided. The standards of review and record-certification requirements applicable to CON appeals shall apply to home health agency appeals to the extent provided by Miss. Code Ann. § 41-7-201(1). Awards of costs, fees, reasonable expenses, and attorney fees shall be governed by Rule 5.23 of this Manual and applicable law. The appeal-bond requirement applicable to appeals governed by Rule 5.21 does not apply to home health agency appeals unless otherwise provided by law. Supreme Court review of home health agency Certificate of Need appeals shall be governed by Miss. Code Ann. § 41-7-201(1)(d).
Source: Miss. Code Ann. § 41-7-201; H.B. 1622 § 4, 2026 Reg. Sess.	
Rule 5.23	**Fee-Shifting on Appeal** Beginning July 1, 2026, any party aggrieved by a final order of the Department approving a Certificate of Need application that exercises the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi under Miss. Code Ann. § 41-7-201(1) or (2), including any additional appeal to the Supreme Court of the State of Mississippi, shall be required to reimburse the Applicant whose application was approved for all reasonable attorney, consultant, and other fees related to the appeal if the Department's final order approving the CON is not vacated or set aside by the chancery court or by the Supreme Court. This fee-shifting obligation applies to any appeal of an order approving a CON filed on or after July 1, 2026, regardless of when the underlying application was filed or the CON was issued. The fee-shifting obligation established by this rule is cumulative of, and does not limit or replace, any award of costs, fees, expenses, or attorney fees otherwise authorized by applicable law. The appeal bond required by Rule 5.21 constitutes security for obligations arising under this rule and for any costs, fees, expenses, or attorney fees otherwise recoverable under applicable law.
Source: Miss. Code Ann. § 41-7-201; H.B. 1622 § 4, 2026 Reg. Sess.	

Rule 5.24	**Proponent's Right to Compel Decision.** Unless a hearing is held, if review by the Department is not complete with a final decision issued within ninety (90) calendar days from the filing of the application, the proponent (i.e., the CON Applicant) may, within thirty (30) calendar days after the expiration of that period, commence legal action in the Chancery Court of the First Judicial District of Hinds County, Mississippi, or in the chancery court of the county in which the service or facility is proposed to be provided, to compel the Department to issue written findings and a written order approving or disapproving the proposal.
Source: Miss. Code Ann. § 41-7-201	
Rule 5.25	**Designation of Record on Appeal.** In order to allow the Department to adequately prepare the record for appeal, any party filing an appeal, cross-appeal, or other responsive pleading to a notice of appeal shall specifically designate the record for purposes of appeal in a manner similar to that required by the Mississippi Rules of Appellate Procedure. Such designation must specifically set out any documents received or generated by the Department after publication of the staff analysis that the party desires included in the appellate record.
Source: Miss. Code Ann. § 41-7-201	
Rule 5.26	**Electronic Proceedings.** To the extent permitted by law, hearings, conferences, and related proceedings may be conducted by electronic means, including videoconference, teleconference, or other technology approved by the Department.
Source: Miss. Code Ann. § 41-7-201	

CHAPTER 6 — POST-APPROVAL ADMINISTRATION

Rule 6.1	**Continuing Compliance.** A CON-holder shall remain responsible for compliance with applicable law, this Manual, the State Health Plan where applicable, all conditions of approval, and representations made to the Department in connection with approval of the project. Issuance of a Certificate of Need does not authorize operation without required licensure, eliminate the need for other governmental approvals, supersede zoning requirements, guarantee reimbursement eligibility, or create rights beyond those granted in the approval.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 6.2	**Certificate of Need Validity — Scope, Location, and Person.** Pursuant to Miss. Code Ann. § 41-7-195(1), a Certificate of Need is valid only for the defined scope, physical location, and person named in the application. A CON is not transferable or assignable, nor shall a project or capital expenditure project be transferred from one person to another, except with the approval of the Department. A CON-holder may not operate outside the approved scope, outside the approved physical location, or under the authority of a CON held by a different person, without prior Department approval. Any material change in the approved scope, physical location, or ownership of a CON shall be reported to the Department in accordance with this chapter and may require a new CON or Department approval of a modification.

Source: Miss. Code Ann. § 41-7-195

Rule 6.3	**Progress Reports.** The CON-holder is required to submit a written progress report every six (6) months from the effective date of the Certificate of Need and upon project completion. Completion means when the approved project is sufficiently complete to be operational for the purpose for which the CON was issued. The holder shall certify each report and submit documentation demonstrating good faith effort to implement the CON by showing substantial progress. A fee of One Thousand Dollars ($1,000.00) shall be assessed for the processing and handling of six-month progress reports associated with extension requests and is payable to the Department by check, money order, or any other manner approved by the Department.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 6.4	**Duty to Notify of Material Changes.** A CON-holder shall promptly notify the Department of any material change affecting an approved project. Material changes may include changes in ownership, project delays, financing changes, construction changes, location changes, changes in approved services, equipment changes, or other significant project developments.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 6.5	**Change in Scope of Approved Project.** If an approved project is substantially changed in scope — in construction, services, or capital expenditure — the existing Certificate of Need is void and a new CON application is required before the holder may lawfully proceed further. *See* Rule 6.6 for standards governing determination of whether a modification is material and Rule 6.7 for the cost overrun process.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 6.6	**Material Project Modifications.** In determining whether a modification is material, the Department may consider changes in approved capital expenditure, project location, ownership or control, approved services, bed capacity, major medical equipment, project size or scope, service area, or implementation schedule. No single factor shall be dispositive. The Department may determine that a proposed modification: 1. May be approved administratively; 2. Requires additional review; 3. Requires a formal application; 4. Requires a new Certificate of Need application; or 5. Does not require further review. Requests for project modification shall be submitted in writing, describe the proposed modification, explain the reason for the modification, provide supporting documentation, and include any information requested by the Department.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 6.7	**Cost Overrun Approval.** Changes in capital expenditure not associated with substantive construction or service changes require application for cost overrun approval. When actual or projected capital expenditures exceed the amount authorized by the Certificate of Need, the holder shall submit a request for cost overrun approval in accordance with this Rule and include: A. For construction projects: a revised estimate signed by an architect licensed to practice in Mississippi or a contractor authorized by law to do business in Mississippi; a description of the method used to determine the revised cost

estimate; justification for each line item for which a cost overrun is requested; a revised capital expenditure budget outlining all associated costs; and copies of any bid quotations. Any cost overrun on a construction or renovation project locating cost in or above the upper one-fourth range for U.S. construction or renovation cost shall require additional documentation to explain the reasons.

B. For equipment purchases: an official price quotation from the vendor or manufacturer.

C. For cost overruns resulting in part or in whole from requirements of the licensure and certification authority: appropriate documentation from the licensing or certification authority.

Construction cost overrun requests may be compared with nationally recognized construction cost data, including RS Means or comparable industry references, or other bona fide reference.

The fee for cost overrun approval shall be calculated as: 0.50 of 1% of the revised capital expenditure, less the original fee, not to exceed Twenty-Five Thousand Dollars ($25,000.00) and not less than Five Thousand Dollars ($5,000.00). For any proposal in which the estimated or actual cost exceeds the amount originally approved, a review by the State Health Officer shall be required.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 6.8 **Extensions — Six-Month Extension.**

Certificates of Need are valid for a period not to exceed one (1) year and may be extended by the Department for an additional period not to exceed six (6) months. To continue authority under a CON following the initial twelve-month issuance period, the holder must document substantial progress toward completion and be granted a six-month extension.

A request for a six-month extension shall be filed at least thirty (30) calendar days before the expiration of the original or any extended period. Six-month extensions shall be based upon and supported by documentation demonstrating good faith effort to implement the CON through substantial progress. Substantial progress shall be determined based upon review of the documentation submitted and whether a change in project status has occurred since the previous progress reporting period.

A fee of Two Thousand Five Hundred Dollars ($2,500.00) shall be assessed for the processing and handling of six-month extension requests and is payable to the Department by check, draft, or money order.

Source: Miss. Code Ann. § 41-7-195

Rule 6.9	**Denial of Extension — Hearing Right.** If the Department denies a request for a six-month extension, the Department shall afford the CON-holder fifteen (15) calendar days notice within which to request a hearing. If a public hearing is requested, the Department shall conduct the hearing within forty-five (45) calendar days of receipt of the written request, utilizing the hearing procedures set forth in Chapter 5 to the extent practicable. A written request for such a hearing must be received no later than fifteen (15) calendar days from the date of the notice of denial and must be accompanied by the Six Thousand Dollar ($6,000.00) hearing fee deposit required by Rule 5.3. The State Health Officer shall render a written decision within thirty (30) calendar days following conclusion of any hearing on the denial of a six-month extension.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 6.10	**Good Cause for Extension.** In evaluating whether good cause exists to grant a six-month extension, the Department may consider all relevant circumstances, including but not limited to: 1. Construction delays; 2. Financing delays; 3. Regulatory delays including delays in licensure, permitting, or required governmental approvals; 4. Litigation affecting the project; 5. Supply-chain disruptions; 6. Acts of God or natural disasters; 7. Public health emergencies; 8. Workforce shortages; and 9. Other circumstances beyond the reasonable control of the CON-holder, provided the holder has acted diligently to mitigate and overcome such circumstances.

Source: Miss. Code Ann. § 41-7-195

Rule 6.11	**Good Faith Efforts.** In determining whether a CON-holder has made a good faith effort to implement an approved project and to obligate the approved expenditure, the Department may consider all relevant circumstances, including but not limited to: 1. Capital expenditures incurred to date; 2. Construction or renovation activities undertaken; 3. Financing commitments obtained or actively pursued; 4. Efforts to acquire land, equipment, or materials; 5. Staffing efforts, including recruitment and contracting; 6. Licensure or certification activities; and 7. Other implementation activities demonstrating intent and ability to complete the approved project. No single factor shall be dispositive. The Department shall evaluate the totality of the circumstances in determining whether a good faith effort has been made.
Source: Miss. Code Ann. § 41-7-195	
Rule 6.12	**Substantial Progress.** In determining whether substantial progress has occurred toward implementation of an approved project during a valid Certificate of Need period, the Department may consider the totality of circumstances, including but not limited to: 1. Total project expenditures incurred; 2. Construction or renovation progress; 3. Financing commitments obtained; 4. Equipment acquisition or orders placed; 5. Contracts executed with contractors, vendors, or staff; 6. Site development activities; and 7. Other implementation efforts demonstrating active and material pursuit of project completion.

	No single factor shall be determinative. Substantial progress shall be evaluated based upon the nature and scope of the approved project and the stage of implementation at the time of review.
Source: Miss. Code Ann. § 41-7-195	
Rule 6.13	**Documentation of Commencement of Construction and Substantial Progress.** The following documentation may be reviewed to determine whether commencement of construction or other preparation has been substantially undertaken during a valid Certificate of Need period and whether the holder is making a good faith effort to obligate approved expenditures. A. Commencement of Construction — all of the following must be demonstrated: 1. A letter from the Director of the Health Facilities Licensure and Certification Division stating that final plans have been submitted and approved, prepared by an architect or architectural firm licensed in Mississippi, and that the site is approved. 2. A copy of a legally binding written contract executed by the holder and a contractor to construct and complete the project within a reasonable designated time, stating the specific capital expenditure amount conforming to the amount previously approved. 3. A copy of the contractor's Mississippi license. 4. A copy of the building permit issued by the applicable governing authority, or if no building permit is required, a letter from the applicable authority stating such. 5. A letter from the applicable governing authority that the proposed project is in compliance with applicable zoning regulations, or if no regulations exist, a letter to that effect. 6. A statement in writing that the proposed construction is not in violation of the Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 et seq., or any federal law pertaining to construction in a federally designated wetlands area. 7. Documentary proof that a progress payment of at least one percent (1%) of the total construction cost stated in the contract has been paid by the holder to the contractor, exclusive of site preparation costs.

8. A written statement signed by the holder and the contractor that all site preparation work has been completed.

9. A written statement signed by the holder and the contractor that actual bona fide construction has commenced and describing the details of such preliminary construction.

10. A copy of the Proceed to Construction Written Order previously given to the contractor.

B. Other Preparation Substantially Undertaken During the Valid CON Period — evidence may include but is not limited to:

For construction projects: acquisition of property (title, evidence of payment); completion of topographic or boundary surveys; site preparation (contractor selection, contract, evidence of payment); completion of site development plan; and architectural plans and drawings (architect selection, contract, evidence of payment, submission to Health Facilities Licensure and Certification, and any letter of findings, comments, or approval of commencement of construction).

For establishment of service: hiring or entering contracts with necessary staff or medical professionals; submission of a fire/life safety code inspection request; submission of an application for facility inspection or licensure; and acquisition of equipment (title, lease, etc.).

C. Good Faith Effort to Obligate Approved Expenditure — documentation may include, in addition to items under A and B above: documentation of capital expenditure made to date; evidence that permanent financing has been obtained if the approved capital expenditure has not been obligated; if financing has not been obtained, evidence of fund commitment from a lending institution; and evidence of contractual obligation to expend funds.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 6.14 **Expiration of a Certificate of Need.**

The valid period for a Certificate of Need is the period stated on the Certificate or any subsequent extension approved by the State Health Officer. A CON-holder is authorized to proceed with and make expenditures on the project only during the valid period or any extension thereof.

Once a CON is no longer in a valid period, it is expired and void by operation of law, and the holder must immediately refrain from taking any action under it. If a holder fails to request an extension before the Certificate's expiration date, the

	Certificate shall be automatically void by operation of law without any further action on the part of the Department.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 6.15	**Extension or Renewal of an Expired Certificate of Need.** Extenuating circumstances may prevent a holder from proceeding with a proposed project within the valid period of the approved Certificate of Need. The Department has adopted a format for Extension/Renewal of an Expired CON to be used when the increase in capital expenditure does not exceed the rate of inflation and no change in the intent or scope of the project has occurred. This application shall be submitted and reviewed under the procedures and criteria set forth in this Manual. The following criteria shall be considered: 1. Reason for expiration; 2. How long the CON has been expired; 3. Status of the project at the time of expiration and current status; 4. Continued need for the project; 5. Applicant's ability to complete the project; and 6. Timeline for completion. The Department shall not consider a CON for extension or renewal that has been expired for more than eighteen (18) months, or that is not shown in the current State Health Plan. The fee shall be one-half of the original assessment. The minimum fee shall not be less than Two Thousand Five Hundred Dollars ($2,500.00) and the maximum fee shall not exceed Twelve Thousand Five Hundred Dollars ($12,500.00).
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 6.16	**Amendments to Certificates of Need.** A Certificate of Need may be amended to reflect changes in the defined scope or physical location if the amendment is necessary to comply with the licensing laws of the State or for certification under Title XVIII or Title XIX of the Social Security Act. Any such necessity shall be documented in writing from the Director of the Health Facilities Licensure and Certification Division.

	A CON may also be amended when no substantial change exists in construction, service, or capital expenditure and when extenuating circumstances or events, as determined by the Department, inhibit completion as originally presented. Requests for amendments shall be submitted in writing to the Department only during the valid CON period and in the form and detail required by the Department. The fee for amendment shall be calculated as: 0.50 of 1% of the additional capital expenditure, not to exceed Twenty-Five Thousand Dollars ($25,000.00) and not less than Five Thousand Dollars ($5,000.00). ***NOTE:*** *Amendments resulting from an additional capital expenditure or a change in scope of project will be reviewed as a separate project and will require an additional fee. No CON shall be amended after the holder has submitted a final report indicating project completion and the Department has acknowledged receipt in writing.*
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 6.17	**Bed Abeyance.** A health care facility seeking to place licensed beds in abeyance (voluntary temporary de-licensure) or to remove beds from abeyance (re-licensure) shall submit a written request letter to the Department. A fee of Five Hundred Dollars ($500.00) shall be assessed for the processing and handling of all abeyance requests and is payable to the Department by check, draft, or money order. No abeyance request shall be processed until the required fee is received. The Department shall maintain a record of all de-licensing facilities and their voluntarily de-licensed beds and shall continue to count those beds as part of the state's total bed count for health care planning purposes. If a health care facility that has voluntarily de-licensed beds later desires to re-license some or all of those beds, it shall notify the Department of its intent to increase the number of licensed beds. The Department shall survey the health care facility within thirty (30) calendar days of that notice and, if appropriate, issue the facility a new license reflecting the new bed complement. In no event shall a health care facility be re-issued a license to operate beds in excess of its bed count before voluntary de-licensure without seeking CON approval.
Source: Miss. Code Ann. § 41-7-191	

Rule 6.18	**Post-Approval Change of Ownership.** Any post-approval ownership transaction shall be reported to the Department in accordance with applicable law and Department procedures. The Department may require submission of documentation concerning ownership and management structure, financing arrangements, operational control, asset transfers, and other matters relevant to review. A Certificate of Need is not transferable from one person or entity to another except with the approval of the Department.
Source: Miss. Code Ann. § 41-7-191	
Rule 6.19	**Revocation and Rescission.** The Department may revoke or rescind a Certificate of Need where authorized by law. Grounds may include material misrepresentation, fraud, failure to comply with conditions of approval, failure to comply with applicable law, or other grounds authorized by law. Before revocation, rescission, or other adverse action, the Department shall provide any notice and opportunity for hearing required by law.
Source: Miss. Code Ann. § 41-7-195	
Rule 6.20	**Penalties for Violations.** Any person or entity violating the provisions of Miss. Code Ann. §§ 41-7-171 through 41-7-209 by not obtaining a Certificate of Need, by deviating from the provisions of a CON, or by refusing or failing to cooperate with the Department in the exercise or execution of its functions, responsibilities, and powers shall be subject to the following: A. Revocation of the license of a health care facility, including any designated section, component, or bed service thereof, or revocation of the license of any other person or entity for whom the Department serves as the licensing authority. If the Department lacks jurisdiction to revoke such license, the State Health Officer shall recommend and show cause to the appropriate licensing agency that such license should be revoked. B. Non-licensure by the Department of specific or designated bed services offered by the entity or person. C. Non-licensure by the Department where infractions concern the acquisition or control of major medical equipment. D. Revoking, rescinding, or withdrawing a CON previously issued.

	Violations of Miss. Code Ann. §§ 41-7-171 et seq., or any rules or regulations promulgated thereunder, by intent, fraud, deceit, unlawful design, willful or deliberate misrepresentation, or by careless, negligent, or incautious disregard, either by persons acting individually or in concert, shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars ($1,000.00) for each offense. Each day of continuing violation constitutes a separate offense. Prosecution shall be in the county where the violation or portion thereof occurred. The Attorney General, upon certification by the State Health Officer, shall seek injunctive relief in a court of proper jurisdiction to prevent violations in cases where other administrative penalties and legal sanctions have failed or to cause discontinuance of any such violation. Major third-party payors, public and private, shall be notified of any violation or infraction under this rule and shall be required to take such appropriate punitive action as is provided by law.
Source: Miss. Code Ann. §§ 41-7-171 et seq.	
Rule 6.21	**Department Periodic Review of Approved Projects.** The Department shall periodically review the progress and time schedule of any holder issued or granted a Certificate of Need for any purpose, consistent with the mandate of Miss. Code Ann. § 41-7-193(2). The Department may conduct site visits, audits, inspections, correspondence reviews, file reviews, or other activities reasonably necessary to verify that approved projects are progressing in accordance with the approved time schedule and within the approved scope and capital expenditure. A CON-holder shall cooperate with the Department in the exercise of its periodic review authority. Failure to cooperate may constitute grounds for enforcement action, revocation, rescission, or other action authorized by law.
Source: Miss. Code Ann. §§ 41-7-193 and 41-7-209	
Rule 6.22	**Project Completion.** A CON-holder shall notify the Department in writing upon completion of an approved project. For purposes of this rule, completion means that the approved project is sufficiently complete to be operational for the purpose for which the Certificate of Need was issued. The completion notice shall include:

	A. Identification of the CON, including the CON number and approved project description; B. The date on which the project became operational; C. A certification by the CON-holder that the project was completed in accordance with the approved scope, physical location, and capital expenditure authorized by the CON; and D. Such other information as the Department may require. The Department shall acknowledge receipt of the completion notice in writing. The date of that written acknowledgment shall constitute the project completion date for purposes of this chapter, including the prohibition on post-completion amendments. The Department may establish forms and procedures governing completion notices.
Source: Miss. Code Ann. § 41-7-193	
Rule 6.23	**Failure to Implement.** Failure to implement an approved project within the applicable Certificate of Need validity period and any authorized extension thereof may constitute grounds for expiration, rescission, revocation, or other action authorized by law, including the actions described in this Chapter. The Department shall follow the applicable procedures of Chapter 5 and this Chapter before taking any adverse action based on failure to implement.
Source: Miss. Code Ann. § 41-7-195	
Rule 6.24	**Voluntary Surrender.** A CON-holder may voluntarily surrender an approval by submitting written notice to the Department at any time before project completion as defined in Rule 6.22 of this Manual. The notice of voluntary surrender shall: A. Identify the Certificate of Need being surrendered, including the CON number and approved project description; B. State the reason for the surrender; and

C. Certify that no construction, renovation, equipment acquisition, or other capital expenditure has been undertaken under the CON in violation of applicable law, or if such activities have been undertaken, describe their current status.

Upon receipt of a written notice of voluntary surrender that satisfies the requirements of this rule, the Department shall acknowledge the surrender in writing. The CON shall be deemed relinquished as of the date of the Department's written acknowledgment.

Voluntary surrender shall not constitute a finding of violation, non-compliance, or wrongdoing on the part of the CON-holder and shall not be used as evidence against the holder in any subsequent proceeding, unless the surrender is accompanied by evidence of fraud, misrepresentation, or willful violation of applicable law.

Voluntary surrender of a CON does not preclude the former holder from submitting a new application for a CON in the future, subject to applicable law and rules in this Manual regarding applications unacceptable for review.

Source: Miss. Code Ann. § 41-7-195

CHAPTER 7 — GENERAL CERTIFICATE OF NEED REVIEW CRITERIA

Rule 7.1 **Applicability and Balancing.**

The Department shall evaluate each Certificate of Need application in accordance with applicable law, this Manual, and any applicable criteria and standards contained in the State Health Plan.

Unless otherwise required by law, this Manual, or the State Health Plan, no single review criterion shall be determinative. The Department may consider and weigh applicable review criteria based upon the facts and circumstances of each application.

No Certificate of Need shall be approved unless the Department determines that the proposal substantially complies with applicable law, this Manual, and the State Health Plan.

In determining whether substantial compliance exists, the Department may deny an application if it determines that the application fails to satisfy one or more applicable review criteria to a degree that warrants denial.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 7.2	**Consistency with Applicable Law.** The Applicant shall demonstrate that the proposed project is consistent with applicable statutory requirements, regulatory requirements, licensure requirements, and federal requirements.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.3	**Consistency with State Health Plan.** The Applicant shall demonstrate consistency with the applicable provisions of the State Health Plan, including need methodologies, inventories, planning districts, utilization methodologies, service-specific criteria, and other applicable planning standards. Certificate of Need applications shall be reviewed under the State Health Plan in effect at the time the application is received by the Department.
Source: Miss. Code Ann. § 41-7-193	
Rule 7.4	**Long-Range Development Plan.** The Department may consider the relationship of the proposed services to the long-range development plan, if any, of the institution proposing or providing the services.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.5	**Need for the Project.** The Applicant shall demonstrate a need for the proposed project. In evaluating need, the Department may consider: A. The need of the population to be served for the proposed services and the extent to which all residents of the area — in particular low-income persons, racial and ethnic minorities, women, handicapped persons, other underserved groups, and the elderly — are likely to have access to those services. B. In the case of relocation, the need of the population presently served, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the relocation on the ability of low-income persons, racial and ethnic minorities, women, handicapped persons, other underserved groups, and the elderly to obtain needed health care. C. The current and projected utilization of like facilities or services within the proposed service area, based on data where available from the Office of

	Health Planning and Resource Development, which shall be considered the most reliable data unless clearly shown otherwise. D. The probable effect of the proposed facility or service on existing facilities providing similar services, including any overlap in service areas and the appropriate and efficient use of existing facilities or services. E. Community reaction to the proposed facility or service, including endorsements from community officials and individuals and any significant written opposition or opposition expressed at a public hearing, which may be considered an adverse factor and weighed against endorsements received.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.6	**Alternatives Considered.** The Applicant shall identify reasonable alternatives considered and explain why the proposed project is preferred. The Department may consider renovation of existing facilities, expansion of existing services, shared services, cooperative arrangements, technological alternatives, and operational alternatives. For new construction projects, modernization of existing facilities shall be considered as an alternative, and rejection of this alternative by the Applicant should be justified.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.7	**Access to Care.** The Applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of members of medically underserved groups that have traditionally experienced difficulties in obtaining equal access to health services. The Department shall consider: A. The extent to which medically underserved populations currently use the Applicant's services compared to the percentage of the population in the service area that is medically underserved, and the extent to which those populations are expected to use the proposed services if approved; B. The Applicant's performance in meeting obligations under applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons, including the existence of any civil rights access complaints against the applicant; C. The extent to which the unmet needs of Medicare, Medicaid, and medically indigent patients are proposed to be served by the Applicant; and

	D. The extent to which the Applicant offers a range of means by which a person may access the proposed facility or services, including geographic access, transportation considerations, travel times, and service-area characteristics.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.8	**Financial Feasibility.** The Applicant shall demonstrate that the project is financially feasible. The Department may consider capital costs, financing arrangements, operating projections, revenue projections, utilization projections, debt obligations, financial resources, and economic conditions. The proposed charges shall be comparable to those established by other facilities for similar services within the service area or the state, and the Applicant shall document how proposed charges were calculated. Projected utilization levels shall be reasonably consistent with those experienced by similar facilities in the service area or the state and shall be consistent with the need level of the service area. If the capital expenditure of the proposed project is Two Million Dollars ($2,000,000.00) or more, the Applicant shall submit a financial feasibility study prepared by an accountant, CPA, or the facility's financial officer. The study shall include the financial analyst's opinion of the ability of the facility to undertake the obligation and the probable effect of the expenditure on present and future operating costs, and must be signed by the preparer.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.9	**Cost Containment and Efficiency.** The Applicant shall demonstrate that the proposed project promotes efficient use of health care resources. The Department may consider duplication of services, utilization of existing resources, operational efficiency, cost-effectiveness, resource allocation, shared services, and technological efficiency. The immediate and long-term financial feasibility of the proposal and the probable effect on costs and charges for providing health services shall be considered.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.10	**Utilization of Existing Services.** The Department shall consider the current and projected utilization of existing facilities and services when evaluating a proposed project. The utilization of

existing services is relevant to the need determination, the cost containment analysis, and the evaluation of competing applications.

Factors that may be considered include:

1. Occupancy rates of existing facilities providing similar services;
2. Utilization rates of existing services;
3. Service volumes and trends;
4. Existing capacity levels relative to demand;
5. Wait times for existing services;
6. Existing and projected demand for the proposed services; and
7. Other relevant utilization indicators.

Unless clearly shown otherwise, utilization data from the Office of Health Planning and Resource Development shall be considered the most reliable data available for purposes of this rule.

Source: Miss. Code Ann. § 41-7-193

Rule 7.11 **Construction Projects.**

All construction projects shall be designed and constructed with the objective of maximizing cost containment, protecting the environment, and conserving energy. Each proposal involving construction shall be accompanied by a cost estimate and, where applicable, schematic drawings. Space allocations shall conform to applicable local, state, or minimum standards.

The cost per square foot shall be calculated based on the total project cost, minus the cost of land and non-fixed equipment, using the following formulas:

New Construction/Renovation (Prorated Project): Cost per sq. ft. (New Construction) = A+C+D+(E+F+G(A%)) ÷ New Construction Sq. Ft.; Cost per sq. ft. (Renovation) = B+(E+F+G(B%)) ÷ Renovation Sq. Ft.

New Construction Only: Cost per Sq. Ft. = (A+C+D+E+F+G) ÷ Total Sq. Ft.

Renovation Only: Cost per Sq. Ft. = (B+C+E+F+G) ÷ Total Sq. Ft.

Where: A = New Construction; B = Renovation; C = Fixed Equipment; D = Site Preparation; E = Fees; F = Contingency; G = Capitalized

	Interest; A% = percentage of sq. ft. for new construction; B% = percentage of sq. ft. for renovation. Any cost overrun on a construction or renovation project that locates cost in or above the upper one-fourth range for U.S. construction or renovation cost shall require additional documentation. Construction cost overrun requests shall be with nationally recognized construction cost data, including RS Means or comparable industry references or other bona fide reference.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.12	**Medicaid Participation.** The Department shall consider the Applicant's participation in the Medicaid program and the anticipated impact of the project on Medicaid beneficiaries, including existing Medicaid participation, projected Medicaid utilization, accessibility to Medicaid beneficiaries, historical participation, and commitments regarding future participation. The Department shall disapprove a Certificate of Need application if the Applicant fails to provide or confirm that the Applicant shall provide a reasonable amount of indigent care, or if the Applicant's admission policies deny access to care by indigent patients. The Department shall also disapprove an application if approval would have a significant adverse effect on the ability of an existing facility or service to provide Medicaid or indigent care. The State Health Officer shall determine whether the amount of indigent care provided or proposed is reasonable. A reasonable amount of indigent care is an amount comparable to that offered by other providers of the requested service within the same or proximate geographic area.
Source: Miss. Code Ann. § 41-7-193	
Rule 7.13	**Charity Care and Information Reporting Obligations.** The Department shall consider the Applicant's provision of charity care and services to medically underserved populations, including existing charity care policies, historical levels, proposed commitments, service to underserved populations, and access initiatives. An Applicant shall affirm in its application that it will record and maintain, at a minimum, the following information and shall make it available to the Department within fifteen (15) business days of request:

	A. Utilization data, including the number of indigent, Medicaid, and charity admissions and inpatient days of care; B. Age, race, sex, zip code, and county of origin of patient; C. Cost and charges per patient day or per procedure, if applicable; and D. Any other data pertaining directly or indirectly to the utilization of services by medically indigent, Medicaid, or charity patients that may be requested, including discharge diagnosis, service provided, and similar information.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.14	**Relationship to Existing Health Care System.** The Department may consider the effect of the proposed project on the health care delivery system, including existing providers, existing services, regional resources, health care infrastructure, continuity of care, referral relationships, and other system impacts. The Department shall also consider the relationship of the proposed services to ancillary or support services, including the organizational relationship.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.15	**Availability of Resources.** The Applicant shall demonstrate the availability of resources — including health personnel, management personnel, and funds for capital and operating needs — for the services proposed. The Department may consider: A. Whether the Applicant has a reasonable plan for the provision of all required staff, including physicians, nursing, allied health, and support staff; B. Whether sufficient physicians are available to ensure proper implementation and utilization of the project; C. If the Applicant presently owns existing facilities or services, whether the Applicant has demonstrated a satisfactory staffing history; and D. Alternative uses of resources for the provision of other health services.
Source: Miss. Code Ann. § 41-7-171 et seq.	

Rule 7.16	**Quality of Care.** The Applicant shall demonstrate the ability to provide quality services. The Department shall consider accreditation status, licensure history, regulatory compliance history, quality assurance programs, performance improvement activities, clinical protocols, patient safety initiatives, and other quality indicators. In the case of existing services or facilities, the quality of care provided in the past shall be considered.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.17	**Access by Health Professional Schools.** The Department may consider the effect of the proposed means of delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided. Where proposed health services are to be available in a limited number of facilities, the extent to which any health professional school in the area will have access to the services for training purposes shall be considered. The special needs and circumstances of entities that provide a substantial portion of their services or resources to individuals not residing in the health services area in which the entities are located — including medical and other health professional schools, multi-disciplinary clinics, and specialty centers — may also be considered.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.18	**Community Support and Community Impact.** The Department may consider the effect of the project upon the community to be served, including community support, community opposition, public comments, community health needs, economic impact, and public health considerations.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.19	**Service Availability and Continuity.** The Department may consider whether the proposed project promotes or adversely affects the continuity and availability of health care services to the population to be served. This criterion is particularly relevant in applications involving relocation, change of ownership, consolidation of services, or discontinuation of any existing service. Factors that may be considered include:

	1. The effect of the project on the maintenance of essential services currently provided in the service area; 2. The degree to which the project promotes or disrupts coordination of care and continuity of care for existing patients; 3. The degree to which the project promotes or disrupts integration of health services in the service area; 4. The Applicant's emergency preparedness planning and its effect on continuity of operations; 5. The effect of the project on the continuity of operations of other health care facilities in the service area; and 6. Other relevant considerations concerning the ongoing availability of health care services to the population to be served. Nothing in this rule shall require approval of a project solely because it maintains existing services, nor shall it require denial of a project solely because it may alter existing service patterns, provided the applicant demonstrates that the health care needs of the affected population will continue to be adequately served.
Source: Miss. Code Ann. § 41-7-193	
Rule 7.20	**Non-Discrimination.** Services provided pursuant to an approved project shall be offered in accordance with applicable federal and state non-discrimination requirements.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.21	**Competing Applications.** Where applications from competing Applicants are under review, the Department may evaluate the applications comparatively to determine which entity is the most appropriate applicant. The Department may use a variety of statistical methodologies, including market share analysis, patient origin data, and state agency reports. In the matter of competing applications for nursing facility beds, the Department shall conduct a comparative analysis and make a determination based upon ranking of all competing applications according to the following factors: size of facility; capital expenditure; cost per square foot; cost per bed; staffing; Medicare utilization; total cost to Medicaid; per diem cost to Medicaid; continuum of care services; and community support. Each factor shall be assigned an equal weight.

	The application obtaining the lowest composite score shall be considered the most appropriate application. ***NOTE:*** *Community support letters submitted by or on behalf of an Applicant for a nursing facility Certificate of Need are valid only if signed by individuals who are eighteen (18) years of age or older and who reside in the county in which the proposed nursing facility will be located. Each letter shall contain the name, address, occupation, and telephone number of the signee, and certification that the signee is eighteen (18) years of age or older.* Any nursing facility applicant who signs a written agreement to maintain continuous ownership and operation of the proposed nursing facility for not less than three (3) years after initial licensure and who includes that agreement as part of the Certificate of Need application shall have one point deducted from the total composite score. In the event of default (selling or leasing the facility within three years from initial licensure), the Applicant shall be barred from filing a CON application for a nursing facility for a period of three (3) years from the date of default.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.22	**Supplemental Service-Specific Criteria.** Service-specific criteria have been developed for a number of health services and are contained in the State Health Plan. Applications that propose to develop or expand such services shall be evaluated against the applicable general criteria in this chapter and also against the service-specific criteria contained in the State Health Plan and the adopted rules and regulations of the Department. ***NOTE:*** *Should the Department receive a Certificate of Need application regarding the acquisition or control of major medical equipment or the provision of a service for which specific CON criteria and standards have not been adopted, the application shall be deferred until the Department has developed and adopted applicable criteria and standards. If the Department has not developed and adopted applicable criteria and standards within one hundred eighty (180) days of receiving such an application, the application shall be reviewed using the general review criteria in this chapter and all adopted rules, procedures, and plans of the Department.*
Source: Miss. Code Ann. § 41-7-171 et seq.	

Rule 7.23	**Historical Compliance.** The Department may consider an Applicant's history of compliance with applicable law, licensure requirements, Certificate of Need requirements, conditions of approval, reporting requirements, and other regulatory obligations.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 7.24	**Special Circumstances.** The Department may consider special circumstances relevant to the proposed project, including circumstances not specifically identified elsewhere in this chapter, to the extent authorized by applicable law.
Source: Miss. Code Ann. § 41-7-171 et seq.	

CHAPTER 8 — ADMINISTRATIVE PROVISIONS

Rule 8.1	**Fees — General Provisions.** Fees shall be assessed and collected in accordance with applicable law and this Manual. The Department may establish administrative procedures, forms, instructions, and payment methods necessary to administer fees authorized by law. Required fees shall be paid in the manner prescribed by the Department. The Department may decline to process applications, requests, or filings until required fees have been received. Fee refunds shall be governed by the provisions of this Manual and applicable law. Nothing in this Manual requires a refund not otherwise authorized by law.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 8.2	**Electronic Technology and Filing.** The Department may utilize electronic systems, document-management systems, electronic filing systems, virtual meeting platforms, electronic publication systems, and other technologies necessary for efficient administration of the Certificate of Need Program. To the extent permitted by law, the Department may accept electronic signatures, certifications, attestations, acknowledgments, and filings, which may be given the same force and effect as original paper submissions. The Department may establish technical requirements, file formats, and electronic submission procedures.
Miss. Code Ann. § 41-7-171 et seq.	

Rule 8.3	**Communications.** The Department may communicate with Applicants, CON-holders, Affected Persons, interested persons, governmental entities, and other parties through electronic means, mail, hand delivery, telephone, virtual meeting platforms, or other appropriate methods. Unless otherwise required by law, notices may be served by electronic mail, United States mail, hand delivery, commercial delivery service, electronic filing systems, or other methods reasonably calculated to provide notice.

Miss. Code Ann. § 41-7-171 et seq.

Rule 8.4	**Guidance Documents.** The Department may publish guidance documents, policy statements, advisory materials, frequently asked questions, instructions, and other informational materials to assist regulated persons in understanding and complying with the Certificate of Need Program. Guidance materials shall not constitute binding regulations unless adopted in accordance with the Mississippi Administrative Procedures Act.

Source: Miss. Code Ann. § 25-43-1.101 et seq.

Rule 8.5	**Proceedings — Subsidiary Rules.** If the Department's rules and procedures are silent on any question arising in a proceeding, the rules and procedures stated in Robert's Rules of Order, Newly Revised, and the Mississippi Rules of Civil Procedure may be utilized. In the event of conflict between the adopted rules of the Department and those outlined in Robert's Rules of Order or the Mississippi Rules of Civil Procedure, the rules adopted by the Department shall prevail. All meetings of the Department in connection with Certificate of Need matters shall be open to the public. The public shall be notified of meetings through the Department's website not less than ten (10) calendar days before such meetings are held. The agenda shall be made available to the State Health Officer in advance and shall be available to the public at the place of assembly and to applicants at least ten (10) calendar days before the meeting or hearing. Interested persons may attend CON review meetings and, at the discretion of the State Health Officer, may be allowed to address the Department on any item under consideration.

Source: Miss. Code Ann. § 25-41-1 et seq.

Rule 8.6	**Record Retention and Public Records.** The Department may establish policies and procedures governing retention, maintenance, preservation, and disposition of records related to the Certificate of Need Program. Public records maintained in connection with the CON Program are subject to Rule 1.11 of this Manual and the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1 et seq. Nothing in this Manual requires disclosure of records made confidential by law. The index of CON files is maintained by the Department. A CON application shall be available for public inspection and copying only after it has been deemed complete. Applicants and their authorized representatives may review their own files at any time during regular business hours without prior written request.
Source: Miss. Code Ann. § 25-61-1 et seq.	
Rule 8.7	**Fees for Public Records Requests.** Standard fees per copy are established for public records requests, calculated to cover the cost of paper, printing, binding, and handling: 1. Black and white copies: $0.20 per page. 2. Color copies: $0.50 per page. 3. Scanned copies: $0.50 per page. 4. Minimum administrative processing fee for all public records requests: $35.00. Advance payment is required for any information received from the Department. Requests to review individual CON files must be made in writing and must state specifically what information is desired. Requests shall be filled no later than seven (7) business days following receipt. If the Department is unable to produce the records within seven (7) business days, it shall provide a written explanation stating that the record will be produced and specifying with particularity why it cannot be produced within seven (7) days. Unless there is mutual agreement of the parties, in no event shall production be later than fourteen (14) business days from the date of the original request.
Source: Miss. Code Ann. § 25-61-5	

Rule 8.8	**Administrative Error.** Clerical errors, typographical errors, mathematical errors, formatting errors, or other non-substantive administrative errors shall not invalidate an application, determination, approval, review, proceeding, or other Department action unless substantial prejudice is demonstrated. The Department may correct such errors.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 8.9	**Procedures for Adoption and Revision of Review Procedures and Criteria.** The Department shall comply with the Mississippi Administrative Procedures Act whenever Certificate of Need criteria and review procedures require revision or amendment.
Source: Miss. Code Ann. § 25-43-1.101 et seq.	
Rule 8.10	**Cooperation with Governmental Entities.** The Department may communicate and coordinate with federal agencies, state agencies, local governmental entities, licensing authorities, Medicaid authorities, accreditation organizations, and other governmental or regulatory entities concerning matters relevant to administration of the Certificate of Need Program.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 8.11	**Incorporation by Reference.** The Department may incorporate by reference into this Manual forms, schedules, application materials, filing instructions, checklists, guidance documents, and other administrative materials necessary for administration of the Certificate of Need Program, to the extent permitted by applicable law. Materials incorporated by reference shall be made available to the public on the Department's website and at the Department's offices during regular business hours. Incorporation by reference shall not be used to adopt substantive rules or criteria that would otherwise require rulemaking under the Mississippi Administrative Procedures Act. The Department shall publish on its website, and shall update annually, the current inflation-adjusted capital expenditure thresholds applicable to CON review under Miss. Code Ann. § 41-7-173(c)(ii). The published thresholds shall constitute the operative thresholds for determining whether CON review is required for the applicable review period.

Source: Miss. Code Ann. §§ 41-7-185(c); 25-43-1.101 et seq.

CHAPTER 9 — SMALL COMMUNITY HOSPITAL PILOT PROGRAM

Rule 9.1 **Statutory Authority.**

The Small Community Hospital Pilot Program is established by Section 1 of H.B. 1622, 2026 Regular Session, as amended by Section 8 of S.B. 2474, 2026 Regular Session. The scope, eligibility requirements, exemption types, allocation limitations, and non-transferability provisions are governed by those enactments as amended from time to time. Nothing in this chapter modifies the terms of the governing statutes. To the extent any provision of this chapter conflicts with the governing statutes, the statutes control.

Source: H.B. 1622 § 1, 2026 Reg. Sess.; S.B. 2474 § 8, 2026 Reg. Sess.

Rule 9.2 **Definitions.**

For purposes of this chapter:

1. Small Community Hospital — a hospital, as defined in Miss. Code Ann. § 41-7-173, which is located: (a) in a county that does not contain a municipality whose population exceeds fifteen thousand (15,000) according to the 2020 decennial census, and that does not contain any portion of a municipality whose population exceeds fifteen thousand (15,000) according to the 2020 decennial census; or (b) within the region designated by the Mississippi State Department of Health as the Delta Public Health Region as of January 1, 2026. A Small Community Hospital does not include a licensed Rural Emergency Hospital designated by the federal Centers for Medicare and Medicaid Services.

2. Delta Public Health Region — the public health region designated as such by the Mississippi State Department of Health as of January 1, 2026.

3. Main Building Campus — the main building campus of the Small Community Hospital as of January 1, 2026.

4. Five-Mile Radius — the area within five (5) miles of the main building campus of the Small Community Hospital.

5. General Exemption — an exemption from the requirement to obtain a Certificate of Need for an activity that would otherwise require a CON, issued under the governing statutes, limited to the Main Building Campus and the Five-Mile Radius.

6. ESRD Exemption — an exemption to operate an end-stage renal disease facility issued to an eligible Small Community Hospital under the governing statutes.

7. Geriatric Psychiatric Unit Exemption — an exemption to operate a geriatric psychiatric unit issued to any Small Community Hospital under the governing statutes, limited to the Main Building Campus and the Five-Mile Radius.

Source: H.B. 1622 § 1, 2026 Reg. Sess.; S.B. 2474 § 8, 2026 Reg. Sess.

Rule 9.3 **Types of Exemptions Available.**

Under the Pilot Program, eligible Small Community Hospitals may apply for the following exemptions:

A. Geriatric Psychiatric Unit Exemption — The State Health Officer shall issue a Geriatric Psychiatric Unit Exemption to any hospital in a small community. This exemption is limited to the Main Building Campus and the Five-Mile Radius. A Geriatric Psychiatric Unit Exemption shall not be counted toward the General Exemption allotment.

B. General Exemption — Each Small Community Hospital qualifying under Rule 9.2(1)(a) shall receive one (1) General Exemption. Each Small Community Hospital qualifying under Rule 9.2(1)(b) shall receive two (2) General Exemptions. General Exemptions are limited to the Main Building Campus and the Five-Mile Radius and shall not extend to clinics or other facilities owned or operated by the Small Community Hospital that are not located on the main campus. A General Exemption shall not apply to: (1) a service for which there is a general Certificate of Need moratorium; or (2) an application that would place the licensed hospital within thirty-five (35) miles of another licensed hospital or otherwise jeopardize a licensed hospital's federal critical access hospital designation.

C. ESRD Exemption — The State Health Officer may issue an ESRD Exemption to operate an end-stage renal disease facility for not more than eight (8) hospitals in a small community. No more than two (2) such facilities may be located within each of the four (4) Public Health Regions designated by the Department as of January 1, 2026. If more than two (2) Small Community Hospitals within the same Public Health Region apply for an ESRD Exemption, the hospitals in areas most remote from existing dialysis units shall be issued exemptions. An ESRD Exemption shall be counted toward the General Exemption allotment. If a Small Community Hospital applies for an ESRD Exemption but is not granted one, that hospital may use its General Exemption for another service.

Source: H.B. 1622 § 1(3)–(4), 2026 Reg. Sess.; S.B. 2474 § 8(3)–(4), 2026 Reg. Sess.

Rule 9.4	**Non-Transferability and Application Deadline.** An exemption issued under the Pilot Program is specific to and solely for the Small Community Hospital to which it was issued and may not be transferred to another entity unless the hospital itself is transferred. If a Small Community Hospital does not apply for an exemption on or before June 30, 2027, that hospital's eligibility for an exemption under the Pilot Program shall expire.

Source: H.B. 1622 § 1(5), 2026 Reg. Sess.; S.B. 2474 § 8, 2026 Reg. Sess.

Rule 9.5	**Application Procedures.** A Small Community Hospital seeking an exemption under the Pilot Program shall submit a written request to the Department on forms prescribed by the Department. The request shall: 1. Identify the requesting hospital by name, address, and licensure number; 2. Identify the type of exemption sought; 3. Provide documentation sufficient to establish eligibility as a Small Community Hospital; 4. Describe the proposed activity for which the exemption is sought; and 5. For ESRD Exemption requests, identify the hospital's Public Health Region and provide information relevant to the determination of remoteness from existing dialysis units. The Department may request additional information reasonably necessary to determine eligibility for the requested exemption and to evaluate compliance with the requirements of the Pilot Program. The application deadline of June 30, 2027, is established by statute and may not be waived by the Department. Failure to provide information reasonably necessary for the Department to determine eligibility or compliance with the requirements of the Pilot Program may result in denial of the request.

Source: Miss. Code Ann. § 41-7-171 et seq.

Rule 9.6	**State Health Officer Decision.** Except as provided in Rule 9.7 regarding requests for reconsideration, the State Health Officer's decision concerning an exemption under the Pilot Program is final and not subject to judicial review as provided by applicable law.

Source: H.B. 1622 § 1(6), 2026 Reg. Sess.; S.B. 2474 § 8(6), 2026 Reg. Sess.

Rule 9.7	**Reconsideration.** Any person or entity that wishes to challenge the issuance of an exemption under the Pilot Program may file with the State Health Officer a written request for reconsideration within seven (7) calendar days of the State Health Officer's decision. If a timely request for reconsideration is filed, the State Health Officer or the State Health Officer's designee shall conduct a hearing no sooner than fourteen (14) days and no later than twenty-one (21) days from the date of the original decision. Parties shall receive reasonable advance notice of the hearing date, time, and location. The hearing shall be informal in nature, and there shall be no right to engage in discovery. The purpose of the hearing is to allow a party to offer an objection to the issuance of the exemption or to present, in a summary fashion, matters that may have been overlooked. After the hearing, the State Health Officer may decide not to issue the exemption, to further consider the issuance of the exemption, or to reaffirm the original decision. The State Health Officer's decision following reconsideration is final and not subject to judicial review, as provided by applicable law.

Source: H.B. 1622 § 1(6), 2026 Reg. Sess.; S.B. 2474 § 8(6), 2026 Reg. Sess.

Rule 9.8	**Scope of Exemption.** An exemption issued under the Pilot Program is solely an exemption from the requirement to obtain a Certificate of Need under Miss. Code Ann. §§ 41-7-171 et seq. for the specific activity described in the exemption, within the applicable geographic limitations. A Pilot Program exemption does not constitute, replace, or substitute for any other license, certification, permit, or approval required under state or federal law to operate a health care facility or health care service, including but not limited to licensure by the Division of Health Facilities

	Licensure and Certification, Medicare certification, Medicaid enrollment, and any other required regulatory approval. A Small Community Hospital that receives a Pilot Program exemption must obtain all other required regulatory approvals before beginning operation of the exempted service. An exemption issued under this chapter does not: 1. Authorize operation without required licensure from the Division of Health Facilities Licensure and Certification or any other applicable licensing authority; 2. Eliminate the need for Medicare certification, Medicaid enrollment, or other federal program enrollment; 3. Eliminate the need for any other governmental approval, permit, or certification required by state or federal law; 4. Supersede applicable zoning requirements; 5. Override applicable statutory moratoria under Miss. Code Ann. § 41-7-191, except as expressly provided by the Pilot Program statute; 6. Apply to services or locations excluded by applicable law or rules in this chapter; or 7. Create any vested right in the exemption holder beyond the specific activity and geographic location for which the exemption was issued.
Source: Miss. Code Ann. § 41-7-171 et seq.	
Rule 9.9	**Reporting and Monitoring.** The Department may collect information reasonably necessary to carry out responsibilities assigned by applicable law and to verify continued compliance with the eligibility and exemption requirements of the Pilot Program.

~~Title 15 - Mississippi State Department of Health~~

~~Part IX – Office of Health Policy and Planning~~

~~Subpart 91 – Planning & Resource Development~~

~~CHAPTER 1 - POLICIES, PROCEDURES AND DEFINITIONS~~

~~1.1 General Statement of Public Policy~~

~~Section 41-7-171 et seq., Mississippi Code of 1972 Annotated, as amended, established the Mississippi Department of Health (Department) as the sole and official agency of the State of Mississippi to administer and supervise all state health planning and development responsibilities of the State of Mississippi.~~

~~The intention of health planning and health regulatory activities is to prevent unnecessary duplication of health resources; provide cost containment, improve the health of Mississippi residents; and increase the accessibility, acceptability, continuity and quality of health services. The regulatory mechanism to achieve these results is the Certificate of Need (CON).~~

~~A CON must be obtained from the Department before undertaking any of the activities described in Section 41-7-191 (1) without obtaining a Certificate of Need (CON) from the Department. No final arrangement or commitment for financing such activity may be made by any person unless a CON for such arrangement or commitment has been issued by the Department. The Department will only issue a CON for new institutional health services and other proposals which are determined to be needed pursuant to statutory requirements. Only those proposals granted a CON may be developed or offered within the State of Mississippi.~~

~~Only the Department, acting in response to an application for a certificate of need, or in response to a decision of a court of competent jurisdiction, may cause a CON to be issued, denied, or withdrawn or may determine that CON review is not required. In carrying out these responsibilities, the Department shall make decisions to issue or withdraw a CON by conducting the review of each application in accordance with the adopted procedures, standards, and criteria.~~

~~No CON shall be issued unless the action proposed in the application for such Certificate has been reviewed for consistency with the specifications and criteria established by the Department and substantially complies with the projection of need as reported in the ***State Health Plan*** which is in effect at the time the application is received by the Department.~~

~~The Department will disapprove a CON application if the applicant fails to provide or confirm that the applicant shall provide a reasonable amount of indigent care or has admission policies which deny access to care by indigent patients.~~

~~The Department will disapprove a CON application if approval of the request would have significant adverse effect on the ability of an existing facility or service to provide Medicaid/indigent care.~~

~~The State Health Officer shall determine whether the amount of indigent care provided or to be offered is "reasonable." The Department has determined that a reasonable amount of indigent care is an amount which is comparable to the amount of such care offered by other providers of the requested service within the same, or proximate, geographic area.~~

~~The Department shall adopt and revise as necessary criteria and review procedures for CON applications. Before review of new institutional health services or other proposals requiring a CON, the Department shall disseminate to all health care facilities and health maintenance organizations within the State and shall publish in The Clarion-Ledger (Jackson, Mississippi) and other newspapers deemed appropriate a description of the scope of coverage of the State Department of Health's Certificate of Need Program. Whenever the scope of such coverage is revised, the State Department of Health shall disseminate and publish a revised description in like manner.~~

~~Certificates of Need shall be issued by the State Health Officer based upon those criteria and standards established and lawfully adopted. Appropriate mechanisms for providing affected persons an opportunity for a formal hearing on matters to be considered by the State Department of Health have been developed. No CON shall be granted or denied until affected parties have been accorded such right to a formal hearing.~~

~~A CON is not transferable from one person or entity to another except with the approval of the Department. A CON shall be valid for a designated period of not more than one year from the effective date. The Department may extend the CON for a period not to exceed six months in those cases where the applicant shows to the satisfaction of the State Department of Health that a good faith effort has been made toward completion of the project.~~

~~All approved projects will be monitored by Department staff to assure compliance with stated policies, standards (including Life Safety, Construction, and Licensure), and approved costs.~~

~~Recipients of Certificates of Need are required to make written progress reports of their projects at least every six months and at completion.~~

~~NOTE: If any section, chapter, articles, paragraph, sentence, clause, phrase, rule or regulation, or any other part or portion of this State Certificate of Need Review Manual is declared by proper authority to be invalid or of no effect, the remainder hereof shall be in no manner affected thereby but shall remain in full force and effect.~~

~~Whenever or wherever the occasion may arise to present conflict between this State Certificate of Need Review Manual and legislative statutes, the legislative statutes shall prevail.~~

1.2 Applications Unacceptable for Certificate of Need Review

An application for a CON shall not be accepted from the same person for a proposal in a health planning area from which a previously submitted application for like or similar service or equipment, as determined by the Department, has been disapproved unless one or more of the following conditions exist:

1. A substantial change has occurred in existing or proposed health services of the type proposed by the applicant.

2. A substantial change has occurred in the need for the health service proposed by the applicant.

3. At least one year has elapsed from the date of the finding that resulted in disapproval of the previous application.

A substantial change in existing or proposed services or facilities shall mean the closure of the facility or service, or revocation of a CON, for that facility or service which, when taken into account, will result in an actual need for a facility or service. "Actual need" means need as reflected by the appropriate plans, standards, or criteria as reflected in the most recent or current version of the State Health Plan.

A substantial change in the need for the facility or service shall mean an amendment, correction, or replacement of a standard, criterion, or plan of the Department, which when taken into account, will result in an actual need for the type of service or facility proposed.

1.3 Procedures for Adoption and Revision of Certificate of Need Review Procedures and/or Review Criteria

The Mississippi Department of Health shall comply with the State of Mississippi Administrative Procedures Act in the event CON criteria and review procedures require revision or amendment.

Before review of new institutional health services or other proposals requiring a CON, the Department shall disseminate to all health care facilities and health maintenance organizations within the State and shall publish in The Clarion-Ledger (Jackson, Mississippi) and other newspapers as deemed appropriate a description of the scope of coverage of the Department's CON Program. Whenever the scope of such coverage is revised, the Department shall disseminate and publish a revised description in like manner.

Any person who is aggrieved by a proposed adoption or revision of review procedures or criteria shall submit in writing to the Department any objections to the proposed change or need for clarification.

A request for objection or clarification must be submitted to the Department of Health within thirty (30) calendar days after the Department has filed with the Office of the Secretary of State the proposed rule or rules.

1.4 Rules and Procedures for Conducting Meetings and Hearings

The Department shall conduct all meetings and hearings according to the provisions of its adopted rules and procedures.

If the Department rules and procedures are silent on any question, then the rules and procedures as stated in Robert's Rules of Order, Newly Revised (1990 Edition) and the latest version of the Mississippi Rules of Civil Procedure may be utilized.

In the event of conflict between the adopted rules and procedures of the Department and those outlined in Robert's Rules of Order or the Mississippi Rules of Civil Procedure, the rules and procedures adopted by the Department shall prevail.

1.5 Notice of Meeting

All CON meetings of the Department shall be open to the public. The public shall be notified of meetings of the Department through the Mississippi State Department of Health's website not less than ten (10) calendar days before such meetings are held. Public participation is encouraged.

Proof of publication of all hearings in accordance with the above paragraph shall be maintained in the Department's files.

The hearings shall be held in public in a facility of adequate space to accommodate all persons, including the public, reasonably expected to attend and shall be conducted according to the provisions of Section 25-41-1 et seq., Mississippi Code of 1972 Annotated, as amended.

Interested persons are welcome to attend CON review meetings of the Department and, at the discretion of the State Health Officer, may be allowed to address the Department on any item that is under consideration.

1.6 Agenda

The agenda for all business meetings and hearings shall be made available to the State Health Officer in advance. Copies of the agenda will be available to the public at the place of assembly and to applicants ten (10) calendar days before the meeting or hearing.

1.7 Certificate of Need Application Review

All CON applications will be reviewed pursuant to the provisions of Chapter 3 of this Manual.

1.8 Consideration of Proposals - Decision

The State Health Officer shall consider the Department's staff analysis on each proposal before making a decision. Such analysis shall be based on the proposal's consistency with the specifications and criteria established by the Department and its substantial compliance with the projection of need as reported in the State Health Plan in effect at the time the application for the proposal was submitted.

The decision of the State Health Officer shall be based on one of the following conditions:

1. The proposal is in substantial compliance with the required findings that are necessary for approval.

2. The proposal is not in substantial compliance with the necessary required findings for approval.

3. The proposal, with certain stipulated revisions, is in substantial compliance with the necessary findings for approval.

After reaching a decision regarding a proposal, the State Health Officer shall provide a written notification to the applicant, and others upon request, within (ten) 10 calendar days of the announcement of his or her decision.

1.9 Policy Regarding Public Access to Records and Data

The Department holds available for public inspection and copying those records made or received by the Department in connection with the performance of the Department's functions under its designation as the State Health Planning and Development Agency (SHPDA).

The following items are available:

1. The State Health Plan.

2. Contents of the files pertaining to Certificate of Need (CON) applications.

3. Published reports of the Health Planning and Resource Development Division.

4. Selected statistical data regarding health facilities utilization and health manpower.

1.10 Procedure for Requesting Information

Requests for copies of the State Health Plan or other published reports may be made by

telephone, by written request, or in person to the Health Planning and Resource Development Division.

Requests to review individual CON files must be made in writing. Requests for information contained in the CON application files must be made in writing and must state specifically what information is desired. These requests should be addressed to:

Public Records Liaison
Office of Communication, Osborne 100
Mississippi State Department of Health
P.O. Box 1700
Jackson, MS 39215-1700

In accordance with Section 25-61-5, Mississippi Code of 1972, Annotated, as amended, no open-ended requests will be honored. All requests for information contained in the CON files must stand alone.

Requests for statistical data must be made in writing and should describe the specific items requested as to nature of data, time frame requested, and whether statewide or specified counties.

If an applicant or their representative wishes to review their own CON file, they may do so at any time during regular business hours without first submitting a request in writing.

1.11 Processing of Requests

Requests for published reports will be filled no later than seven (7) business days following the receipt of such request.

If the Division is unable to produce the records requested by the seventh business day after the request is made, the Division will provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-business day period. Unless there is mutual agreement of the parties, in no event shall the date for the Division's production of the requested records be any later than fourteen (14) business days from the receipt of the original request.

These time schedules represent projected maximum times. The Division will fulfill all requests as promptly as possible.

A CON application filed with the Department shall be available for inspection and copying only after said application has been deemed complete by Division staff.

Requests for specific statistical data will be processed in an expeditious manner, but no time guarantees can be made due to the availability of database programmers and staff's work priorities.

1.12 Index of Records

The index of CON files is maintained in the Health Planning and Resource Development Division of the Department.

1.13 Fees

Standard fees per copy are established for Public Records Requests. These fees have been calculated to cover the cost of paper, printing, binding and handling charges for each document. The price list for published reports and statistical data requests is available from the Division of Health Planning and Resource Development.

For information contained in the files of the Division, a fee of $0.20 per page for black and white copies, $0.50 per page for color copies and $0.50 per page for scanned copies. A minimum fee of $35.00 is charged for the administrative processing of all Public Records Request.

Advance payment is required for any information received from the Division of Health Planning and Resource Development.

1.14 Definition of Terms

a. Affected Person means:

1. the applicant;

2. a person residing within the geographic area served or to be served by the applicant's proposal;

3. a person who regularly uses health care facilities or Health Maintenance Organizations (HMO) located in the geographic area of the proposal which provide similar service to that which is proposed;

4. health care facilities and HMOs which, before receipt of the application under review, formally indicated an intention to provide services similar to that of the proposal being considered at a future date;

5. third party payors who reimburse health care facilities located in the geographical area of the proposal; or

6. any agency that establishes rates for health care services or HMOs located in the geographic area of the proposal.

b. Aggrieved Party includes the Mississippi Department of Health, the applicant, and any person who actively participated in the proceedings before the Mississippi Department of Health. Active participation in the proceedings includes requesting a hearing during the course of review, and the timely filing of written comments which completely and formally set out objections to the application and the reasons for those objections.

c. **Applicant** means an individual, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state or political subdivision or instrumentality (including a municipal corporation) of a state.

d. **Bed Capacity** means the number of beds by licensure category within the facility as determined by the Department's Health Facilities Licensure and Certification Division.

e. **By or On Behalf Of** means a capital expenditure by a health care facility which meets a review threshold, or a capital expenditure by another entity which will result in a direct or indirect benefit to a health care facility, including capital expenditures by parent corporations for the benefit of their health facility holdings and guarantor arrangements on loans and/or leases.

A capital expenditure "by or on behalf of a health care facility" includes but is not limited to the following:

1. Medical office building (MOB) or other structure is constructed on land adjacent to a health care facility;

2. Land is leased from a health care facility for the construction of a MOB or other structure to benefit the health care facility;

3. The health care facility has an option to purchase the MOB or other structure;

4. The health care facility maintains the authority to approve tenants of the MOB or other structure; and/or

5. The health care facility retains the option to assume control of the MOB or other structure and collect rent.

a. **Capital Expenditure**:

a. When pertaining to defined major medical equipment, shall mean an expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an expense of operation and maintenance and which exceeds one million five hundred thousand dollars ($1,500,000.00)

b. When pertaining to a clinical health service, other than major medical equipment shall mean any expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an

expense of operation and maintenance and which exceeds five million dollars ($5,000,000.00), adjusted for inflation by the State Department of Health. The Department will use the inflation index, as published by the State Economist annually, to calculate this adjustment. The Department will publish the new amounts each year on its website.

c. When pertaining to non-clinical health service, other than major medical equipment, shall mean any expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an expense of operation and maintenance and which exceeds ten million dollars ($10,000,000.00) adjusted for inflation by the State Department of Health. The Department will use the inflation index, as published by the State Economist annually, to calculate this adjustment. The Department will publish the new amounts each year on its website.

d. Shall include the acquisition, whether by lease, sufferance, gift, devise, legacy, settlement of a trust or other means, of any facility or part thereof, or equipment for a facility, the expenditure for which would have been considered a capital expenditure if acquired by purchase. Transactions which are separated in time but are planned to be undertaken within 12 months of each other and are components of an overall plan for meeting patient care objectives shall, for purposes of this definition, be viewed in their entirety without regard to their timing.

e. In those instances where a health care facility or other provider of health services proposes to provide a service in which the capital expenditure for major medical equipment or other than major medical equipment or a combination of the two may have been split between separate parties, the total capital expenditure required to provide the proposed service shall be considered in determining the necessity of CON review and in determining the appropriate CON review fee to be paid. The capital expenditure associated with facilities and equipment to provide services in Mississippi shall be considered regardless of where the capital expenditure was made, in state or out of state, and regardless of the domicile of the party making the capital expenditure, in state or out of state.

b. Capital Lease means a lease which meets one or more of the following conditions:

a. Title is transferred to the lessee by the end of the lease term.

b. The lease contains a bargain purchase option at less than the fair value at the time of the option.

c. The lease term is at least 75 percent of the leased property's estimated economic life.

d. The present value of the minimum lease payments is 90 percent or more of the fair value of the leased property.

Operating Leases do not meet any of the four criteria listed above.

c. Certificate of Need means a written order by the State Health Officer setting forth the affirmative finding that a proposal in prescribed application form sufficiently satisfies the plans, standards, and criteria prescribed for such service or other project by Sections 41-7-171 et seq., Mississippi Code of 1972 Annotated, as amended, and by rules and regulations promulgated thereunder by the Department.

d. Change of Ownership includes, but is not limited to, inter vivos gifts, purchases, transfers, lease arrangements, cash and/or stock transactions or other comparable arrangements whenever another person or entity (not the current owner) acquires or controls the majority interest of an existing health care facility, and/or the change of ownership of major medical equipment, a health service, or an institutional health service. Changes of ownership from partnerships, single proprietorships, or corporations to another form of ownership are specifically included. However, "Change of Ownership" shall not include any inherited interest acquired as a result of a testamentary instrument or under the laws of descent and distribution of the State of Mississippi.

e. Change in Project Scope is defined as any substantive change, as determined by the State Department of Health, in plans to construct or renovate a health care facility, in number of beds or services to be offered within the facility, or in capital expenditure authorized by the approved CON.

f. Clinical Health Service shall only include those activities which contemplate any change in the existing bed complement of any health care facility through the addition or conversion of any beds, under Section 41-7-191(1)(c) or propose to offer any health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered, under Section 41-7- 191(1)(d).

g. Construction means the erection, building, or substantial alteration, reconstruction, improvement, renovation, extension, or modification of a health care facility and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

h. Commencement of Construction means that all of the following have been completed with respect to a proposal or project proposing construction, renovation, remodeling, or alteration.

a. A legally binding written contract has been executed and consummated by the proponent and a lawfully licensed contractor to construct and/or

complete the intent of the proposal within a specified period of time in accordance with final architectural plans which have been approved by the licensing authority of the Department;

b. Any and all permits and/or approvals deemed lawfully necessary by all authorities with responsibility for such have been secured;

c. Actual bona fide undertaking of the subject proposal has commenced, and a progress payment of at least one percent of the total cost of the contract has been paid to the contractor by the proponent; and

d. Requirements of this paragraph have been met and certified in writing by the Department.

Force account expenditures, such as deposits, securities, bonds, et cetera, may, in the discretion of the Department, be excluded from any or all of the provisions of defined commencement of construction.

i. Consumer means an individual who is not a provider of health care or representative of a provider of health care services or who has no financial or indirect interest in any provider of services.

j. Determination of Reviewability means findings of the Department setting forth the Department's decision as to the requirement for certificate of need review regarding a proposal pending before it, pursuant to Section 41-7-205.

k. Develop, when used in connection with health services, means to undertake those activities which, on their completion, will result in the offering of a new institutional health service or the incurring of a financial obligation as defined under applicable state law in relation to the offering of such services.

l. Health Care Facility includes hospitals, long term care hospitals, psychiatric hospitals, chemical dependency hospitals, comprehensive medical rehabilitation facilities, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, psychiatric residential treatment facilities, pediatric skilled nursing facilities, end stage renal disease facilities (including freestanding hemodialysis units), ambulatory surgical facilities, and/or home health agencies (including facilities owned or operated by the State or political subdivision or instrumentality of the State) but does not include Christian Science sanatoriums operated or licensed and certified by the First Church of Christ, Scientist, Boston, Massachusetts. This definition shall not apply to facilities for the private practice, either independently or by incorporated medical groups, of physicians, dentists, or other health care professionals except where such facilities are an integral part of an institutional health service. The various health care facilities listed in this paragraph shall be defined as follows:

a. **Ambulatory Surgical Facility** means a facility primarily organized or established for the purpose of performing surgery for outpatients and is a

separate identifiable legal entity from any other health care facility. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

b. **Chemical Dependency Hospital** means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical and related services for the diagnosis and treatment of chemical dependency such as alcohol and drug abuse.

c. **Comprehensive Medical Rehabilitation Facility** means a hospital or a hospital unit that is licensed and/or certified as a comprehensive medical rehabilitation facility which provides specialized programs that are accredited by the Commission on Accreditation of Rehabilitation Facilities and supervised by a physician Board-certified or Board-eligible in psychiatry or other doctor of medicine or osteopathy with at least two years of training in the medical direction of a comprehensive rehabilitation program that:

i. Includes evaluation and treatment of individuals with physical disabilities;

ii. Emphasizes education and training of individuals with disabilities;

iii. Incorporates at least the following core disciplines:

1. Physical Therapy

2. Occupational Therapy

3. Speech and Language Therapy

4. Rehabilitation Nursing; and

iv. Incorporates at least three of the following disciplines:

1. Psychology

2. Audiology

3. Respiratory Therapy

4. Therapeutic Recreation

5. Orthotics

6. Prosthetics

7. Special Education

8. Vocational Rehabilitation

9. Psychotherapy

10. Social Work

11. Rehabilitation Engineering

These specialized programs include, but are not limited to, spinal cord injury programs, head injury programs, and infant and early childhood development programs.

d. **End Stage Renal Disease (ESRD) Facilities** means kidney dialysis centers, which includes freestanding hemodialysis units and limited care facilities. The term "limited care facility" generally refers to an off-hospital premises facility, regardless of whether it is provider or non-provider operated, which is engaged primarily in furnishing maintenance hemodialysis services to stabilized patients.

e. **Hospital** means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis; treatment and care of injured, disabled, or sick persons; or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term does not include psychiatric hospitals.

f. **Home Health Agency** means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

i. Physical, occupational, or speech therapy;

ii. Medical social services;

iii. Part-time or intermittent services of a home health aide;

iv. Other services as approved by the licensing agency for home health agencies;

v. Medical supplies, other than drugs and biological, and the use of medical appliances; or

vi. Medical services provided by an intern or resident-in-training at a hospital under a teaching program of such hospital.

Further, all skilled nursing services and those services listed in items 1 through 4 of this paragraph (f) must be provided directly by the licensed home health agency. For purposes of this subparagraph, "directly" means either through an agency employee or by an arrangement with another individual not defined as a health care facility. This paragraph shall not apply to health care facilities which had contracts for the above services with a home health agency on January 1, 1990.

g. **Intermediate Care Facility** means an institution which provides, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health related care and services (above the level of room and board).

NOTE: Under federal guidelines, nursing facilities are no longer licensed as intermediate care facilities. Effective October 1, 1990, nursing facilities are classified, based on reimbursement levels, as nursing facilities or skilled nursing facilities (see skilled nursing facility).

h. **Intermediate Care Facility for the Mentally Retarded** means an intermediate care facility that provides health or rehabilitative services in a planned program of activities to, persons with intellectual disability, also including but not limited to cerebral palsy and other conditions by the Federal Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103.

i. **Long-Term Care Hospital** means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than 25 calendar days, which is primarily engaged in providing chronic or long term medical care to patients who do not require more than three hours of rehabilitation or comprehensive rehabilitation per day, and has a transfer agreement with an acute care medical center and a comprehensive medical rehabilitation facility. Long term care hospitals shall not use rehabilitation, comprehensive medical rehabilitation, medical rehabilitation, sub-acute rehabilitation, nursing home, skilled nursing facility, or sub-acute care facility in association with its name.

j. **Pediatric Skilled Nursing Facility** means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under 21 years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

k. **Psychiatric Hospital** means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of persons with mental illness.

l. **Psychiatric Residential Treatment Facility** means any non-hospital establishment with permanent licensed facilities which provides a twenty-four (24) hour program of care by qualified therapists including, but not limited to, duly licensed mental health professionals, psychiatrists, psychologists, psychotherapists and licensed certified social workers, for emotionally disturbed children and adolescents referred to such a facility by a court, local school district, or by the Department of Human Services, who are not in an acute phase of illness requiring the services of a psychiatric hospital, and are in need of such restorative treatment services. For purposes of this paragraph, the term "emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

i. An inability to learn which cannot be explained by intellectual, sensory, or health factors;

ii. An inability to build or maintain satisfactory relationships with peers and teachers;

iii. Inappropriate types of behavior or feelings under normal circumstances;

iv. A general pervasive mood of unhappiness or depression; or

v. A tendency to develop physical symptoms or fears associated with personal or school problems. An establishment furnishing primarily domiciliary care is not within this definition.

m. **Rehabilitation Hospital** means a hospital or established and dedicated unit of a general hospital licensed for rehabilitation, which is organized, staffed, and equipped to render services toward the rehabilitation of disabled persons through an integrated program of medical, psychological, social, and vocational evaluation and provision of services over a continuous period exceeding 24 hours. The average length of stay for such beds shall be 30 calendar days or more.

n. **Skilled Nursing Facility (SNF)** means a health institution planned, organized, operated, and maintained to provide facilities and health services with related social care to inpatients who require medical care and 24-hour nursing services for illness, injury, or disability. Each patient shall be under the care of a physician licensed to practice medicine in the State of Mississippi. The nursing services shall be organized and

maintained to provide 24-hour nursing services under the direction of a registered professional nurse employed full-time.

m. Health Maintenance Organization or **"HMO"** means a public or private organization which:

a. Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: usual health care services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

b. Is compensated (except for co-payments) for the provision of the basic health care services listed in subparagraph (a) of this paragraph to enrolled participants on a predetermined basis; and

c. Provides health care services primarily:

i. Directly through physicians who are either employees or partners of such organization; or

ii. Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

n. Health Planning Area means that geographic area specified in the State Health Plan that is determined by population data, patient origin data, and area health facilities offering referral services to the area. Health Planning Areas are used for determining bed need and/or service needs within the state.

o. Health Service Area means a geographic area of the state designated in the State Health Plan as the area to be used in planning for specified health facilities and services and to be used when considering CON applications to provide health facilities and service.

p. Health Services means clinically related (i.e., diagnostic, treatment, or rehabilitative) services and include alcohol, drug abuse, mental health, and home health care services

q. Hospital and/or Health Facility Based means a health service that is physically located in or legally owned by the hospital or health facility.

r. Institutional Health Services shall mean health services provided in or through health care facilities and shall include the entities in or through which such services are provided.

s. Major Medical Equipment means medical equipment costs in excess of one million five hundred thousand dollars ($1,500,000.00). However, this definition shall not be applicable to clinical laboratories if they are determined by the

Department to be independent of any physician's office, hospital, or other health facility or otherwise not so defined by federal or state law, or rules and regulations promulgated there under.

t. **Nonclinical Health Services** shall be all other health services, which do not involve any change in the existing bed complement or offering health services as described herein.

u. **Offer** means, when used in connection with health services, that the State Department of Health has determined that the health care facility is capable of providing specified health services.

v. **Person** means an individual, a trust or estate, partnership, corporation (including associations, joint stock companies, and insurance companies), the State, or political subdivision or instrumentality of the State.

w. **Provider** means any person who is a provider or representative of a provider of health care services requiring a CON or who has any financial or indirect interest in any provider or services.

x. **Secretary** means the Secretary of Health and Human Services and any officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

y. **Similar Equipment** means pieces of equipment which are similar in function and appearance. For example, a manually operated bed and an electrically operated bed are similar units. A 1,000 power microscope and a 500 power microscope are similar units. A coulter counter and a microscope are not similar units.

z. **State Health Plan** means the sole and official statewide health plan for Mississippi which identifies priority state health needs and establishes standards and criteria for health related activities which require Certificate of Need review in compliance with Section 41-7-191, Mississippi Code of 1972, as amended.

aa. **State Department of Health** shall mean the state agency created under Section 41-3-15, Mississippi Code of 1972 as amended, which shall be considered to be the State Health Planning and Development Agency, as defined in paragraph 1.46 below.

bb. **State Health Planning and Development Agency** means the agency of state government designated to perform health planning and resource development programs for the State of Mississippi.

cc. **Swing Bed Program** means the interchangeable utilization of hospital beds for the provision of acute or extended care with reimbursement based on the specific level of care provided.

CHAPTER 2 - SCOPE OF COVERAGE OF THE CON REVIEW PROGRAM

2.1 The State CON program applies to the obligation of capital expenditures, the establishment of new health care facilities, the offering of defined new institutional health services, clinical health services, and the acquisition of major medical equipment.

Within these parameters, no person shall engage in any of the following activities without obtaining a CON from the Department:

2.1.1 Any capital expenditure that exceeds the expenditure threshold. This capital expenditure includes the cost of any studies, surveys, designs, plans, working drawings, specification and other activities (including staff efforts and other services) associated with the capital expenditure and includes an acquisition for less than fair market value if the acquisition at fair market value would exceed the expenditure threshold.

A capital expenditure shall include the acquisition, whether by lease, sufferance, gift, devise, legacy, settlement of a trust or other means, of any facility or part thereof, or equipment for a facility, the expenditure for which would have been considered a capital expenditure if acquired by purchase. Transactions which are separated in time but are planned to be undertaken within 12 months of each other and are components of an overall plan for meeting patient care objectives shall, for purposes of this definition, be viewed in their entirety without regard to their timing.

In those instances where a health care facility or other provider of health services proposes to provide a service in which the capital expenditure for major medical equipment or other than major medical equipment or a combination of the two may have been split between separate parties, the total capital expenditure required to provide the proposed service shall be considered in determining the necessity of CON review and in determining the appropriate CON review fee to be paid. The capital expenditure associated with facilities and equipment to provide services in Mississippi shall be considered regardless of where the capital expenditure was made, in state or out of state, and regardless of the domicile of the party making the capital expenditure, in state or out of state.

NOTE: A capital expenditure is considered to be incurred: (a) when a contract enforceable under state law is entered into for the construction, acquisition, lease or financing of the capital asset or (b) when the governing board of a health care facility takes formal action to commit its own funds for a construction project under taken by personnel of the health care facility (force account expenditure) or (c) in the case of donated property, on the date on which the gift is complete under applicable state law.

2.1.2 The construction, development, or establishment of a new health care facility, which establishment shall include the reopening of a health care facility that has ceased to operate for a period of sixty (60) months or more;.

2.1.3 The relocation of a health care facility or portion thereof, or major medical equipment unless such relocation of a healthcare facility or portion thereof, or major medical equipment, which does not involve a capital expenditure by or on behalf of a health care facility, is within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility.

NOTE: The relocation of a health care facility is defined as the relocation of a health care facility from one physical location or site to another.

A portion of a health care facility is considered to be a wing, unit, service(s), or beds.

The relocation of major medical equipment shall include, but is not limited to, the relocation of major medical equipment from one physical facility to another physical facility.

2.1.4 Any change in the existing bed complement of any health care facility through the addition or conversion of any beds or the alteration, modernizing or refurbishing of any unit or department in which the beds may be located; however, if a health care facility has voluntarily de-licensed some of its existing bed complement, it may later relicense some or all of its de-licensed beds without the necessity of having to acquire a certificate of need. The State Department of Health shall maintain a record of the de-licensing health care facility and its voluntarily de-licensed beds and continue counting those beds as part of the state's total bed count for health care planning purposes. If a health care facility that has voluntarily de-licensed some of its beds later desires to relicense some or all of its voluntarily de-licensed beds, it shall notify the State Department of Health of its intent to increase the number of its licensed beds. The State Department of Health shall survey the health care facility within thirty (30) calendar days of that notice and, if appropriate, issue the health care facility a new license reflecting the new contingent of beds. However, in no event may a health care facility that has voluntarily de-licensed some of its beds be reissued a license to operate beds in excess of its bed count before the voluntary de-licensure of some of its beds without seeking certificate of need approval.

A healthcare facility seeking to place beds in abeyance (a state of voluntary temporary suspension/de-license) or re-license beds must submit a letter to the Mississippi State Department of Health – Division of Health Planning and Resource Development requesting that the beds be placed in abeyance (de-license) or removed from abeyance (re-licensed).

A fee of Five Hundred Dollars ($500.00) shall be assessed for the processing and handling of all abeyance requests and is payable to the Mississippi State Department of Health by check, draft, or money order.

2.1.5 Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of 12 months

before the time such services will be offered: Open heart surgery services;

1. Open heart surgery services;

2. Cardiac catheterization services;

3. Comprehensive inpatient rehabilitation services;

4. Licensed psychiatric services;

5. Licensed chemical dependency services;

6. Radiation therapy services;

7. Diagnostic imaging services of an invasive nature, i.e., invasive digital angiography;

8. Nursing home care as defined in subparagraphs (iv) (skilled nursing facility), (vi) (intermediate care facility), and (vii) (intermediate care facility for the mentally retarded) of Section 41-7-173 (h);

9. Home health services;

10. Swing bed services;

11. Ambulatory surgical services;

12. Magnetic resonance imaging services;

13. Positron emission tomography services; and

14. Long term care hospital services.

2.1.6 The relocation of one or more health services from one physical facility or site to another, unless such relocation, which does not involve a capital expenditure by or on behalf of the health care facility, (i) is to a physical facility or site within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility where the health care service is located, or (ii) is the result of an order of a court of appropriate jurisdiction or a result of pending litigation in such courts, or by order of the State Department of Health, or by order of any other agency of legal entity of the State, the federal government, or any political subdivision of either, whose order is also approved by the Department.

2.1.7 The acquisition or otherwise control of any major medical equipment for the provision of medical services, provided, however, (i) the acquisition of any major medical equipment used only for research purposes or (ii) the acquisition of major medical equipment to replace medical equipment for which a facility is already providing medical services and for which the State Department of Health has been notified before the date of such acquisition shall be exempt from this paragraph; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review.

2.1.8 Changes of ownership of existing health care facilities, major medical equipment, a health

service, or an institutional health service, in which a notice of intent is not filed with the State Department of Health at least 15 calendar days before the date such change of ownership occurs.

2.1.9 Regardless of paragraph 2.1.8 above, the change of ownership of any skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded in which a notice of intent as described in 2.1.8 has not been filed and if the Executive Director, Division of Medicaid, Office of the Governor, has not certified in writing that there will be no increase in allowable costs to Medicaid from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership.

2.1.10 Any activity described in paragraphs 2.1.1 through 2.1.9, if undertaken by any person if that same activity would require CON approval if undertaken by a health care facility.

2.1.11 Any capital expenditure or deferred capital expenditure by or on behalf of a health care facility not covered by paragraphs 2.1.1 through 2.2.10.

NOTE: Examples of capital expenditures "by or on behalf of a health care facility" include, but are not limited to the following:

1. Medical office building (MOB) or other structure is constructed on land adjacent to a health care facility;

2. Land is leased from a health care facility for the construction of a MOB or other construction to benefit the health care facility;

3. The health care facility has an option to purchase the MOB or other structure;

4. The health care facility maintains the authority to approve tenants of the MOB or other structure; and/or

5. The health care facility retains the right to assume control of the MOB or other structure and collect rent.

2.1.12 The contracting of a health care facility as defined in subparagraphs (i) through (viii) of Section 41-7-173(h), Mississippi Code of 1972 Annotated, as amended to establish a home office, sub-unit, or branch office in the space operated as a health care facility through a formal arrangement with an existing health care facility as defined in subparagraph (ix) of Section 41-7-173(h).

2.2 *Moratoria*

Presently, the Department is prohibited from granting approval for or issuing Certificates of Need to any person proposing the new construction of, addition to, or expansion of any health care facility defined in subparagraphs (iv) (skilled nursing facility), (vi) (intermediate care facility), and (viii) (intermediate care facility for the mentally retarded) of Section 41-7-173 (h) or the conversion of vacant hospital beds to provide skilled or intermediate nursing home care, except as specifically authorized by statute.

The Department, likewise, is prohibited from granting approval for or issuing a CON to

any person proposing the establishment or expansion of the currently approved territory of, or the contracting to establish a home office, subunit, or branch office within the space operated as a health care facility as defined in Section 41-7-173 (h) (i) through (viii) by a health care facility as defined in subparagraph (ix) (home health agency) of Section 41-7-173 (h).

The Department, however, is authorized to issue a license to an existing home health agency (HHA) for the transfer of a county from that agency to another existing HHA, and to charge a fee for reviewing and making a determination on the application for such transfer not to exceed one-half of the authorized fee assessed for the original application for the HHA (see 116.03).

2.3 Exemptions

2.3.1 Health care facilities owned and/or operated by the State or its agencies are exempt from the restraints in this section against issuance of a CON if such addition or expansion consists of repair or renovation necessary to comply with the state licensure law. This exception shall not apply to the new construction of any building by such state facility. This exception shall not apply to any health care facilities owned or operated by counties, municipalities, districts, unincorporated areas, other defined persons, or any combination thereof.

2.3.2 The new construction, renovation or expansion of or addition to any health care facility defined in subparagraph (ii) (psychiatric hospital), subparagraph (iv) (skilled nursing facility), subparagraph (vi) (intermediate care facility), subparagraph (viii) (intermediate care facility for the mentally retarded), and subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173 (h) which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health and the addition of new beds as the conversion of beds from one category to another in any such defined health care facility which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health shall not require the issuance of a CON under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

2.3.3 The replacement or relocation of a health care facility designated as a critical access hospital shall be exempt from Section 41-7-191(1) so long as the critical access hospital complies with all applicable federal law and regulations regarding such replacement or relocation.

2.3.4 The new construction, renovation or expansion of or addition to any veterans home or domiciliary for eligible veterans of the State of Mississippi as authorized under Section 35-1-19 shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

2.4 Swing-Bed Concept

The Department may issue a CON to any hospital to utilize a portion of its beds for the "swing-bed" concept. An eligible hospital must be in conformance with the federal regulations regarding such swing-bed concept at the time it submits its application for a

CON to the Department, except that such hospital may have more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program.

A hospital meeting all federal requirements for participation in the swing-bed program that receives a CON shall render services provided under the swing-bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services, and no such hospital shall permit any patient who is eligible for both Medicaid and Medicare or eligible only for Medicaid to stay in the swing beds of the hospital for more than thirty (30) calendar days per admission unless the hospital receives prior approval for such patient from the Division of Medicaid, Office of the Governor.

Any hospital having more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program which receives such CON shall develop a procedure to insure that before a patient is allowed to stay in the swing beds of the hospital no vacant nursing home bed for that patient is located within a 50-mile radius of the hospital.

When a hospital has a patient staying in the swing-beds of the hospital and the hospital receives notice from a nursing home located within a 50-mile radius that a vacant bed is available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice.

Any hospital which is subject to the requirements of the two preceding paragraphs may be suspended from participation in the swing-bed program for a reasonable period of time by the Department if the Department, after a hearing complying with due process, determines that the hospital has failed to comply with any of those requirements.

2.5 Dissemination of Scope of Coverage

The Department shall disseminate a description of the Scope of Coverage section before reviewing any project not previously within the scope of the State's program coverage. The scope of coverage shall be disseminated to all health care facilities and health maintenance organizations within the State and published in The Clarion-Ledger (Jackson, Mississippi) and other newspapers deemed appropriate. Whenever the scope of coverage is revised, the Department shall disseminate and publish a revised description of it.

CHAPTER 3 - CERTIFICATE OF NEED APPLICATION PROCEDURES

3.1 Notice of Intent To Apply for a Certificate of Need

A Notice of Intent outlines the general scope of a planned project requiring a CON shall be submitted to the Department as early as possible in the course of planning, but no later than fifteen (15) calendar days before any person files a CON application. The Notice of Intent shall be valid for a period of 180 calendar days (six months) from date of receipt.

The review of an application of any applicant who fails to submit the Notice of Intent to Apply for a Certificate of Need at least fifteen (15) calendar days prior to the Application

for a Certificate of Need shall be deferred until this fifteen (15) calendar day notice requirement is met. Under no circumstances shall an Application for a Certificate of Need be reviewed unless a Notice of Intent to Apply for a Certificate of Need has been filed first.

3.2 CON Application

Upon request by a potential applicant, the State Department of Health will provide the applicant with the appropriate CON kit, which contains criteria and standards for the requested service and application format to be used in preparation of the CON application. The applicant is required to answer fully and completely all questions that apply to the proposed project and to provide all enclosures required by the application format. Only that information which is prescribed by the format will be necessary. The Department may seek clarifying information to questions asked in the application format that were not fully answered.

3.3 Copy Requirements

An original and three copies of the completed application shall be provided to the Mississippi Department of Health, Health Planning and Resource Development Division, 570 E. Woodrow Wilson, Jackson, Mississippi 39215-1700.

3.4 Notice of Receipt of Application

A notice of receipt of application shall be timely published online on the Department's website.

3.5 Reviewing Applications for Completeness

Within fifteen (15) calendar days of receipt, each CON application shall be reviewed by the Department to determine that sufficient information required to conduct a review is contained in the application and that the CON processing fee, if applicable, has been paid. If these criteria are met, an application shall be deemed complete.

Note: A shell application that has numerous deficiencies at the time of original filing shall not be considered as an "incomplete application" in Section 3.6 herein below. A shell application is an application which, at the time of filling, lacks sufficient information to begin processing. **The Department will no longer accept shell applications.** Within fifteen (15) calendar days of receipt, a shell application will be returned to the submitter, along with the fee. The applicant may resubmit a completed application at any time.

3.6 Incomplete Applications

If the Department determines that an application is incomplete, the information required to render the application complete shall be requested of the applicant in writing within fifteen (15) calendar days of the application's filing. The request shall specify what additional information is required. Failure to provide the requested information within fifteen (15) calendar days will result in administrative withdrawal of the application unless the applicant has requested the Department's review be deferred. Notice of such

administrative withdrawal shall be furnished to the applicant and the administrative withdrawal or requested deferral shall be published on the Department's website. When an application is administratively withdrawn, the applicant is barred from proceeding with the project until a new application is submitted, deemed complete, reviewed, and a CON is issued by the Department.

3.7 Complete Applications

An application submitted by the proponent(s) of any proposal shall be logged in and shown as received on the business day of its receipt unless the Department is barred by law, rule, or regulation from accepting such application.

The Department shall determine if the application is complete according to its rules and regulations within the prescribed period of time as provided for in this Section of the ***CON Review Manual***.

If, after review has begun, additional clarifying information is requested, the applicant shall have fifteen (15) calendar days to submit the information, and, upon request of the applicant, the review period shall be extended fifteen (15) calendar days.

Until it is deemed complete, an applicant may submit additional material.

Members of the public, third-party payors, and all other affected persons may submit material to the Department at any time during the first fifteen (15) calendar days following the date the application is deemed complete.

Entry of an application into review shall cause timely notice to the public to be published on the Department's website that the application has been accepted by the Department and entered into review, and that the public is invited to comment on the application for a period of fifteen (15) calendar days from the deemed complete date, and the deadline date and time shall be clearly specified. Likewise, notice to the applicant shall be issued by mail, notifying recipients that the application has been accepted by the Department and entered into review.

3.8 Date of Issuance of Staff Analysis

The Department will not delay review of an application. The Department shall make its recommendation approving or disapproving an application within forty-five (45) calendar days of the date the application was filed or within fifteen (15) calendar days of receipt of any requested information, whichever is later.

3.9 State Health Officer's Decision

Unless a hearing is requested under Miss. Code Ann. § 41-7-197, the State Health Officer's final order approving or disapproving an application shall be issued within ninety (90) calendar days of the date the application was filed.

3.10 Emergency CON Review

Any health care facility, finding it a matter of immediate necessity to make a capital expenditure for replacement of or repair to equipment or facility caused by unforeseen or

unpredictable events that may jeopardize the health and/or safety of the patients of such health care facility, may file an application for emergency CON. Emergency expenditures include those expenditures required for repair of fixed equipment to maintain the provision of quality care.

Such equipment includes, but is not limited to, heating and air conditioning equipment, elevators, electrical transformers and switch gear, sterilization equipment, emergency generators, water supply, and other utility connections.

Notification to the Department regarding an emergency capital expenditure shall be made in the following manner: the administrative executive officer (or one of his/her designated administrative assistants) of a health care facility in need of an emergency CON shall contact a member of the Department administrative staff who is responsible for the administration of the CON program. Justification for the emergency CON should be fully explained, describing in as much detail as possible the incurred loss or damage, the result or probable result of such loss or damage, the estimated cost or expenditure contemplated, the anticipated date such repairs or replacement will commence, the anticipated date of the completion of the repairs, and other necessary information requested by the staff member.

The State Health Officer, after obtaining required information, shall grant or deny the emergency Certificate of Need application. This decision will be communicated to the applicant as expeditiously as possible and the Department will timely give notice of such issuance to the public as with other applications.

Written notification shall be submitted as soon as possible by the applicant to the State Department of Health, explaining the nature of the emergency and other pertinent details regarding the request for the emergency CON.

If it is sufficiently documented that the alleged emergency did not exist, that there was an apparent intent to misrepresent facts, or that there was an apparent intent to perpetrate a fraud by the applicant, any such CON previously granted may be revoked or rescinded by the State Health Officer.

Emergency CONs shall be valid for not more than ninety (90) calendar days. Consequently, any recipient of an emergency CON is required to submit the appropriate CON application to the Department within fifteen (15) calendar days of the effective date of the emergency CON, addressing the same project for which the emergency CON was granted. Normal CON procedures are applicable to any subsequent application submitted by a recipient of an emergency CON with reference to the same project, except that there shall be no requirement for the filing of a Notice of Intent.

3.11 Certificate of Need Processing Fee

Per Miss. Code Ann. § 41-7-188, as may be amended from time to time, the amount of the processing fee to be assessed is determined by the following formula:

CON Fee = 0.50 x 1% of proposed capital expenditure

The minimum fee shall not be less than Five Thousand Dollars ($5,000) and the maximum fee shall not exceed Twenty-Five Thousand Dollars ($25,000.00).

Should the capital expenditure in the CON application differ from that in the notice of intent, the applicant must adjust the fee payment to conform to the fee stated in the CON application, being certain to capitalize only those increments of the total expenditure proposed which are appropriate.

Fee payment shall accompany the CON application and is payable to the Mississippi Department of Health by check, draft, or money order.

When a CON application is received by the Department, the capital expenditure will be determined, and the fee based on that amount. If the applicant has submitted overpayment of the CON fee as determined by the Department, the amount of the overpayment will be refunded. If partial payment of the CON fee has been submitted, the balance due must be received within fifteen (15) calendar days of receipt of partial payment due to the Department. The assessed CON fee, once paid, shall be non-refundable.

No application shall be deemed complete for the purpose of review until the required fee is received by the State Department of Health.

No filing fee shall be required for:

1. Any application submitted by an agency, department, institution, or facility which is operated, owned, and/or controlled by the State of Mississippi and which receives operating and/or capital expenditure funds solely by appropriations from the Legislature of the State; or
2. Any application submitted by a health care facility for repairs or renovation determined by the Health Facilities Licensure and Certification Division of the Department, in writing, to be necessary to avoid revocation of license and/or loss of certification for participation in the Medicaid and/or Medicare Programs. Any proposed expenditure in excess of the amount determined by the Department to be necessary to accomplish the stated purpose shall be subject to fee requirements previously detailed.

3.12 Notification to Affected Persons of CON Application Status

Notification to affected persons will be made on the day an application is deemed complete.

The notice to affected persons shall:

1. Give the date of entry into review;

2. Give the name and address of the applicant and the general description of the proposal;

3. Give the proposed schedule for review;

4. Give the period during which written comments on the project, either for or against, will be accepted by the Department (the dates when the public comment period begins and ends);

5. Notify the affected party of the approximate date of publication of the staff

analysis;

6. Give the method by which a copy of the staff analysis may be obtained; and

7. Notify the affected person that a hearing may not be requested until the staff analysis is published, and that any affected person may, within ten (10) calendar days of the date of publication of the staff analysis, request a hearing in accordance with the Department's rules and regulations, and the manner in which notification of any scheduled hearing will be made.

Notification to members of the public and third-party payors shall be provided by posting notices on the Department's website. Notification to the applicant shall be by mail. The date of notification is the date on which notice is mailed and posted on the Department's website.

3.13 Staff Analysis

Each application for a CON shall be assigned to a staff member of the Health Planning and Resource Development Division for analysis and review. The applications will be reviewed in compliance with the State Health Plan and the criteria contained in Chapter 8 of this manual. A written summary of the staff analysis and recommendation with respect to approval or disapproval shall be prepared. The staff analysis shall be made available online on the Department's website and shall be sent by United States Mail, postage pre-paid, to the applicant and to those who have filed a written request for the specific staff analysis in response to the notice to affected persons. If the staff is recommending disapproval, the applicant shall be allowed five (5) calendar days in which to provide additional material on its own application only for further analysis that may resolve the basis of the staff's recommendation of disapproval. Applicants will be notified of the deadline for the receipt for additional material. Any additional material presented by an applicant, not requested by the Department, and any additional material submitted by the applicant subsequent to the fifth (5th) calendar day following the publication of a staff analysis recommending disapproval of the application shall not be considered at any time during the course of review.

NOTE: A one-time submission of new information in response to a negative staff analysis shall be submitted by the applicant only. No additional submissions will be accepted from the public.

Additional information shall be submitted directly to the Division of Health Planning and Resource Development.

The staff analysis and recommendation on any application on which a hearing during the course of review has been granted shall be prepared from information contained in the application at the time the hearing is requested, except for reports previously requested from other affected state agencies and information requested by Department staff. The staff analysis and recommendation shall be available online on the forty-fifth (45th) day following the receipt of a complete application.

3.14 Determinations of Reviewability

An applicant proposing a project which may be governed by the provisions of Section 41-7-171 et seq., Mississippi Code Annotated, as amended, may submit a determination of reviewability request to obtain a written declaratory opinion regarding the reviewability of the proposed project. If such opinion is sought, the requestor and Department shall abide by the provisions of Miss. Code Ann. §-25-43-2.103 as they were effective on July, 2016, except that the Department's response shall be provided within forty-five (45) calendar days of the request.

Applicants proposing certification as a Single Specialty Ambulatory Surgery Center, or a Distinct Part SNF, Geropsychiatric DPU must contact the Department for a written opinion regarding the Reviewability of the service.

3.15 Notification of Filing of Determination of Reviewability

When a determination request is received, notification to affected persons will be made within five (5) business days of receipt of the request by publishing the notice on the Department's website.

3.16 Determination of Reviewability Processing Fee

Per Miss. Code Ann. §-41-7-205, a fee payment of Two Thousand and Five Hundred Dollars ($2,500) shall accompany the application for Determination of Reviewability and is payable to the Mississippi Department of Health by check, draft, or money order.

3.17 Changes of Ownership

Prospective applicants proposing a change of ownership of existing health care facilities, and/or the change of ownership of a health service, major medical equipment, or an institutional health service must file a completed Notice of Intent to Change Ownership.

3.18 Change of Ownership Processing Fee

A fee payment of Two Thousand and Five Hundred Dollars ($2,500) shall accompany the application for any Notice of Intent Change of Ownership and is payable to the Mississippi State Department of Health by check, draft, or money order.

3.19 Transfer of County of Home Health Agency (HHA)

The Department, is authorized to issue a license to an existing home health agency (HHA) for the transfer of a county from that agency to another existing HHA, and to charge a fee for reviewing and making a determination on the application for such transfer not to exceed one-half of the authorized fee assessed for the original application for the HHA.

The amount of the fee to be assessed on transfer of a county from one agency to another shall be calculated as follows:

0.25 of 1% of the capital expenditure stated in the notice of transfer. The fee shall not be greater than Twelve Thousand Five Hundred Dollars ($12,500.00) and not less than Two Thousand and Five Hundred Dollars ($2,500).

The Transfer of Home Health Agency (HHA) County form must be filed with the Department thirty (30) calendar days prior to the transition. During the 30-day period it will be presented to the State Health Officer for a final decision.

If the Department denies the request to transfer county of a home health agency, then the Department will notify the applicant and follow the same procedures as denial of a six-month extension request.

CHAPTER 4 - PUBLIC HEARING DURING THE COURSE OF REVIEW

4.1 Hearing Request

Any affected person may, within ten (10) calendar days of publication of the staff analysis, request a public hearing during the course of review. An applicant, however, may request a hearing on its own application only if the staff recommendation is for disapproval of the application. Requests for a hearing in the course of review must be received by the Department not later than the close of business (5:00 p.m.) on the tenth (10th) calendar day after the date the staff analysis is published. Should the tenth (10th) calendar day fall on a Saturday, Sunday, or other legal holiday when the Department is actually closed for business, the request must be received by the Department by 5:00 p.m. on the next business day. If a public hearing is requested, appropriate notice shall be provided to the applicant and other affected persons. The general public to be served by the proposal shall be notified of such action by the Department through means of publication on the Department's website. Other public information channels may be utilized.

If no request for a hearing in the course of review is received, the State Health Officer may take action on the application.

If requested, a public hearing shall be commenced by an independent hearing officer designated by the Department within sixty (60) calendar days of the filing of the hearing request unless all parties to the hearing agree to extend the time for commencement of the hearing. Notification of the time, date, and place of the hearing will be given to all affected parties and the public in accordance with these regulations no later than fifteen (15) calendar days before such hearing.

The Department shall designate an independent hearing officer who shall not be an employee of the Department but who shall be a licensed attorney. In the hearing, any affected person shall have the right to be represented by counsel, to present oral or written arguments and evidence relevant to the matter, which is subject to the hearing, and to conduct reasonable questioning of persons who make relevant factual allegations (if the person is affected by the matter). A record of the hearing shall be made, and shall consist of a transcript of all testimony received, all documents and other material introduced by any interested person, the staff report and recommendation, and such other material as the Hearing Officer considers relevant, including his/her own recommendation, which he/she shall make after the hearing is closed and after he/she has had an opportunity to review, study, and analyze the evidence presented during the hearing. Said recommendation shall be issued no later than forty-five (45) calendar days after the hearing is closed.

A copy of the Hearing Officer's report shall be sent to the parties to the hearing prior to the

decision being announced by the State Health Officer.

4.2 Fee for Public Hearing

The fee assessed to cover the cost of conducting a public hearing during the course of review shall be an amount equal to $3,000 per day for each day of the hearing and shall be secured by a deposit of, $6,000 payable by the requestor, or shared equally by all requestors, at the time the request for hearing is received by the Department of Health. A request for hearing and payment of the fee and deposit must both be received within ten (10) calendar days of notice. The $6,000 fee will cover the cost of a hearing for a two- day period ONLY. Whenever a hearing exceeds the two-day period allotted, an additional fee of $3,000 per day for each day beyond the first two days shall be assessed to the requestor, or shared equally by all requestors, of said hearing. If the fees collected for a hearing exceed the actual costs, the remaining funds shall be refunded to the requestor(s) once all invoices have been paid. In the case of multiple requestors, the remaining funds will be divided equally between the parties. If the fees collected for a hearing are insufficient to cover the actual reasonable costs of the hearing, the requestor(s) shall be responsible for remitting additional fees to cover the costs.

Should the request for hearing be withdrawn, a portion of the assessed fee shall be refunded. A minimum of $1,000 will be retained by the Department. Any extraordinary expenses incurred, such as extra publication expenses, expenses of hiring a court reporter, extraordinary administrative time, etc., shall be deducted at a reasonable rate, and the remaining portion thereof shall be refunded to the person(s) requesting the hearing during the course of review.

Refund of fees will be made in accordance to the following regulations:

1. Portions of the $6,000 fee required to request a hearing during the course of a review will be refunded under the following circumstances:

   a. When an application for a Certificate of Need is withdrawn by the applicant and a hearing during the course of review is pending but has not commenced at the time of the withdrawal of the application.

   b. When the person or entity requesting the hearing during the course of review withdraws said request.

2. To obtain a partial refund of the hearing fee when the application has been withdrawn prior to commencement of the hearing, the requestor(s) must request said refund within five (5) business days after said application has been withdrawn.

   The actions outlined in paragraph (1)(b), above, must have been completed no later than five (5) business days before the day on which the hearing during the course of review was scheduled to be held. Any notice of the actions outlined in paragraph (1)(b), above, received later than five (5) business days prior to the date set for the hearing during the course of review will not entitle the requestor to a return of any portion of the fee paid.

3. When an application is administratively withdrawn by the Department prior to the commencement of the hearing, a full refund of filing fee will be made to the requestor(s).

4.3 Consolidation of Hearings

When applications involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before a hearing officer, on the motion of any party, the Department, or the hearing officer's own motion, the hearing officer may order a joint hearing on any or all of the matters and issues in the cases. Additionally, the hearing officer may order any or all of the cases consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary cost or delay.

4.4 Motions (Hearing in Course of Review)

Motions may be heard at any time subsequent to the receipt of a valid request for hearing by the Department, at a time and date to be selected at the discretion of the hearing officer. Motions which may be heard by the hearing officer shall normally include, but are not necessarily limited to:

1. Motion to strike or dismiss an application or request for hearing for failure of the application, applicant or requestor to follow the published rules and regulations of the Department;

2. Motion to set a hearing date;

3. Motion for issuance of subpoena(s);

4. Motion to compel discovery;

5. Motion to designate record;

6. Motion to quash or motion in limine;

7. Motion to impose sanctions.

To the extent practicable, except for motions to quash subpoenas, motions in limine, motions for protective order and other evidentiary motions, all pretrial motions shall be noticed for and shall be heard upon a date no less than ten (10) calendar days prior to the hearing during the course of review. Motions to quash subpoenas, motions in limine, motions for protective order and other evidentiary motions shall be noticed for and shall be heard upon a date no less than twenty (20) calendar days prior to the hearing during the course of review. Motions and the notices thereon shall be served in accordance with the rules of the Department governing service.

Except for good cause shown, no motion shall be served on opposing parties less than three (3) business days prior to the date of the scheduled motion hearing.

Opposing parties may, before the time specified herein for the hearing of the motion, serve upon the Hearing Officer and all other parties a written response to the motion.

At least ten (10) business days prior to the hearing during the course of review, the Hearing Officer shall conduct a hearing on any motion(s) filed herein. Although clearly interlocutory in nature for purposes of perfecting an appeal to Chancery Court, the Hearing Officer's ruling on the motion is final as to all matters regarding the conduct of the hearing. Any decision as to the disposition of a motion, whether made orally or in writing, will be entered into the record by the Hearing Officer.

4.5 Ex Parte Contacts

4.5.1 After the publication of a particular staff analysis, and before a written decision is made by the State Health Officer, there shall be no ex parte contacts between (a) any person acting on behalf of the applicant or holder of the CON or any person opposed to the issuance or in favor of the withdrawal of the CON and (b) the State Health Officer; the Chief of Staff; the Director of the Office of Health Policy and Planning; the hearing officer; or the staff of Health Planning and Resource Development. The prohibition against ex parte contacts shall not be construed to prohibit contact by and between staff members, a hearing officer, the Director of the Office of Health Policy and Planning, the Chief of Staff, the State Health Officer, and the staff of the Mississippi Attorney General's Office

4.5.2 Violation of Miss. Code Ann. §§ 41-7-171 through 41-7-209, or any rules or regulations promulgated in furtherance thereof by intent, fraud, deceit, unlawful design, willful and/or deliberate misrepresentation, or by careless, negligent or incautious disregard for such statutes or rules and regulations, either by persons acting individually or in concert with others, shall constitute a misdemeanor and shall be punishable by a fine not to exceed $1,000 for each such offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of any such violation shall be in the county of the state wherein any such violation, or portion thereof, occurred.

4.6 Notification of the Status of Review

The State Department of Health, upon request of persons subject to review, shall provide timely notification of the status of review, the Department's findings, and other appropriate information respecting the review.

4.7 Limited Exchange of Information (Discovery)

In an effort to expedite the hearing process, parties to a hearing during the course of review shall exchange in writing the following information on or before the fortieth (40th) calendar day prior to the first date of the hearing:

1. A list of proposed issues that the parties reasonably believe shall be the subject of the hearing;

2. A list of witnesses that shall include a full name, address and telephone number of every witness the parties reasonably anticipate calling at the hearing, together with whether the witness is a fact or expert witness, and a brief summary of the matters upon which the witness is expected to testify;

3. A true and correct copy of every document anticipated to be introduced at the hearing (except those documents introduced solely for rebuttal);

4. Copies of the underlying documentation which support the admissibility of charts, graphs, compilations, professional and expert reports (except where privileged) shall be produced for inspection if reasonable and exchanged if reasonably necessary;

5. A true and correct copy of every subpoena which the parties have or will request be issued to non-parties; (documents received by a party from non-parties in response to subpoenas must be furnished to all other parties no later than twenty (20) calendar days prior to the hearing).

6. All documents should be pre-marked for admission into evidence.

The parties are under a continuing duty to supplement this limited exchange of information and documents. All information and documents called for in this section should be finally supplemented by the parties no later than the twentieth (20th) calendar day prior to the first day of the hearing during the course of review.

4.8 Pre-Hearing Orders

On or before the twentieth (20th) calendar day prior to the first day of the hearing, the parties should exchange proposed pre-trial orders. The pre-trial order shall be in form generally accepted in the civil courts of Mississippi. The pre-trial order shall be agreed upon by the parties and entered by the hearing officer on or before the tenth (10th) calendar day prior to the hearing. If agreement cannot be reached by and between the parties to a hearing, the hearing officer shall resolve the disagreement and adjudicate a pre-trial order for entry on or before the tenth (10^{th}) calendar day prior to the hearing. Any hearing necessitated by disagreement between the parties or otherwise whose subject is the pre-trial order shall be noticed by the parties for a date on or before the tenth (10th) calendar day prior to the first day of the hearing during the course of review.

The pre-trial order shall include the order of proof, if applicable, a list of witnesses for each party, a statement that the parties have reached agreement as to the documents which have been pre-marked for admission, and that there is no question as to their authenticity and admissibility; a brief list and summation of the issues to be tried, an iteration of any stipulations reached; and any other matters upon which the parties may reach agreement, or which the hearing officer may require, in his/her discretion. The order shall contain a stipulation of any documents necessary to a determination of the hearing which were received or generated by the Department subsequent to the publication of the staff analysis, which, together with the application, documents received

subsequent to the application and prior to the staff analysis, and the staff analysis, will constitute the file of the Department for introduction into the record.

An executed copy of the pre-trial order shall be furnished to the hearing officer and to the Department for inclusion in the file.

4.9 Sanctions

Upon the motion of any party to a hearing, a hearing officer may impose reasonable sanctions on parties who fail or refuse to comply with the rules and regulations of the Department regarding certificates of need or who violate a hearing officer's order. Additional reasonable sanctions may be imposed upon parties or non-parties who fail or refuse to comply with subpoenas. Reasonable sanctions include, but are not limited to, denial of or exclusion of information or documents sought; exclusion from the record of testimony of witnesses; or other reasonable measures. The imposition of sanctions shall not be to punish, but rather to compel fairness and to deny parties any advantage which might be gained by non-compliance.

4.10 Service of Documents

One copy of each document such as pleadings, motions, briefs, letters, etc., shall be served on each attorney of record in a particular matter. A copy shall likewise be served on the hearing officer, and one copy furnished to the Department for inclusion in the file. Any document furnished the Department for filing shall plainly state, on its face or in an accompanying letter, that it is being furnished for and is requested to be filed.

4.11 Furnishing Copies

Any document sought to be introduced into the record shall be accompanied by sufficient copies for all other counsel, including counsel opposite, the hearing officer and the court reporter.

Any motion or other pleading filed which references or is in response to another document previously filed shall be accompanied by a copy of the previously filed document (i.e., a motion to quash a subpoena shall be accompanied by a copy of the subpoena; a motion in limine to exclude a document shall be accompanied by a copy of the document).

4.12 Hearing Officer's Authority to Grant Subpoenas

The Mississippi State Board of Health, pursuant to its rule-making authority and subpoena powers granted unto it in Mississippi Code of 1972 Annotated, §§ 41-3-17 and 41-3-15(4)(1), respectively, hereby adopts the following rules:

The State Health Officer, vested with the authority of the board as described in § 41-3-5, Mississippi Code of 1972 Annotated, as amended will, at his/her discretion, appoint a Hearing Officer to hear any matter before the Mississippi Department of Health. The Hearing Officer shall be granted the authority to issue subpoenas to compel the

attendance of witnesses and the production of relevant documents and things. Any duly appointed Hearing Officer so authorized may issue a subpoena sua sponte, or upon application by any party to a matter being heard before the Mississippi Department of Health.

Except for good cause shown, no subpoena shall be issued less than thirty-five (35) calendar days and served less than thirty (30) calendar days, prior to the date of the hearing for which the subpoena is sought. Any subpoena duces tecum issued under this rule shall specify a date, time and place for the production of documents or things. The date for production shall be no less than twenty (20) calendar days prior to the date of the hearing, unless the subpoena is issued pursuant to a specific order of the hearing officer, which order may provide for another date. Upon issuance of a subpoena, the Hearing Officer may designate an individual employed by the Mississippi Department of Health or some other suitable person, such as the party requesting the subpoena, to execute and return service of the subpoena. The person to whom the subpoena is directed may, no less than twenty-five (25) calendar days before the date set as the first day of the hearing, serve upon the parties to the hearing and the Hearing Officer written objection to the subject matter of the subpoena together with a notice of a motion on the objection, in which case the attendance of the witness or the production of documents and things shall not be compelled except pursuant to an order by the Hearing Officer subsequent to the hearing on the motion. In considering the objection of a party to the issuance of a subpoena for the attendance of witnesses or the production of documents and things, the Hearing Officer shall consider the relevancy, probativeness, and reasonableness of the subject of the subpoena.

At least twenty (20) calendar days prior to the hearing, the Hearing Officer hears motions concerning the issued subpoenas, if any. The Hearing Officer's rulings on the issuing and disposition of the subpoenas are final as to all matters involving subpoenas issued or sought to be issued. Any such ruling, whether made orally or in writing, will be entered into the record by the Hearing Officer.

If any party subpoenaed under this rule shall refuse to comply with such subpoena, the Hearing Officer shall be authorized to certify such facts and enter same into the record. At that point, any party to the hearing may then move the appropriate court for relief during the hearing, but the hearing will not be delayed while this matter is being resolved.

4.13 Procedures For Conducting A "Hearing During The Course of Review"

4.13.1 Procedure and Other Related Matters (signing in)

Certificate of need hearings are open and public, except for rare occasions when the hearing officer may wish to inspect documents or examine witnesses in camera. To expedite the conduct of the hearing, persons attending should "sign in," listing their name, address and organization.

4.13.2 Declaration of Hearing Officer

The Hearing Officer opens the hearing (giving time and date).

~~The Hearing Officer will identify himself/herself and those responsible for recording the hearing.~~

~~The Hearing Officer has the authority to administer oaths, and will swear in those who wish to testify except officers of the courts, who are not required to be sworn.~~

~~The legal notice will be admitted into the record as Exhibit One by the Hearing Officer.~~

~~The file of the Department with respect to the application will be admitted into the record as Exhibit Two by the Hearing Officer.~~

~~The staff analysis with respect to the application will be admitted into the record as Exhibit Three by the Hearing Officer.~~

~~The Hearing Officer will read the following notice to those present: "This hearing is being conducted to discuss the merits of the application under consideration; please refrain from discussing or offering evidence concerning any other pending or yet-to-be-offered application that is not relevant to the matter in issue."~~

~~"Any affected person, during the conduct of the hearing, shall have the right to be represented by counsel. Additionally, any person may present oral or written arguments and evidence relevant to the matter which is subject to the Hearing and may conduct reasonable questioning of persons who make relevant, factual allegations if the person is affected by the matter."~~

~~4.13.3 Order of Proof~~

~~NOTE: All persons giving testimony during the conduct of the hearing will state their name and their organizational affiliation.~~

1. ~~A member of the staff, who may give a brief summary of the Department's staff report; such staff member may be questioned by any affected person present, including the Hearing Officer.~~

2. ~~The applicant.~~

3. ~~The opponent(s), if any, in an order to be established by agreement between the opponent(s), or if no agreement can be reached, by the Hearing Officer. If no opponent(s) are present, the Department may present witnesses, exhibits, and testimony regarding the application, conduct questioning of witnesses presented by the Applicant, make objections, argue, and submit proposed findings of fact and conclusions of law and/or a proposed recommendation. In this instance, the Department should be represented by a staff attorney who may be an employee of the Mississippi Attorney General.~~

4. Persons who wish to give evidence for themselves or on behalf of a group or organization.

5. Persons who wish to give evidence but are not listed on "Sign-In" sheet and who have not been sworn (These persons will be sworn prior to giving testimony).

6. Rebuttal by the applicant, limited to matters raised during the opponent's case in chief.

7. Closing statements or arguments of counsel or affected persons. Waiver of the submission of closing statements or arguments at the hearing shall not entitle any party or affected person to argument before the State Health Officer. (Argument shall normally be by briefs, submitted to the Hearing Officer simultaneously, within thirty (30) calendar days of the close of the Hearing).

8. The Hearing Officer will then close the Hearing.

4.13.4 Submission of Written Documents

All exhibits, documents, written arguments, letters, photographs, etc., to be entered into the record (transcript) shall be on paper of not less than 8 1/2" x 11". Such, if not the required size, may be reproduced to 8 1/2" x 11" by photocopy or may be firmly affixed to paper of the required size by clear scotch-type tape.

Undeveloped film, disks and diskettes on which data or other information is stored, transparencies, documents or letters, or exhibits which are of poor quality and not easily read or understood (because of poor quality) shall not be permitted to be introduced into the Record (transcript). Such documentary evidence or written arguments as set out above shall be permitted into the Record (transcript) if of good quality, easily readable or understood (because of good quality and of the proper dimension) by the Hearing Officer.

Each page of any submission shall have a blank margin of not less than one inch at the top and the bottom, a blank margin on the left side of the page of not less than one-and- one-half inch, and a blank margin of not less than one-half inch on the right side of each page (Left and right are as the viewer looks at the page).

Any exhibit which is to be inserted in the transcript shall consist of not more than five pages - all properly numbered sequentially and also numbered Page 1, Page 2, etc., of that particular exhibit. All exhibits of more volume than five pages shall be considered as "bulky" exhibits.

The Hearing Officer, within his/her discretion, may hold the hearing open for a specified period of time for the submission of argument, briefs, or certain documentary evidence that he/she may request. Copies of any such material requested shall be furnished by the person or party of whom it was requested to the Hearing Officer, the Department, the CON applicant, and to the opposing parties. No further arguments, briefs, rebuttals,

presentations, or submission of other documentary material by any person or organization of any kind pertaining to any matter will be accepted.

Any witness during the course of a hearing may be cross-examined by any party to the hearing. The Department may question or cross-examine any witness through its attorney. The Hearing Officer may question any witness on direct or cross-examination.

4.13.5 Counsel Pro Hac Vice

Any attorney, appearing as such, representing any person or organization shall be in compliance with Rule 46(b) of the Mississippi Appellate Procedure Rules as to the appearance of counsel pro hac vice.

4.13.6 Procedures for Conducting Comparative "Hearing During the Course of Review"

The conduct of a comparative hearing during the course of review shall differ from a non-comparative hearing only in the following respects, and shall include all other procedures for conducting a non-comparative "hearing during the course of review":

4.13.6.1 Order of Proof

NOTE: All persons giving testimony during the conduct of the hearing will state their name and their organizational affiliation.

1. A member of the staff, who may give a brief summary of the Department's staff report; such staff member may be questioned by any affected person present, including the Hearing Officer.

2. The applicants, in the order that their requests for hearing were received by the Department.

3. The opponent(s), if any, in the order to be established by agreement between the opponent(s), or if no agreement can be reached, by the Hearing Officer. If no opponent(s) are present, the Department may present witnesses, exhibits, and testimony regarding the application, conduct questioning of witnesses presented by the Applicant, make objections, argue, and submit proposed findings of fact and conclusions of law and/or a proposed recommendation. In this instance, the Department should be represented by a staff attorney who may be an employee of the Mississippi Attorney General.

4. Rebuttal proof by the applicants, in the order in which they presented their cases in chief;

5. Persons who wish to give evidence for themselves or on behalf of a group or organization.

6. Persons who wish to give evidence but are not listed on "Sign-In" sheet and who have not been sworn (These persons will be sworn prior to giving testimony).

7. Closing statements or arguments of counsel or affected persons. Waiver of the submission of closing statements or arguments at the hearing shall not entitle any party or affected person to argument before the State Health Officer. (Argument shall normally be by briefs, submitted to the Hearing Officer simultaneously, within thirty (30) calendar days from the close of the Hearing).

8. The Hearing Officer will then close the Hearing.

CHAPTER 5 - FINDINGS AND ORDERS OF THE DEPARTMENT

5.1 Written Findings

The basis for CON decisions will be provided in writing. The Department may approve or disapprove a proposal for CON as originally presented in final form, or it may approve a CON by modification, by reduction only, of such proposal provided the proponent agrees in writing to such modification.

5.2 Decision and Final Order

The State Health Officer will review all applications to determine whether the proposed project substantially complies with plans, standards, and criteria prescribed for such projects by the governing legislation, by the State Health Plan, and the adopted rules and regulations of the Department. When a hearing during the course of review has been held, the completed record shall be certified to the State Health Officer, who shall consider only the record in making his/her decision; he/she shall not consider any evidence or material which is not included therein. The State Health Officer shall make his/her written findings and issue his/her orders after reviewing said records.

If the staff recommendation is to approve the project and the State Health Officer does not concur, the applicant shall have one opportunity only to submit additional information for staff analysis, and the State Health Officer shall delay his/her decision on the project until evaluation of the additional information is completed. Any additional information submitted must be received by the Department within fifteen (15) calendar days of the date the applicant is notified. The procedures to be followed at the subsequent review shall be the same as when the State Health Officer reviews a proposal for which a hearing during the course of review has not been held.

Whether or not a hearing during the course of review was held, the Department will post on its website the date in which the State Health Officer will make her decision.

If the State Health Officer finds that the project does conform to the applicable requirements, a decision to approve shall be rendered. If the State Health Officer finds that the project fails to satisfy the plans, standards, and criteria, a decision to disapprove will

be rendered. The State Health Officer's decision to approve or deny the Certificate of Need shall be the final order of the Department and shall be published on the Department's website and followed by written notice to the applicant. Any party aggrieved by any final order by the Department shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, as provided by Section 41-7-201 Mississippi Code of 1972 Annotated, as amended (Supplement 1993), provided however, that any appeal of an Order disapproving an application for CON may be made to the Chancery Court of the county where the proposed construction expansion or alteration was to have been located or the new service or purpose of the capital expenditure was to have been utilized.

5.3 Designation of Record on Appeal

In order to allow the Department to adequately prepare the record for appeal, any party filing an appeal, cross-appeal, or other responsive pleading to a notice of appeal shall specifically designate the record for purposes of appeal, in fashion similar to that required by the Mississippi Rules of Appellate Procedure. Such designation must specifically set out any documents received or generated by the Department subsequent to the publication of the staff analysis that the party desires to be included in the appellate record.

5.4 Administrative Decisions

The State Health Officer may approve emergency CON's and six-month extensions without providing prior notice to affected persons or the public or providing an opportunity for a hearing during the course of review. These applications are described in Subsequent Reviews, in Chapter 6 of this manual.

5.5 Withdrawal of a Certificate of Need

Section 41-7-195, Mississippi Code of 1972 Annotated, as amended, states in part, "If commencement of construction or other preparation is not substantially undertaken during a valid Certificate of Need period or the State Department of Health determines that the applicant is not making a good faith effort to obligate such approved expenditure, the State Department of Health shall have the right to withdraw, revoke, or rescind the Certificate."

In considering the withdrawal, revocation, or rescission of the CON in those cases where an applicant has failed to show good faith effort through substantial progress, the Department shall take the following actions:

1. The applicant, affected persons, and the general public will be notified by appropriate means that withdrawal of the CON is under consideration by the Department and the reasons therefore;

2. Applicant so advised of contemplated action shall have thirty (30) calendar days from the date of the written notice to respond, and if they so desire, to request a public hearing before the State Health Officer or his/her independent designated hearing officer. If no response is received from the applicant during the 30-day period, the Department may conclude that the applicant concurs with the proposed action to withdraw, revoke or rescind the CON;

3. If a public hearing is requested by any affected party, the Department will conduct the hearing within forty-five (45) calendar days of receipt of the written request. The State Health Officer will render his/her written decision within thirty (30) calendar days following conclusion of any hearing on withdrawal of the Certificate of Need. Written notice of the date, time, and place of any hearing to be conducted on withdrawal of CON will be provided to affected persons at least five (5) calendar days before the date of the hearing and will be published in The Clarion-Ledger and/or other newspaper of general circulation in the area in which the project was to have been developed, if deemed appropriate by the Department.

Action taken by the Department to revoke, withdraw, or rescind a CON shall be in the form of a final written order. The same appeal rights that apply to initial review of the applications apply in the case of hearings or reviews to withdraw existing CON.

In the withdrawal of a Certificate of Need, the State Department of Health shall follow required procedures for notification of the beginning of the review; written findings and conditions; notification of the status of review; public hearing in the course of review; ex parte contact; judicial review; and annual reports of the State Department of Health.

CHAPTER 6 - SUBSEQUENT REVIEWS

6.1 Change in Scope of Approved Project

Applicants for a CON should clearly understand that if an approved project is changed substantially in scope - in construction, services, or capital expenditure the existing CON is void, and a new CON application is required before the proponent can lawfully proceed further.

6.2 Progress Reports

The CON holder is required to submit a written progress report every six months, or as requested by the department, and a final report upon completion of a project. For purposes of this chapter, completion shall mean when the approved proposed project is sufficiently complete so that it becomes operational for the purpose for which the certificate of need was issued. For projects that are incomplete, the CON holder is required to submit a six-month extension request thirty (30) calendar days prior to the expiration of the CON or any extended period (see Section regarding Six-Month Extension). The CON Holder shall certify the report and submit documentation of the CON holder's good faith effort to implement the CON by showing substantial progress.

A fee of One Thousand Dollars ($1,000) shall be assessed for the processing and handling of six-month extension- progress reports and six-month extension- final reports and is payable to the Mississippi State Department of Health by check, draft, or money order.

6.3 Six Month Extension

Certificates of Need are valid for a period not to exceed one year and may be extended by the Department for an additional period not to exceed six months. In order to continue authority for a CON under a valid CON period following the initial twelve (12) month

~~issuance period, the CON holder is required to document substantial progress toward completion of the CON and be granted a six-month extension.~~

~~If the CON project is incomplete, the CON holder is required to file a request for a six-month extension (and submit appropriate documentation) at least thirty (30) calendar days prior to the expiration of the original or any extended period.~~

~~Six-month extensions shall be based upon and supported by the CON holder's submission of documentation that shows a good faith effort to implement the CON through substantial progress. Substantial progress will be determined based upon review of the documentation submitted and whether a change in project status has occurred since the previous progress reporting period.~~

~~A fee of Two Thousand and Five Hundred Dollars ($2,500) shall be assessed for the processing and handling of six-month extension requests and is payable to the Mississippi State Department of Health by check, draft, or money order.~~

~~6.3.1 Documentation of Commencement of Construction, Good Faith Effort to Obligate Approved Expenditure, or Other Preparation Substantially Undertaken During the Valid CON Period~~

~~The following documentation may be reviewed to determine whether commencement of construction or other preparation has been substantially undertaken during a valid CON period and whether the applicant is making a good faith effort to obligate approved expenditures.~~

~~1. Commencement of Construction:~~

~~a. Letter from the director of Health Facilities Licensure and Certification Division of the Department of Health stating that final plans have been submitted and are approved, that the plans were prepared by an architect or architectural firm licensed to do business within the State of Mississippi, and that the site is approved.~~

~~b. A copy of a legally binding and obligating written contract executed by and between the applicant and the contractor to construct and to complete the project within a reasonable designated time schedule and to commence such construction within a reasonable designated time period and which states the specific capital expenditure amount which conforms to that amount previously approved.~~

~~c. A copy of the contractor's Mississippi license.~~

~~d. A copy of the building permit issued by the municipality or other applicable governing authority, or if a building permit is not required, a letter from the municipality, county, or other governing authority stating such.~~

e. A letter from the municipality, county, or other governing authority that the proposed project is in compliance with zoning regulations, if any, and if no such regulations exist, a letter to that effect.

f. A statement in writing that the proposed construction project, or any preparation thereof, is not in violation of the Coastal Wetlands Protection Act, Section 49-27-1 et seq. of the Mississippi Code of 1972 Annotated, as amended, or in violation of any federal law or regulation pertaining in any manner to construction in a federally designated "wetlands" area.

g. Documentary proof that a progress payment of at least one percent of the total construction cost as set out in the contract has been paid by the applicant to the contractor (This payment exclusive of any site preparation cost).

h. A written statement signed by the applicant and the contractor stating that all site preparation work has been completed.

i. A written statement signed by the applicant and the contractor that actual bona fide construction of the proposed project has commenced and the details of such preliminary construction.

j. A copy of the Proceed to Construction Written Order previously given to the contractor.

2. Other Preparation Substantially Undertaken During the Valid CON Period [Progress may be documented by providing evidence including but not limited to, the following.]

a. Evidence To Document Progress - Construction Projects:

i. Acquisition of property (title, evidence of payment, etc.).

ii. Completion of topographic or boundary surveys

iii. Site preparation (contractor selection, contract, evidence of payment, etc.)

iv. Completion of site development plan

v. Architectural plans/drawings (architect selection, contract, evidence of payment, statement of partial completion of plans/drawings, letter evidencing submission of plans to Health Facilities Licensure and Certification, Division of Fire Safety, letter of findings, comments or remediation; resolutions submitted; approval of commencement of construction.)

b. Evidence To Document Progress - Establishment of Service

i. Hiring or entering contracts with necessary staff/medical professionals to provide service

ii. Submission of a fire/life safety code inspection request.

iii. Submission of an application for facility inspection/ licensure.

iv. Acquisition of Equipment (Title, Lease, etc)

3. Good Faith Effort to Obligate Approved Expenditure

[Documentation may include evidence of the following items in addition to items that may be supplied under subsection 1 or 2.]

a. Document capital expenditure made to date.

b. Show evidence that permanent financing has been obtained, if approved capital expenditure has not been obligated.

c. If financing has not been obtained, show fund commitment from lending institution or agency.

d. Provide evidence of contractual obligation to expend funds.

6.3.2 If commencement of construction or other preparation is not substantially undertaken during a valid CON period, or if the Department of Health determines the CON holder is not making a good faith effort to obligate the approved expenditure, the Department shall have the right to withdraw, revoke, or rescind the certificate pursuant to Section 7.1.

6.4 EXPIRATION OF A CON

The valid period for a CON is that period stated on the CON or any subsequent extension approved by the State Health Officer. A CON holder is only authorized to proceed on the CON project including making expenditures during the valid period of a CON or any extension of the valid period. Once a CON is no longer in a valid period or any extension thereof, the CON is expired and void and the CON holder no longer has any authority under the CON and must refrain from taking any action under the expired CON**. In addition, if a CON holder fails to request Department approval for an extension prior to the CON's expiration date, the CON shall be automatically void by operation of law, and shall not require any action on the part of the Department to withdraw, revoke or rescind the certificate**. If the Department denies a request for a six-month extension, then the Department shall afford the CON holder fifteen (15) calendar days notice within which to request a hearing.

1. If a public hearing is requested, the Department will conduct the hearing within forty-five (45) calendar days of receipt of the written request, utilizing the "Hearing During the Course of Review" procedures to the extent practicable.

2. A written request for such hearing must be received by the Department no later than fifteen (15) calendar days from the date of notice and must be accompanied by the $6,000 hearing fee.

3. The State Health Officer will render his/her written decision within thirty (30) calendar days following conclusion of any hearing on denial of the six-month extension request of the Certificate of Need.

6.5 Extension/Renewal of an Expired CON

Extenuating circumstances may prevent an applicant from proceeding with the proposed project within the valid period of the approved CON.

The Department has adopted a format for "Extension/Renewal of an Expired CON" that is to be used by proponents of a project when the increase in capital expenditure does not exceed the rate of inflation and no change in the intent or scope of the project has occurred.

This application is to be submitted and reviewed under procedures and criteria set forth in this manual for CON review in compliance with state regulations. The following criteria will be considered when reviewing projects for extension/renewal of an expired CON.:

1. Reason for expiration

2. How long has the CON been expired

3. Status of project at time of expiration and current status of project.

4. Continued need for project

5. Applicant's ability to complete the project.

6. Timeline for completion of the project.

The Department shall not consider a CON for extension/renewal that has expired more than 18 months, or one that is not shown in the current State Health Plan.

The fee assessed for prior approved projects shall be one-half of the original assessment. The minimum assessment shall be not less than $2,500.00 and the maximum fee shall not exceed $37,500.

6.6 Cost Overrun

Changes in capital expenditure not associated with substantive construction or service changes require application for a cost overrun approval. It is expected that each applicant will accurately and completely represent the cost associated with the project, so that when a CON is issued, a maximum capital expenditure is authorized.

In those cases where the expenditure maximum established by the Certificate of Need is exceeded, the applicant is required to request cost overrun approval. The following procedures shall apply to cost overrun applications.

1. The request for cost overrun shall be made in accordance with the cost overrun format.

For construction projects, a revised estimate signed by an architect licensed to practice in Mississippi or a contractor authorized by law to do business in Mississippi shall accompany the request for cost overrun. The request shall include a description of the method used to determine the revised cost estimate and the justification for each line item in the budget for which a cost overrun is requested. In addition to the above, a revised capital expenditure budget outlining all costs associated with the project and a copy of any bid quotations will be submitted.

a. In cost overrun requests for purchase of capital equipment, an official price quotation from the vendor or the manufacturer is required.

b. Cost overrun requests for construction projects shall be compared with national construction cost data as published in the latest edition of Building Construction Cost Data, Robert S. Means Co., Inc., Kingston, Massachusetts, or other bona fide reference.

Any cost overrun on a construction or a renovation project which locates cost in or above the upper one-fourth range for construction or renovation cost in the U.S. shall require additional documentation to explain the reasons.

c. Cost overrun requests which result in part or in whole from the requirement of the licensure and certification authority of the State shall be given special consideration. Appropriate documentation from the licensing and/or certification authority shall be submitted with the request.

d. The amount of the fee to be assessed on cost overruns will be calculated as follows:

.50 of 1% of the revised capital expenditure, less the original fee, not to exceed $25,000 but not less than $2,500.00.

For any proposal in which the estimated or actual cost exceeds the amount originally approved, a review by the State Health Officer shall be required.

6.7 Amendments to Certificates of Need

A CON may be amended to reflect changes in the defined scope and/or physical location if said amendment is necessary to be in compliance with licensing laws of the State or for certification under Title XVIII or Title XIX of the Social Security Act. Any such necessity to be in compliance shall be documented in writing from the administrative head of the Health Facilities Licensure and Certification Division.

A CON may also be amended when no substantial change exists in construction, service, or capital expenditure when extenuating circumstances or events, as determined by the State Department of Health, inhibit completion of a Certificate of Need as originally presented in final form.

Requests for amendments to CON must be submitted in writing to the Department only during the valid CON period and in the form and detail as may be required by the Department. The amount of the fee to be assessed on amendments will be calculated as follows:

.50 of 1% of the additional capital expenditure, not to exceed $25,000 but not less than $2,500.00.

NOTE: Amendments which result from an additional capital expenditure or a change in scope of project will be reviewed as a separate project and will require an additional fee.

No CON will be amended after the proponent has submitted the final report to the Department indicating completion of the project for which the Certificate of Need was issued, and the State Department of Health has acknowledged in writing the receipt of said final report.

CHAPTER 7 - PENALTIES TO ENFORCE REQUIREMENTS OF THE CERTIFICATE OF NEED ACT

7.1 Any person or entity violating the provisions of Section 41-4-171 to 41-7-209, Mississippi Code of 1972 Annotated, as amended, by not obtaining a CON, or by deviating from the provisions of a CON, or by refusing or failing to cooperate with the Department in the exercise or execution of its functions, responsibilities, and powers shall be subject to the following:

Revocation of the licensure of a health care facility or a designated section, component, or bed service thereof, or revocation of the license of any other person for which the Department is the licensing authority. If the Department lacks jurisdiction to revoke the license of such person, the State Health Officer shall recommend and show cause to the appropriate licensing agency that such license should be revoked.

Non-licensure by the Department of specific or designated bed service offered by the entity or person.

Non-licensure by the Department where infractions occur concerning the acquisition or control of major medical equipment.

Revoking, rescinding, or withdrawing a CON previously issued.

Violations of Sections 41-7-171 et seq. of Mississippi Code of 1972 Annotated, as amended, or any rules or regulations promulgated in furtherance thereof by intent, fraud, deceit, unlawful design, willful and/or deliberate misrepresentation, or by careless, negligent, or incautious disregard for such statutes or rules and regulations, either by persons acting individually or in concert with others, shall constitute a misdemeanor and shall be punishable by a fine not to exceed $1,000 for each such offense. Each day of

~~continuing violation shall be considered a separate offense. The venue for prosecution of any such violation shall be in the county of the state wherein any such violation, or portion thereof, occurred.~~

~~The Attorney General, upon certification by the State Health Officer, shall seek injunctive relief in a court of proper jurisdiction to prevent violations of Sections 41-7-171 et seq. of Mississippi Code of 1972 Annotated, as amended, or any rules or regulations promulgated in furtherance of these Sections in cases where other administrative penalties and legal sanctions imposed have failed or cause a discontinuance of any such violation.~~

~~Major third-party payors, public and private, shall be notified of any violation or infraction under this section and shall be required to take such appropriate punitive action as is provided by law.~~

~~CHAPTER 8 – CRITERIA USED BY STATE DEPARTMENT OF HEALTH FOR EVALUATION OF PROJECTS~~

~~8.1 General Considerations~~

~~Projects will be reviewed by the Department as deemed appropriate. Review, evaluation, and determination of whether a CON is to be issued or denied will be based upon the following general considerations and any service specific criteria which are applicable to the project under consideration.~~

1. ~~***State Health Plan***: The relationship of the health services being reviewed to the applicable State Health Plan.~~

~~NOTE: CON applications will be reviewed under the State Health Plan that is in effect at the time the application is received by the Department.~~

~~No project may be approved unless it is consistent with the State Health Plan. A project may be denied if the Department determines that the project does not sufficiently meet one or more of the criteria.~~

2. ~~**Long Range Plan**: The relationship of services reviewed to the long range development plan, if any, of the institution providing or proposing the services.~~

3. ~~**Availability of Alternatives**: The availability of less costly or more effective alternative methods of providing the service to be offered, expanded or relocated.~~

4. ~~**Economic Viability**: The immediate and long-term financial feasibility of the proposal, as well as the probable effect of the proposal on the costs and charges for providing health services by the institution or service. Projections should be reasonable and based upon generally accepted accounting procedures.~~

   a. ~~The proposed charges should be comparable to those charges~~

established by other facilities for similar services within the service area or state. The applicant should document how the proposed charges were calculated.

b. The projected levels of utilization should be reasonably consistent with those experienced by similar facilities in the service area and/or state. In addition, projected levels of utilization should be consistent with the need level of the service area.

c. If the capital expenditure of the proposed project is $2,000,000 or more, the applicant must submit a financial feasibility study prepared by an accountant, CPA, or the facility's financial officer. The study must include the financial analyst's opinion of the ability of the facility to undertake the obligation and the probable effect of the expenditure on present and future operating costs. In addition, the report must be signed by the preparer.

5. **Need for the Project**: One or more of the following items may be considered in determining whether a need for the project exists:

a. The need that the population served or to be served has for the services proposed to be offered or expanded and the extent to which all residents of the area – in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups, and the elderly – are likely to have access to those services.

b. In the case of the relocation of a facility or service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups, and the elderly, to obtain needed health care.

c. The current and projected utilization of like facilities or services within the proposed service area will be considered in determining the need for additional facilities or services. Unless clearly shown otherwise, data where available from the Division of Health Planning and Resource Development shall be considered to be the most reliable data available.

d. The probable effect of the proposed facility or service on existing facilities providing similar services to those proposed will be considered. When the service area of the proposed facility or service overlaps the service area of an existing facility or service, then the effect on the existing facility or

service may be considered. The applicant or interested party must clearly present the methodologies and assumptions upon which any proposed project's impact on utilization in affected facilities or services is calculated. Also, the appropriate and efficient use of existing facilities/services may be considered.

e. The community reaction to the facility will be considered. The applicant may choose to submit endorsements from community officials and individuals expressing their reaction to the proposal. If significant opposition to the proposal is expressed in writing or at a public hearing, the opposition may be considered an adverse factor and weighed against endorsements received.

6. **Access to the Facility or Service**: The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, Medicaid eligible, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable State Health Plan as deserving priority. For the purpose of determining the extent to which the proposed service will be accessible, the state agency shall consider:

a. The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved and the extent to which medically underserved populations are expected to use the proposed services if approved;

b. The applicant's performance in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance (including the existence of any civil rights access complaints against the applicant);

c. The extent to which the unmet needs of Medicare, Medicaid, and medically indigent patients are proposed to be served by the applicant; and

d. The extent to which the applicant offers a range of means by which a person will have access to the proposed facility or services.

7. **Information Requirement**: The applicants shall affirm in their application that they will record and maintain, at a minimum, the following information regarding charity care, care to the medically indigent, and Medicaid populations and make it available to the

Mississippi Department of Health within fifteen (15) business days of request:

a. Utilization data, e.g., number of indigent, Medicaid, and charity admissions, and inpatient days of care;

b. Age, race, sex, zip code and county of origin of patient;

c. Cost/charges per patient day and/or cost/charges per procedure, if applicable; and

d. Any other data pertaining directly or indirectly to the utilization of services by medically indigent, Medicaid, or charity patients which may be requested, i.e. discharge diagnosis, service provided, etc.

8. **Relationship to Existing Health Care System**: The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

9. **Availability of Resources**: The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable State Health Plan.

a. The applicant should have a reasonable plan for the provision of all required staff (physicians, nursing, allied health and support staff, etc.).

b. The applicant should demonstrate that sufficient physicians are available to insure proper implementation (e.g., utilization and/or supervision) of the project.

c. If the applicant presently owns existing facilities or services, he/she should demonstrate a satisfactory staffing history.

d. Alternative uses of resources for the provision of other health services should be identified and considered.

10. **Relationship to Ancillary or Support Services**: The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

11. The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

12. **Access by Health Professional Schools**: If proposed health services are to be available in a limited number of facilities, the extent to which any health professional school in the area will have access to the services

for training purposes.

13. Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health services areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professional schools, multi-disciplinary clinics, and specialty centers, etc.

14. **Construction Projects**: All construction projects shall be designed and constructed with the objective of maximizing cost containment, protection of the environment, and conservation of energy. The impact of the construction costs, including financing charges on the cost of providing health care, shall be considered.

    i. Each proposal involving construction shall be accompanied by a cost estimate.

    ii. Each proposal which involves construction, modernization, or alteration of the physical plant shall be accompanied by a copy of the schematic drawings.

    iii. Space allocations should conform to applicable local, state, or minimum standards. For all projects, state or other applicable licensing standards must be met by the proposal.

    iv. For new construction projects, modernization of existing facilities should be considered as an alternative, and the rejection of this alternative by the applicant should be justified.

    v. The cost per square foot will be calculated based on the total project cost, minus cost of land and non-fixed equipment (specialized equipment such as fixed MRI, scanners, etc. are excluded from cost/square foot calculation). The following formulas will be used in calculation of the cost per square foot of projects:

New Construction/Renovation (Prorated Project)

Cost/square foot (New Construction) = A+C+D+(E+F+G(A%))*
New Const. Sq. Ft.

Cost/square foot (Renovation) = B+(E+F+G(B%))**
Renovation Sq. Ft.

New Construction (No Renovation Involved)

~~Cost/Square Foot = A+C+D+E+F+G~~
~~Sq. Ft.~~

~~Renovation (No New Construction)~~

~~Cost/Square Foot = B+C+E+F+G Sq. Ft.~~

~~Where:~~
~~A = New Construction~~
~~B = Renovation~~
~~C = Fixed Equipment~~
~~D = Site Preparation~~
~~E = Fees~~
~~F = Contingency~~
~~G = Capitalized Interest~~
~~* = A% refers to percentage of sq. ft. allocated to new construction~~
~~**= B% refers to percentage of sq. ft. allocated to renovation~~

15. **Competing Applications**: ~~The factors which influence the outcome of competition on the supply of health services being reviewed. Determination will be made that the entity approved is the most appropriate applicant for providing the proposed health care facility or service. Such determination may be established from the material submitted as to the ability of the person, directly or indirectly, to render adequate service to the public. Additional consideration may be given to how well the proposed provider can meet the criteria of need, access, relationship to existing health care system, availability of resources, and financial feasibility. In addition, the Department may use a variety of statistical methodologies, including but not limited to, "market share analysis," patient origin data, and state agency reports. In the matter of competing applications for nursing facility beds, the Department will conduct a comparative analysis and make a determination based upon a ranking of all competing applications according to the following factors: size of facility; capital expenditure; cost per square foot; cost per bed; staffing; Medicare utilization; total cost to Medicaid; per diem cost to Medicaid; continuum of care services, and community support*. Each factor shall be assigned an equal weight. The application obtaining the lowest composite score in the ranking will be considered the most appropriate application.~~

~~Note: Community support letters submitted by and on behalf of an applicant for a CON for a nursing facility are valid only if signed by individuals who are eighteen (18) years of age or older and who reside in the county in which the proposed nursing facility will be located. In addition, each letter shall contain the name, address, occupation,~~

telephone number of the signee, and certification that he/she is 18 years of age or older.

Any nursing facility applicant, who signs a written agreement to maintain continuous ownership and operation of the proposed nursing facility for a period of not less than three (3) years after initial licensure and who includes said agreement as part of the Certificate of Need application, shall have one point deducted from the total composite score of that application. However, in the event of default on the agreement (selling or leasing said facility in less than three

(3) years from initial licensure) by an applicant, the applicant will be penalized by being barred from filing a CON application for a nursing facility for a period of three (3) years from the date of default.

16. **Quality of Care**: In the case of existing services or facilities, the quality of care provided by those facilities in the past.

8.2 Supplemental Service-Specific Criteria

Service-specific criteria have been developed for a number of health services and are contained in the State Health Plan. Applications that propose to develop or expand such services will be measured against the applicable general criteria listed in this section and also against the Service Specific Criteria contained in the State Health Plan and the adopted rules and regulations of the Department. The Supplemental Standards and Criteria shall be used by the Department to determine the need for new acute and long- term care hospital beds, psychiatric and chemical dependency facilities, comprehensive inpatient rehabilitation facilities, facilities for the mentally retarded, ESRD facilities, cardiac catheterization laboratories, open heart surgical services, therapeutic radiation services, diagnostic imaging services, home health services, magnetic resonance imaging services, extracorporeal shockwave lithotripsy services, positron emission tomography services, etc.

8.3 Required Findings on Access

Findings on access (see Criterion 6 of this chapter) must be included in the written findings of the State Department of Health for each project approved, except where the project is one which was undertaken to eliminate or prevent eminent safety hazards or to comply with certain licensure or accreditation standards regarding life safety codes or regulations, where the project proposes a capital expenditure not directly related to the provision of health services or to beds or major medical equipment, or where the project is proposed by or on behalf of a health care facility which is controlled directly or indirectly by an HMO.

In making its written findings on access, the Department must take into account the current accessibility of the facility as a whole.

The Department may impose a condition that requires the applicant to take affirmative steps to meet access criteria on those projects that were approved but do not meet access criteria.

The Department must state in its written findings if a project is disapproved for failure to meet the need and access criteria.

In any case where the Department finds that a project does not satisfy the criteria for access to traditionally underserved groups, a report of such findings shall be made in writing to the applicant.

CHAPTER 9 - JUDICIAL RECOURSE

9.1 Appeal of the Decision of the State Health Officer by an Aggrieved Party

There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health care facility for a period of thirty (30) calendar days from the date of the order, if an existing provider located in the same service area where the health care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need. The stay of proceedings shall expire at the termination of thirty (30) calendar days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for those appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of direct appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within twenty (20) calendar days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the twenty (20) calendar days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of. Any person whose rights may be materially affected by the action of the State Department of Health may appear and become a party or the court may, upon motion, order that any such person, organization or entity be joined as a necessary party.

Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) calendar days of the date of the filing of the appeal or within such time as the court may by order for cause allow from the service of such notice, certify to the chancery court the record in the case, which records shall include a transcript of all

~~testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal. The chancery court shall give preference to any such appeal from a final order by the State Department of Health in a certificate of need proceeding, and shall render a final order regarding such appeal no later than one hundred twenty (120) calendar days from the date of the final order by the State Department of Health. If the chancery court has not rendered a final order within this 120-day period, then the final order of the State Department of Health shall be deemed to have been affirmed by the chancery court, and any party to the appeal shall have the right to appeal from the chancery court to the Supreme Court on the record certified by the State Department of Health as otherwise provided in this section. In the event the chancery court has not rendered a final order within the 120-day period and an appeal is made to the Supreme Court as provided herein, the Supreme Court shall remand the case to the chancery court to make an award of costs, fees, reasonable expenses and attorney 's fees incurred in favor of the appellee payable by appellant(s) should the Supreme Court affirm the order of the State Department of Health.~~

~~Any appeal of a final order by the State Department of Health in a certificate of need proceeding shall require the giving of a bond by the appellant(s) sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the chancery court within five (5) calendar days of the date of filing the appeal.~~

~~No new or additional evidence shall be introduced in the chancery court, but the case shall be determined upon the record certified to the court.~~

~~The court may sustain or dismiss the appeal in term time or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of, in whole or in part, and may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for any further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) if the court affirms the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either: (1) such order of the chancery court has become final and has not been appealed to the Supreme Court; or (ii) the Supreme Court has entered a final order affirming the chancery court.~~

~~Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.~~

Within thirty (30) calendar days from the date of a final order by the Supreme Court or a final order of the chancery court not appealed to the Supreme Court that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court, or the final order of the chancery court not appealed by the Supreme Court.

9.2 Appeal of the Proponent When the Department Fails to Render a Decision in Required Time

Unless a hearing is held, if review by the State Department of Health concerning the issuance of a CON is not complete with a final decision issued by the State Health Officer within the time specified by rule or regulations, which shall not exceed ninety (90) calendar days from the filing of the application for a certificate of need, the proponent of the proposal may, within thirty (30) calendar days after the expiration of the specified time for review, commence such legal action as is necessary in the Chancery Court of the First Judicial District of Hinds County or in the Chancery Court of the county in which the service or facility is proposed to be provided to compel the Department to issue written findings and written order approving or disapproving the proposal in question.

APPENDICES

APPENDIX A – Reserved

APPENDIX B – Reserved

APPENDIX C – Reserved

APPENDIX D – Reserved

APPENDIX E – Reserved

APPENDIX F

Mississippi State Department of Health

GUIDELINES FOR ESTABLISHING A CERTIFIED MEDICARE, DISTINCT PART, PPS-EXCLUDED PSYCHIATRIC UNIT FOR GERIATRIC PSYCHIATRIC PATIENTS IN MISSISSIPPI ACUTE CARE HOSPITALS

(1) The proposed geriatric psychiatric unit shall be located in a distinct part of the hospital. A distinct part geriatric psychiatric unit (hereafter referred to as a Geropsych DPU) must be physically separate from other hospital beds not included in the unit, and be operated distinguishably from the rest of the hospital.

(2) The proposed PPS-excluded Geropsych DPU shall meet all Medicare certification requirements contained in paragraph 3106 of the State Operations Manual. Conjointly, although the beds to be included in the proposed unit will remain licensed as acute care beds, the Geropsych DPU also shall be required to comply with the State's Minimum Standards for the Operation of Psychiatric Hospitals.

(3) Any hospital which currently has a PPS-exempt psychiatric program will not be eligible for a Geropsych DPU.

(4) The Geropsych DPU shall not participate in the State Medicaid Program.

(5) The Geropsych DPU is required to have a medical director, who is a board eligible or board certified psychiatrist, and a full-time head nurse, who is qualified by training or experience in psychiatric nursing.

(6) A letter requesting a determination of exemption from Certificate of Need review must be submitted to the Division of Health Planning and Resource Development, Mississippi Department of Health. The letter must indicate that the requesting facility will comply with items 1, 2, 4, and 5 above, and state the number of unit beds which will be operated.

Upon receipt of the CON exemption determination, the Division of Health Facilities Licensure and Certification should be contacted for an application for a PPS-excluded Geropsych DPU.

GENERAL INFORMATION

1) The industry standard formula for Geropsych DPU bed need is .5 beds per 1,000 population aged 55+. Using 1993 population projections of the Population Estimates Branch, U.S. Bureau of the Census, the number of persons in Mississippi aged 55 and over is 542,660. Application of the referenced formula yields a probable geriatric psychiatric bed need of 271 for the State.
2) Optimum unit size is generally considered to be in the range of 12 to 24 beds.
3) In order to realize maximum Medicare cost-based reimbursement, a Geropsych DPU must be certified as a PPS-exempt unit on the anniversary date of a new hospital cost reporting period. This requires that compliance with all certification requirements and required surveys be completed three weeks to a month before said anniversary date.

DISTINCT PART OF HOSPITAL CERTIFIED AS SKILLED NURSING FACILITY

Licensed hospitals may be certified for Medicare participation as a Skilled Nursing Facility if the following criteria are met:

1) The proposed Skilled Nursing Facility (SNF) beds shall be located in a distinct part of the hospital. A distinct part SNF (DP/SNF) must be physically identifiable and be operated distinguishably from the rest of the institution. It must consist of all beds within that unit such as a separate building, floor, wing or ward. Several rooms at one end of a hall or one side of a corridor may be accepted as distinct part SNF.
2) The distinct part SNF shall meet all certification requirements of a Skilled Nursing Facility. Prior to certification, a distinct part SNF entering the program, and/or requiring construction and/or renovation shall comply with all requirements under 42 CFR 483.70, Requirements For States And Long Term Care Facilities, Physical environment, or any successor regulations. The distinct part does not have to meet licensing requirements for a SNF because it meets hospital licensing requirements.
3) The distinct part SNF shall not participate in the Medicaid Program.
4) Dining and recreation spaces square footage shall be eighteen (18) square feet per licensed bed.
5) No more than one distinct part hospital-based SNF or one distinct part hospital-based Nursing Facility per hospital may be certified.

APPENDIX G - Reserved

APPENDIX H – Reserved

APPENDIX I – Reserved