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of need, or in response to a decision of a court of competent jurisdiction, may cause a CON to be issued, denied, or withdrawn or may determine that CON review is not required.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 by legal publication in The Clarion-Ledger (Jackson, Mississippi) and 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) 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 applicant, the applicant's spokesperson, affected persons, or other interested persons do not have to be present when the State Health Officer announces his decision.

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.

1.11 Processing of Requests

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

If the Division is unable to produce the records requested by the seventh working 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 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) working 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 published reports. 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 Health Planning and Resource Development Division.

For information contained in the files of the Division, a fee of $.25 per page is charged to cover the cost of copying and handling. A minimum fee of $5 is charged.

Records are transferred to the Mississippi Department of Archives and History upon completion of the project. A minimum fee of $15 is charged to retrieve files from the Mississippi Department of Archives and History. This fee is assessed in addition to any other applicable charge listed above.

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.

f. **Capital Expenditure**:

1. 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)

2. 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.

3. 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.

4. 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.

5. 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.

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

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

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

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

4. 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.

h. **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.

i. **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. (See Appendix B for further clarification).

j. **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.

k. **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).

l. **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.

m. **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.

1. 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;

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

3. 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

4. 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.

n. **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.

o. **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.

p. **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.

q. **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:

1. **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.

2. **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.

3. **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:

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

   b. Emphasizes education and training of individuals with disabilities;

   c. Incorporates at least the following core disciplines:

      i. Physical Therapy

      ii. Occupational Therapy

      iii. Speech and Language Therapy

      iv. Rehabilitation Nursing; and

   d. Incorporates at least three of the following disciplines:

      i. Psychology

      ii. Audiology

      iii. Respiratory Therapy

      iv. Therapeutic Recreation

      v. Orthotics

      vi. Prosthetics

      vii. Special Education

viii. Vocational Rehabilitation

ix. Psychotherapy

x. Social Work

xi. 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.

4. **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.

5. **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.

6. **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:

   a. Physical, occupational, or speech therapy;

   b. Medical social services;

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

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

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

   f. 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.

7. **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).

8. **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.

9. **Long-Term Care Hospital** means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than 25 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.

10. **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.

11. **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.

12. **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:

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

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

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

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

    e. 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.

13. **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 days or more.

14. **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.

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

1. 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;

2. 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

3. Provides health care services primarily:

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

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

s. **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.

t. **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.

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

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

w. **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.

x. **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.

y. **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.

z. **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.

aa. **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.

bb. **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.

cc. **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.

dd. **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.

ee. **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.

ff. **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.

gg. **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.

hh. **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) 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.

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 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 30 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 (See Appendix A for Notice of Intent To Apply for a Certificate of Need Form), which 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) days before any person files a CON application. The Notice of Intent shall be valid for a period of 180 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) days prior to the Application for a Certificate of Need shall be deferred until this 15 day notice requirement is met.

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) 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) days of the application's filing. The request shall specify what additional information is required. When additional information is requested on an incomplete application and the information is not provided to the Department within fifteen (15) days of the written request, review of the application may be deferred until the requested information is received. Notice of such deferment shall be furnished to the applicant and published on the Department's website. Failure to provide the requested information within fifteen (15) days 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) days to submit the information, and, upon request of the applicant, the review period shall be extended fifteen (15) 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) 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 in a newspaper of general statewide circulation and 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) days from the deemed complete date, and the deadline date and time shall be clearly specified. Likewise, notice to affected persons 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) days of the date the application was filed or within fifteen (15) 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) 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 90 days. Consequently, any recipient of an emergency CON is required to submit the appropriate CON application to the Department within 15 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 Hundred Dollars ($500.00), and the maximum fee shall not exceed Twenty-Five Thousand Dollars ($25,000.00).

Pursuant to House Bill 211, 2010 Legislative Session, an additional assessment will be applied to each CON application's processing fee determined by the following formula:

Additional Assessment = 0.25 x 1% of the proposed capital expenditure.

The minimum additional assessment shall not be less than Two Hundred Fifty Dollars ($250.00) and the maximum additional assessment shall not exceed Fifty Thousand Dollars ($50,000.00).

The minimum fee is Seven Hundred Fifty Dollars ($750.00) and the maximum fee that can be assessed for both fees is Seventy-Five Thousand ($75,000.00).

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) 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) 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 other affected persons 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 5 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 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 are effective on July, 2016, except that the Department's response shall be provided within forty-five (45) days of the request. (See Appendix D for Determination of Reviewability Form).

Applicants proposing certification as a Single Specialty Ambulatory Surgery Center, or a Distinct Part SNF (See Appendices E), Geropsychiatric DPU (See Appendices F) 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 Hundred Fifty Dollars ($250.00) 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 (See Appendix B).

3.18 Change of Ownership Processing Fee

A fee payment of Two Hundred Fifty Dollars ($250.00) shall accompany any Notice of Intent to Change 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 Five Hundred Dollars ($500.00).

The Transfer of Home Health Agency (HHA) County form must be filed with the Department 30 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 10 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) day after the date the staff analysis is published. Should the tenth (10th) 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, and in The Clarion-Ledger or other newspaper of general circulation in the area to be affected by the proposal. 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) 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 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) 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 10 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 cost 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) 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) 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) working 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) working 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) 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) 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) 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) 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 10th 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) 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) days and served less than thirty (30) 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) 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) 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) 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) 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) 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.

When a hearing during the course of review has not been held, the staff responsible for the preparation of the staff analysis and recommendation and the proponent(s) of the proposal may be present at the time the decision is announced. They shall be available to answer questions by the State Health Officer. The proponent may make a brief oral presentation, not to exceed 20 minutes. The State Health Officer may, at his/her discretion, request additional information and delay a final decision with respect to the proposal until said information is received and analyzed.

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 15 days of the date of the monthly CON decision meeting in which the initial project was to have been considered. 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, applicants will be informed of the date of the review of their proposal by the State Health Officer at least 10 days in advance of such review and will be provided a copy of the proposed agenda.

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 announced in the monthly CON meeting 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) 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) days of receipt of the written request. The State Health Officer will render his/her written decision within thirty (30) 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) 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, (see Progress Report / Six-Month Extension Request Format, Appendix G). 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 30 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.

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 30 days prior to the expiration of the original or any extended period, (see Appendix G).

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 $250 shall be assessed for the processing and handling of six-month extension requests.

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 15 days notice within which to request a hearing.

1. If a public hearing is requested, the Department will conduct the hearing within 45 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 15 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 30 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 $250 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.

    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 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.

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

c. 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.

d. 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.

e. 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 $1,000.

plus

0.25 of 1% of the additional capital expenditure not to exceed $50,000, but not less than $250.

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 $750.
>
> plus
>
> 0.25 of 1% of the additional capital expenditure, not to exceed $50,000, but not less than $250.

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 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:

<u>New Construction/Renovation (Prorated Project)</u>

$$\text{Cost/square foot (New Construction)} = \frac{A+C+D+(E+F+G(A\%))^{*}}{\text{New Const. Sq. Ft.}}$$

$$\text{Cost/square foot (Renovation)} = \frac{B+(E+F+G(B\%))^{**}}{\text{Renovation Sq. Ft.}}$$

<u>New Construction (No Renovation Involved)</u>

$$\text{Cost/Square Foot} = \frac{A+C+D+E+F+G}{\text{Sq. Ft.}}$$

Renovation (No New Construction)

$$\text{Cost/Square Foot} = \frac{B+C+E+F+G}{\text{Sq. Ft.}}$$

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) 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) 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) 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) 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) 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) 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) 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) 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) days from the filing of the application for a certificate of need, the proponent of the proposal may, within thirty (30) 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

MISSISSIPPI STATE DEPARTMENT OF HEALTH
NOTICE OF INTENT TO APPLY FOR A CERTIFICATE OF NEED
(Must be received 15 days prior to submission of a CON application)

TITLE OF PROJECT:	

I. APPLICANT/FACILITY INFORMATION

APPLICANT					
Applicant Legal Name:					
d/b/a (if applicable):					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Parent Organization (if applicable):					
E-mail Address:		Fax:			
PRIMARY CONTACT PERSON					
Name:		Title or Position:			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					
LEGAL COUNSEL /CONSULTANT(if applicable)					
Name:		( )Counsel ( ) Consultant			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					
FACILITY (if different from Applicant)					
Name:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			

1. Select the type of ownership of present or proposed facility**.**

TAX EXEMPT	☐ Not-for-Profit Corporation		
	☐ Public (Hospital or Government)		
TAX PAYING	☐ General Partnership	☐ Business Corporation	☐ Sole Proprietor
	☐ Limited Liability Partnership or Limited Partnership	☐ Limited Liability Company	
State of Incorporation or Organization:			

2. Identify any proposed bed changes (increases/decreases) by licensure category.

II. PROJECT DESCRIPTION

1. Provide a narrative description of the project, including location of new construction, areas involved in repair or renovation, new services being proposed, and/or equipment acquisition proposed.

2. Provide a brief justification for the project.

3. Does the project involve correction of code or Licensure deficiencies?

   a. If yes, are all deficiencies corrected by this project?
   b. List any project components which do not involve correction of code or licensure deficiencies.

4. Estimated project costs:

Construction Cost – New	$
Construction Cost – Renovation	
Capital Improvement Cost (i.e. minor painting and repairs, refurbishing)	
Total Fixed Equipment Cost	
Total Non-Fixed Equipment Cost	
Land Cost	
Site Preparation Cost	
Fees (architectural, consultant, etc.	
Contingency Reserve	
Capitalized Interest	
Other Costs (specify)	
Total Estimated Project Cost	

.

5. Approximate:
   (a) project starting date _____
   (b) project completion date _____

Submitted by:

_____
Signature

_____
Name (type)

_____
Title

_____
Date

APPENDIX B

MISSISSIPPI STATE DEPARTMENT OF HEALTH

NOTICE OF INTENT TO CHANGE OWNERSHIP

(Must be accompanied by $250 processing fee)

Part I: Facility Information

Facility Name:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Number/Type of Licensed Beds:					
Type of Organization: (County owned, non-profit, for profit, etc.)					
CON Number:					
CON Title:					

Part II: Purchaser/Lessee Information

Name of Organization:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Change in Number/Type of Licensed Beds:					
Change in Services Offered:					
Type of Organization (non-profit, for profit, etc.					
Primary Contact Person					
Name:		Title or Position:			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					

Part III: Seller/Lessor Information

Name of Organization:					
Address:					
City:		State:		Zip Code:	
Owner(s):		Operator(s):			
Type of Organization (non-profit, for profit, etc.					
Primary Contact Person					
Name:		Title or Position:			
Address:					
	State:		Zip Code:		
Telephone:		Fax:			
E-mail Address:					

Part IV: Type/Value of Consideration

Type Transaction:	Purchase ( )	Lease ( )	Other ( )
Describe other transaction:			
Purchase/Lease Cost if the CHOW is for a nursing home:		$	

Part V: Expected Date of Transaction: _____

Part VI: Provide the following:

(a) The proposed (agreed upon) sales contract/lease agreement executed by the principals.

(b) **NURSING HOMES ONLY**. Certification, from the Division of Medicaid, that no increase in allowable costs to Medicaid will result from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership.

Part VII: Complete and sign the attached Certification page.

Submitted by: _____

Name (Print or type)

_____

Title

_____

Date

_____

Address (if different than page 1)

.

CERTIFICATION

I (we) do solemnly swear or affirm on behalf of _____ and _____, after diligent research, inquiry and study, that the information and material, contained in this foregoing Notice of Intent to Change Ownership is true, accurate, and correct, to the best of my (our) knowledge and belief. It is understood that the Mississippi State Department of Health and the Division of Medicaid, Office of the Governor, will rely on this information and material in making their decision as to the exemption from Certificate of Need Review, and if it is found that the application contains distorted facts or misrepresentation or does not reveal truth and accuracy, the Department may require Certificate of Need review.

I (we) solemnly swear or affirm that no revision or alteration of the Notice submitted will be made without notifying the Mississippi State Department of Health.

_____ _____
Signature (Purchaser) Signature (Seller)

_____ _____
Title Title

_____
Name of Facility

Sworn to and subscribed before me, this the _____ day of _____, 20 ____.

_____
Notary Public

_____
My Commission Expires

APPENDIX C

CHANGES OF OWNERSHIP OR CONTROL OF HEALTH CARE FACILITIES UNDER MISSISSIPPI STATE BOARD OF HEALTH LICENSURE REGULATIONS

This regulation defines what constitutes a change of ownership or control necessitating notification of the Health Planning and Resource Development Division, Mississippi Department of Health, and for purposes of issuing licenses to new owners/controllers by the Division of Licensure and Certification, Mississippi Department of Health.

Definitions: The following definitions shall apply to this regulation:

A. Ownership:

1) That person, persons or entity ultimately responsible for the control of the day-to-day operations of the facility, as well as long-range planning and control; also

2) That person, persons or entity legally responsible for the liabilities which accrue by virtue of operation of a facility.

B. Change of Ownership:

Any mechanism which transfers actual ownership or operational control of a CON from one or more persons or entities (owner) to another person, group of persons or entity (owner).

Examples:

1) The following illustrate, by way of example, the principle of changes of ownership. They are non-inclusive.

a. Transfers of title to the business enterprise. While this may include transfers of title to the real property constituting the facility, a transfer of title to the realty is not necessary to establish a change of ownership.

b. Changes in form of business enterprise, such as:

i) Formation of corporation or partnership by a sole proprietor.

ii) A proprietorship which elects to incorporate changes in ownership.

iii) A sale, gift or exchange of stock which results in a 50 percent or more change of stock ownership. For example, before a sale of stock, the ownership of A Corporation is as follows:

Shareholder	Percent Shares Owned
Mr. X	17
Mr. Y	22
Ms. Z	21
Ms. C	05
Mr. D	35
Total	100

After a stock sale, the proportion of ownership is as follows:

Shareholder	Percent Shares Owned	Percentage Change
Mr. X	17	0
Mr. Y	35	13
Ms. C	35	30
Mr. M	13	13
		56

There has been a change of ownership of A Corp for licensure and certification purposes, for Certificate of Need purposes.

iv) When two or more corporations merge, with the corporation holding the Mississippi health care facility surviving, no change of ownership has occurred. However, if the non-surviving corporations owned defined health care facilities, a change of ownership has occurred with respect to those facilities.

v) Consolidation of two or more corporations resulting in a new corporate entity constitutes a change of ownership.

vi) Under Mississippi law, the removal, addition, or substitution of one or more individuals as partners dissolves the old partnership and creates a new partnership. This constitutes a change of ownership.

vii) Entering into a management agreement contract amounts to a change of ownership when it conveys a large measure of control. An example would be where the governing body of the management company or its agent has responsibility for developing and implementing policies and procedures, without the approval or concurrence of the former owner.

viii) When a facility, once having achieved provider status, is leased in whole or in part, a change of ownership has occurred if the lessee will operate the business enterprise without substantial guidance or control from the lessor.

ix) Transfers between departments of the same governmental entity are not changes of ownership.

x) Transfers between different levels of government, such as city to county, state to county, etc., are changes of ownership.

xi) Changes of ownership shall not result solely from the testamentary transfer of an interest in a facility, nor shall a transfer of any interest solely by descent and distribution under the laws of intestacy of Mississippi result in a change of ownership.

C. Licensing Agency:

The Mississippi Department of Health, Division of Licensure and Certification.

There shall be full disclosure of facility ownership and control. In its initial application for licensure, the facility shall disclose:

A. The ownership of the facility, including the names and addresses of the following: all stockholders, if the owner is a corporation; the partners, if the owner is a partnership; or the owner(s), if individually owned.

B. The name, address, and capacity of each officer and each member of the governing body, as well as the individual(s) directly responsible for the operation of the facility.

C. Owner's proof of financial ability for continuous operation.

D. The name and address of the resident agent for service of process within the State of Mississippi if the owner shall not reside or be domiciled in the State of Mississippi.

In its Application for Renewal of License, the facility shall report annually:

A. The name and address of the owner.
B. The name and address of the operator.
C. The name, address and capacity of each officer and each member of the governing body, as well as the individual(s) responsible for the operation of the facility.

When any changes shall be made in the constituency of the governing body, the officers or the individual(s) directly responsible for the operation of the facility, the facility shall notify the licensing agency in writing within 15 days of such changes, and shall also furnish to it a certified copy of that portion of the minutes of the governing body dealing with such change.

When change of ownership of a facility or service is contemplated, the parties shall notify the Division of Health Planning and Resource Development in writing at least 30 days prior to the proposed date of change of ownership, giving the name and address of the proposed new owner.

A facility shall notify the licensing agency in writing within 24 hours after any change of ownership, shall surrender its license therewith, and await issuance of its new license.

APPENDIX D

Mississippi State Department of Health

DETERMINATION OF REVIEWABILITY APPLICATION FORM (PROCESSING FEE: $250)

1. Title of Project _____

2. Facility name, address, county, ZIP code.

3. Legal name and address of applicant, if different from Item 2 above.

4. Principal agent to contact for this project (Include address, county, ZIP code and telephone number).

5. Type of organization (e.g., county-owned, not-for-profit acute care hospital).

6. Provide a brief narrative description of the project, including location of new construction, areas involved in repair or renovation, square feet involved in new construction or renovation, new services being proposed, and/or equipment acquisition proposed.

7. Enclose architect's schematic drawings if new construction or renovation project.

8. Site approval from Licensure unless the project will be in an operating health care facility.

1. If new construction is being developed by entity other than the applicant

(a) Identify owners/Board of Directors and enclose charters of incorporation or partnership agreement, etc.

(b) Identify tenants that will occupy the building, if applicable.

(c) Will the facility share the same parking lot as the hospital.

10. Estimated project cost

a.	Construction Cost – New	_____
b.	Construction Cost – Renovation	_____
c.	Capital Improvement Cost (i.e., minor painting and repairs, refurbishing)	_____
d.	Total Fixed Equipment Cost	_____
e.	Total Non-Fixed Equipment Cost	_____
f.	Land Cost	_____
g.	Site Preparation Cost	_____
h.	Fees (architectural, consultant, etc.)	_____
i.	Contingency Reserve	_____
j.	Capitalized Interest	_____
k.	Other Costs (specify) _____	_____
l.	Total Estimated Project Cost	_____

11. If the project involves purchase/lease of equipment, provide the following:

a. Independent report of the fair market value of major medical equipment, if not new equipment.

Original purchase price of equipment
Purchase and installation date (s) of equipment
Depreciation schedule of equipment, and
Fair market value of equipment.

b. A copy of the proposed vendor contract, including lease amount, if applicable.

c. Assurance that the entity desiring to acquire or otherwise control the equipment is a registered business entity authorized to do business in Mississippi.

d. Name of proposed health care facility or facilities to be served, if mobile or shared unit. Include a copy of proposed vendor service contract.

12. Anticipated purchase and installation date(s) for equipment/service.

13. Provide a construction cost estimate signed by an architect licensed to practice in Mississippi of a contractor authorized to do business in Mississippi.

14. Sign the attached Certification page.

CERTIFICATION

STATE OF MISSISSIPPI
COUNTY OF _____

I (we) do solemnly swear or affirm on behalf of _____ _____, after diligent research, inquiry and study, that the information and material, contained in this foregoing application for a Declaratory Ruling is true, accurate, and correct, to the best of my (our) knowledge and belief. I (we) understand that the Mississippi Department of Health will rely on this information and material in making its determination and if it finds that the application contains distorted facts or misrepresentation, the Department may require Certificate of Need review of the project. I (we) will notify the Department should subsequent increases in the cost of any portion of this project cause the capital expenditure to exceed $1,500,000 for major medical equipment or $5,000,000 for clinical health services or $10,000,000.00 for non-clinical health services, and will apply for a CON.

It is further understood that this determination ruling is valid for a period of twelve months. If the project is not implemented within the twelve month period, I (we) must request a second ruling by the Department. I (we) understand that if the statute or Plan changes during a twelve month period in which the proposed project is not implemented, the Department will make its determination ruling in accordance with the proposed statute/Plan change.

_____ _____
Signature Signature

_____ _____
Title Title

_____
Name of Facility

Sworn to and subscribed before me, this the _____ day of _____, 20 ___.

_____
Notary Public

_____
My Commission Expires

APPENDIX E

Mississippi State Department of Health

SINGLE SPECIALTY AMBULATORY SURGERY FACILITY APPLICATION FOR DETERMINATION OF NON-REVIEWABILITY (PROCESSING FEE: $500)

1. Type of Specialty: _____

2. Facility name, address, county, ZIP Code.

3. Legal name and address of applicant, if different from Item 2 above.

4. Contact person. (Include address, county, ZIP Code, telephone number, and FAX number).

5. Provide a brief narrative description of your facility, and the types of services it currently offer. Also identify the type of surgery that will be performed.

6. Identify physicians in the group and state which physician(s) will perform surgery. Certify that: a) each physician will maintain medical staff privilege at a full service hospital, or b) at least one member of the physician group has staff privileges at a full service hospital and will be available at the facility or on call with a 30-minute travel time of the full service hospital during hours of operation of the facility.

7. Please certify that the surgical procedures performed in this facility will be in compliance with federal and state regulations regarding anesthesia.

8. Certify that the proposed facility will have a formal transfer agreement with a full service hospital to provide services which are required beyond the scope of the single specialty facility's programs. The facility must also have a formal process for providing follow-up services to the patients (e.g., home health care, outpatient services) through proper coordination mechanisms.

9. Please state the total cost involved in constructing and equipping the facility for the service.

10. Certify that the surgical services to be provided by the practice will be limited to those procedures that are either office procedures performed under local or regional anesthesia, or procedures that are more complex than office procedures but less complex than major procedures requiring prolonged postoperative monitoring and hospital care to ensure safe recovery and desirable results; that the procedures will be limited to those which the patient will arrive at the facility and expect to be discharged on the same day; that all procedures will only be performed by the physicians or dentists listed in the application and each are and will continue to be licensed to practice in the State of Mississippi.

11. Certify that any changes in the physicians or dentists listed in the application (through addition or withdrawal) will be communicated by written notice to the department within 30 days of the change.

12. The facility must be physically separated from non-surgical activities, as required by the "Interpretative Guidelines and Survey Procedures for Ambulatory Surgical Services". Please certify your compliance with this criterion

13. Please sign the attached certification page.

CERTIFICATION

STATE OF MISSISSIPPI

COUNTY OF _____

I (we) do solemnly swear or affirm on behalf of _____ _____, after diligent research, inquiry and study, that the information and material, contained in this foregoing application for a Declaratory Ruling is true, accurate, and correct, to the best of my (our) knowledge and belief. I (we) understand that the Mississippi Department of Health will rely on this information and material in making its determination. If it finds that the application contains distorted facts or misrepresentation, the Department may require Certificate of Need review of the project. I (we) will notify the Department should at any time ownership of the single specialty facility transfer to a hospital or other health care facility, or should the facility seek to operate a dual specialty surgery facility.

It is further understood that this ruling is valid for a period of twelve months. If the project is not implemented within the twelve month period, I (we) must request a second ruling by the Department. I (we) understand that this determination is made in accordance with the Official Attorney General's Opinion dated March 22, 1994. Should that ruling change prior to initiation of the project, I (we) understand that any subsequent ruling will be made in accordance with the revised Opinion.

_____	_____
Signature	Signature
_____	_____
Title	Title

_____
Name of Facility

Sworn to and subscribed before me, this the _____ day of _____, 20 ____.

_____
Notary Public

_____
My Commission Expires

APPENDIX F

Mississippi State Department of Health

GUIDELINES FOR ESTABLISHING A MEDICARE CERTIFIED, 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.

Mississippi State Department of Health

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

MISSISSIPPI STATE DEPARTMENT OF HEALTH

Certificate of Need (CON)

Progress Report/ Six-Month Extension Request

(Please submit Original and one Copy of the Report)

(Must be accompanied by $250 processing fee)

Report/Request Type: [ ] Six-Month Progress Report

[ ] Six-Month Extension Request
(Must Be Received 30 Days Prior to Expiration)

[ ] Final Report (Project Completion)

1. CON Information

a. CON Review #:_____CON#:_____

b. Facility Name:_____

c. Project Title: _____

d. Effective Date:_____Expiration Date: _____

e. Current Extension Period Expiration Date: _____

f. CON Holder Name: _____

Address:_____

_____

g. CON Contact Person: _____

Address:_____

_____

Telephone: _____

Email Address: _____

h. Attach a photocopy of the original Certificate of Need.

i. **Capital Expenditure Authorized:** $_____

j. **Capital Expenditure Made to Date:** $_____

2. Documentation of Commencement of Construction or Other Preparation Substantially Undertaken

A. Describe any changes in the individual business or corporate officers and directors since the original approval.

B. Describe any agreements in existence, being planned, or that have occurred since original approval. Attach a copy of current partnership agreement or articles of incorporation, if different from that provided in the original application.

C. Provide documentation for activities accomplished during the pre-construction phase of the project including, but not limited to, the following:

1. Acquisition of land/ property (title, evidence of payment, etc.).
2. Completion of topographic or boundary surveys
3. Site preparation (contractor selection, contract, evidence of payment, etc.)
4. Completion of site development plan(s)
5. 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.)
6. If the approved expenditure has not been obligated, provide evidence that permanent financing has been obtained. If financing has not been obtained, provide evidence of fund commitment from lending institution or agency

D. Provide documentation of construction activities:

1. Date construction contract offered for bid: _____
2. Date contract awarded: _____
3. Date any site preparation is estimated to be complete: _____
4. Percentage of work completed: _____

5. Estimated date of completion: _____

E. If actual construction has not commenced, provide date it will commence and the reasons for the delay.

F. Provide documentation of activities to established services through the acquisition of capital equipment:

1. Equipment purchase/ lease agreement.
2. Date contract signed between buyer and vendor: _____
3. Name of mobile equipment vendor: _____
4. Registration/serial number of mobile equipment vendor: _____
5. Date equipment is to be delivered: _____
6. Date equipment to be placed in service: _____
7. Have there been any changes in funding sources? [ ] Yes [ ] No

   If yes, explain: _____
8. Number of procedures performed by month: _____
9. Provide evidence that the Division of Radiological Health has approved the plans for provision of radiation therapy services, if applicable.

G. If the CON is for a project involving no construction, (e.g., establishment of services), please provide documentation including, but not limited to, the following:

1. Hiring or entering contracts with necessary staff/medical professionals to provide service
2. Estimated date that any new staff required will be hired: _____
3. Estimated date any new service will be available to public: _____
4. Submission of a fire/life safety code inspection request.
5. Submission of an application for facility inspection/licensure of service.

H. Complete and sign the attached Certification page.

CERTIFICATION

STATE OF MISSISSIPPI
COUNTY OF _____

I (we) do solemnly swear or affirm on behalf of _____ _____ , after diligent research, inquiry and study, that the information and material, contained in this foregoing Progress Report/Six-Month Extension Request is true, accurate, and correct, to the best of my (our) knowledge and belief. I (we) understand that the Mississippi State Department of Health will rely on this information and material in making its decision as to the granting of an extension of the Certificate of Need, and if it finds that the report/request contains distorted facts or misrepresentation, the Department may refrain from further review of the report/request and consider it rejected. It is further understood that if the Certificate of Need is extended based upon the evidence contained in this request, such certificate may be revoked, canceled, or rescinded if the Mississippi State Department of Health determines its findings were based on evidence, not true, factual, accurate, and correct.

I (we) certify that no revision or alteration of the proposal submitted will be made without obtaining prior written consent of the Mississippi State Department of Health and that I (we) will furnish to the Mississippi State Department of Health a progress report and/or a request for a six-month extension on the proposal every six (6) months until the project is completed.

_____	_____
Signature	Signature
_____	_____
Title	Title

_____
Name of Facility

Sworn to and subscribed before me, this the _____ day of _____20___.

_____
Notary Public

_____
My Commission Expires

Appendix H

MISSISSIPPI STATE DEPARTMENT OF HEALTH
APPLICATION FOR A CERTIFICATE OF NEED

APPLICATION FOR EXTENSION/RENEWAL OF AN EXPIRED CERTIFICATE OF NEED

TITLE OF PROJECT:		
Capital Expenditure:	$	CON Review #:

I. APPLICANT/FACILITY INFORMATION

APPLICANT					
Applicant Legal Name:					
d/b/a (if applicable):					
Address:					
City:		State:		Zip Code	
County:		Telephone:			
Parent Organization (if applicable):					
E-mail Address:		Fax:			
PRIMARY CONTACT PERSON					
Name:		Title or Positio			
Firm:					
Address:					
City:		State:		Zip Code	
Telephone:		Fax:			
E-mail Address:					
LEGAL COUNSEL /CONSULTANT(if applicable)					
Name:		( )Counsel ( ) Consultant			
Firm:					
Address:					
City:		State:		Zip Code	
Telephone:		Fax:			
E-mail Address:					

1. If the name of the existing or proposed facility is different than the Applicant's legal name provide the facility information.

FACILITY					
Name:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			

2. If the existing or proposed facility will be managed or operated by a different entity other than the Applicant, enter the entity information below.

MANAGEMENT / OPERATING ENTITY					
Name:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			

3. Select the type of ownership of present or proposed facility**.**

TAX EXEMPT	☐ Not-for-Profit Corporation		
	☐ Public (Hospital or Government)		
TAX PAYING	☐ General Partnership	☐ Business Corporation	☐ Sole Proprietor
	☐ Limited Liability Partnership or Limited Partnership	☐ Limited Liability Company	
State of Incorporation or Organization:			

4. **Please provide documentation of the organizational and legal structure as indicated in the table below.**

5. **Facility Type (select one)**

☐ Hospital-Based ☐ Freestanding ☐ Nursing Home ☐ Not Applicable

ORGANIZATIONAL STRUCTURE	
Not-for-Profit Corporation	▪ Name of Each Officer and Director ▪ Letter of Good Standing from Secretary of State
Public	▪ All Governing Authority Approvals for this Project
Sole Proprietor	▪ County Business Authorization Documents, if available
General Partnership	▪ Name, Partnership Interest, and Percentage Ownership of Each Partner ▪ Partnership Agreement
Limited Liability Partnership or Limited Partnership	▪ Name, Partnership Interest, and Percentage Ownership of Each Partner ▪ Letter of Good Standing from Secretary of State
Business Corporation	▪ Name of Each Officer and Director ▪ Letter of Good Standing from Secretary of State
Limited Liability Company	▪ Name of Each Member and Managing Member, Officers, and/or Directors ▪ Letter of Good Standing from Secretary of State

II. PROJECT DESCRIPTION

1. Describe in detail ALL of the characteristics of the project. Be sure to include any changes in the project since original approval. Specifically, discuss:

   a. Reason for expiration.

   b. How long has the CON been expired.

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

   d. Continued need for project.

   e. Applicant's ability to complete the project.

   f. Timeline for completion of the project.

2. Attach a copy of the original Application.

III. COMPLIANCE WITH STATE HEALTH PLAN, POLICIES, AND PROCEDURES

1. Describe how the project complies with the health care needs addressed in the current *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. Prior approved projects must continue to be in compliance with the Plan in effect at the time the original project was approval.**

2. Describe how the proposed project complies with the *Mississippi Certificate of Need Review Manual*, all adopted policies and procedures of the Mississippi State Department of Health, statute and federal regulations, if applicable.

IV. FINANCIAL ANALYSIS

1. If capital expenditure has changed, complete the enclosed Capital Expenditure Summary page.

2. Provide line item justification for each increase (or decrease) in capital expenditure.

3. Have any changes occurred in the method of financing the proposed capital expenditure or in any other data submitted in the financial analysis of the prior CON? If so, provide updated information to include, but not limited to the following:

   a. A revised projected operating statement for the first full year of operation after completion of the project (for the proposed project/service only); include revised cost per day/procedure and charge per day/procedure.

   b. Disclose source of all financing (if debt attach creditor's letter).

   c. Provide amount of loan/lease, interest rate, term of loan and payment/lease amount.

   d. Enclose a loan amortization schedule for all loans.

5. Provide audited or un-audited financial statements for the past year.

6. Enclose a revised depreciation schedule for all assets.

7. Show effect of project on Medicaid patients, Medicare patients and other payors.

V. CERTIFICATION

Complete and submit original Certification Page for this project.

MISSISSIPPI STATE DEPARTMENT OF HEALTH
CERTIFICATION

APPLICANT: _____

TITLE OF PROPOSED PROJECT: _____

TOTAL CAPITAL EXPENDITURE: _____

I (we) swear or affirm on behalf of _____ after diligent research, inquiry and study, that the information and material contained in the attached application for a Certificate of Need is true, accurate, and correct, to the best of my (our) knowledge and belief. It is understood that the Mississippi State Department of Health will rely on this information and material in making its decision as to the issuance of a Certificate of Need, and if it finds that the application contains distorted facts or misrepresentation or does not reveal truth or accuracy, the Department may refrain from further review of the application and consider it rejected. It is further understood that if a Certificate of Need is issued based upon evidence contained in this application, such Certificate may be revoked, canceled or rescinded if the Department of Health determines its findings were based on evidence, not true, factual, accurate, and correct.

I (we) certify that no revision or alteration of the proposal submitted will be made without obtaining prior written consent of the Department of Health. **Furthermore, I (we) will furnish to the Department of Health a progress report on the proposal every six (6) months until the project is completed.**

_____ _____

Print or Type Name Signature

_____ _____

Title Facility Name (if Different)

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me, this **the** _____ ***day of*** ***, 20*** _ ***.***

_____

Notary Public

_____

My Commission Expires

CAPITAL EXPENDITURE SUMMARY

APPLICANT: _____

TYPE OF PROJECT: _____

	(1)	(2)	
	Original Approved Amount ($)	**Revised Amount* ($)**	**Increase or (Decrease) ($)**
1. New Construction			
2. Construction / Renovation			
3. Land			
4. Site Work			
5. Fixed Equipment			
6. Non-Fixed Equipment			
7. Contingency			
8. Fees (Architectural, Consultant, etc)			
9. Capitalized Interest			
10. Capital Improvement			
Total Capital Expenditure			

Percentage Increase or Decrease _____

Total Square Feet of Construction _____

Total Square Feet of Renovation _____

Percentage Complete _____

*Revised Capital Expenditure should include:
(1) Original Amount Approved
(2) Additional Requested Amount

Appendix I

MISSISSIPPI STATE DEPARTMENT OF HEALTH

TRANSFER COUNTY OF A HOME HEALTH AGENCY
(Must be accompanied by processing fee $.25 of 1% of cost)

Part I: Facility Information

Facility Name:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Number/Type of Licensed Beds:					
Type of Organization: (County owned, non-profit, for profit, etc.)					

Part II: Purchaser/Lessee Information

Name of Organization:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Changes in Number/Type of Licensed Beds:					
Type of Organization (non-profit, for profit, etc.					
Primary Contact Person					
Name:		Title or Position:			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					

Part III: Seller/Lessor Information

Name of Organization:					
Address:					
City:		State:		Zip Code:	
Owner(s):		Operator(s):			
Type of Organization (non-profit, for profit, etc.					

Primary Contact Person					
Name:		Title or Position:			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					

Part IV: Type/Value of Consideration

Type Transaction:	Purchase ( )	Lease ( )	Other ( )
Describe other transaction:			
List County(ies) being transferred:			
Lease/Purchase Cost: $		Fair Market Value: $	

Part V: Expected Date of Transaction: _____

Part VI: Provide the following:

The proposed (agreed upon) sales contract/lease agreement executed by the principals.

Part VII: Complete and sign the attached Certification page.

Submitted by: _____

Name (Print or type)

_____
Title

_____
Date

_____
Address (if different than page 1)

CERTIFICATION

I (we) do solemnly swear or affirm on behalf of _____ _____ and _____, after diligent research, inquiry and study, that the information and material, contained in this foregoing Notice of Intent to Transfer County of a Home Health Agency (HHA) is true, accurate, and correct, to the best of my (our) knowledge and belief. It is understood that the Mississippi State Department of Health, will rely on this information and material in making its decision as to approve the licensure of the HHA, and if it is found that the application contains distorted facts or misrepresentation or does not reveal truth and accuracy, the Department may refrain from further review and consider it rejected. It is further understood that the approval and license are granted based upon evidence contained in this application, such approval/license may be revoked, canceled or rescinded if the Department of Health determines its findings were based on evidence not true, factual, accurate, or correct.

I (we) solemnly swear or affirm that no revision or alteration_of the Notice submitted will be made without notifying the Mississippi State Department of Health.

_____ _____

Signature (Purchaser) Signature (Seller)

_____ _____

Title Title

_____

Name of Facility

Sworn to and subscribed before me, this the _____ day of _____, 20 ___.

_____

Notary Public

_____

My Commission Expires

Mississippi State Department of Health
Mary Currier, MD, MPH
State Health Officer

Nicole G. Litton, Director
Office of Health Policy and Planning

Keisi D.V. Ward, Chief
Division of Health Planning and Resource Development

Division of Health Planning and Resource Development Staff

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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

~~100~~ 1.1 General Statement of Public Policy

~~100.01~~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 ~~Department of Health~~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.

~~101~~1.2 Applications Unacceptable for Certificate of Need Review

~~101.01~~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.

~~102~~1.3 Procedures for Adoption and Revision of Certificate of Need Review Procedures and/or Review Criteria

~~102.01~~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.

~~103~~1.4 Rules and Procedures for Conducting Meetings and Hearings

~~103.01~~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.

~~104~~1.5 Notice of Meeting

~~104.01~~All CON meetings of the Department shall be open to the public. The public shall be notified of meetings of the Department by legal publication ~~in The Clarion-Ledger (Jackson, Mississippi) and~~ 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.

~~105~~1.6 Agenda

~~105.01~~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) days before the meeting or hearing.

~~106~~1.7 Certificate of Need Application Review ~~Quarterly and Expedited Review~~

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

~~106.01 utilizing the review schedule as adopted. If an application qualifies for an expedited review, the Department will attempt to render a decision within 90 days from the date of completeness.~~

~~The intent of the Department is to hold any approved public hearing regarding any proposal under review no later than 90 days after the publication of the staff analysis on said project in order to permit the decision on the proposal under review to be rendered by the State Health Officer approximately 120 days after the publication of a staff analysis on the project. The Department, when possible, will hold approved hearings on expedited proposals, and render a decision regarding the proposal under review within 90 days after the application is deemed complete.~~

~~107~~1.8 Consideration of Proposals - Decision

~~107.01~~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 applicant, the applicant's spokesperson, affected persons, or other interested persons do not have to be present when the State Health Officer announces his decision.

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.

~~4. Action on the proposal deferred pending additional information or material or until a stipulated certain time for a stated reason.~~

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.

~~108~~1.9 Policy Regarding Public Access to Records and Data

~~108.01~~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.

~~109~~1.10 Procedure for Requesting Information

~~109.01~~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 , ~~Because of staff time~~ 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.

~~110~~1.11 Processing of Requests

110.01Requests for published reports will be filled no later than ~~five~~ seven (7~~5~~) working days following the receipt of such request.

If the Division is unable to produce the records requested by the seventh working 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 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) working days from the receipt of the original request. ~~Requests for information contained in CON files will be filled not later than five work days following the receipt of the request if the material requested is 50 pages or less. If the requested material exceeds 50 pages, the request will be filled not later than 10 work days following the receipt of such requests.~~

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 ~~and entered into a review cycle~~.

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.

~~111~~1.12 Index of Records

~~111.01~~The index of CON files is maintained in the Health Planning and Resource Development Division of the Department.

~~112~~1.13 Fees

~~112.01~~Standard fees per copy are established for published reports. 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 Health Planning and Resource Development Division.

For information contained in the files of the Division, a fee of $.25 per page is charged to cover the cost of copying and handling. A minimum fee of $5 is charged.

Records are transferred to the Mississippi Department of Archives and History upon completion of the project. A minimum fee of $15 is charged to retrieve files from the Mississippi Department of Archives and History. This fee is assessed in addition to any other applicable charge listed above.

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

1.14 Definition of Terms

~~112.02~~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.

~~112.03~~**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.

~~112.04~~**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.

~~112.05~~**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.

~~112.06~~**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.

~~112.07~~f. **Capital Expenditure**:

1. 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)

2. 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 ~~two~~ five million dollars ($~~2~~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.

3. 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 ~~five~~ ten million dollars ($~~5~~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.

~~**Projects involving non-clinical health services may include but are not limited to the following**:~~

~~**4. (i) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a change in beds, a change in a listed clinical health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility, or**~~

~~(ii) Projects which do not involve the provision of clinical health services or direct patient care, including but not limited to, the following:~~

~~1. Administrative Offices;~~

~~2. Energy Conservation;~~

~~3. Heating and/or Air Conditioning systems;~~

~~4. Management information systems;~~

~~5. Medical Offices;~~

~~6. Parking Facilities;~~

~~7. Telecommunications or telephone systems;~~

~~8. Ventilation systems; or~~

~~9. Any other expenditure that is not for a clinical health service as determined by the State Department of Health.~~

4. 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.

5. 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.

~~**112.08**~~**g.** **Capital Lease** means a lease which meets one or more of the following conditions:

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

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

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

4. 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.

~~112.09~~**h.** **Certificate of Need** means a written order by the ~~Department~~ 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.

~~112.10~~**i.** **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 ~~the~~ facility, and/or the change of ownership of major medical equipment, a health service, or an institutional health ~~or~~ service. Changes of ownership from partnerships, single proprietorships, or corporations to another form of ownership are specifically included.~~,provided,h~~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. (See Appendix B for further clarification).

~~112.11~~**j.** **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.

~~112.12~~**k.** **Clinical Health Service** ~~means a single diagnostic, therapeutic, rehabilitative, preventive, or palliative procedure or series of those procedures that may be separately identified for billing and accounting purposes~~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). ~~those services for which a capital expenditure is made to increase the number of beds at a healthcare facility or to obtain a certificate of need under Section 41-7-191(d), Mississippi Code of 1972 Annotated, as amended.~~

~~112.13~~**l.** **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.

~~112.14~~**m.** **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.

1. 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;

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

3. 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

4. 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.

~~112.15~~**n.** **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.

~~112.16~~**o.** **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~~171 et seq~~.

~~112.17~~**p.** **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.

~~112.18~~**q.** **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:

1. **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.

2. **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.

3. **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:

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

   b. ~~ii.~~Emphasizes education and training of individuals with disabilities;

   c. ~~iii.~~Incorporates at least the following core disciplines:

      i. Physical Therapy

      ii. Occupational Therapy

      iii. Speech and Language Therapy

      iv. Rehabilitation Nursing; and

   d. ~~iv.~~Incorporates at least three of the following disciplines:

      i. Psychology

      ii. Audiology

      iii. Respiratory Therapy

iv. Therapeutic Recreation

v. Orthotics

vi. Prosthetics

vii. Special Education

viii. Vocational Rehabilitation

ix. Psychotherapy

x. Social Work

xi. 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.

4. **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.

5. **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.

6. **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:

a. ~~i.~~Physical, occupational, or speech therapy;

b. ~~ii.~~Medical social services;

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

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

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

f. ~~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.

7. **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).

8. **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.

9. **Long-Term Care Hospital** means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than 25 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.

10. **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.

11. **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.

12. **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:

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

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

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

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

    e. ~~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.

13. **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 days or more.

14. **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.

~~112.19~~**r.** **Health Maintenance Organization** or **"HMO"** means a public or private organization which:

1. 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;

2. 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

3. Provides health care services primarily:

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

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

~~112.20~~**s.** **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.

~~112.21~~**t.** **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.

~~112.22~~**u.** **Health Services** means clinically related (i.e., diagnostic, treatment, or rehabilitative) services and include alcohol, drug abuse, mental health, and home health care services ~~including clinical health services and institutional health services and excluding nonclinical health services~~.

~~112.23~~**v.** **Hospital and/or Health Facility Based** means a health service that is physically located in or legally owned by the hospital or health facility.

~~112.24~~**w.** **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.

~~112.25~~**x.** **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.

y. **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.

~~112.26~~**z.** **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.

~~112.27~~**aa.** **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.

~~112.28~~**bb.** **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.

~~112.29~~**cc.** **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.

~~112.30~~**dd.** **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.

~~112.31~~**ee.** **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.

~~112.32~~**ff.** **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 ~~(34)~~1.46 ~~of this section~~ below.

~~112.33~~**gg.** **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.

~~112.34~~**hh.** **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

~~100~~**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:

~~100.01~~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.

~~100.02~~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;.

~~100.03~~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.

~~100.04~~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) 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.

~~100.05~~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.

~~100.06~~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.

~~100.07~~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 ~~and~~ 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.

~~100.08~~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~~30~~ days before the date such change of ownership occurs~~, or a change in services or bed capacity as prescribed in paragraphs (4) and (5) as a result of the change of ownership; an acquisition for less than~~

~~fair market value must be reviewed if the acquisition at fair market value would be subject to review~~.

~~100.09~~2.1.9 Regardless of paragraph 2.1.8 above, ~~t~~~~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 ~~paragraph (8)~~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.

~~100.10~~2.1.10 Any activity described in ~~P~~paragraphs 2.1.1~~(1)~~ through 2.1.9~~(9)~~, if undertaken by any person if that same activity would require CON approval if undertaken by a health care facility.

~~100.11~~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 ~~(1)~~through 2.2.10~~(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.

~~100.12~~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

~~100.13~~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).

~~101~~2.3 Exemptions

~~101.01~~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.

~~101.02~~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.

~~101.03~~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.

~~102~~2.4 Swing-Bed Concept

~~102.01~~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 30 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.

~~103~~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

~~100~~3.1 Notice of Intent To Apply for a Certificate of Need

~~100.01~~A Notice of Intent (See Appendix A for Notice of Intent To Apply for a Certificate of Need Form), which 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, ~~for the construction, development, or establishment of a new health care facility. Likewise, A Notice of Intent shall be submitted to the Department~~ but no later than ~~at least~~ fifteen (15) ~~30~~ days before any person files a CON application. ~~acquires an existing health care facility; undertakes the acquisition of major medical equipment; increases the number of beds or converts beds from one licensed category to another; and/or offers one of the following health services not provided by or through the facility in the last 12 months: open heart surgery services; cardiac catheterization services; comprehensive inpatient rehabilitation services; licensed psychiatric services; licensed chemical dependency services; radiation therapy services; diagnostic imaging services of an invasive nature, i.e., invasive digital angiography; nursing home care as 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); home health services; swing bed services; ambulatory surgical services; magnetic resonance imaging services; positron emission tomography services; and long-term care hospital services.~~ The Notice of Intent shall be valid for a period of 180 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) ~~30~~ days prior to the Application for a Certificate of Need shall be deferred until this 15 ~~30~~ day notice requirement is met. ~~For non batched or expedited reviews, or until the beginning of the next review cycle.~~

~~101~~3.2 CON Application

~~101.01~~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.

~~102~~3.3 Copy Requirements

~~101.02~~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.

~~103~~3.4 Notice of Receipt of Application

~~103.01~~A notice of receipt of application shall be timely published online on the Department's website~~, on a weekly basis if possible~~.

~~104~~3.5 Reviewing Applications for Completeness

Within fifteen (15) 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.

~~104.01 and scheduled for review. Complete applications shall be entered into the appropriate review cycle or period as determined by the nature of the application.~~

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. ~~At the discretion of the Department a shell application may be held by the Department until such time that the applicant has supplemented the application with the necessary information to be sufficiently complete.~~

~~105~~3.6 Incomplete Applications

~~105.01~~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) days of the application's filing. The request shall specify what additional information is required. When additional information is requested on an incomplete application and the information is not provided to the Department within fifteen (15) days of the written request, review of the application ~~shall~~ may be deferred ~~to the subsequent review cycle~~ until the requested information is received. Notice of such deferment shall be furnished to the applicant and published on the Department's website. Failure to provide the requested information~~by the first day of the month preceding the subsequent review cycle~~ within fifteen (15) 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.

~~106~~3.7 Complete Applications

~~106.01~~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. ~~When an application is~~

~~received on the next business day following a weekend or holiday that falls on the first day of a month, the application is deemed received on the first day of that month.~~

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 ~~at least~~ fifteen (15) days to submit the information, and, upon request of the applicant, the review period shall be extended ~~at least~~ fifteen (15) days. ~~If the applicant's review period is extended, the review period of all other competing applications is also extended.~~

Until it is deemed complete, ~~A~~an applicant may submit additional material. ~~First day of the first month of the review cycle (the day the application is entered into review).~~

Members of the public, third-party payors, and all other affected persons may submit material to the Department at any time during the first ~~30~~ fifteen (15) days following the date the application is deemed complete.

Entry of an application into review shall cause timely ~~a~~ notice to the public to be published in a newspaper of general statewide circulation and 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 ~~thirty (30)~~fifteen (15) days from the ~~date the notice first appears on the website~~ deemed complete date, and the deadline date and time shall be clearly specified. Likewise, notice to affected persons shall be issued by mail, notifying recipients that the application has been accepted by the Department and entered into review. ~~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 category of the certificate of need sought;~~

3. ~~Give the proposed schedule for review of the application;~~

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 party that a hearing may not be requested by any party until the staff analysis is published, and that any affected party may, within twenty (20) 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.~~

~~101 Determining Review Cycles~~

~~101.01 To the extent practicable, no CON review shall take longer than 90 days following the publication of a staff analysis on the application. The review period begins on the first day of the quarterly review cycle and ends on the date the State Health Officer renders his decision.~~

~~The following criteria have been established to determine when it would not be practicable for the State Department of Health to complete a review within 90 days;~~

1. ~~When, as determined by the State Health Officer, it is necessary to defer review of a project to a later date.~~

2. ~~When, as made available by State guidelines, requests for public hearings during the course of review delay decisions beyond the 90-day period.~~

~~Except as provided above, in the event that the Department fails to act on an application within the 90-day period following the date of publication of the staff analysis, the applicant may, within 30 days following the expiration of the 90-day period, bring an action in the appropriate Chancery Court to require the Department to approve or disapprove the application. A CON (or an exemption) may not be issued or denied solely because the Department failed to reach a decision. If the applicant's review period is extended, the review period of all other competing applications is also extended.~~

~~102 Scheduled Review Cycles~~

~~102.01 Scheduled review cycles are established to allow all applications for similar types of services, facilities, or equipment affecting the same health planning area to be reviewed in relation to each other four times per year. Review cycles have been established as indicated below:~~

1. ~~First Quarter - Begins on January 1~~

2. ~~Second Quarter - Begins on April 1~~

3. ~~Third Quarter - Begins on July 1~~

4. ~~Fourth Quarter - Begins on October 1~~

~~Applications will be batched for review within these cycles by the following categories:~~

i. ~~Licensed Psychiatric Services~~

ii. ~~Licensed Chemical Dependency Services~~

iii. ~~Skilled Nursing Services~~

iv. ~~Psychiatric Residential Treatment Facility~~

v. ~~Intermediate Care Services for the Mentally Retarded~~

vi. ~~Home Health Services~~

vii. ~~Comprehensive Inpatient Rehabilitation Services~~

viii. ~~ESRD Facility~~

ix. ~~Ambulatory Surgical Services~~

x. ~~Major Medical Equipment, if competing~~

xi. ~~Open Heart Surgery Services~~

xii. ~~Cardiac Catheterization Services~~

xiii. ~~Radiation Therapy Services~~

xiv. ~~Diagnostic Imaging Services (Invasive)~~

~~Assignment to a review cycle is determined by the date on which the application is received. To be considered in a particular review cycle, applications must be received by the Department on or before the first working day of the month preceding the review cycle in which the review is desired; must contain all required information; and must be "deemed complete" by the Department within fifteen (15) days after notice that an application is not complete is issued by the Department.~~

~~Certificate of Need decisions on "complete" applications normally will be rendered no later than ninety (90) days after the publication of the staff analysis on the application.~~

~~*Review Schedules*~~			
~~To be Considered in Review Cycle~~	~~Applications Must be~~		
	~~Received by~~	~~Deemed Complete by~~	~~Staff Analysis Normally Published by~~
~~(1) Review Cycle 1~~	~~December 1~~	~~January 1~~	~~February 15~~ ~~May 15~~
~~(2) Review Cycle 2~~	~~March 1~~	~~April 1~~	~~August 15~~
~~(3) Review Cycle 3~~	~~June 1~~	~~July 1~~	~~November 15~~
~~(4) Review Cycle 4~~	~~September 1~~	~~October 1~~	

~~103~~

~~104 **Exceptions to Review Cycles**~~

~~104.01 If no competing application exists for a similar type of service, facility, or equipment affecting the same health planning area, the staff analysis would normally be published on the approximate date indicated in the fourth column of the above table.~~

~~105 **Expedited Review**~~

~~105.01 Section 41-7-205, Mississippi Code of 1972 Annotated, as amended, requires the State Department of Health to provide an expedited review for those projects determined to warrant such action.~~

~~All requests for such an expedited review by the applicant must be made in writing to the Department. The Department shall determine within 15 days after receipt of a written request whether expedited review is appropriate. For applications determined by the Department to qualify for expedited review, the Department shall render its decision concerning the issuance of a CON within 90 days after the receipt of a completed application. A project qualifies for expedited review only if it meets one of the following criteria:~~

1. ~~A transfer or change of ownership of a health care facility where the facility continues to operate under the same category of license or permit as it possessed before the date of the proposed change of ownership and none of the other activities for which a CON is required by Section 41-7-191 (1) Mississippi Code of 1972 Annotated, as amended, takes place in conjunction with such transfer;~~

2. ~~Replacement of equipment with used equipment of similar capability if the equipment is included in the facility's annual capital expenditure budget or plan;~~

3. ~~A request for project cost overruns that exceeds the rate of inflation as determined by the Department;~~

4. ~~A request for relocation of services or facilities if the relocation of such services or facilities (i) involves a capital expenditure by or on behalf of a health care facility; or (ii) is more than one thousand three hundred twenty (1,320) feet from the main entrance of the health care facility where the service is located, or;~~

5. ~~A request for a CON to comply with duly recognized fire, building, or life safety codes or to comply with state licensure standards or accreditation standards required for reimbursement;~~

6. ~~A request for a certificate of need for an expenditure that is not for a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure service or series of those procedures, and that exceeds the capital expenditure minimum specified under Section 41-7-173.~~

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) days of the date the application was filed or within fifteen (15) days of receipt of any requested information, whichever is later.

3.9 State Health Officer's Decision

~~110~~ Unless a hearing is requested under Miss. Code Ann. § 41-7-197, ~~as may be amended from time to time~~ the State Health Officer's final order approving or disapproving an application shall be issued within ~~sixty (60)~~ ninety (90) days of the date the application was filed. ~~Exceptions to Review Cycles~~

~~If no competing application exists for a similar type of service, facility, or equipment affecting the same health planning area, the staff analysis would normally be published on the approximate date indicated in the fourth column of the above table.~~

~~Expedited Review~~

~~Section 41-7-205, Mississippi Code of 1972 Annotated, as amended, requires the State Department of Health to provide an expedited review for those projects determined to warrant such action.~~

~~All requests for such an expedited review by the applicant must be made in writing to the Department. The Department shall determine within 15 days after receipt of a written request whether expedited review is appropriate. For applications determined by the Department to qualify for expedited review, the Department shall render its decision concerning the issuance of a CON within 90 days after the receipt of a completed application. A project qualifies for expedited review only if it meets one of the following criteria:~~

~~A transfer or change of ownership of a health care facility where the facility continues to operate under the same category of license or permit as it possessed before the date of the proposed change of ownership and none of the other activities for which a CON is required by Section 41-7-191 (1) Mississippi Code of 1972 Annotated, as amended, takes place in conjunction with such transfer;~~

~~Replacement of equipment with used equipment of similar capability if the equipment is included in the facility's annual capital expenditure budget or plan;~~

~~A request for project cost overruns that exceeds the rate of inflation as determined by the Department;~~

~~A request for relocation of services or facilities if the relocation of such services or facilities (i) involves a capital expenditure by or on behalf of a health care facility; or (ii) is more than one thousand three hundred twenty (1,320) feet from the main entrance of the health care facility where the service is located, or;~~

~~A request for a CON to comply with duly recognized fire, building, or life safety codes or to comply with state licensure standards or accreditation standards required for reimbursement;~~

~~A request for a certificate of need for an expenditure that is not for a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure service or series of those procedures, and that exceeds the capital expenditure minimum specified under Section 41-7-173.~~

~~112~~3.10 Emergency CON Review

~~112.01~~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.

~~The State Health Officer, upon receipt of sufficient documentation, may reaffirm his previous approval of 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 90 days. Consequently, any recipient of an emergency CON is required to submit the appropriate CON application to the Department within ~~4~~15 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.

~~113~~3.11 Certificate of Need Processing Fee

~~113.01~~ Per Miss. Code Ann. § 41-7-188, as may be amended from time to time, ~~t~~~~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 Hundred Dollars ($500.00)~~$1,000~~, and the maximum fee shall not exceed Twenty-Five Thousand Dollars ($25,000.00).

Pursuant to House Bill 211, 2010 Legislative Session, an additional assessment will be applied to each CON application's processing fee determined by the following formula:

Additional Assessment = 0.25 x~~X~~ 1% of the ~~amount of the~~ proposed capital expenditure.

The minimum additional assessment shall not be less than Two Hundred Fifty Dollars ($250.00) and the maximum additional assessment shall not exceed Fifty Thousand Dollars ($50,000.00).

The minimum fee is Seven Hundred Fifty Dollars ($750.00) ~~$1,250~~and the maximum fee that can be assessed for both fees is Seventy-Five Thousand ($75,000.00).

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) 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.

~~114~~3.12 Notification to Affected Persons of CON Application Status

~~114.01~~Notification to affected persons will be made on the day an application is deemed complete ~~and entered into the review cycle for substantive applications~~.

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 ~~category of the certificate of need sought~~;

3. Give the proposed schedule for review ~~of the application~~;

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 ~~twenty (20)~~ ten (10) 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~~, and/or through newspapers and public information channels.~~ Notification to other affected persons shall be by mail. The date of notification is the date on which notice is mailed~~,~~ and posted on the Department's website ~~or is published in The Clarion-Ledger (Jackson, Mississippi), whichever is earlier~~.

~~115~~3.13 Staff Analysis ~~and Recommendations~~

~~115.01~~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 ~~15~~ 5 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 ~~16th~~ 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.

~~116~~3.14 Determinations of Reviewability

~~116.01 Prospective applicants proposing a capital expenditure (an expenditure which under generally accepted accounting principles consistently applied is not properly chargeable as an expense of operation and maintenance) that is One Million Dollars ($1,000,000) or more or any capital expenditure of any amount that would require review of the Division of Health Facilities Licensure and Certification, expansion of ESRD facility, relocation of a health care facility or service, an addition of health services, a change of ownership, a bed conversion, or any other activity wherein the provision of Section 41-7-173 et seq., Mississippi Code of 1972 Annotated, as amended, are potentially applicable, shall submit a written request to the Department for a determination 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 are effective on July, 2016, except that the Department's response shall be provided within forty-five (45) days of the request. (See Appendix D for Determination of Reviewability Form).

~~In addition,~~ aApplicants proposing certification as a Single Specialty Ambulatory Surgery Center, or a Distinct Part SNF (See Appendices E), Geropsychiatric DPU (See Appendices F) 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.

~~116.02~~3.16 Determination of Reviewability Processing Fee

Per Miss. Code Ann. § 41-7-205, a ~~A~~ fee payment of Two Hundred Fifty Dollars ($250.00) shall accompany the application for Determination of Reviewability and is payable to the Mississippi Department of Health by check, draft, or money order.

~~117~~3.17 Changes of Ownership

~~117.01~~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 (See Appendix B).

~~117.02~~3.18 Change of Ownership Processing Fee

A fee payment of Two Hundred Fifty Dollars ($250.00) shall accompany any Notice of Intent to Change Ownership and is payable to the Mississippi State Department of Health by check, draft, or money order.

~~117.03~~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 Five Hundred Dollars ($500.00).

The Transfer of Home Health Agency (HHA) County form must be filed with the Department 30 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. ~~(Rule 108.02)~~

CHAPTER 4 - PUBLIC HEARING DURING THE COURSE OF REVIEW

4.1 Hearing Request

~~100~~Any affected person may, within 10 ~~20~~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~~, or approval by reduction~~. 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) ~~twentieth (20th)~~ day after the date the staff analysis is published. Should the tenth (10th) ~~twentieth (20th)~~ 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 ~~following~~. 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, and in The Clarion-Ledger or other newspaper of general circulation in the area to be affected by the proposal. Other public information channels may be utilized.

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

If requested, a public hearing ~~will be held by the Department within sixty (60) days after the date the hearing request was received by the Department, unless a waiver of time has been agreed upon by all parties~~ shall be commenced by an independent hearing officer designated by the Department within sixty (60) 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 15 calendar days before such hearing.

~~The requested hearing shall be conducted by a hearing officer designated by the Department. Any party may request an independent hearing officer. If such is requested, t~~The Department shall designate an independent hearing officer who shall not be an employee of the Department but who shall be a licensed attorney. ~~The request for an independent hearing officer must be made on the face of the request for hearing, if by the requestor of the hearing, or by separate request, if by the applicant, within ten (10) days of the filing of the request for hearing. If no independent hearing officer is requested pursuant to this rule, the Department may designate an employee of the Department to serve as hearing officer. At the request of any affected person, subpoenas may be issued for witnesses or documents by the Hearing Officer (see Hearing Officer's Authority to Grant Subpoenas, this section).~~ 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 ~~within a reasonable period of time~~ 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) days after the hearing is closed.

A copy of the Hearing Officer's report shall be ~~made available to the applicant and affected person(s)~~ 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 ~~20~~10 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 cost 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:

   ~~i.~~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.

   ~~ii.~~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).

~~102~~4.3 Consolidation of Hearings

~~102.01~~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.

~~103~~4.4 Motions (Hearing in Course of Review)

~~103.01~~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) 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) 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) ~~five (5)~~ working 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) working 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.

~~104~~4.5 Ex Parte Contacts

~~104.01~~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

~~104.02~~4.5.2 Violation of Miss. Code Ann. §§ ~~Sections~~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.

~~105~~4.6 Notification of the Status of Review

~~105.01~~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.

~~106~~4.7 Limited Exchange of Information (Discovery)

~~106.01~~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) 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) day prior to the first day of the hearing during the course of review.

~~107~~4.8 Pre-Hearing Orders

~~107.01~~On or before the twentieth (20th) 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) 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 10th 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) 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.

~~108~~4.9 Sanctions

~~108.01~~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.

~~109~~4.10 Service of Documents

~~109.01~~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.

~~110~~4.11 Furnishing Copies

~~110.01~~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).

~~111~~4.12 Hearing Officer's Authority to Grant Subpoenas

~~111.01~~The Mississippi State Board of Health, pursuant to its rule-making authority and subpoena powers granted unto it in Mississippi Code of 1972 Annotated, §§ ~~Sections~~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 § ~~Sections~~ 41-3-5, Mississippi Code of 1972~~9~~ 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) ~~forty (40)~~ days and served less than thirty (30) 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~~-five~~ (20~~5~~) 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) 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) 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"

~~112~~4.13.1 Procedure and Other Related Matters (signing in)

~~112.01~~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.

~~113~~4.13.2 Declaration of Hearing Officer

~~113.01~~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."

~~114~~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.

~~114.01~~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.

~~114.02~~2. The applicant.

~~114.03~~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.

~~114.04~~4. Persons who wish to give evidence for themselves or on behalf of a group or organization.

~~114.05~~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).

~~114.06~~6. Rebuttal by the applicant, limited to matters raised during the opponent's case in chief.

~~114.07~~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) days of the close of the Hearing).

~~114.08~~8. The Hearing Officer will then close the Hearing.

~~115~~**4.13.4** Submission of Written Documents

~~115.01~~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.

~~116~~4.13.5 Counsel Pro Hac Vice

~~117~~Any attorney, appearing as such, representing any person or organization shall be in compliance with Rule 46(b) of the Mississippi Appellate Procedure ~~Supreme Court~~Rules as to the appearance of counsel pro hac vice.

~~118~~4.13.6 Procedures for Conducting Comparative "Hearing During the Course of Review"

~~118.01~~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":

~~119~~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.

2. ~~119.01~~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.

3. ~~119.02~~The applicants, in the order that their requests for hearing were received by the Department.

4. ~~119.03~~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.

5. ~~119.04~~Rebuttal proof by the applicants, in the order in which they presented their cases in chief;

6. ~~119.05~~Persons who wish to give evidence for themselves or on behalf of a group or organization.

7. ~~119.06~~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).

8. ~~119.07~~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, <u>within thirty (30) days from the close of the Hearing</u> ~~an agreed upon number of days following the receipt of the transcript by the Department of Health~~).

9. ~~119.08~~The Hearing Officer will then close the Hearing.

CHAPTER 5 - FINDINGS AND ORDERS OF THE DEPARTMENT

~~120~~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 is may approve a CON by modification, by reduction only, of such proposal provided the proponent agrees in writing to such modification.

~~121~~5.2 Decision and Final Order

~~121.01~~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.

When a hearing during the course of review has not been held, the staff responsible for the preparation of the staff analysis and recommendation and the proponent(s) of the proposal may be present at the time the decision is announced. They shall be available to answer questions by the State Health Officer. The proponent may make a brief oral presentation, not to exceed 20 minutes. The State Health Officer may, at his/her discretion, request additional information and delay a final decision with respect to the proposal until said information is received and analyzed.

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 15 days of the date of the monthly CON decision meeting in which the initial project was to have been considered. 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, applicants will be informed of the date of the review of their proposal by the State Health Officer at least 10 days in advance of such review and will be provided a copy of the proposed agenda.

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 announced in the monthly CON meeting 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.

~~122~~5.3 Designation of Record on Appeal

~~122.01~~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.

~~123~~5.4 Administrative Decisions

~~123.01~~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.

~~124 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, (see Progress Report / Six-Month Extension Request Format, Appendix G). 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 30 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.~~

~~125 Documentation of Commencement of Construction, Good Faith Effort to Obligate Approved Expenditure, or Other Preparation Substantially Undertaken During the Valid CON Period~~

~~125.01The following **documentation shall be required**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:** [CON Holder must document all items in 1.a. through 1.j. below]:

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 Required To Document Progress – Construction Projects:~~

~~a. Acquisition of property (title, evidence of payment, etc.).~~

~~b. Completion of topographic or boundary surveys~~

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

~~d. Completion of site development plan~~

~~e. 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 Required 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 shall 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.~~

~~126~~5.5 Withdrawal of a Certificate of Need

~~126.01~~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:

4. 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;

5. Applicant so advised of contemplated action shall have thirty (30) 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;

6. If a public hearing is requested by any affected party, the Department will conduct the hearing within forty-five (45) days of receipt of the written request. The State Health Officer will render his/her written decision within thirty (30) 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) 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

~~100~~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, (see Progress Report / Six-Month Extension Request Format, Appendix G). 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 30 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.

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 30 days prior to the expiration of the original or any extended period, (see Appendix G).

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 $250 shall be assessed for the processing and handling of six-month extension requests.

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 ~~shall be required~~ 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: ~~[CON Holder must document all items in 1.a. through 1.j. below]:~~

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~~a. Evidence To Document Progress - Construction Projects:

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

ii. ~~b.~~ Completion of topographic or boundary surveys

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

iv. ~~d.~~ Completion of site development plan

v. ~~e.~~ 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~~b. Evidence ~~Required~~ 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 ~~shall~~ 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.

~~**101 Six Month Extension**~~

~~101.01 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 30 days prior to the expiration of the original or any extended period, (see Appendix G).~~

~~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 $250 shall be assessed for~~ the processing and handling of six-month extension requests.

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

~~102~~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 15 days notice within which to request a hearing.

1. If a public hearing is requested, the Department will conduct the hearing within 45 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 15 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 30 days following conclusion of any hearing on denial of the six-month extension request of the Certificate of Need.

4. ~~**The Department is authorized to extend and renew any CON that has expired, and charge a fee for reviewing and making a determination on the application for such action not to exceed one-half of the authorized fee assessed for the original application for the CON (see Prior Approved Projects).**~~

~~102.01 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.~~

~~103~~6.5 Extension/Renewal of an Expired CON

~~103.01~~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 $250 and the maximum fee shall not exceed $37,500.

~~104~~6.6 Cost Overrun

~~104.01~~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.

   a. ~~i.~~ 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.

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

   c. ~~iii.~~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.

d. ~~iv.~~ 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.

e. ~~v.~~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 $1,000.

plus

0.25 of 1% of the additional capital expenditure not to exceed $50,000, but not less than $250.

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.

~~105~~6.7 Amendments to Certificates of Need

~~105.01~~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.

~~i.~~ 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 $750 ~~1,000~~.

plus

0.25 of 1% of the additional capital expenditure, not to exceed $50,000, but not less than $250.

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

~~100~~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

~~100~~8.1 General Considerations

~~100.01~~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. ~~i.~~ 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. ~~ii.~~ 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. ~~iii.~~ 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 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:

<u>New Construction/Renovation (Prorated Project)</u>

$$\text{Cost/square foot (New Construction)} = \frac{A+C+D+(E+F+G(A\%))^{*}}{\text{New Const. Sq. Ft.}}$$

$$\text{Cost/square foot (Renovation)} = \frac{B+(E+F+G(B\%))^{**}}{\text{Renovation Sq. Ft.}}$$

<u>New Construction (No Renovation Involved)</u>

$$\text{Cost/Square Foot} = \frac{A+C+D+E+F+G}{\text{Sq. Ft.}}$$

Renovation (No New Construction)

$$\text{Cost/Square Foot} = \frac{B+C+E+F+G}{\text{Sq. Ft.}}$$

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.

~~101~~8.2 Supplemental Service-Specific Criteria

~~101.01~~ 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.

~~102~~8.3 Required Findings on Access

~~102.02~~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.

~~102.02~~In making its written findings on access, the Department must take into account the current accessibility of the facility as a whole.

~~102.03~~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.

~~102.04~~The Department must state in its written findings if a project is disapproved for failure to meet the need and access criteria.

~~102.05~~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

~~10~~09.1 Appeal of the Decision of the State Health Officer by ~~A~~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) 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) 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 ~~Mississippi Supreme Court~~ Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within twenty (20) 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) 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 ~~C~~clerk of the ~~Supreme Court~~ chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) 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) 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 ~~Supreme Court~~ chancery court within five (5) days of the date of filing the appeal.

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

The ~~Supreme C~~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) 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.

~~101~~9.2 Appeal of the Proponent When the Department Fails to Render a Decision in Required Time

~~101.01~~ Unless a hearing is held, ~~iIf~~ 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~~, to the extent practicable,~~ exceed ninety (90) days from the filing of the application for a certificate of need, ~~subsequent to the date of publication of the staff analysis and recommendation, the CON shall not be granted.~~, ~~tThe~~ proponent of the proposal may, within thirty (30) 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 new ~~institutional health~~ 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

MISSISSIPPI STATE DEPARTMENT OF HEALTH
NOTICE OF INTENT TO APPLY FOR A CERTIFICATE OF NEED
(Must be received 15~~30~~ days prior to submission of a CON application)

TITLE OF PROJECT:	
~~**Type of Review:**~~	~~( ) Quarterly ( ) Expedited ( ) Unknown~~

II. APPLICANT/FACILITY INFORMATION

APPLICANT					
Applicant Legal Name:					
d/b/a (if applicable):					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Parent Organization (if applicable):					
E-mail Address:		Fax:			
PRIMARY CONTACT PERSON					
Name:		Title or Position:			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					
LEGAL COUNSEL /CONSULTANT(if applicable)					
Name:		( )Counsel ( ) Consultant			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					
FACILITY (if different from Applicant)					
Name:					
Address:					
City:		State:		Zip Code:	

County:		Telephone:	

2. Select the type of ownership of present or proposed facility**.**

TAX EXEMPT	☐ Not-for-Profit Corporation		
	☐ Public (Hospital or Government)		
TAX PAYING	☐ General Partnership	☐ Business Corporation	☐ Sole Proprietor
	☐ Limited Liability Partnership or Limited Partnership	☐ Limited Liability Company	
State of Incorporation or Organization:			

2. Identify any proposed bed changes (increases/decreases) by licensure category.

II. PROJECT DESCRIPTION

5. Provide a narrative description of the project, including location of new construction, areas involved in repair or renovation, new services being proposed, and/or equipment acquisition proposed.

6. Provide a brief justification for the project.

7. Does the project involve correction of code or Licensure deficiencies?

    a. If yes, are all deficiencies corrected by this project?
    b. List any project components which do not involve correction of code or licensure deficiencies.

4. Estimated project costs:

Construction Cost – New	$
Construction Cost – Renovation	
Capital Improvement Cost (i.e. minor painting and repairs, refurbishing)	
Total Fixed Equipment Cost	
Total Non-Fixed Equipment Cost	
Land Cost	
Site Preparation Cost	
Fees (architectural, consultant, etc.	
Contingency Reserve	
Capitalized Interest	
Other Costs (specify)	
Total Estimated Project Cost	

.

5. Approximate:
   (a) project starting date _____
   (b) project completion date _____

Submitted by:

_____
Signature

_____
Name (type)

_____
Title

_____
Date

APPENDIX B

MISSISSIPPI STATE DEPARTMENT OF HEALTH

NOTICE OF INTENT TO CHANGE OWNERSHIP
(Must be accompanied by $250 processing fee)

Part I: Facility Information

Facility Name:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Number/Type of Licensed Beds:					
Type of Organization: (County owned, non-profit, for profit, etc.)					
CON Number:					
CON Title:					

Part II: Purchaser/Lessee Information

Name of Organization:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Changes in Number/Type of Licensed Beds:					
Change in Services Offered:					
Type of Organization (non-profit, for profit, etc.					
Primary Contact Person					
Name:		Title or Position:			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					

Part III: Seller/Lessor Information

Name of Organization:					
Address:					
City:		State:		Zip Code:	
Owner(s):		Operator(s):			
Type of Organization (non-profit, for profit, etc.					
Primary Contact Person					
Name:		Title or Position:			
Address:					
	State:		Zip Code:		
Telephone:		Fax:			
E-mail Address:					

Part IV: Type/Value of Consideration

Type Transaction:	Purchase ( )	Lease ( )	Other ( )
Describe other transaction:			
Purchase/Lease Cost if the CHOW is for a nursing home:		$	
~~Fair Market Value:~~		~~$~~	

Part V: Expected Date of Transaction: _____

Part VI: Provide the following:

(c) The proposed (agreed upon) sales contract/lease agreement executed by the principals.

(d) **NURSING HOMES ONLY**. Certification, from the Division of Medicaid, that no increase in allowable costs to Medicaid will result from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership.

Part VII: Complete and sign the attached Certification page.

Submitted by: _____

Name (Print or type)

_____

Title

_____

Date

_____

Address (if different than page 1)

.

CERTIFICATION

I (we) do solemnly swear or affirm on behalf of _____ and _____, after diligent research, inquiry and study, that the information and material, contained in this foregoing Notice of Intent to Change Ownership is true, accurate, and correct, to the best of my (our) knowledge and belief. It is understood that the Mississippi State Department of Health and the Division of Medicaid, Office of the Governor, will rely on this information and material in making their decision as to the exemption from Certificate of Need Review, and if it is found that the application contains distorted facts or misrepresentation or does not reveal truth and accuracy, the Department may require Certificate of Need review.

I (we) solemnly swear or affirm that no revision or alteration of the Notice submitted will be made without notifying the Mississippi State Department of Health.

_____ _____

Signature (Purchaser) Signature (Seller)

_____ _____

Title Title

_____

Name of Facility

Sworn to and subscribed before me, this the _____ day of _____, 20 ____.

_____

Notary Public

_____

My Commission Expires

APPENDIX C

CHANGES OF OWNERSHIP OR CONTROL OF HEALTH CARE FACILITIES UNDER MISSISSIPPI STATE BOARD OF HEALTH LICENSURE REGULATIONS

This regulation defines what constitutes a change of ownership or control necessitating notification of the Health Planning and Resource Development Division, Mississippi Department of Health, and for purposes of issuing licenses to new owners/controllers by the Division of Licensure and Certification, Mississippi Department of Health.

Definitions: The following definitions shall apply to this regulation:

A. Ownership:

2) That person, persons or entity ultimately responsible for the control of the day-to-day operations of the facility, as well as long-range planning and control; also

2) That person, persons or entity legally responsible for the liabilities which accrue by virtue of operation of a facility.

B. Change of Ownership:

Any mechanism which transfers actual ownership or operational control of a CON from one or more persons or entities (owner) to another person, group of persons or entity (owner).

Examples:

1) The following illustrate, by way of example, the principle of changes of ownership. They are non-inclusive.

a. Transfers of title to the business enterprise. While this may include transfers of title to the real property constituting the facility, a transfer of title to the realty is not necessary to establish a change of ownership.

b. Changes in form of business enterprise, such as:

i) Formation of corporation or partnership by a sole proprietor.

ii) A proprietorship which elects to incorporate changes in ownership.

iii) A sale, gift or exchange of stock which results in a 50 percent or more change of stock ownership. For example, before a sale of stock, the ownership of A Corporation is as follows:

Shareholder	Percent Shares Owned
Mr. X	17
Mr. Y	22
Ms. Z	21
Ms. C	05
Mr. D	35
Total	100

After a stock sale, the proportion of ownership is as follows:

Shareholder	Percent Shares Owned	Percentage Change
Mr. X	17	0
Mr. Y	35	13
Ms. C	35	30
Mr. M	13	13
		56

There has been a change of ownership of A Corp for licensure and certification purposes, for Certificate of Need purposes.

iv) When two or more corporations merge, with the corporation holding the Mississippi health care facility surviving, no change of ownership has occurred. However, if the non-surviving corporations owned defined health care facilities, a change of ownership has occurred with respect to those facilities.

v) Consolidation of two or more corporations resulting in a new corporate entity constitutes a change of ownership.

vi) Under Mississippi law, the removal, addition, or substitution of one or more individuals as partners dissolves the old partnership and creates a new partnership. This constitutes a change of ownership.

vii) Entering into a management agreement contract amounts to a change of ownership when it conveys a large measure of control. An example would be where the governing body of the management company or its agent has responsibility for developing and implementing policies and procedures, without the approval or concurrence of the former owner.

viii) When a facility, once having achieved provider status, is leased in whole or in part, a change of ownership has occurred if the lessee will operate the business enterprise without substantial guidance or control from the lessor.

ix) Transfers between departments of the same governmental entity are not changes of ownership.

x) Transfers between different levels of government, such as city to county, state to county, etc., are changes of ownership.

xi) Changes of ownership shall not result solely from the testamentary transfer of an interest in a facility, nor shall a transfer of any interest solely by descent and distribution under the laws of intestacy of Mississippi result in a change of ownership.

C. Licensing Agency:

The Mississippi Department of Health, Division of Licensure and Certification.

There shall be full disclosure of facility ownership and control. In its initial application for licensure, the facility shall disclose:

A. The ownership of the facility, including the names and addresses of the following: all stockholders, if the owner is a corporation; the partners, if the owner is a partnership; or the owner(s), if individually owned.

B. The name, address, and capacity of each officer and each member of the governing body, as well as the individual(s) directly responsible for the operation of the facility.

C. Owner's proof of financial ability for continuous operation.

D. The name and address of the resident agent for service of process within the State of Mississippi if the owner shall not reside or be domiciled in the State of Mississippi.

In its Application for Renewal of License, the facility shall report annually:

A. The name and address of the owner.
B. The name and address of the operator.
C. The name, address and capacity of each officer and each member of the governing body, as well as the individual(s) responsible for the operation of the facility.

When any changes shall be made in the constituency of the governing body, the officers or the individual(s) directly responsible for the operation of the facility, the facility shall notify the licensing agency in writing within 15 days of such changes, and shall also furnish to it a certified copy of that portion of the minutes of the governing body dealing with such change.

When change of ownership of a facility or service is contemplated, the ~~facility~~ parties shall notify the Division of Health Planning and Resource Development in writing at least 30 days prior to the proposed date of change of ownership, giving the name and address of the proposed new owner.

~~The~~ A facility shall notify the licensing agency in writing within 24 hours after any change of ownership, shall surrender its license therewith, and await issuance of its new license.

APPENDIX D

Mississippi State Department of Health

DETERMINATION OF REVIEWABILITY APPLICATION FORM
(PROCESSING FEE: $250)

1. Title of Project _____

2. Facility name, address, county, ZIP code.

3. Legal name and address of applicant, if different from Item 2 above.

8. Principal agent to contact for this project (Include address, county, ZIP code and telephone number).

5. Type of organization (e.g., county-owned, not-for-profit acute care hospital).

6. Provide a brief narrative description of the project, including location of new construction, areas involved in repair or renovation, square feet involved in new construction or renovation, new services being proposed, and/or equipment acquisition proposed.

7. Enclose architect's schematic drawings if new construction or renovation project.

8. Site approval from Licensure unless the project will be in an operating health care facility.

10. If new construction is being developed by entity other than the applicant

(a) Identify owners/Board of Directors and enclose charters of incorporation or partnership agreement, etc.

(b) Identify tenants that will occupy the building, if applicable.

(c) Will the facility share the same parking lot as the hospital.

10. Estimated project cost

a.	Construction Cost – New	_____
b.	Construction Cost – Renovation	_____
c.	Capital Improvement Cost (i.e., minor painting and repairs, refurbishing)	_____
d.	Total Fixed Equipment Cost	_____
e.	Total Non-Fixed Equipment Cost	_____
f.	Land Cost	_____
g.	Site Preparation Cost	_____
h.	Fees (architectural, consultant, etc.)	_____
i.	Contingency Reserve	_____
j.	Capitalized Interest	_____
k.	Other Costs (specify) _____	_____
l.	Total Estimated Project Cost	_____

11. If the project involves purchase/lease of equipment, provide the following:

a. Independent report of the fair market value of major medical equipment, if not new equipment.

Original purchase price of equipment
Purchase and installation date (s) of equipment
Depreciation schedule of equipment, and
Fair market value of equipment.

b. A copy of the proposed vendor contract, including lease amount, if applicable.

c. Assurance that the entity desiring to acquire or otherwise control the equipment is a registered business entity authorized to do business in Mississippi.

d. Name of proposed health care facility or facilities to be served, if mobile or shared unit. Include a copy of proposed vendor service contract.

12. Anticipated purchase and installation date(s) for equipment/service.

13. Provide a construction cost estimate signed by an architect licensed to practice in Mississippi of a contractor authorized to do business in Mississippi.

14. Sign the attached Certification page.

CERTIFICATION

STATE OF MISSISSIPPI
COUNTY OF _____

I (we) do solemnly swear or affirm on behalf of _____ _____, after diligent research, inquiry and study, that the information and material, contained in this foregoing application for a Declaratory Ruling is true, accurate, and correct, to the best of my (our) knowledge and belief. I (we) understand that the Mississippi Department of Health will rely on this information and material in making its determination and if it finds that the application contains distorted facts or misrepresentation, the Department may require Certificate of Need review of the project. I (we) will notify the Department should subsequent increases in the cost of any portion of this project cause the capital expenditure to exceed $1,500,000 for major medical equipment or $~~2~~5,000,000 for clinical health services or $10,000,000.00 for non-clinical health services, ~~other than equipment~~ and will apply for a CON.

It is further understood that this determination ruling is valid for a period of twelve months. If the project is not implemented within the twelve month period, I (we) must request a second ruling by the Department. I (we) understand that if the statute or Plan changes during a twelve month period in which the proposed project is not implemented, the Department will make its determination ruling in accordance with the proposed statute/Plan change.

_____ _____
Signature Signature

_____ _____
Title Title

_____
Name of Facility

Sworn to and subscribed before me, this the _____ day of _____, 20 ___.

_____
Notary Public

_____
My Commission Expires

APPENDIX E

Mississippi State Department of Health

SINGLE SPECIALTY AMBULATORY SURGERY FACILITY
APPLICATION FOR DETERMINATION OF NON-REVIEWABILITY
(PROCESSING FEE: $250~~$500~~)

1. Type of Specialty: _____

2. Facility name, address, county, ZIP Code.

3. Legal name and address of applicant, if different from Item 2 above.

4. Contact person. (Include address, county, ZIP Code, telephone number, and FAX number).

5. Provide a brief narrative description of your facility, and the types of services it currently offer. Also identify the type of surgery that will be performed.

6. Identify physicians in the group and state which physician(s) will perform surgery. Certify that: a) each physician will maintain medical staff privilege at a full service hospital, or b) at least one member of the physician group has staff privileges at a full service hospital and will be available at the facility or on call with a 30-minute travel time of the full service hospital during hours of operation of the facility.

7. Please certify that the surgical procedures performed in this facility will be in compliance with federal and state regulations regarding anesthesia.

8. Certify that the proposed facility will have a formal transfer agreement with a full service hospital to provide services which are required beyond the scope of the single specialty facility's programs. The facility must also have a formal process for providing follow-up services to the patients (e.g., home health care, outpatient services) through proper coordination mechanisms.

9. Please state the total cost involved in constructing and equipping the facility for the service.

14. Certify that the surgical services to be provided by the practice will be limited to those procedures that are either office procedures performed under local or regional anesthesia, or procedures that are more complex than office procedures but less complex than major procedures requiring prolonged postoperative monitoring and hospital care to ensure safe recovery and desirable results; that the procedures will be limited to those which the patient will arrive at the facility and expect to be discharged on the same day; that all procedures will only be performed by the physicians or dentists listed in the application and each are and will continue to be licensed to practice in the State of Mississippi.

15. Certify that any changes in the physicians or dentists listed in the application (through addition or withdrawal) will be communicated by written notice to the department within 30 days of the change.

16. The facility must be physically separated from non-surgical activities, as required by the "Interpretative Guidelines and Survey Procedures for Ambulatory Surgical Services". Please certify your compliance with this criterion

17. Please sign the attached certification page.

CERTIFICATION

STATE OF MISSISSIPPI

COUNTY OF _____

I (we) do solemnly swear or affirm on behalf of _____ _____, after diligent research, inquiry and study, that the information and material, contained in this foregoing application for a Declaratory Ruling is true, accurate, and correct, to the best of my (our) knowledge and belief. I (we) understand that the Mississippi Department of Health will rely on this information and material in making its determination. If it finds that the application contains distorted facts or misrepresentation, the Department may require Certificate of Need review of the project. I (we) will notify the Department should at any time ownership of the single specialty facility transfer to a hospital or other health care facility, or should the facility seek to operate a dual specialty surgery facility.

It is further understood that this ruling is valid for a period of twelve months. If the project is not implemented within the twelve month period, I (we) must request a second ruling by the Department. I (we) understand that this determination is made in accordance with the Official Attorney General's Opinion dated March 22, 1994. Should that ruling change prior to initiation of the project, I (we) understand that any subsequent ruling will be made in accordance with the revised Opinion.

_____	_____
Signature	Signature
_____	_____
Title	Title

_____
Name of Facility

Sworn to and subscribed before me, this the _____ day of _____, 20 ____.

_____
Notary Public

_____
My Commission Expires

APPENDIX F

Mississippi State Department of Health

GUIDELINES FOR ESTABLISHING A MEDICARE CERTIFIED, 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.

Mississippi State Department of Health

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

MISSISSIPPI STATE DEPARTMENT OF HEALTH

Certificate of Need (CON)

Progress Report/ Six-Month Extension Request

(Please submit Original and one Copy of the Report)

(Must be accompanied by $250 processing fee)

Report/Request Type: [ ] Six-Month Progress Report

[ ] Six-Month Extension Request
(Must Be Received 30 Days Prior to Expiration)

[ ] Final Report (Project Completion)

1. CON Information

a. CON Review #:_____CON#:_____

b. Facility Name:_____

c. Project Title: _____

d. Effective Date:_____Expiration Date: _____

e. Current Extension Period Expiration Date: _____

f. CON Holder Name: _____

Address:_____

_____

g. CON Contact Person: _____

Address:_____

_____

Telephone: _____

Email Address: _____

h. Attach a photocopy of the original Certificate of Need.

i. **Capital Expenditure Authorized:** $_____

j. **Capital Expenditure Made to Date:** $_____

2. Documentation of Commencement of Construction or Other Preparation Substantially Undertaken

J. Describe any changes in the individual business or corporate officers and directors since the original approval.

K. Describe any agreements in existence, being planned, or that have occurred since original approval. Attach a copy of current partnership agreement or articles of incorporation, if different from that provided in the original application.

L. Provide documentation for activities accomplished during the pre-construction phase of the project including, but not limited to, the following:

1. Acquisition of land/ property (title, evidence of payment, etc.).
2. Completion of topographic or boundary surveys
3. Site preparation (contractor selection, contract, evidence of payment, etc.)
4. Completion of site development plan(s)
5. 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.)
6. If the approved expenditure has not been obligated, provide evidence that permanent financing has been obtained. If financing has not been obtained, provide evidence of fund commitment from lending institution or agency

M. Provide documentation of construction activities:

1. Date construction contract offered for bid: _____
2. Date contract awarded: _____
3. Date any site preparation is estimated to be complete: _____
4. Percentage of work completed: _____

5. Estimated date of completion: _____

N. If actual construction has not commenced, provide date it will commence and the reasons for the delay.

O. Provide documentation of activities to established services through the acquisition of capital equipment:

1. Equipment purchase/ lease agreement.
2. Date contract signed between buyer and vendor: _____
3. Name of mobile equipment vendor: _____
4. Registration/serial number of mobile equipment vendor: _____
5. Date equipment is to be delivered: _____
6. Date equipment to be placed in service: _____
7. Have there been any changes in funding sources? [ ] Yes [ ] No

   If yes, explain: _____
8. Number of procedures performed by month: _____
9. Provide evidence that the Division of Radiological Health has approved the plans for provision of radiation therapy services, if applicable.

P. If the CON is for a project involving no construction, (e.g., establishment of services), please provide documentation including, but not limited to, the following:

1. Hiring or entering contracts with necessary staff/medical professionals to provide service
2. Estimated date that any new staff required will be hired: _____
3. Estimated date any new service will be available to public: _____
4. Submission of a fire/life safety code inspection request.
5. Submission of an application for facility inspection/licensure of service.

Q. Complete and sign the attached Certification page.

CERTIFICATION

STATE OF MISSISSIPPI
COUNTY OF _____

I (we) do solemnly swear or affirm on behalf of _____ _____ , after diligent research, inquiry and study, that the information and material, contained in this foregoing Progress Report/Six-Month Extension Request is true, accurate, and correct, to the best of my (our) knowledge and belief. I (we) understand that the Mississippi State Department of Health will rely on this information and material in making its decision as to the granting of an extension of the Certificate of Need, and if it finds that the report/request contains distorted facts or misrepresentation, the Department may refrain from further review of the report/request and consider it rejected. It is further understood that if the Certificate of Need is extended based upon the evidence contained in this request, such certificate may be revoked, canceled, or rescinded if the Mississippi State Department of Health determines its findings were based on evidence, not true, factual, accurate, and correct.

I (we) certify that no revision or alteration of the proposal submitted will be made without obtaining prior written consent of the Mississippi State Department of Health and that I (we) will furnish to the Mississippi State Department of Health a progress report and/or a request for a six-month extension on the proposal every six (6) months until the project is completed.

_____ _____
Signature Signature

_____ _____
Title Title

_____
Name of Facility

Sworn to and subscribed before me, this the _____ day of _____20___.

_____
Notary Public

_____
My Commission Expires

Appendix H

MISSISSIPPI STATE DEPARTMENT OF HEALTH
APPLICATION FOR A CERTIFICATE OF NEED

APPLICATION FOR EXTENSION/RENEWAL OF AN EXPIRED CERTIFICATE OF NEED

TITLE OF PROJECT:		
Capital Expenditure:	$	CON Review #:

R. APPLICANT/FACILITY INFORMATION

APPLICANT					
Applicant Legal Name:					
d/b/a (if applicable):					
Address:					
City:		State:		Zip Code	
County:		Telephone:			
Parent Organization (if applicable):					
E-mail Address:		Fax:			
PRIMARY CONTACT PERSON					
Name:		Title or Positio			
Firm:					
Address:					
City:		State:		Zip Code	
Telephone:		Fax:			
E-mail Address:					
LEGAL COUNSEL /CONSULTANT(if applicable)					
Name:		( )Counsel	( ) Consultant		
Firm:					
Address:					
City:		State:		Zip Code	
Telephone:		Fax:			
E-mail Address:					

1. If the name of the existing or proposed facility is different than the Applicant's legal name provide the facility information.

FACILITY					
Name:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			

2. If the existing or proposed facility will be managed or operated by a different entity other than the Applicant, enter the entity information below.

MANAGEMENT / OPERATING ENTITY					
Name:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			

3. Select the type of ownership of present or proposed facility**.**

TAX EXEMPT	☐ Not-for-Profit Corporation		
	☐ Public (Hospital or Government)		
TAX PAYING	☐ General Partnership	☐ Business Corporation	☐ Sole Proprietor
	☐ Limited Liability Partnership or Limited Partnership	☐ Limited Liability Company	
State of Incorporation or Organization:			

4. **Please provide documentation of the organizational and legal structure as indicated in the table below.**

5. **Facility Type (select one)**

☐ Hospital-Based ☐ Freestanding ☐ Nursing Home ☐ Not Applicable

ORGANIZATIONAL STRUCTURE	
Not-for-Profit Corporation	▪ Name of Each Officer and Director ▪ Letter of Good Standing from Secretary of State
Public	▪ All Governing Authority Approvals for this Project
Sole Proprietor	▪ County Business Authorization Documents, if available
General Partnership	▪ Name, Partnership Interest, and Percentage Ownership of Each Partner ▪ Partnership Agreement
Limited Liability Partnership or Limited Partnership	▪ Name, Partnership Interest, and Percentage Ownership of Each Partner ▪ Letter of Good Standing from Secretary of State
Business Corporation	▪ Name of Each Officer and Director ▪ Letter of Good Standing from Secretary of State
Limited Liability Company	▪ Name of Each Member and Managing Member, Officers, and/or Directors ▪ Letter of Good Standing from Secretary of State

II. PROJECT DESCRIPTION

1. Describe in detail ALL of the characteristics of the project. Be sure to include any changes in the project since original approval. Specifically, discuss:

   a. Reason for expiration.

   b. How long has the CON been expired.

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

   d. Continued need for project.

   e. Applicant's ability to complete the project.

   f. Timeline for completion of the project.

2. Attach a copy of the original Application.

III. COMPLIANCE WITH STATE HEALTH PLAN, POLICIES, AND PROCEDURES

1. Describe how the project complies with the health care needs addressed in the current *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. Prior approved projects must continue to be in compliance with the Plan in effect at the time the original project was approval.**

2. Describe how the proposed project complies with the *Mississippi Certificate of Need Review Manual*, all adopted policies and procedures of the Mississippi State Department of Health, statute and federal regulations, if applicable.

IV. FINANCIAL ANALYSIS

1. If capital expenditure has changed, complete the enclosed Capital Expenditure Summary page.

2. Provide line item justification for each increase (or decrease) in capital expenditure.

3. Have any changes occurred in the method of financing the proposed capital expenditure or in any other data submitted in the financial analysis of the prior CON? If so, provide updated information to include, but not limited to the following:

   a. A revised projected operating statement for the first full year of operation after completion of the project (for the proposed project/service only); include revised cost per day/procedure and charge per day/procedure.

   b. Disclose source of all financing (if debt attach creditor's letter).

   c. Provide amount of loan/lease, interest rate, term of loan and payment/lease amount.

   d. Enclose a loan amortization schedule for all loans.

5. Provide audited or un-audited financial statements for the past year.

6. Enclose a revised depreciation schedule for all assets.

7. Show effect of project on Medicaid patients, Medicare patients and other payors.

V. CERTIFICATION

Complete and submit original Certification Page for this project.

MISSISSIPPI STATE DEPARTMENT OF HEALTH
CERTIFICATION

APPLICANT: _____

TITLE OF PROPOSED PROJECT: _____

TOTAL CAPITAL EXPENDITURE: _____

I (we) swear or affirm on behalf of _____ after diligent research, inquiry and study, that the information and material contained in the attached application for a Certificate of Need is true, accurate, and correct, to the best of my (our) knowledge and belief. It is understood that the Mississippi State Department of Health will rely on this information and material in making its decision as to the issuance of a Certificate of Need, and if it finds that the application contains distorted facts or misrepresentation or does not reveal truth or accuracy, the Department may refrain from further review of the application and consider it rejected. It is further understood that if a Certificate of Need is issued based upon evidence contained in this application, such Certificate may be revoked, canceled or rescinded if the Department of Health determines its findings were based on evidence, not true, factual, accurate, and correct.

I (we) certify that no revision or alteration of the proposal submitted will be made without obtaining prior written consent of the Department of Health. **Furthermore, I (we) will furnish to the Department of Health a progress report on the proposal every six (6) months until the project is completed.**

_____ _____

Print or Type Name Signature

_____ _____

Title Facility Name (if Different)

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me, this **the** _____ ***day of*** ***, 20*** _ ***.***

_____

Notary Public

_____

My Commission Expires

CAPITAL EXPENDITURE SUMMARY

APPLICANT: _____

TYPE OF PROJECT: _____

	(1)	(2)	
	Original Approved Amount ($)	**Revised Amount* ($)**	**Increase or (Decrease) ($)**
1. New Construction			
2. Construction / Renovation			
3. Land			
4. Site Work			
5. Fixed Equipment			
6. Non-Fixed Equipment			
7. Contingency			
8. Fees (Architectural, Consultant, etc)			
9. Capitalized Interest			
10. Capital Improvement			
Total Capital Expenditure			

Percentage Increase or Decrease _____

Total Square Feet of Construction _____

Total Square Feet of Renovation _____

Percentage Complete _____

*Revised Capital Expenditure should include:
(1) Original Amount Approved
(2) Additional Requested Amount

Appendix I

MISSISSIPPI STATE DEPARTMENT OF HEALTH

TRANSFER COUNTY OF A HOME HEALTH AGENCY
(Must be accompanied by processing fee $.25 of 1% of cost)

Part I: Facility Information

Facility Name:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Number/Type of Licensed Beds:					
Type of Organization: (County owned, non-profit, for profit, etc.)					

Part II: Purchaser/Lessee Information

Name of Organization:					
Address:					
City:		State:		Zip Code:	
County:		Telephone:			
Changes in Number/Type of Licensed Beds:					
Type of Organization (non-profit, for profit, etc.					
Primary Contact Person					
Name:		Title or Position:			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					

Part III: Seller/Lessor Information

Name of Organization:					
Address:					
City:		State:		Zip Code:	
Owner(s):		Operator(s):			
Type of Organization (non-profit, for profit, etc.					

Primary Contact Person					
Name:		Title or Position:			
Firm:					
Address:					
City:		State:		Zip Code:	
Telephone:		Fax:			
E-mail Address:					

Part IV: Type/Value of Consideration

Type Transaction:	Purchase ( )	Lease ( )	Other ( )
Describe other transaction:			
List County(ies) being transferred:			
Lease/Purchase Cost: $		Fair Market Value: $	

Part V: Expected Date of Transaction: _____

Part VI: Provide the following:

The proposed (agreed upon) sales contract/lease agreement executed by the principals.

Part VII: Complete and sign the attached Certification page.

Submitted by: _____

Name (Print or type)

_____

Title

_____

Date

_____

Address (if different than page 1)

CERTIFICATION

I (we) do solemnly swear or affirm on behalf of _____ _____ and _____, after diligent research, inquiry and study, that the information and material, contained in this foregoing Notice of Intent to Transfer County of a Home Health Agency (HHA) is true, accurate, and correct, to the best of my (our) knowledge and belief. It is understood that the Mississippi State Department of Health, will rely on this information and material in making its decision as to approve the licensure of the HHA, and if it is found that the application contains distorted facts or misrepresentation or does not reveal truth and accuracy, the Department may refrain from further review and consider it rejected. It is further understood that the approval and license are granted based upon evidence contained in this application, such approval/license may be revoked, canceled or rescinded if the Department of Health determines its findings were based on evidence not true, factual, accurate, or correct.

I (we) solemnly swear or affirm that no revision or alteration of the Notice submitted will be made without notifying the Mississippi State Department of Health.

_____ _____

Signature (Purchaser) Signature (Seller)

_____ _____

Title Title

_____

Name of Facility

Sworn to and subscribed before me, this the _____ day of _____, 20 ___.

_____

Notary Public

_____

My Commission Expires

Mississippi State Department of Health
Mary Currier, MD, MPH
State Health Officer

~~Donald E. Eicher, II~~ Nicole G. Litton, Director
Office of Health Policy and Planning

~~Rachel E. Pittman~~ Keisi D.V. Ward, Chief
Division of Health Planning and Resource Development

Division of Health Planning and Resource Development Staff

Tineeka N. Hardy

April Porter

~~Rachel Pittman~~

Support Staff
~~Linda Jefferson, Administrative Assistant~~
Chaka Johnson, Administrative Assistant
Jeanette L. Johnson, Administrative Assistant

Mississippi State Department of Health
Division of Health Planning and Resource Development
Post Office Box 1700
Jackson, Mississippi 39215-1700
(601) 576-7874
FAX: (601) 576-7530