



MISSISSIPPI STATE DEPARTMENT OF HEALTH

May 4, 2026

Kent Nicaud, CEO
Memorial Hospital at Gulfport
4500 13th St.
Gulfport, MS 39501

RE: CON Review Number: HHA-NIS-0326-012
Memorial Hospital at Gulfport
Establishment of Home Health Agency and Offering of Home Health Services
Capital Expenditure: \$200,000.00
Location: Gulfport, Harrison County, Mississippi

STAFF ANALYSIS AND RECOMMENDATION

HOME HEALTH AGENCY CERTIFICATE OF NEED APPLICATION

I. INTRODUCTION

The Mississippi State Department of Health (“MSDH” or “Department”) has reviewed the above-referenced application for a Certificate of Need (“CON”) to Establish a Home Health Agency (“HHA”) pursuant to Miss. Code Ann. § 41-7-191 *et seq.* and the FY 2022 Mississippi State Health Plan, Third Edition (“SHP”).

After review of the application, applicable statutory provisions, and SHP criteria and methodology, MSDH staff recommends **disapproval** of the application.

This recommendation does not reflect a determination that the applicant is unqualified or failed to proceed in good faith. Rather, it reflects the Department’s inability to reliably make the independent affirmative finding of unmet need required for approval under the FY 2022 SHP.

II. GOVERNING LAW AND REVIEW STANDARD

Miss. Code Ann. § 41-7-193(1) provides that a CON shall not be issued unless the proposal has been reviewed for consistency with applicable criteria and substantially complies with the projection of need as reported in the State Health Plan.

Section 41-7-193(3) requires the Department to make a recommendation approving or disapproving a complete application within the prescribed statutory timeframe and expressly provides that the Department shall not delay review. The statutory framework does not contemplate deferral in lieu of action.

Accordingly, MSDH must determine whether the application satisfies all applicable SHP criteria and must issue a recommendation of approval or disapproval based upon that analysis.



III. APPLICABLE STATE HEALTH PLAN CRITERIA

The FY 2022 SHP establishes criteria governing the approval of new HHA providers, including:

- A determination of need based on utilization metrics; and
- An independent affirmative finding of unmet need equivalent to fifty (50) patients.

The requirement of an independent finding of unmet need is a distinct and substantive criterion intended to ensure that approval of new providers is based upon demonstrable unmet patient demand rather than generalized utilization patterns alone.

IV. CONTEXT OF METHODOLOGY APPLICATION

For an extended period exceeding four (4) decades, the filing and review of applications for new Home Health Agency CONs were restricted by legislative moratorium. During that period, the Department did not conduct application-specific evaluations for the establishment of new HHA providers.

Accordingly, the methodology contained in the FY 2022 State Health Plan, Third Edition has not been previously applied in the context of evaluating and approving new HHA CON applications. The Department's obligation to apply the SHP methodology in an approval setting arose only upon the judicial invalidation of the moratorium in *Slaughter v. Edney*, No. 3:20-CV-789-CWR-ASH, 2026 WL 640990 (S.D. Miss. Jan. 28, 2026), which removed the statutory barrier to filing and required the Department to review and act upon newly filed applications. It is within this context—where the methodology became outcome-determinative in a live approval decision—that the limitations described below assumed operational significance in the evaluation of new HHA CON applications.

V. ANALYSIS OF METHODOLOGY

The SHP prescribes a methodology intended to evaluate whether the required fifty(50) patient unmet need exists. Upon application of that methodology in the context of this review, MSDH has determined that it does not reliably function as an independent test of that requirement.

Specifically, the formula used to evaluate unmet need equivalent to fifty (50) patients is mathematically redundant and collapses into the same calculation used for general utilization analysis. As a result, the methodology does not independently measure the level of unmet need it is intended to assess.

This reflects a limitation inherent in the methodology as currently structured. It is not dependent upon the completeness of the application or the sufficiency of data submitted, nor can it be remedied through supplementation of the record. The formula, as written, does not perform the analytical function the SHP requires it to perform.



Because the SHP expressly requires an independent affirmative finding of unmet need equivalent to fifty (50) patients, and because the prescribed methodology does not reliably establish that finding, the Department cannot reliably make the independent affirmative finding required for approval.

VI. FINDINGS

Based on the foregoing, MSDH makes the following findings:

1. The application has been reviewed under the law and the FY 2022 State Health Plan, Third Edition in effect at the time of filing.
2. This recommendation of disapproval is not based upon the subsequently enacted moratorium under House Bill 1622, 2026 Reg. Sess. (Miss. 2026), which does not apply retroactively to this application.
3. MSDH has a statutory duty to approve a CON only where genuine unmet need can be reliably established in accordance with applicable SHP criteria.
4. The FY 2022 SHP requires an independent affirmative finding of unmet need equivalent to fifty (50) patients as a condition of approval.
5. The methodology prescribed in the SHP does not independently or reliably establish that finding.
6. As a result, MSDH cannot reliably make the independent affirmative finding required to support approval of the application.
7. The limitations of the SHP methodology assumed operational significance upon the Department's obligation to apply it in the evaluation of new HHA CON applications following the judicial invalidation of the prior moratorium.
8. Approval under a methodology that does not reliably perform the required analysis would prevent the Department from making the determination of need necessary to carry out its health planning responsibilities, including avoiding unnecessary duplication of services and supporting cost containment.
9. Denial under these circumstances is appropriate to preserve planning integrity and ensure that future approvals are based upon sound and reliable methodology.
10. This recommendation does not reflect a determination that unmet need does not exist, but rather that such need cannot be reliably established under the current SHP methodology.



VII. STATUS OF METHODOLOGY REVIEW

MSDH recognizes the importance of ensuring that determinations of need for Home Health Agency services are based upon accurate, reliable, and analytically sound methodology capable of supporting the required findings of need.

To that end, the Department is actively engaged in evaluating and developing revised criteria, methodology, and supporting data to ensure that future CON determinations for HHA services are grounded in standards that are functionally reliable and capable of supporting the required findings of need. This effort includes review of utilization patterns, referral data, payer mix considerations, provider capacity, and access-to-care

indicators. This work is being undertaken in a manner consistent with the Department's statutory obligations, including the requirement to timely process applications and render a recommendation approving or disapproving under Miss. Code Ann. § 41-7-193. It also reflects the Department's responsibility to ensure that CON determinations are based upon methodology that reliably performs the analysis required by the State Health Plan.

This recommendation of disapproval is based solely upon the Department's inability to reliably make the findings required under the existing SHP methodology at the time of review and should not be construed as a determination regarding the existence or absence of unmet need under methodology capable of reliably performing the required analysis.

The Department's ongoing development of revised methodology is intended to ensure that determinations of need for HHA services are based upon standards that reliably perform the analysis required by the State Health Plan and applicable law. As those standards are developed, consideration of HHA need may occur under the revised methodology and criteria as permitted by law. Nothing in this recommendation limits the Department's authority, where permitted by law, to consider HHA need in any subsequent administrative or judicial proceeding conducted under revised methodology or criteria adopted in accordance with law.

VIII. CONCLUSION AND RECOMMENDATION

MSDH is required to approve a CON only where the applicable SHP criteria are satisfied and the required findings can be reliably made.

Because the FY 2022 SHP requires an independent affirmative finding of unmet need for approval, and because the prescribed methodology does not function as a reliable or independent basis for making that finding, the Department cannot responsibly approve the application. As applied in this review, the methodology does not perform the analytical function required by the SHP to support approval.

Accordingly, MSDH staff recommends that the application for a Certificate of Need to Establish a Home Health Agency be **DISAPPROVED**.