

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 410 Department or Agency: State Health Planning and Development Agency  
(Certificate of Need Review Board)

Rule No.: 410-1-10-03

Rule Title: Project Modifications After Issuance of Certificate of Need

         New   X   Amend          Repeal          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?         NO        

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?         YES        

Is there another, less restrictive method of regulation available that could adequately protect the public?         NO        

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?         NO        

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?         NO        

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?         YES        

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Does the proposed rule have an economic impact?         NO        

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Alva M. Lambert

Date 6-16-16

DATE FILED  
(STAMP)



## STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870  
MONTGOMERY, ALABAMA 36104

### NOTICE OF INTENDED ACTION

AGENCY NAME: STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
(Certificate of Need Review Board)

RULE NO. & TITLE: 410-1-10-.03 Project Modifications After Issuance of Certificate of  
Need

#### INTENDED ACTION:

The State Health Planning and Development Agency and the Certificate of Need Review Board propose to amend the above-styled section of the *Alabama Certificate of Need Program Rules and Regulations*.

#### SUBSTANCE OF PROPOSED ACTION:

This amendment clarifies that all written submissions filed with the Agency pursuant to this rule must be submitted electronically in accordance with Rule 410-1-3-.09 and provides for electronic payment of the required filing fee.

#### TIME, PLACE, MANNER OF PRESENTING VIEWS:

In response to this Proposed Rule, all interested persons are invited to submit data, views, comments and/or arguments, orally or in writing. Any and all such data, comments, arguments and/or requests to orally address the Certificate of Need Review Board shall be made in writing on or before August 4, 2016, and shall be made to:

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

On August 17, 2016, at 10:00 a.m., the Certificate of Need Review Board shall conduct a public hearing in the State Capitol, Capitol Auditorium, 600 Dexter Avenue, Montgomery, Alabama, at which time it shall consider the Proposed Amendment, along with all written and oral submissions respecting the Proposed Amendment. Only those interested persons who have made timely written requests will be afforded the opportunity to speak.

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

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

August 4, 2016

CONTACT PERSON AT AGENCY:

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

  
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Alva M. Lambert, Executive Director

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

- (1) A proposed change in a project for which the State Agency has previously issued a Certificate of Need will require approval by the Certificate of Need Review Board or the Executive Director of the State Agency as specified below. Approval is required whether or not a capital expenditure is associated with the proposed change.
  - (a) A “change in project” shall include, but not be limited to any change in the bed capacity or bed use (i.e., conversion of beds) of a facility, the addition of a health service or services, an increase in the cost of the project, in excess of ten percent (10%) of the total project cost, including, without limitation, a change in financing methods which results in an increase in the cost of the project.
  - (b) An application for a change in a project must be made pursuant to Rule 410-1-3-.09 in writing to the State Agency and shall include information and any supporting data deemed necessary by the Executive Director relevant to the merits of the application. Such application shall be accompanied by a fee of thirty-five percent (35%) of the original Certificate of Need application fee for the project. The required filing fee must be submitted to the State Agency via overnight mail -and marked in such a way as to clearly identify the fee with the electronic submission; or the fee maybe submitted electronically via the payment portal available through the State Agency’s website. The party seeking approval for such change must certify that a copy of such request has been served on all parties of record in the underlying administrative proceeding or who have filed letters in opposition thereto.
- (2) Any change in project involving the addition of beds, change in bed classification (conversion of beds) or the provision of new health services not specified in the original CON application shall require the filing of a new CON application. Any other proposed change in a project which falls below the financial thresholds for review provided in Section Rule 410-1-4-.01 and does not involve a physical relocation of the facility to a location other than that specifically designated in the application or CON shall be reviewable by the Executive Director of the agency. Otherwise, a project modification that meets the requirements of this rule shall be reviewable by the full Certificate of Need Review Board. No project modification will be granted prior to ten (10) business days after publication of the project modification request through notice provided on SHPDA’s web site. - No more than two project modifications per project may be approved pursuant to this rule.
- (2) No project modification shall be granted during the pendency of an appeal of the Agency order granting the underlying CON.
- (3) The Agency shall be notified pursuant to the provisions of Rule 410-1-3-.09 in writing of the termination of a health service or of one or more beds; provided, however, that such termination shall not require Agency review or approval.

- (4) Any adverse decision on a project modification heard by the Certificate of Need Review Board is subject to the Fair Hearing provisions of these rules, 410-1-8-.16, *et seq.*

Author: Alva M. Lambert

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

History: March 21, 1985; Amended: Filed May 3, 2005; effective June 7, 2005. Amended: Filed July 24, 2012; effective August 28, 2012. Amended: June 18, 2014; effective July 30, 2014.

Amended: Filed: \_\_\_\_\_; effective: \_\_\_\_\_.