

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on the 8th day of September, 2020, and filed with the agency secretary on the 9th day of September, 2020.

AGENCY NAME: State Health Planning and Development Agency (Statewide Health Coordinating Council)

Amendment New Repeal (Mark appropriate space)

Rule No. 410-2-5-.09, 2020-2023 Alabama State Health Plan
(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

Rule Title: State of Emergency Provisions

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

No public comments were received and the rule was adopted as published in the Administrative Monthly. The rule was supported by all those who participated in the rule-making proceeding.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXXVIII,
ISSUE NO. 9, AAM, DATED June 30, 2020.

Statutory Rulemaking Authority: Code of Alabama, 1975 §§ 22-21-260(4).

(Date Filed)
(For LRS Use Only)

REC'D & FILED
SEP 17 2020

LEGISLATIVE SVC AGENCY

Emily T. Marsop
Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.

410-2-5-.09 State of Emergency Provisions

1. Finding of Emergency Need and Waiver.

A. The Statewide Health Coordinating Council recognizes that additional health care resources may be required, on an urgent and temporary basis, to address public health needs of the citizens of Alabama during a State of Emergency declared by the Governor (a "Declaration"). Accordingly, upon the issuance of a Declaration authorizing temporary waivers to Certificate of Need ("CON") requirements, the State Health Planning and Development Agency (the "Agency") may grant waivers for:

(1) Any proposed expansion of institutional health services, beds, facilities, equipment and other resources (hereafter "institutional health services") by existing providers to meet the declared emergency, regardless of existing need methodology and without respect to health planning areas otherwise provided in the State Health Plan ("SHP"); and

(2) The establishment of emergency alternate care sites, or their equivalent, as may be approved by ADPH for the duration of the declared emergency.

2. Waiver Filing Requirements.

A. Any provider seeking a waiver from CON authority under this provision shall provide the State Health Planning and Development Agency ("the Agency") in writing, on abbreviated forms to be prescribed by the Agency, an application containing the following information, as applicable:

- (1) Name and address of the provider;
- (2) Expanded institutional health services or any other services to be provided;
- (3) Number of beds or additional hemodialysis stations requested exceeding the current CON authorized capacity;
- (4) A description of any equipment being acquired;
- (5) The date that the proposed expanded facilities, equipment or services will be in service and available to address the emergency;
- (6) Projected cost;
- (7) Information demonstrating that the project is required to address the public health emergency identified in the Declaration; and
- (8) An unqualified commitment, by an authorized officer of the applicant, to comply with the requirements and limitations of this rule and any similar rule adopted by the CON Board.

B. The application shall be signed by an authorized officer of the applicant under oath.

3. Waiver Term. Any waiver issued pursuant to this rule shall automatically terminate on the earlier of: (i) as applicable, the discontinuation of services subject to the waiver; or (ii) sixty (60) days following the termination of the State of Emergency identified in the Declaration. Any continued operation of institutional health services authorized under a waiver granted pursuant to this section shall require a CON, subject to regular CON criteria and procedures, including compliance with the SHP, without regard to this rule.

4. New Health Care Facility. Except as specifically provided in Ala. Admin. Code §410-2-5-.09.1(A)(1) and (2), the construction, development or other establishment of a new health care facility, as defined in Section 410-1-2-.05, shall not be eligible for a waiver under this rule.

5. Subsequent Relocation. The grant of a waiver under this rule for the temporary relocation of beds, equipment or other resources shall automatically authorize the return of such beds, equipment or other resources to their original location after the emergency, without the need for further authorization. Providers shall notify SHPDA of the effective date of such relocation in such manner as prescribed by the Executive Director.

6. No Impact on Regular Need Methodology. Expanded health services authorized on a temporary basis pursuant to a waiver granted under this rule shall not be considered for purposes of the permanent need methodology in the SHP.

7. Conflict. The provisions of this rule shall be subject to additional restrictions or conditions as may be imposed in a Declaration. In the event of a conflict between any provision of this rule and a Declaration, the Declaration shall prevail. Waivers previously issued under Ala. Admin. Code §§ 410-2-5-.09-E and 410-1-10-.05-E shall remain in force in accordance with their terms. The provisions of Ala. Admin. Code §410-1-10-.01, Emergency Review, are unaffected by this rule.

Author: Statewide Health Coordinating Council

Statutory Authority: §§ 41-22-5, 22-21-260(6), -264 and -275, Code of Alabama (1975)

History: Filed: September 17, 2020; Effective: November 14, 2020.