

**RESOLUTION OF STATE HEALTH COORDINATING COUNCIL ADOPTING
EMERGENCY RULE**

WHEREAS, the State Health Coordinating Council previously adopted an emergency rule amending the State Health Plan to recognize the need for any certain new institutional health services related to the treatment of patients affected by COVID-19 and to provide a mechanism for the grant of temporary waivers of related Certificate of Need requirements; and

WHEREAS, such emergency rule expired on August 5, 2020; and

WHEREAS, at the time of adoption of such prior emergency rule, the SHCC could not have reasonably foreseen that the current emergency would extend beyond the 120-day term, and there has been insufficient time to complete a normal rulemaking process to adopt a permanent rule; and

WHEREAS, the SHCC finds that that the same circumstances that justified adoption of the April 7, 2020 emergency rule, exist today;

IT IS THEREFORE, RESOLVED, that the SHCC does hereby adopt the Emergency Rule, 410-2-5-.09-E, attached to this resolution.

410-2-5-.09-E **EMERGENCY PROVISIONS RELATED TO COVID-19**

1. Finding of Emergency Need and Waiver.

On March 13, 2020, pursuant to the Alabama Emergency Management Act of 1955, Governor Ivey proclaimed a State of Emergency related to the appearance of the 2019 novel coronavirus known as COVID-19. In the declaration, the Governor found that “COVID-19 cases could overwhelm the health care facilities and personnel of this State and undermine their ability to deliver patient care in the traditional, normal, and customary manner or using the traditional, normal, and customary standards of care.” (Governor Ivey Emergency Proclamation, March 13, 2020). An April 2, 2020 supplement to the declaration directed the State Planning and Development Agency (the “Agency”), Statewide Health Coordinating Council (“SHCC”) and the Certificate of Need Review Board (“CON Board”) to provide for temporary waivers to the CON process to permit new services, facilities and other resources related to the treatment of patients potentially affected by appearance of COVID-19, or to free up bed or treatment space at existing health care facilities to permit such treatment. The State of Emergency Declaration, and all current and future supplements, are collectively referenced herein as the “Declaration.”

The SHCC finds that existing health care resources may not be enough to handle the needs of the public during this crisis, and that additional resources are likely to be required, on an urgent and temporary basis, to address the public health needs of the citizens of the State. The emergency resulting from COVID-19, as described in the Declaration, constitutes an unforeseen event which constitute an immediate danger for the health and safety of patients, and the adoption of this emergency rule is necessary to address such threat.

Therefore, to assist in the immediate provision of identifiable and necessary services, and subject to the requirements and conditions of Section 2, need is declared for any proposed new institutional health service, including new and expanded services, beds, facilities, equipment and other resources (hereafter “institutional health services”), related to the treatment of patients potentially affected by appearance of COVID-19 regardless of existing need methodology and without respect to health planning areas otherwise provided in the State Health Plan. Any additional authority granted under the provisions of this emergency rule shall be considered a waiver of ordinary Certificate of Need (“CON”) requirements. Such waiver shall be temporary in nature, as provided herein and in any emergency CON regulations. Any waiver of ordinary CON requirements shall not be considered to be a waiver of any requirements related to the Alabama Department of Public Health or any other regulatory Agency.

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) Additional institutional health services or any other services to be provided;

- (3) Number of beds or additional hemodialysis stations requested;
- (4) A description of any facilities being constructed, and equipment being acquired;
- (5) The date that the proposed new facilities, equipment or services will be in service and available to address the emergency;
- (6) Projected cost if known;
- (7) Information demonstrating that the project is required to address the public health emergency identified in the Declaration and this rule; and
- (8) An unqualified commitment, by an authorized officer of the applicant, to comply with the requirements and limitations of this emergency rule and any similar emergency 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 emergency rule shall automatically terminate on the earlier of: (i) as applicable, the discontinuation of services or closure of facilities subject to the waiver; or (ii) sixty (60) days following the termination of the State of Emergency as recognized in the Declaration. Any continued operation of institutional health services authorized under a waiver granted pursuant to this section will require a CON, which shall be subject to existing CON criteria and procedures, including compliance with the State Health Plan, without regard to emergency rules adopted by the CON Board or SHCC in response to the Declaration. It is the intent of this subsection that services, facilities or other new institutional health services established as a result of a waiver be considered “new” for purposes of an application for CON authority to extend such new institutional health services beyond the deadlines in this subsection. The SHCC recommends that SHPDA adopt an emergency rule providing for a reduction in the minimum filing fee associated with CON applications submitted under this rule. *See: Ala. Op. Att’y Gen. No. 2001-070 (Jan. 16, 2001).*

4. No Impact on Regular Need Methodology. New institutional 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 State Health Plan.

5. Term. This emergency rule is adopted to replace a prior emergency rule which was effective on April 7, 2020 and expired on August 5, 2020. At the time of adoption of such prior emergency rule, the SHCC could not have reasonably foreseen that the emergency would extend beyond the 120-day term, and there has been insufficient time to complete a normal rulemaking process to adopt a permanent rule. This replacement rule shall be effective upon its filing with the Legislative Reference Service and shall extend for the lesser of 120 days or the adoption of a superseding permanent rule.

Statutory Authority: Code of Ala. 1975, §§ 41-22-5, 22-21-260(6), -264 and -275.
History: New Emergency Rule filed and effective August 19, 2020.