

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. 410-1-8-.02
Rule Title: Contested Case Before Administrative Law Judge
New 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

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.

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 Abba M. Lambert

Date 11/17/11

DATE FILED
(STATE) **REC'D & FILED**

NOV 17 2011



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: 410-1-8-.02 Contested Case Before Administrative Law Judge

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:

To establish timeframe in which the Executive Director has to assign an Administrative Law Judge to a request for contested case hearing.

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 January 3, 2012, and shall be made to:

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

On January 18, 2012, 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:

January 3, 2012

CONTACT PERSON AT AGENCY:

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

Alva M. Lambert
Alva M. Lambert, Executive Director

410-1-8-.02 Contested Case Before Administrative Law Judge

- (1) Upon timely written request of the applicant or intervenor of record that the application be assigned to an Administrative Law Judge, the Executive Director shall direct that the public hearing on the application or applications be held before an Administrative Law Judge appointed by the Governor of the State of Alabama. The assignment to an Administrative Law Judge shall occur within ten days of the timely written request, unless extended by agreement of the parties or as required to identify and resolve scheduling or conflict issues involving a potential judge. The Administrative Law Judge shall conduct the contested case proceedings in accordance with the Alabama Administrative Procedure Act, and shall file with the Board proposed findings of fact and conclusions of law with the Board in accordance with §§ 41-22-15 & -16, Ala. Code, 1975.
- (2) In the case of competing or batched applications, if one competing applicant or intervenor makes request pursuant to 410-1-8-.02 (1) for a contested case hearing, then all applications which are competing or batched with that applicant shall be also conducted as contested cases, regardless of whether such request for contested case status is made by those applicants.
- (3) A fee not to exceed the cost of the contested case proceeding, including the fee paid to the Administrative Law Judge, will be imposed upon the parties to the contested case proceeding. The parties shall each be responsible for their own legal fees.
- (4) Security for costs shall be filed with the written request for a contested case proceeding. If the requester desires to post cash in lieu of security for costs, application shall be made to the Agency and the amount of cash to be posted shall be set by the State Agency. Security for costs shall be approved by the State Agency. Any cash security shall be conditioned and deposited to secure the payment of the Administrative Law Judge, at the conclusion of the contested case proceeding. Failure to file security for costs with the request for a contested case proceeding shall result in the contested case proceeding request being deemed incomplete.
- (5) In contested cases the presiding officer of the Certificate of Need Review Board, or, if the case is assigned to an Administrative Law Judge, the Administrative Law Judge, may in his or her discretion, issue a discovery order requiring applicants and intervenors, a reasonable time before the contested case hearing, to exchange lists of expected witnesses, together with a general summary of each witness' testimony, copies of documents to be offered as evidence at the hearing and if specifically requested, copies of any documents referred to in the Certificate of Need application not otherwise available to the public. Unless extended by written agreement of all parties: (a) any public hearing before an Administrative Law Judge pursuant to this section shall begin within forty-five (45) days of assignment to the Administrative Law Judge and be completed within ninety (90) days; and (b) the Administrative Law Judge shall render proposed findings of fact and conclusions of law in accordance with the Alabama Administrative Procedure Act within thirty (30) days of completion of the transcript.

- (6) Because substantial information is contained in applications for Certificates of Need, in supplemental filings, and in filings required of intervenor-opponents, it is the Agency's experience and judgment that the probative value of additional information obtained through more extensive discovery rarely justifies the accompanying burdens in time and expense, even though there is always additional information which is arguably "relevant" or "material." Therefore, depositions, interrogatories, document production requests, requests for admission, subpoenas, or subpoenas duces tecum, are not favored, and it is recommended that the discretion to authorize such discovery be exercised against permitting such discovery, or that any such discovery be limited to the most rare and unusual circumstances.

Author: Alva M. Lambert

Statutory Authority: § 41-22-12, § 41-22-15 and § 41-23-16, Code of Alabama, 1975.

History: Amended: Filed April 22, 1992. Amended: Filed October 17, 1996; effective November 21, 1996. Amended: Filed March 13, 1997; effective April 18, 1997. Amended: Filed February 1, 2000; effective March 7, 2000. Amended: _____.