



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: 410-1-11-.09 Certificate of Need Not Transferable

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 revises the current provisions regarding notice of change of ownership to comport with the recent amendments to ALA. CODE §§ 22-21-260, -263 and -270 (1975 as amended), which further define changes of ownership and control in existing health care facilities and clarify when a certificate of need is required for such changes. The amendments to ALA. CODE §§ 22-21-260, -263 and -270 became effective on May 8, 2013.

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 5, 2015, 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 19, 2015, 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 5, 2015

CONTACT PERSON AT AGENCY:

Nicole Horn

100 North Union Street

RSA Union, STE 870

Montgomery, AL 36104

(334) 242-4103

A handwritten signature in cursive script that reads "Alva M. Lambert". The signature is written in black ink and is positioned above a horizontal line.

Alva M. Lambert, Executive Director

#### 410-1-11-.09 Certificate of Need Not Transferable

(a) Upon, as applicable, (1) the completion of construction and issuance of a certificate of completion; (2) the receipt of proof of the purchase of equipment; or (3) the inauguration of a new health service, the Certificate of Need issued for such project shall be vested in and continued in force and effect as a part of the health care facility and shall survive changes of ownership of the health care facility without further certificate of need approval by this agency.

(ab) Prior to becoming vested under subsection (a), a A certificate of need shall not be transferable, assignable, or convertible, other than ~~between members of a parent subsidiary controlled corporate group as defined in Internal Revenue Code, 26 U.S.C. § 1563(a)(1), and shall be valid solely to the person and purpose named thereof, except to such other member of the controlled group, or by change of name or merger with another corporation to an entity under common ownership or control.~~ As used in this subsection only, "ownership and control" means ownership, directly or through one or more affiliates, of 50 percent or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or 50 percent or more of the voting equity interests in the case of any other type of legal entity, or status as a general partner in any partnership, or any other arrangement whereby an entity including, without limitation, any governmental entity, controls or has the right to control the selection of 50 percent or more of the board of directors, managing members, or equivalent governing body of a legal entity. An "affiliate" under the preceding sentence means any corporation, limited liability company, partnership, or other legal entity that directly or indirectly controls or is controlled by or is under common control with such entity. Any agreement entered into by an applicant, prior to the issuance of a certificate of need, to transfer ownership or control of such health care facility to another person after the certificate becomes vested shall be disclosed to SHPDA prior to a decision by the Certificate of Need Review Board to grant or deny such certificate.

(bc) The transfer of ~~stock~~ equity interests in, or change of names or merger of, ~~a corporation~~ any legal business entity which holds a Certificate of Need shall not constitute a transfer, assignment, or conversion of the Certificate of Need and shall not require SHPDA approval unless the transaction also involves implementing one or more of the new institutional health services or a new health care facility or health maintenance organization described in Sections 22-21-263(a)(2), (3) or (4), Code of Alabama, 1975, ~~provided the corporation which holds the certificate shall notify SHPDA in writing of any change in name or merger.~~

(d) A Certificate of Need holder shall notify SHPDA of any change of ownership or control in accordance with Ala. Admin. Code r. 410-1-7-.04.

Statutory Authority: Code of Ala. 1975, § 22-21-270, as amended by Act 98-341.

History: Amended: Filed 2-1-00; effective 3-7-00.