

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
ADMINISTRATIVE CODE

CHAPTER 410-1-11
DURATION AND EXTENSION OF THE CERTIFICATE OF NEED

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410-1-11-.01 Duration Of Certificate Of Need.

A Certificate of Need issued under these rules shall be valid for a period not to exceed twelve (12) months from the date of issuance, and may be subject to one extension not to exceed twelve (12) months, provided the holder of the Certificate of Need applies pursuant to Rule 410-1-3-.09 for the extension and meets the extension criteria set out in Chapter 410-1-11 of these rules and regulations. The running of the duration of the initial twelve (12) month period, or an extension thereof, shall be tolled from the date of the filing of a civil action arising under any of the provisions of Title 22, Chapter 21, Article 9, Code of Ala. 1975, being §§22-21-260 through -278, or other judicial proceeding until such action is dismissed from the judicial process.

Author: Alva M. Lambert

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

History: Amended: Filed February 1, 2000; effective March 7, 2000. **Amended:** Filed August 23, 2016; effective October 7, 2016.

410-1-11-.02 Incurring The Obligation.

The holder of the certificate of need must incur a firm commitment or obligation as defined by statute and these rules within the initial twelve (12) month period, or if extended, within the extension period. Should the obligation be incurred before the expiration date of the certificate of need, then the certificate shall be continued in force and effect for a period not to exceed one year, or:

(a) the completion of the construction project, where the certificate is for construction; or

(b) the inauguration of the service, where the certificate of need is for the provision of a service; or

(c) the actual purchase of equipment, where the certificate of need is for the purchase of equipment, whichever shall be later.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §22-21-270.

History: Amended: Filed February 1, 2000; effective March 7, 2000.

410-1-11-.03 Failure To Incur The Obligation.

If the holder of the Certificate of Need fails to incur the firm commitment or obligation within the initial twelve-month (12 month) period, or during any extension period, then the certificate shall be terminated and shall be null and void. No extension can be granted except upon written application for the extension before the initial expiration date of the Certificate of Need. If there has been no firm commitment or obligation or application for an extension filed with SHPDA within the initial twelve-month (12 month) period, then the certificate shall be terminated and shall be null and void.

Author: Alva M. Lambert

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

History: Amended: Filed February 1, 2000; effective March 7, 2000.

410-1-11-.04 Failure To Commence Construction.

(1) If the holder of the Certificate of Need fails to commence the construction project within the time period stated in the construction contract or to complete the construction project within the time period stated in the construction contract, then the Certificate of Need shall be terminated and shall be null and void, unless tolled or extended pursuant to statute or SHPDA rule or regulation. The completion date of the construction project specified in the construction contract may be extended by mutual agreement of the parties to the contract, without SHPDA approval. Provided SHPDA, or an Administrative Law Judge appointed by the Governor on appeal for a fair hearing, may for causes beyond the control of the holder of the Certificate of Need, upon written request, by the holder of the Certificate of Need detailing the reasons therefore, continue the Certificate of Need in force if the commencement of the construction project is delayed for a

period not to exceed sixty (60) days or if during the specified construction period, the construction work should cease for not more than six (6) months, or in the event of default in the construction contract by the contractor, or if, for any cause, the construction work has not ceased or otherwise been stopped for a period exceeding sixty (60) consecutive days. Further, the Executive Director of SHPDA may, upon written request by the holder of the Certificate of Need detailing the reasons therefor, continue the Certificate of Need.

(2) All written requests filed pursuant to this rule must be filed in accordance with the provisions of Rule 410-1-3-.09.

Author: Alva M. Lambert

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

History: Amended: Filed February 1, 2000; effective March 7, 2000. **Amended:** Filed August 23, 2016; effective October 7, 2016.

410-1-11-.05 Completion Of The Obligation.

Upon completion of the construction project and issuance by the contractor of the certificate of completion, a copy of which shall be forwarded to the state agency, or upon receipt by the agency of proof of purchase of equipment, or upon receipt by the state agency by the chief executive officer or other authorized person, of a letter of inauguration of the service, then the Certificate of Need shall be considered fully vested and not subject to revocation, modification, or further review by the state agency, except in instances involving actual fraud, and the approval granted pursuant to the CON shall be continued in full force and effect.

Author: Alva M. Lambert

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

History: Amended: Filed February 1, 2000; effective March 7, 2000.

410-1-11-.06 Application For Extension.

No later than one month before the date of expiration of the Certificate of Need, the holder of the Certificate of Need may exercise his right to apply for an extension using the appropriate State Agency form. It shall be the duty of the holder of the Certificate of Need to request such form and submit the same in completed form to the State Agency no later than one month before the date of expiration of the Certificate of Need. Such request shall be accompanied by a fee of twenty-five percent (25%) of the original Certificate of Need application fee associated with the project. Failure to submit such completed application by such date

shall render the application denied, and shall result in the Certificate of Need being rendered null and void as of its termination date.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §22-21-265(b).

History: Amended: Filed July 24, 2012; effective August 28, 2012.

410-1-11-.07 Criteria For Extension.

(1) The state agency will review the application for extension of the certificate of need against each of the criteria enumerated and described below. No extension of the certificate of need may be granted if the application indicates a substantial change in the scope of the project. Each of the following must be met:

(a) architectural progress must be shown, if appropriate to the application, by working drawings that have been completed and approved by the Bureau of Licensure and Certification, Department of Public Health; and

(b) the applicant must have acquired fee simple title long-term leasehold or option to purchase or lease to the facility site and show that approved water, sewage disposal, and other utilities will be made available to the site. The certificate of need will be limited to the site or proposed site stated in the application or at a public hearing. Any change in site requires prior approval of the Certificate of Need Review Board.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-270.

History:

410-1-11-.08 Surrender Of Certificate Of Need.

(1) A holder of a Certificate of Need may elect to surrender his Certificate of Need, not incurring an obligation thereunder. For the surrender to be effective, the holder of the Certificate of Need must notify the State Agency pursuant to Rule 410-1-3-.09 of the intent to surrender the certificate and of the effective date of the action. Upon notification, the Certificate of Need shall be automatically terminated.

(2) A holder of a Certificate of Need will be deemed to have abandoned his certificate, if once having completed construction or inaugurated the service, he then suspends operation of the facility or provision of the service for an uninterrupted period of twelve (12) months or longer.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §22-21-270.

History: Amended: Filed February 1, 2000; effective March 7, 2000. **Amended:** Filed August 23, 2016; effective October 7, 2016.

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.

(b) Prior to becoming vested under subsection (a), a certificate of need shall not be transferable, assignable, or convertible, other than 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.

(c) The transfer of equity interests in, or change of names or merger of, 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 Ala. 1975.

(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.

Author: Alva M. Lambert

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

History: Amended: Filed February 1, 2000; effective March 7, 2000. **Amended:** Filed August 20, 2015; effective September 24, 2015.