

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
ADMINISTRATIVE CODECHAPTER 410-1-3  
ADMINISTRATION

## TABLE OF CONTENTS

410-1-3-.01	Designated State Health Statistical Agency
410-1-3-.02	Other State Agencies
410-1-3-.03	Ex Parte Contacts
410-1-3-.04	Board Meeting Procedures
410-1-3-.05	Time Periods
410-1-3-.06	State Agency Records
410-1-3-.07	Periodic Reports
410-1-3-.08	Mode Of Filing
410-1-3-.09	Electronic Filing
410-1-3-.10	Electronic Notice
410-1-3-.11	Submission Of Mandatory Reports; Administrative Penalties
410-1-3-.12	Annual Reports

**410-1-3-.01      Designated State Health Statistical Agency.**

Pursuant to Executive Order Number Thirty-Six (36), dated December 15, 1980, the state agency is recognized as the central state agency responsible for administering statistical activities under the Cooperative Health Statistical System.

**Author:**

**Statutory Authority:** Executive Order Number 36, December 15, 1980.

**History:****410-1-3-.02      Other State Agencies.**

(1) Other state agencies who may be requested to comment on specific applications may include, but are not limited to, the following:

(a) Division of Mental Illness, State Department of Mental Health may be requested to comment on all applications for mental health facilities and services as appropriate.

(b) Alabama Medicaid Agency may be requested to comment on all projects involving Title XIX monies.

(c) Bureau of Licensure and Certification, Department of Public Health, may be requested to comment on certain applications as deemed appropriate by the state agency.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §22-21-275(1).

**History:**

**410-1-3-.03      Ex Parte Contacts.**

(1) There shall be no ex parte contacts:

(a) in the case of an application for certificate of need, between the applicant for the certificate of need, any person acting on behalf of the applicant, or any person opposed to the issuance of a certificate of need for the applicant and any member of the Certificate of Need Review Board who exercises any responsibility respecting the application after the application has been received by the agency and before a decision is made with respect to the application; or

(b) in the case of a proposed revocation of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the revocation and any member of the Certificate of Need Review Board who exercises responsibility respecting revocation of the certificate after the petition to revoke the certificate of need has been filed and before a decision is made on revocation.

(2) Any violation of this rule shall be reported to the Certificate of Need Review Board, which shall impose the sanctions provided in this rule.

(3) Any violation of this rule by an applicant or any person acting on behalf of an applicant shall result in the violator's application being dismissed from the review process and its application fee being forfeited.

(4) Any violation of this rule by an opponent or any person acting on behalf of an opponent shall result in the opposition being stricken from the record and a public notification by the Certificate of Need Review Board that such opposition is not to be considered in its deliberations on an application.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §22-21-275.

**History:**

**410-1-3-.04      Board Meeting Procedures.**

(1) Parliamentary procedure shall be conducted within the sound discretion of the Chairman of the Certificate of Need Review Board according to the latest version of Robert's Rules of Order, Newly Revised.

(2) Any member of the Certificate of Need Review Board who has a financial interest, privileges of practice or any other potential conflicts of interest pertaining to any application or the opposing party to any application pending before the Certificate of Need Review Board, must recuse themselves from any debate, votes, or proceedings pertaining to said application.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §41-22-4(2).

**History: Amended:** Filed October 17, 1996; effective November 21, 1996.

**410-1-3-.05      Time Periods.**

Any time period established herein shall begin on the day following the event which invokes the time period. When the last day of the period falls on a Saturday, Sunday, or state or federal holiday, the period shall be extended to the next day which is not a Saturday, Sunday, or state or federal holiday. The time period shall expire at 5:00 p.m. of the last day of the computed period.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §22-21-275.

**History:****410-1-3-.06      State Agency Records.**

(1) All information collected, assembled, or maintained by the state agency in connection with its transaction of official business is public information and available for public inspection and disclosure during normal business hours, unless otherwise protected from disclosure under law.

(2) Upon request to the Agency's public records coordinator, designated by the Executive Director, public records maintained by the Board shall be available for inspection and duplication at the office of the Board during regular business hours in accordance with this rule. The inspection and duplication of public records shall be under the supervision of the Executive Director or other agency designee, at a designated time coordinated with the public records coordinator.

(3) For the purpose of this rule, a request for copies of public records shall be considered a "Standard Request" if it seeks one or more discretely identified public records that the Executive Director or other agency designee determines will take less than eight (8) hours of staff time to process, taking into consideration the need to identify and to redact or take other measures to withhold legally protected action. A Standard Request should require no or minimal clarification by the requestor. A "Time-Intensive Request" is defined as a request that the Executive Director or other agency designee determines will take more than eight (8) hours of staff time to process, taking into consideration the need to obtain clarification of broad or vague requests, and to identify and to redact or take other measures to withhold legally protected action and any time needed to redact or take other measures to withhold legally protected information.

(4) Any person wishing to obtain copies of public records shall submit a written request in PDF format by email to [public.records@shpda.alabama.gov](mailto:public.records@shpda.alabama.gov), addressed to the Agency's public records coordinator, using the form provided for this purpose on the public records page of the Board's public web site. "Standard Requests" shall be accompanied by a minimum fee of \$20.00. Should the staff time associated with the response exceed one hour, the requesting party shall pay an additional fee of \$20.00 for each additional hour incurred prior to production. All requests will be acknowledged within two (2) business days from receipt, at which time the requesting party shall be notified if the request is deemed a Time-Sensitive Request. If practicable, the requestor will be given an estimate of the staff time and related fees associated with a Time-Intensive Request prior to processing, which must be paid prior to production. The requestor will be provided a substantive response fulfilling or denying the request within fifteen (15) business days for Standard Requests, and forty-five (45) days for Time-Intensive Requests. These deadlines may be extended in additional fifteen (15) day and forty-five (45) day increments, respectively, upon written notice to the requestor. All fees must be paid prior to production.

(5) Records requests fulfilled will be provided via electronic means wherever possible. Where paper copies are required, the agency may charge an additional per-page fee of \$.50 per page for copies per black and white copied page, 8.5 x 11 inches in size. All certified copies shall be provided in printed form.

(6) In addition, upon request, the Agency may provide non-routine data compilation or summary of health care data to third parties in accordance with a fee schedule based on total costs incurred by the Agency, as determined by the Executive Director, approved by the CON Review Board, and published on the Agency's website.

(7) Personnel records, data and/or materials relating to judicial proceedings, and other documents subject to a legal privilege or

confidentiality requirement under state or federal law are not available for public disclosure or access.

(8) Nothing in this rule shall authorize the Agency to impose a fee for staff time associated with preparation and initial publication of any report or statistical update which it is required to publish under law or rule.

**Author:** Alva M. Lambert

**Statutory Authority:** Code of Ala. 1975, §§22-21-271, 22-21-274.

**History: Amended:** Filed July 24, 2012; effective August 28, 2012. **Amended:** Filed July 24, 2013; effective August 28, 2013.

**Amended:** Filed August 23, 2016; effective October 7, 2016.

**Amended:** Published July 31, 2023; effective September 14, 2023.

#### **410-1-3-.07      Periodic Reports.**

The State Agency will prepare and publish at least annually decisions made by the Certificate of Need Review Board, certificates issued, and the status of proposals in the Certificate of Need process. Subscribers may subscribe to receive a special, monthly status report of all pending matters upon payment of an annual fee to cover the estimated cost to the Agency of \$180.00 (for a print report) or \$90.00 (for an electronic report, when available). Interested parties may subscribe to receive printed notice of all SHPDA filings as processed at an annual fee to cover the estimated cost of the Agency of \$50.00 for a single location or \$250.00 for multiple locations or, when available, electronic notice of such filings for \$25.00 for a single location or \$125.00 for multiple locations.

**Author:** Alva M. Lambert

**Statutory Authority:** Code of Ala. 1975, §22-21-275(15).

**History: Amended:** Filed July 24, 2013; effective August 28, 2013. **Amended:** Published July 31, 2023; effective September 14, 2023.

#### **410-1-3-.08      Mode Of Filing.**

All official documents filed with this Agency must be timely filed by electronic mail, as required by Rule 410-1-3-.09, and must be sent to the Executive Secretary of the Agency at [shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov) in order to be deemed officially filed.

**Author:** Alva M. Lambert

**Statutory Authority:** Code of Ala. 1975, §22-21-275.

**History: New Rule:** Filed September 19, 1994; effective October 24, 1994. **Amended:** Filed July 24, 2013; effective August 28, 2013. **Amended:** Filed August 23, 2016; effective October 7, 2016.

**410-1-3-.09      Electronic Filing.**

(1) All documents to be filed with the State Agency, with the exception of any Mandatory Report as defined in Rule 410-1-3-.11, shall be submitted electronically to [shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov) within the time frames set forth in paragraph (12). All Mandatory Reports shall be submitted electronically to [data.submit@shpda.alabama.gov](mailto:data.submit@shpda.alabama.gov) within the time frames set forth in paragraph (12). The electronic submittal shall contain all required information for the type filing being made and be formatted in text searchable, PDF format. The documents may also be submitted in text searchable, PDF format on a clean compact disk or other electronic media approved by the Executive Director and delivered to the State Agency by hand delivery or overnight or express mail by the deadline.

(2) All required filing fees must be submitted electronically via the payment portal available through the State Agency's website at [www.shpda.online@shpda.alabama.gov](http://www.shpda.online@shpda.alabama.gov) or via overnight mail or other delivery method, marked in such a way as to clearly identify the fee with the electronic submission, for delivery to the State Agency at the address below on the day of electronic filing or on the next Agency business day, as follows:

State Health Planning and Development Agency Attention:  
Secretary

*Mailing Address:*  
P.O. Box 303025  
Montgomery, Alabama 36130-3025

*For Physical Deliveries:*  
RSA Union Building  
100 N. Union Street - Suite 870  
Montgomery, Alabama 36104

Fees should be accompanied by transmittal letter with following information:

Subject: Filing Fee for:  
Name of Filing Entity  
Filing Description: [CON application, reviewability  
determination request, change of ownership notice, etc.] Date  
of Electronic Filing  
Project Number, if known

(3) Subject to the provisions of subsection (4) of this section, the receipt date for an electronic submittal via e-mail shall be date and time of receipt by the State Agency of a filing that meets the requirements set forth herein, as reflected in the

electronic records of the State Agency. The date of receipt of an electronically submitted Certificate of Need application does not by itself constitute a determination of completeness by the State Agency under SHPDA Rule 410-1-7-.06(2). Within eight (8) business hours of receipt, the Executive Secretary of the Agency or his/her designee shall send an acknowledgement of receipt to the submitter via electronic mail to the electronic address appearing on the submission. For Mandatory Reports, acknowledgement of receipt shall be sent by the Data/Planning Director of the Agency or his/her designee in accordance with the requirements of Rule 410-1-3-.11(2) (a) .

(4) For filings requiring the submission of a filing fee or administrative penalty, the filing shall be considered provisionally received pending receipt of the required fee or penalty, and shall be considered void should the proper filing fee or administrative penalty not be received by the end of the next business day, as provided in subsection (2) above.

(5) The size of an individual PDF file submitted to the Agency should not exceed 15 Megabytes. If the total Megabyte count of a main pdf document and attached supporting pdf documents in a single filing exceeds 15 Megabytes, the attached supporting documents should be submitted separately and related back to the main document entry. An electronic filing that is not completed due to being in excess of this restriction shall not be deemed filed.

(6) Unless otherwise provided for in an Agency form, the text of all formal filings shall be double-spaced, except that quotations from cases or other legal authorities more than 2 but not more than 25 lines long may be indented and single-spaced. Headings, footnotes, and quotations from statutes, evidentiary materials, and other matters in the record may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there. Mandatory Reports submitted in accordance with forms provided by the Agency shall be deemed in compliance with the format requirements of this rule.

(7) The typed font of all documents, including footnotes, must be plain, Roman or Courier style, although italics or boldface may be used for emphasis. References to court cases or administrative decisions should be italicized or underlined.

(8) In the event of an outage of SHPDA's electronic filing system, paper filings will be accepted, subject to the submission of an electronic copy to the authorized online address(s) set out in this Rule, within twenty-four (24) hours after service restoration, unless the outage occurs on a Friday, in which case the filing will be due on the following Monday.

(9) Applicants shall preserve a paper original of all filings made in electronic form for the duration of any SHPDA proceedings and

related appeals resulting from such filings. Upon request of the State Agency or an intervenor of record, an Applicant which has submitted a Certificate of Need application electronically may be required to produce an original signed and notarized application in paper form on or before the 55th day of the review period.

(10) In addition to meeting the requirements of this rule, specific filings are subject to other applicable provisions of these rules, including, but not limited to:

- (a) Letter of Intent (Rule 410-1-7-.05)
- (b) CON Applications (Rule 410-1-7-.06)
- (c) Emergency CON applications (Rule 410-1-10-.01)
- (d) Requests for Declaratory Rulings (Rule 410-1-9-.01)
- (e) Request for Reviewability Determinations (Rule 410-1-7-.02)
- (f) Change of Ownership Notifications (Rule 410-1-7-.04)
- (g) Exceptions to Proposed Findings of Facts and Conclusions of Law (Rule 410-1-8-.05)
- (h) Notice of Opposition, Intervention and Request for Contested Case Hearing (Rule 410-1-7-.13 and -.15, 410-1-9-.03)
- (i) Request for Reconsideration (Rule 410-1-8-.09)
- (j) Request for Fair Hearing (Rule 410-1-8-.16)
- (k) Project Modifications (Rule 410-1-10-.03)
- (l) 1. Notice of Appeal (Rule 410-1-8-.24)
- (m) Mandatory Reports (Rule 410-1-3-.11)

(11) Fees may be submitted electronically via an e-government contractor when the service becomes available to the State Agency.

(12) To be considered timely, submission of a filing with the State Agency must comply with the requirements of Rule 410-1-7-.01. Electronic filings received by the Agency after 5:00 p.m. on any given day will be stamped in as received on the following business day.

**Author:** Alva M. Lambert

**Statutory Authority:** Code of Ala. 1975, §22-21-271(d).

**History: New Rule:** Filed July 24, 2013; effective August 28, 2013. **Amended:** Filed March 18, 2016; effective May 2, 2016.



**Amended:** Filed August 23, 2016; effective October 7, 2016.

**Amended:** Filed March 21, 2017; effective May 5, 2017.

**410-1-3-.10      Electronic Notice.**

Except as specifically required under law, SHPDA may provide any written notice required under these rules in electronic PDF format, which shall be considered delivered upon the date of transmission. All health care providers holding a certificate of need from SHPDA, as well as any other interested parties seeking to be included in SHPDA's general distribution list, shall maintain with the State Agency a current e-mail address for purposes of this rule.

**Author:** Alva M. Lambert

**Statutory Authority:** Code of Ala. 1975, §22-21-271(d).

**History: New Rule:** Filed July 24, 2013; effective August 28, 2013.

**410-1-3-.11      Submission Of Mandatory Reports; Administrative Penalties.**

(1) For purposes of this rule:

(a) the term "Mandatory Report" shall include every annual report required to be filed with SHPDA by statute or rule and any other reporting requirement imposed by these rules or the *State Health Plan* that is not clearly identified therein as optional. The term shall not include discovery that may be authorized by the Certificate of Need Review Board or an Administrative Law Judge as part of a contested case proceeding or fair hearing, which shall be subject to such requirements as authorized under the Alabama Administrative Procedure Act or other regulations.

(b) For purposes of this rule only:

1. a "rural health care provider" is a provider or applicant or hospital which is designated by the United States government Health Care Financing Administration (now Centers for Medicare and Medicaid Services) as rural, as specified in the SHPDA statutes at Code of Ala. 1975, §22-21-260(12); and

2. a "small provider" is:

(i) a hospital or other health care provider providing in-patient care which is not a rural provider and has less than 65 licensed beds;

(ii) a health care provider holding CON authority solely to provide in-home services, such as in-home hospice or home health service, which holds CON authority to provide such in-home care in (a) an area of six counties or less, which does not include Jefferson, Madison, Mobile or Montgomery County; or

(I) three counties or less, which includes Jefferson, Madison, Mobile or Montgomery County; or

(iii) any ambulatory surgery center, multi- or single specialty, performing procedures four (4) days a week or less;

(iv) any other health care provider which does not provide in-patient care and which holds a CON authorizing health care services to be provided at a single location.

(v) For purposes of this subsection (2), a health care provider's CON authority shall be aggregated with all other CON authority held by entities under common ownership and control, as defined in Code of Ala. 1975, §22-21-270(e). In addition, a health care provider shall not be considered a "small provider" if any entity under common ownership and control holds CON authority for a facility or service that would not qualify for the small provider exception on a standalone basis. For illustration only:

(I) A business entity holds a CON to provide home health care services in six counties, which do not include Jefferson, Madison, Mobile or Montgomery County. It is under common ownership and control with two other business entities which each hold CON authority in two counties to provide the same service. None of these affiliated entities would be considered a "small provider" for purposes of the rule.

(II) A business entity holding a CON to provide methadone treatment at a single location in Alabama is under common control and ownership with another methadone clinic holding CON authority. None of these affiliated entities would qualify as a "small provider" under this rule.

(III) A non-rural hospital with less than 65 licensed beds is under common ownership and control with a business entity holding CON authority to provide ambulatory surgical service.

None of these affiliated entities would be considered a "small provider" for purposes of this rule.

(c) When computing any time period stated in days or a longer unit of time, the Agency or health care reporter shall, for the purposes of this rule:

1. exclude the day of the event that triggers the period;
2. count every day, including intermediate Saturdays, Sundays, and legal holidays; and
3. include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) The filing of a Mandatory Report shall be deemed received and filed on the date of electronic submission to the Agency, pursuant to SHPDA Rule 410-1-3-.09.

(a) Failure to File or Filing Incomplete Report: Any health care reporter failing to meet a filing deadline for a Mandatory Report, or who files a Mandatory Report deemed to be materially incomplete by the State Agency, shall be notified by the State Agency staff that they are not in compliance with this rule within seven (7) days of the filing deadline (in the case of a failure to file) or within seven (7) days of the date of receipt of the filing (in the case of a report deemed materially incomplete by Agency staff). Such health care reporter shall have sixty (60) days from the original due date of the report to correct the deficiency. Any facility that is noncompliant under this rule, either due to failure to file or due to a filing being deemed materially incomplete, shall be deemed to be in a probationary status in regard to the enforcement of penalties under this section for a period not to exceed sixty (60) days from the date of filing deadline.

(b) Failure of the health care reporter to bring its report into compliance within the required sixty (60) days will result in the report being deemed not properly filed and subject the health care reporter to the administrative penalty provisions of Section 3 applicable to delinquent filings, with such penalties to apply from the original due date of the report.

(c) SHPDA shall track the total number of Mandatory Reports that are not filed on or before the initial deadline, as well as the total number of Mandatory Reports deemed materially incomplete when initially filed. This information, which shall include the names of the non-compliant health care reporters, shall be reported to the Certificate of Need Review Board, the

Health Care Information and Data Advisory Council and the Statewide Health Coordinating Council at their regularly scheduled meetings immediately following the end of the grace period.

(3) In addition to any other provisions contained in these rules or the State Health Plan, a health care reporter that fails to submit a compliant Mandatory Report within any applicable probationary period under subsection (2)(a), shall be assessed a penalty equal to:

(a) A flat fee of \$1,000 for a non-rural health care provider and \$500 for a rural health care provider or small provider, plus

(b) An additional penalty of \$100 for non-rural health care providers and \$50 for rural and small health care providers for each day of delinquency, calculated from the day after the due date for filing (without regard to any probationary period) through the date of filing, up to a maximum penalty of \$10,000 for non-rural health care providers (except for small providers) and \$5,000 for rural health care providers and small providers.

(4) A delinquent Mandatory Report must meet the requirements of Section 2 above and be accompanied by payment of any administrative penalty prescribed in Section 3 above in order to be deemed received and filed with the Agency. Such payment shall be submitted in accordance with SHPDA Rule 410-1-3-.09, including the provisions related to the submission of fees.

(5) The Executive Director may waive imposition of a penalty under this rule only upon a written finding that a timely filing was rendered impossible due to an act of God comparable to (a) an electrical outage or weather emergency applicable to all businesses in the area of the health care reporter; (b) the unanticipated closure of SHPDA offices (other than state holidays or weekends); or (c) an outage rendering SHPDA's filing system inoperable. Any such waiver shall extend only to the period of time that the filing was rendered impossible by the qualifying circumstances. The Executive Director shall advise the Certificate of Need Review Board of the status of all waiver requests at its regular monthly meeting.

(6) A health care provider who is non-compliant under the terms of this rule may not participate in the Certificate of Need review process, either as an applicant for a Certificate of Need or in opposition to a Certificate of Need application (through intervention or other statements in opposition), (without regard to the probationary period set forth in Section 2(a)). A health care provider shall maintain compliance from the date of the initial filing of such provider's application or opposition and for the duration of such provider's participation in the

administrative and/or judicial process. A provider deemed non-compliant due to a Mandatory Report being deemed materially incomplete by Agency staff or for filing after the due date shall have seven (7) days from the date of notification of such deficiency to bring such report into compliance prior to being disqualified from any pending proceeding in which the provider is a party.

(7) A health care reporter required to file a Mandatory Report shall maintain a current listing with the Agency of the name, title, phone number and e-mail address of at least two individuals designated as the contact of record for purposes of all reports filed with the Agency and shall designate at least one such contact person as the primary contact in each report that is filed. The failure to maintain a current contact listing shall not constitute grounds for the waiver of any penalties imposed under this rule.

**Author:** Alva M. Lambert

**Statutory Authority:** Code of Ala. 1975, §§22-4-34, 22-4-35, 22-4-37.

**History: New Rule:** Filed March 18, 2016; effective May 2, 2016.

#### **410-1-3-.12      Annual Reports.**

(1) Entities holding Certificate of Need authority are required to file the following annual reports, as adopted by rule, on the due dates specified below:

(a) Hospitals (Form BHD-134A), due annually by December 15.

(b) Home Health Agencies (Form DM-1), due annually by December 15.

(c) Ambulatory Surgery Centers (Form ASC-1), due annually by December 15.

(d) Specialty Care Assisted Living Facilities (Form SCALF-1), due annually by April 15.

(e) Hospice Providers (Form HPCE-4), due annually by April 15.

(f) Skilled Nursing Facilities (Form SNH-F1), due annually by August 15.

(2) All annual reports shall be filed electronically with the Agency pursuant to Rule 410-1-3-.09. Reporting entities shall be subject to administrative penalties for non-compliance as specified in Rule 410-1-3-.11.

**Author:** Alva M. Lambert

**Statutory Authority:** Code of Ala. 1975, §§22-4-34, 22-4-35.

**History:** **New Rule:** Filed March 18, 2016; effective May 2, 2016.  
**Amended:** Filed September 19, 2018; effective November 3, 2018.