

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
ADMINISTRATIVE CODECHAPTER 410-1-8
PUBLIC HEARINGS AND APPEALS

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410-1-8-.01 Public Hearing During Course Of Review.

Each application for a Certificate of Need shall be accorded a public hearing during the course of the project's review, which will be held at the monthly meeting of the Certificate of Need Review Board unless the applicant or intervenor of record shall have timely requested that the application or competing applications be assigned to an Administrative Law Judge for a contested hearing pursuant to the requirements of the Alabama Administrative Procedure Act. Upon timely written request on or before the fifty-fifth (55th) day of the review period, the applicant or any intervenor of record may request that the application be assigned to an Administrative Law Judge for such contested hearing. If no such party of record shall have made a timely request for assignment to an Administrative Law Judge, the application or competing application shall be heard before the Certificate of Need Review Board at public hearing as provided above.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §§41-22-12, 22-21-275(6), as amended by Act 98-341.

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

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 (10) days of the 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 and -16, Code of Ala. 1975, as amended.

(2) In the case of competing or batched applications, if one competing applicant or intervenor makes request pursuant to Rule 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 request for a contested case proceeding. If the requestor 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) In contested cases heard before an Administrative Law Judge, the Administrative Law Judge may require the direct or redirect examination of a witness through pre-filed testimony in lieu of oral examination. Such pre-filed testimony shall be in written question and answer form and shall be filed at least 10 calendar days prior to the hearing, unless directed otherwise by the Administrative Law Judge. At the hearing, such pre-filed testimony may, upon motion, be incorporated into the record as if the questions had been asked of the witness and the answers had been given orally, provided such testimony has been properly identified and authenticated under oath by the witness for whom it is presented and further provided that such witness is made available for cross-examination. In such cases, witnesses may also summarize their testimony orally. Pre-filed testimony may be stricken by the Administrative Law Judge on the same grounds applicable to testimony presented through oral examination. An Administrative Law Judge may take other measures to streamline the hearing

process, including reasonable limitations on the number of witnesses, time of presentation, and restrictions on the presentation of testimony that is purely cumulative in nature.

(7) 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.

(8) 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, §§41-22-12, 41-22-15, 41-23-16.

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:** Filed August 19, 2011; effective September 23, 2011. **Amended:** Filed January 20, 2012; effective February 24, 2012. **Amended:** Filed September 23, 2014; effective October 28, 2014. **Amended:** Filed August 23, 2016; effective October 7, 2016.

410-1-8-.03 Conduct Of Public Hearings.

Opportunity shall be afforded all persons who make a timely notice under 410-1-7-.12, 410-1-7-.13, 410-1-8-.01, and 410-1-8-.02 of these Rules to respond and present evidence and argument on all material relevant to the issues involved and to be represented by counsel at their own expense. Provided, however, that where a contested case hearing has been held before an Administrative Law Judge, presentations to the Certificate of Need Review Board shall be by written exceptions electronically filed with SHPDA in accordance with Rule 410-1-8-.05 and 410-1-3-.09 and, at the discretion of the Chairperson, by oral arguments.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §§22-21-275, 41-22-12(d), as amended by Act 98-341.

History: **Amended:** Filed September 19, 1996; effective October 23, 1996. **Amended:** March 13, 1997; effective April 18, 1997.

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

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

410-1-8-.04 Testimony At Public Hearing.

All oral presentation made at the public hearing shall be sworn to. A transcript of the public hearing will be made by a registered court reporter designated by the state agency. Minutes of the public hearing will be made by the state agency and approved by the Certificate of Need Review Board. On reconsiderations, at fair hearing, and on judicial appeal, the transcript and minutes of the public hearing will be made a part of the public record.

Author:

Statutory Authority: Code of Ala. 1975, §§22-21-275, 41-22-12.

History:

410-1-8-.05 Majority Decision.

(1) Where the public hearing has been held by the Certificate of Need Review Board, then at the conclusion of the evidence, and after an opportunity for questioning of the applicant or other party, a quorum of the CON Review Board shall, by a majority vote of the members voting, grant or deny, in whole or in part, the application for the CON or other matter properly before the Board.

(2) Where the public hearing has been assigned to and conducted by an Administrative Law Judge, 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 after the conclusion of the public hearing the time period prescribed in Ala. Admin. Code r. 410-1-8-.02. Exceptions to the findings of fact and conclusions of law shall be filed with the agency within seven days after the findings of fact and conclusions of law are rendered. The proposed findings of fact and conclusions of law issued by the Administrative Law Judge and the record of the contested case hearing, and the exceptions to the proposed order, if any, shall be submitted to the individual members of the Certificate of Need Review Board. The proposed findings of fact and conclusions of law shall be presented to the Certificate of Need Review Board at its next regularly scheduled Board meeting and either ratified or rejected, in whole or in part, by a majority vote of a quorum of its membership.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §§22-21-275, 41-22-15, 41-22-16, as amended by Act 98-341.

History: Amended: Filed March 13, 1997; effective April 18, 1997. **Amended:** Filed February 1, 2000; effective March 7, 2000.

Amended: Filed August 19, 2011; effective September 23, 2011.

410-1-8-.06 Effective Date Of Decision.

No decision of the Certificate of Need Review Board shall be deemed final and become the final decision of SHPDA until fifteen (15) days following the date of the decision. In cases first heard before an Administrative Law Judge ("ALJ") the ALJ's proposed Findings of Fact and Conclusions of Law shall become final and the final decision of SHPDA fifteen (15) days after the recommended order is issued if no exception are filed.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §22-21-275(13), as amended by Act 98-341.

History: Amended: Filed February 1, 2000; effective March 7, 2000. **Amended:** Filed May 27, 2015; effective July 1, 2015.

410-1-8-.07 Final Order.

(1) The Certificate of Need Review Board shall issue a final written order respecting the award of a Certificate of Need or application for exemption. Any order respecting the award of a Certificate of Need shall include findings of fact and conclusions of law, separately stated. The final order shall be issued within fifteen (15) days.

(a) after the public hearing is concluded, if conducted by the CON Review Board; or

(b) after the recommended findings of fact and conclusions of law is submitted to and voted upon by the CON Review Board, if the public hearing is conducted by an Administrative Law Judge.

(2) Parties may submit proposed findings of fact to the Certificate of Need Review Board for inclusion in the final order.

(3) The aforementioned time periods may be extended by the consent of all parties and approval by the CON Board Chairperson.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §§22-21-275(10), 41-22-15, 41-22-16.

History: Amended: Filed February 13, 1997; effective March 20, 1997. **Amended:** Filed March 13, 1997; effective April 18, 1997.

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

410-1-8-.08 Issuance Of Certificate Of Need.

(1) The executive director of the state agency shall issue a certificate of need to the applicant thirty (30) days after the decision of the Certificate of Need Review Board is deemed final, unless the issuance of the certificate of need is suspended by the filing of a request for reconsideration pursuant to Sections 410-1-8-.14 and 410-1-8-.15, or request for fair hearing under Section 410-1-8-.17. The 30 day period may be waived or extended with the consent of all parties. In cases where an Administrative Law Judge ("ALJ") the ALJ's proposed Findings of Fact and Conclusions of Law becomes the final decision of SHPDA due to no exceptions being filed, the Executive Director shall issue a certificate of need to the applicant within fifteen (15) days of such decision becoming final.

(2) A press release of the issuance of a Certificate of Need shall be issued the same day the certificate of need is issued to the applicant. The press release will include the following information:

- (a) name of applicant;
- (b) name and location of the project;
- (c) description of the proposal; and
- (d) the Certificate of Need Review Board's decision.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-265, 22-21-275(5).

History: Amended: Filed September 19, 1996; effective October 23, 1996. **Amended:** Filed February 13, 1997; effective March 20, 1997. **Amended:** Filed May 27, 2015; effective July 1, 2015.

410-1-8-.09 Reconsideration Of Decision.

(1) Any aggrieved party, including the applicant, any competing applicant or any aggrieved person who has intervened pursuant to Code of Ala. 1975, §41-22-14, as amended, may file a request for reconsideration of the decision pursuant to the provisions of Rule 410-1-3-.09 within fifteen (15) days to the date SHPDA's decision is deemed final. The request shall state with particularity the evidence which supports one or more of the grounds for reconsideration.

(2) Such application for reconsideration will lie only

- (a) if the final decision of SHPDA is:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of SHPDA;
3. in violation of a SHPDA rule;
4. made upon unlawful procedure;
5. affected by other error of law;
6. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
7. unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion; or

(b) if the party requesting reconsideration presents any significant relevant and material newly discovered information not previously considered by SHPDA which, with reasonable diligence, could not have been discovered in time to be presented before SHPDA made its decision.

There shall be no action for reconsideration of a prior order on reconsideration.

(3) An aggrieved party shall not be required to request reconsideration prior to or as a condition requesting a fair hearing or as a condition to seeking judicial review pursuant to Code of Ala. 1975, §41-22-20, as amended.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §§22-21-275(12), 41-22-17.

History: **Amended:** Filed June 12, 1997; effective July 17, 1997.

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

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

410-1-8-.10 Conduct Of Hearing On Request For Reconsideration.

The Certificate of Need Review Board shall conduct a public hearing on the request for reconsideration. The hearing on the request for reconsideration shall be held within thirty (30) days from the date of the written request for reconsideration at the regular monthly meeting of the Certificate of Need Review Board. All oral presentations made at the reconsideration shall be sworn to. A transcript of the reconsideration hearing will be made by a registered court reporter. Minutes of the reconsideration hearing will be made by the state agency and approved by the Certificate of Need Review Board.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-275(12).

History:

410-1-8-.11 Notice Of Hearing On Request For Reconsideration.

Notice of the hearing on a request for reconsideration shall be provided by the State Agency to the person requesting the reconsideration hearing, the applicant, and any other person who has made a timely application for intervention in the case.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-275(5), (12).

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

410-1-8-.12 Substance Of Hearing On Request For Reconsideration.

The purpose of the hearing on the request for reconsideration is to determine whether good cause has been shown by the person requesting the reconsideration hearing. The only evidence to be considered by the Certificate of Need Review Board is the record of the prior public hearing on the application, the written evidence of good cause submitted by the requester, and any other written evidence filed by an applicant or intervenor to the case which refutes the written evidence of good cause. The Certificate of Need Review Board will consider all written evidence and will, in its discretion pursuant to 410-1-8-.09(3), by a majority vote of a quorum of its members present, determine whether good cause has been proven. Following a determination that good cause has been proven, the request for reconsideration will be granted and the application for the Certificate of Need will be heard at the next regularly scheduled meeting of the Certificate of Need Review Board, with the applicant having the burden of proof. Following a determination that good cause has not been found, the request for reconsideration will be denied.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-275(12), 41-22-17.

History: Amended: Filed June 12, 1997; effective July 17, 1997.

410-1-8-.13 Effect Of Reconsideration Request.

The request for reconsideration shall have the effect of holding in abeyance the issuance of the Certificate of Need by SHPDA and suspending any Certificate of Need issued pursuant to said final decision pending the outcome of the public hearing on reconsideration.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §§22-21-275(12), 41-22-17, as amended by Act 98-341.

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

410-1-8-.14 Issuance Of Certificate Of Need After Denial Of Reconsideration.

Following the denial of a request for reconsideration by the Certificate of Need Review Board, an application for a certificate of need having been approved, the executive director of the state agency shall issue the certificate of need to the applicant, as soon as practicable after the denial.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-275(12).

History:

410-1-8-.15 Issuance Of Certificate Of Need After Granting Of Reconsideration.

If the request for reconsideration is granted, a certificate of need shall be issued pursuant to the outcome of the reconsideration hearing and pursuant to Rules 410-1-8-.05 through 410-1-8-.08.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-275(12).

History:

410-1-8-.16 Fair Hearing.

Any adverse SHPDA decision (other than a SHPDA decision after first being heard as a contested case before an Administrative Law Judge pursuant to the requirements of the Alabama Administrative Procedure Act) may be appealed to a fair hearing before an Administrative Law Judge appointed by the Governor of the State of Alabama. The appeal shall be commenced by a request for a fair hearing by the applicant or any competing applicant, or any aggrieved party of record, which request shall be properly filed with the Agency within fifteen (15) days of the date that the decision of SHPDA became final, or in the event of a request for reconsideration, within fifteen (15) days of the date that the decision of SHPDA on reconsideration became final. The request must be filed electronically pursuant to the provisions of Rule 410-1-3-.09. Fair Hearing review is not available in cases which were first heard as a contested case before an Administrative Law Judge pursuant to the requirements of the Alabama Administrative Procedure Act.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §22-21-275(14), as amended by Act 98-341.

History: Amended: Filed February 12, 1996; effective March 18, 1996. **Amended:** Filed February 1, 2000; effective March 7, 2000.

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

410-1-8-.17 Effect Of Fair Hearing Request.

The request for fair hearing shall have the effect of holding in abeyance the issuance of the Certificate of Need and suspending any Certificate of Need issued pursuant to SHPDA's decision subject to the outcome of the fair hearing.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §22-21-275(14), as amended by Act 98-341.

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

410-1-8-.18 Notice Of Fair Hearing.

Notice of the fair hearing shall be provided by the State Agency to the applicant, the requester, and any other person who has made a timely application for intervention in the case below. Notification to the general public will be made through a news release to a newspaper of general circulation serving the area in which the proposed health care facility or health service is to be located.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-275(5).

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

410-1-8-.19 Time And Place Of Fair Hearing.

The fair hearing will be held in the City of Montgomery unless the applicant, state agency, and any intervenor of record jointly stipulate another location. The time and location of the fair hearing will be determined by the fair hearing officer.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-275(14).

History:

410-1-8-.20 Time Limit From Request Of Convening Of Fair Hearing.

The fair hearing will be held within thirty (30) days of the receipt of the written request by SHPDA unless continued at the discretion of the Fair Hearing Officer upon motion of the applicant, where there is only one application or by the successful applicant or applicants where there are competing applications. No continuance will be granted for longer than six (6) months from the date the written request was received by the SHPDA.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §22-21-275(14), as amended by Act 98-341.

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

410-1-8-.21 Conduct Of Fair Hearing.

The fair hearing officer shall conduct the fair hearing, a transcript of which will be made by a registered court reporter designated by the state agency. The fair hearing shall be open to the public. All parties are entitled to be represented by counsel at their own expense.

Author:

Statutory Authority: Code of Ala. 1975, §22-21-275(14).

History:

410-1-8-.22 Substance And Limitation Of Fair Hearing.

(1) The fair hearing shall be heard de novo as a contested case in accordance with Code of Ala. 1975, §§41-22-12 and 41-22-13. The record of the hearing before the Certificate of Need Review Board and the Order issued by the Board shall be part of the record and shall be given due consideration by the Fair Hearing Officer. The applicant may not submit evidence that would constitute an untimely amendment of its application as deemed complete by SHPDA.

(2) The fair hearing appeal proceedings shall be conducted pursuant to the requirements of the Alabama Administrative Procedure Act, Title 41, Chapter 22, Code of Ala. 1975.

Author: Alva M. Lambert

Statutory Authority: Code of Ala. 1975, §22-21-275(14), as amended by Act 98-341.

History: Repealed and New Rule: Filed February 1, 2000; effective March 7, 2000.

410-1-8-.23 Preservation Of Issues For Appeal (Repealed 3/7/00).**(Repealed)****Author:** Alva M. Lambert**Statutory Authority:** Code of Ala. 1975, §22-21-275(14).**History: Repealed:** Filed February 1, 2000; effective March 7, 2000.**410-1-8-.24 Entry Of Final Order By The Fair Hearing Officer.**

Within thirty (30) days after completion of the transcript, unless extended by agreement of all parties of record, the Fair Hearing Officer shall enter a final order respecting the issuance of a Certificate of Need, which final order shall contain findings of fact and conclusions of law regarding the application. The final order of the Fair Hearing Officer shall be effective upon its filing with SHPDA. Any aggrieved party of record to a Certificate of Need application filed after May 8, 2012 may appeal the final order to the Alabama Court of Civil Appeals within twenty-one (21) days after the decision of the Agency becomes final. Within thirty (30) days after a notice of appeal is filed, SHPDA shall transmit the administrative record to the clerk, with the appealing party bearing the costs associated with the preparation and transmission of the record and transcript of the hearing and of giving notice to the parties of the transmittal

Author: Alva M. Lambert**Statutory Authority:** Code of Ala. 1975, §§22-21-275(6)(14), 441-22-1 thru 441-22-20.**History: Amended:** Filed February 1, 2000; effective March 7, 2000. **Amended:** Filed September 28, 2012; effective November 2, 2012.**410-1-8-.25 Effect Of Final Order Entered By Fair Hearing Officer.**

The decision of the Administrative Law Judge in the fair sharing proceeding shall be considered the final decision of SHPDA.

Author: Alva M. Lambert**Statutory Authority:** Code of Ala. 1975, §22-21-275(14), as amended by Act 98-341.**History: Repealed and New Rule:** Filed February 1, 2000; effective March 7, 2000.

410-1-8-.26 Further Action By State Agency (Repealed 3/7/00).**(Repealed)****Author:** Alva M. Lambert**Statutory Authority:** Code of Ala. 1975, §22-21-275(14).**History: Repealed:** Filed February 1, 2000; effective March 7, 2000.**410-1-8-.27 Issuance Of Certificate Of Need Subsequent To Fair Hearing.**

The Certificate of Need shall be issued as soon as practicable after the date of filing by the Fair Hearing Officer of the final order directing the issuance of the certificate.

Author: Alva M. Lambert**Statutory Authority:** Code of Ala. 1975, §22-21-275(14), as amended by Act 98-341.**History: Amended:** Filed February 1, 2000; effective March 7, 2000.**410-1-8-.28 Fees.**

A fee not to exceed the direct cost of the fair hearing will be imposed upon the parties to the fair hearing. The parties and the state agency will each be responsible for their own legal fees.

Author:**Statutory Authority:** Code of Ala. 1975, §22-21-275(14).**History:****410-1-8-.29 Compensation Of Fair Hearing Officer.**

The fair hearing officer will be compensated at an hourly rate established by the state agency.

Author:**Statutory Authority:** Code of Ala. 1975, §22-21-275(14).**History:****410-1-8-.30 Fair Hearing Security For Costs.**

Security for costs shall be filed with the Notice of Fair Hearing. If the requestor 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 Fair Hearing Officer, at the conclusion of the Fair Hearing process. Failure to file security for costs with the request for Fair Hearing shall result in the Fair Hearing request being deemed incomplete.

Author: State Health Planning Agency

Statutory Authority: Code of Ala. 1975, §22-21-275(14).

History: Filed April 22, 1992.