

## **SYNOPSIS**

### **Rule 111-2-2 Health Planning Certificate of Need**

#### ***Rule 111-2-2-.06 Application for Certificate of Need***

### **STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE**

The purpose of this proposed amendment in totality is to modify existing regulations in light of changes in the Certificate of Need statute, O.C.G.A. § 31-6 et seq., due to the passage of Senate Bill (SB) 433 in the 2008 Georgia General Assembly. SB 433 necessitates extensive revision to the existing administrative rules for certificate of need. The revisions are outlined in detail below.

### **DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES**

Various grammatical and punctuation errors and omissions are corrected throughout the existing version of the regulations.

#### **Rule 111-2-2-.06. Application for Certificate of Need.**

This section is renumbered to reflect additional provisions.

Rule 111-2-2-.06(1), Letter of Intent, is added to reflect the requirement for a letter of intent to be submitted at least thirty days prior to the submission of a certificate of need application, and to provide for the content of the letter.

Authority: O.C.G.A. § 31-6-40(b).

Rule 111-2-2-.06(6) is amended to delete the word, "challenges" and to insert the word, "opposition" in the next to last line to coincide with the new provisions for opposition to determinations.

Authority: O.C.G.A. § 31-6-47.1

### 111-2-2-.06 Application for Certificate of Need.

(1) Letter of Intent. Beginning July 15, 2008, all persons who wish to submit an application for a certificate of need for a new institutional health service or health care facility, as provided in O.C.G.A. § 31-6-40(a)(b), must submit a letter of intent notifying the Department of their intent to do so at least 30 days prior to submission of the certificate of need application. The notice must be in writing and must contain the following information:

- \_\_\_\_\_ (a) Name and address of the legal applicant;
- \_\_\_\_\_ (b) Person to whom inquiries must be addressed;
- \_\_\_\_\_ (c) Name, address of facility, if different from legal applicant;
- \_\_\_\_\_ (d) Proposed project site location with specificity;
- \_\_\_\_\_ (e) Brief summary description of proposal;
- \_\_\_\_\_ (f) Proposed service area; and
- \_\_\_\_\_ (g) Cost of the project.

The Department will not accept any notices of intent submitted by either telephone, facsimile, or electronic mail, pursuant to Rule 111-2-2-.06(6). Beginning with the date referenced above, no certificate of need application will be accepted without a previously filed letter of intent. The certificate of need application must be submitted no later than 30 calendar days after the letter of intent has been received by the Department. In the event that the 30<sup>th</sup> calendar day falls either on a weekend or a legal holiday, the 30<sup>th</sup> calendar day shall become automatically the next business day that is neither a weekend nor a legal holiday. If a certificate of need application is not submitted as provided herein, it will not be accepted and an applicant filing an application beyond the time period specified will be required to submit a new notice of intent in the manner specified above.

**(4)(2) Contents of Application.** Applications shall contain all relevant data, information and assurances required by the Department. The Department will provide application forms on request, and all applications must be on the form supplied by the Department or a copy thereof, and comply with the content requirements specified thereon. Applications shall provide information including, but not necessarily limited to, the following categories as they relate to the proposed projects:

- (a) identification of the applicant;
- (b) ownership;
- (c) site identification;
- (d) compliance with State and local codes and ordinances, including flood hazards;
- (e) a detailed and complete description of proposed project;

(f) project justification, including specific documentation of the need (utilizing the Department's data and methodology) that the population to be served has for the project;

(g) staffing and operation;

(h) financial information, which shall include positive evidence of ability to obtain financing, the source of financing, and maximum interest rates, which will be paid to the lender. Applications submitted for or on behalf of a health care institution shall include one copy of the latest audit report (or internal financial statement for investor-owned facilities). Also submitted shall be all pro forma financial data requested in the application;

(i) cost containment and quality of care considerations;

(j) project design and construction schedule including as applicable

1. Schematic Design Documents meeting the standards defined by the American Institute of Architects in section 2.4.2 of the Standard AIA Contract Language. These Schematic Design Documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall also include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing;

2. A written summary of the Architect's evaluation and planning findings and recommendations meeting the standards defined by the American Institute of Architects in section 2.3 of the Standard AIA Contract Language. This summary shall include, as applicable, an evaluation of the Applicant's program and schedule requirements and budget for the Cost of the Work, each in terms of the other, a preliminary evaluation of the Applicant's site for the Project based on the information provided by the Applicant of site conditions, and the Applicant's program, schedule and budget for the Cost of the Work, and an evaluation of the applicant's proposed method of contracting for construction services; and

3. A detailed description of the proposed timeline and phases for project completion.

(k) a cost estimate prepared by a licensed architect or engineer within the 60 days immediately preceding submission of the application;

(l) documentation from the Office of Regulatory Services of the Department of Human Resources of no uncorrected licensure operational standards in the applicant's facility, if applicable.

### **(2 3) Submittal of Applications.**

(a) Applicants should submit to the Department one (1) signed copy of the application plus the original. The original, signed by the applicant, must accompany the copy. Failure to provide a copy or an original signature of the legal representative of the applicant will result in non-acceptance and return of the application.

(b) Applications received after 3:00 p.m. on any business day will be considered to have been received on the next business day. Receipt of the application will be acknowledged in writing by the Department.

**(3 4) Filing Fee Required.**

(a) Each application for a Certificate of Need review shall be accompanied by a fee, except for the provisions covered in 111-2-2-.06(34)(d) and 111-2-2-.06(34)(e), the amount of which shall be determined by the following schedule:

1. for applications with a total project cost from zero to \$1,000,000, the fee shall be \$1,000; and

2. for applications with a total project cost greater than \$1,000,000, the fee shall be one-tenth of one percent (.001) of the total cost but not to exceed \$50,000; and

3. for the review of cost overruns the fee shall be computed as shown above for the amount of the overrun only.

(b) For any project, which is to be accomplished by lease, gift or other means of acquisition, the dollar value for purposes of computing the fee will be based on the value of the major medical equipment or facilities to be acquired. The value of the major medical equipment is the expenditure, which would be required for purchase. The value of the facilities to be acquired is based on a current (within six months of the submittal of the Certificate of Need application) appraisal of the property.

(c) Payment of the fee shall be by certified check or money order made payable to the State of Georgia and must be received by the Department before an application will be accepted for review. Failure to provide payment of the appropriate fee will result in non-acceptance and return of the application. Fee payments are collected as general State revenue.

(d) State-owned institutions shall be exempt from payment of a filing fee.

(e) The Department may waive payment of a filing fee, or any portion thereof, for certain hospital authority facilities and for certain public non-profit providers when the Department determines that financial circumstances exist, which would justify such action. A party requesting a waiver must make such request at the time the application is submitted to the Department.

(f) Subject to the rules in (a) through (e) above, applicants shall submit an additional filing fee for additional information or amendments provided during the review period that increase the cost of the project. For such supplementary information which increases the cost of the project, the amount that shall be submitted is an amount equal to the difference between the calculation of the filing fee based on the total amended project costs as outlined in (a) and the filing fee paid at the time of application, except that in no case shall the amount submitted be less than \$500. Should such supplementary information decrease the costs associated with a project, the filing fee shall not be reduced or refunded. The Department shall not issue decisions on applications for which such supplementary information has been provided where an applicant has not submitted the additional filing fee, as applicable.

#### **(4 5) Review for Completeness.**

(a) Upon receipt of an application, the Department shall determine whether the application is complete. No application shall be reviewed until it has been determined by the Department to be complete in accordance with information requirements specified in this Section.

(b) An application will be determined to be incomplete if any of the following were not either provided with the application or, as may be specified in this Section, submitted previously to the Department:

1. all the required data, information and assurances provided on the correct forms, including but not limited to the following:

(i) detailed description of the proposed project as required by 111-2-2-.06(42)(e);

(ii) financial program to meet the requirements of 111-2-2-.06(42)(h);

(iii) documentation of necessary financing for the project, such as a letter of credit, etc.;

(iv) financial pro forma to meet the requirements of 111-2-2-.06(42)(h); and

(v) most recent audited financial statements, or personal financial statements if audited statements are not available (tax returns would meet this requirement for unaudited entities and individuals);

(vi) for projects invoking service-specific Rules, as outlined in Rules 111-2-2-.20 et seq., the appropriate service-specific review considerations;

(vii) for projects involving construction, renovation, and/or expansion, schematic plans and cost estimates certified by an architect, engineer, or general contractor, as appropriate and as required by 111-2-2-.06(42)(k);

(viii) for projects involving the acquisition of equipment, purchase orders or invoices, as appropriate;

2. appropriate number of copies of the application sent to the Department, pursuant to and in compliance with 111-2-2-.06(56);

3. signatures on all copies, with an original signature of the applicant on the application determined by the applicant as the original;

4. payment of the filing fee, as described in 111-2-2-.06(34);

5. the most recent three (3) years of all required surveys, as may be previously submitted to the Department, including the Annual Hospital Questionnaire, Annual Nursing Home Questionnaire, survey of home health agencies, or other data-gathering instruments required by the Department for any health care facilities and services owned or operated by the applicant, to include data requested pursuant to O.C.G.A. § 31-6-70. In order for an application to be deemed complete, such surveys and data-gathering instruments shall be complete and accurate, as determined by the Department. Further, an application submitted by a component of an entity which owns or operates other health care facilities will be determined to be incomplete unless all health care facilities

under the same ownership or operation have submitted completed questionnaires with the Department;

6. written verification certifying entitlement to any necessary real estate property or leasehold as described by the applicant in the application. Verification of entitlement shall include, but not be limited to, deeds, contracts, lease arrangements, conditional sales agreements or a comparable arrangement that purports to be a transfer of ownership in whole or in part. If an unsigned lease arrangement is submitted, the Applicant shall also submit an original letter documenting both the lessor's and lessee's commitment to participate in the lease once the CON is approved;

7. authorization to conduct business, including but not limited to, as appropriate:

(i) if the applicant is an entity requiring authorization by the Secretary of State to become a legal entity entitled to do business in the State of Georgia, such documentation;

(ii) by-laws, articles of incorporation, or articles of organization; and

(iii) if the applicant is an existing and licensed or permitted entity, a copy of such license or permit.

8. The applicant shall file one copy of the application with the office of the County Commissioner of the county in which the project exists or is proposed. The applicant shall submit with the application an exact copy of the letter addressed and submitted to the County Commission that accompanied the submittal of the application to the County Commission;

9. all post-approval reporting requirements as mandated at 111-2-2-.04(2) for all previously approved projects, as may be previously submitted to the Department. Further, an application submitted by a component of an entity which owns or operates other health care facilities will be determined to be incomplete unless all health care facilities under the same ownership or operation have met the said post-approval reporting requirements for all previously approved projects with the Department;

10. the written vendor lobbyist certification required by 111-1-2-.03(2);

11. In order to be determined complete, an applicant must be current with all indigent and charity care commitments, if any, made to the Department as a condition or requirement for past approval of a project. Further, an application submitted by a component of an entity which owns or operates other health care facilities will be determined to be incomplete unless all health care facilities under the same ownership or operation are current with any and all indigent and charity care commitments made to the Department; and

12. In order to be determined complete, an applicant must be current with any and all fines, if any, levied by the Department for violation of these Rules.

(c) The Department shall notify the applicant within ten business days following receipt of the application that the application is complete as submitted or that additional information is required to complete the application. If additional information is required,

the notice shall include a statement of the specific additional information required. Notice shall be effective the date it is postmarked by the Department.

(d) The Department shall notify the applicant no later than ten business days following receipt of the additional information whether such information is sufficient to complete the application. If it is not sufficient, the notice shall include a specific statement of the information which needs clarification or which does not adequately respond to the original request.

(e) The Department will deem an application to be withdrawn if the applicant fails to provide the Department with information requested on a notice of incompleteness within two calendar months after the date of the original letter notifying the applicant of the information necessary for completeness.

(f) In addition to the provisions of a paragraph (b) above, additional requirements shall be in effect where the application involves the acquisition of a hospital owned or operated by or on behalf of a political subdivision, any combination of such subdivisions, or by or on behalf of a hospital authority. These requirements shall be as follows:

1. in the event that a health care facility, which has been assisted at any time during the past twenty years through a grant of State funds, is proposed to be acquired by a non-grant-eligible entity, the Department, in accordance with O.C.G.A. §§ 31-7-53(c) and 31-7-57(d), is required to recover the funds granted by the State. A commitment regarding return to the State of such monies consistent with the Code should be forwarded to the Department no later than the end of the review period.

2. there shall be submitted a written agreement between the parties containing the following commitments:

(i) that the purchaser or lessee will annually allocate funds for the purpose of providing indigent/charity care. The funds allocated will be no less than three percent of the gross revenues of the hospital after provisions for bad debt and Medicaid and Medicare contractual adjustments have been deducted. The funds allocated will be based on the previous year's financial records, except the first year of operation following an acquisition the three percent will be based on the gross revenues of the hospital after provisions for bad debt and Medicaid and Medicare adjustments have been deducted. For purposes of this rule; gross revenues will include all income derived from all sources;

(ii) that the purchaser will agree that no resident of the county in which the hospital resides will be denied emergency care (including emergency obstetrical care) due to inability to pay;

(iii) that the purchaser will participate in the Medicaid and Medicare programs and the State Health Benefit Plan, if authorized by the Department.

**(5 6) Submission of Information and Documents.** For the purposes of meeting any deadlines imposed by either these Rules or O.C.G.A. § 31-6, the Department will not accept any information or documents that are submitted either via telephone or facsimile. In order to meet any of the above referenced deadlines, it will be necessary to submit the information or documents either via the postal service or hand delivery, as the term hand delivery is commonly known and used. For the purposes of this rule, the use

of a common carrier or a courier service shall meet the requirement of hand delivery. At all times, the interested party shall submit either the original document or a certified copy thereof. Except as otherwise provided, information and documents received after 5:00 p.m. on any business day will be considered to have been received on the next business day. Except as otherwise provided by these Rules, all documents required and described in these Rules, except for the periodic reports described in 111-2-2-.04, including, but not limited to, applications, opposition letters, supplementary information, requests for determinations, ~~challenges~~ opposition to determinations, and requests for letters of non-reviewability shall be submitted with a signed original and one (1) copy.

Authority O.C.G.A. §§ 31-5A et seq. and 31-6 et seq.