

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 410 Department or Agency State Health Planning and Development Agency

Rule No. 410-2-5-04

Rule Title: Plan Revision Procedures

New  X Amend  Repeal  Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

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Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Service Agency.

Signature of certifying officer Alva M. Lambert

Date October 10, 2017

(DATE FILED)  
(STAMP)

## NOTICE OF INTENDED ACTION

AGENCY NAME: STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
(Statewide Health Coordinating Council)

RULE NO. & TITLE: 410-2-5-.04 Plan Revision Procedures

### INTENDED ACTION:

The State Health Planning and Development Agency (Statewide Health Coordinating Council) proposes to amend the above styled section of the *Alabama State Health Plan*.

### SUBSTANCE OF PROPOSED ACTION:

This proposed amendment requires SHPDA to provide notice of a proposed plan adjustment or plan amendment to all certificated health care facilities known to provide similar services in the county where the adjustment is requested; deletes the requirement for proof of publication of a proposed adjustment; and provides that all written documentation to be considered by the SHCC shall be filed not less than fourteen (14) days prior to the public hearing therefor.

### 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 SHCC shall be made in writing on or before December 6, 2017, and shall be made to:

Karen McGuire, Executive Secretary  
State Health Planning and Development Agency  
P. O. Box 303025  
Montgomery, Alabama 36130-3025

On January 11, 2018, at 10:30 a.m., the SHCC shall conduct a public hearing in Room 200, 11 South Union Street, Montgomery, Alabama, at which time it shall consider the Proposed Rule, along with all written and oral submissions with respect to the Proposed Rule. Only those interested persons who have made timely written requests will be afforded the opportunity to speak.

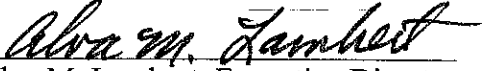
Copies of the proposed changes are available for review at 100 North Union Street, RSA Union Building, Suite 870, Montgomery, Alabama. Phone (334) 242-4103 or visit the office Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays.

### FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

December 6, 2017

CONTACT PERSON AT AGENCY:

Karen McGuire, Executive Secretary  
100 North Union Street  
RSA Union, STE 870  
Montgomery, AL 36104  
(334) 242-4103

  
Alva M. Lambert, Executive Director

#### 410-2-5-.04 Plan Revision Procedures

(1) Introduction. The Statewide Health Coordinating Council (SHCC) is responsible for the development of the State Health Plan (SHP) with final approval resting with the Governor. The SHCC desires (a) a process that will maintain a viable and current SHP; (b) a coordinated system of revising the SHP; and (c) an application form to be used by individuals, groups, or other entities that request a specific revision to the SHP commonly called an adjustment.

(2) There are three types of plan revisions:

(a) Plan Adjustment – In addition to such other criteria that may be set out in the SHP, a requested modification or exception, to the SHP, of limited duration, to permit additional facilities, beds, services, or equipment to address circumstances and meet the identified needs of a specific county, or part thereof, or another specific planning region that is less than statewide and identified in the State Health Plan. A Plan Adjustment is not of general applicability and is thus not subject to the AAPA's rulemaking requirements. Unless otherwise provided by the SHCC, a Plan Adjustment shall be valid for only one (1) year from the date the Plan Adjustment becomes effective, subject to the exceptions provided in this paragraph 2(a). If an Application is not filed with SHPDA seeking a Certificate of Need for all or part of the additional facilities, beds, services or equipment identified in the Plan Adjustment within one (1) year of the Plan Adjustment, the Plan Adjustment shall expire and be null and void. If an Application(s) seeking a Certificate of Need for all or part of the additional facilities, beds, services or equipment identified in the Plan Adjustment is filed prior to the expiration of the one (1) year period, the Plan Adjustment shall remain effective for purposes of such pending Certificate of Need Application(s). Such one (1) year period shall be further extended for the duration of any deadline provided by SHPDA for the filing of applications as part of a batching schedule established in response to a letter of intent filed within nine (9) months of the effective date of the adjustment. Upon the expiration of such deadlines, no Certificate of Need Applications shall be accepted by SHPDA which are based, in whole or in part, upon the expired Plan Adjustment.

(b) Statistical Update – An update of a specific section of the SHP to reflect more current population, utilization, or other statistical data.

(c) Plan Amendment – The alteration or adoption of rules, policies, methodologies, or any other plan revision that does not meet the plan adjustment or statistical update definition. An amendment is of "general applicability" and subject to the AAPA's rulemaking requirements.

(3) Application Procedures.

(a) Application Procedure for Plan Adjustment – Any person may propose an adjustment to the SHP, which will be considered in accordance with the provisions of SHPDA Rule 410-2-5-.04(4). The proposal will state with specificity the proposed language of the adjustment on such forms as may be prescribed by SHPDA from time to time and shall meet the electronic filing requirements of SHPDA Rule 410-1-3-.09 (Electronic Filing).

b) Procedure for Statistical Update – SHPDA staff shall make statistical updates to the SHP as needed. The SHCC shall be informed at its next regularly scheduled meeting of such updates.

(c) Application Procedure for Plan Amendment – Any person may propose an amendment to the SHP by submitting a detailed description of the proposal to the SHPDA, on such forms as may be prescribed by SHPDA from time to time, in accordance with the electronic filing requirements of SHPDA Rule 410-1-3-.09 (Electronic Filing). Such amendment shall be considered in accordance with the provisions of Rule 410-2-5-.04(4). The proposal will state with specificity the proposed language of the amendment. If it is to amend a methodology, the exact formula will be included, as well as the results of the application of the formula. The SHCC may also consider Plan Amendments on its own motion.

(4) Review Cycle

(a) Within fifteen (15) days from the date of receipt of an application for an amendment or adjustment, the SHPDA staff shall determine if the applicant has furnished all required information for SHCC review and may thus be accepted as complete. The SHCC Chairman and the applicant will be notified when the application is accepted as complete.

(b) Within forty-five (45) days after the application is deemed complete, the application will be added to the SHCC calendar for review. SHPDA shall provide notice of the application for an amendment or adjustment when the application is deemed complete to: (1) all certificated health care facilities known to provide similar services holding a Certificate of Need in the county where the adjustment is requested; (2) all certificated health care facilities known to provide similar services in adjacent counties; and (3) such health care associations, state agencies and other entities that have requested to be placed on SHPDA's general notice list for such county. Once an application is deemed complete, persons other than the applicant will have thirty (30) days from the date of completion to electronically file statements in opposition to or in support of the application, as well as any other documentation they wish to be considered by the SHCC. All such documentation shall be filed with SHPDA in accordance with the provisions of Rule 410-1-3-.09 (Electronic Filing), together with a certification that it has been served on the applicant and/or any other persons that have filed notices of support or opposition to the application. No documentation may be submitted beyond the deadlines in this subsection and subsection (3) unless authorized by written order issued by the Chairperson. All persons shall adhere to SHPDA's rules governing electronic filing.

(c) — ~~A person seeking a Plan Adjustment shall also provide proof of publication of a notice of the proposed adjustment and the SHCC hearing or meeting scheduled to consider the adjustment~~

~~in a newspaper having general circulation in the county in which the proposed adjustment is requested, as well as any other county in the service area for which the adjustment is proposed. Such notice shall be published between fifteen (15) and twenty (20) days prior to the hearing date and shall be in such form as may be prescribed by SHPDA's Executive Director.~~

(cd) Procedure for Consideration of Plan Adjustments. Proposed Plan Adjustments deemed complete will be placed on the SHCC agenda (individually or collectively) for a public hearing without further action by the SHCC. Unless otherwise provided herein, all written documentation to be considered by the SHCC at the public hearing shall be filed with the State Agency and served on the applicant and any intervenors and opponents of record not less than fourteen (14) days prior to the public hearing. Interested parties may address the proposed Plan Adjustments at the SHCC meeting, subject to such time limits and notice requirements as may be imposed by the SHCC Chairman. If the SHCC approves the Plan Adjustment in whole or in part, the adjustment, along with the SHCC's favorable recommendation, will be sent to the Governor for his consideration and approval/disapproval. A Plan Adjustment shall be deemed disapproved by the Governor if not acted upon within fifteen (15) days.

(de) Procedure for Consideration of Plan Amendments. A proposed Plan Amendment deemed complete will be placed on the SHCC agenda (individually or along with other proposed amendments) for an initial determination if the proposed amendment should be published in accordance with the AAPA and set for public hearing. At the Chairman's discretion, interested parties may be allowed to address the SHCC regarding the proposed amendments prior to such initial consideration. If the SHCC accepts the amendment for publication and hearing in accordance with the AAPA, SHPDA shall cause such publication and notice to be issued in accordance with the AAPA and the provisions of Rule 410-1-3-.10. Interested parties may address the proposed Plan Amendment at the SHCC meeting, subject to such time limits and notice requirements as may be imposed by the SHCC Chairman.

(ef) If approved by the SHCC, a Plan Amendment, along with the SHCC's favorable recommendation, will be sent to the Governor for his approval or disapproval. A Plan Amendment shall be deemed disapproved by the Governor if not acted upon within fifteen (15) days. Upon approval by the Governor, a Plan Amendment shall be filed with the Legislative Reference Service for further review in accordance with the AAPA. No party shall have any rights of administrative review, reconsideration or appeal of the approval or denial of a Plan Amendment except as may be specifically provided in the AAPA.

(fg) MEDIATION. At the discretion of the Chairman of the SHCC, non-binding mediation may be used to resolve differences between interested parties in regard to any pending matter before the SHCC. Said mediation will be conducted by the Chairman of the SHCC or his or her designee. Any modification or compromise relating to a pending proposal resulting from the mediation shall be sent to all interested parties as defined in paragraph (4)(b). No statement, representation or comment by any party to the Mediation shall be used, cited to, referenced or otherwise introduced at the SHCC's hearing on the proposal in question. Any proposed compromise or other agreement between the parties shall not be binding upon the SHCC.

(5) Filing Fees. Any person proposing a Plan Adjustment shall be required to pay an administrative fee equal to the minimum fee set by SHPDA for the filing of a Certificate of Need Application. Such fees shall be non-refundable and shall be used to defray costs associated with the processing and consideration of Plan Adjustment requests. All required filing fees must be submitted to the State Agency via overnight mail or other delivery method and marked in such a way as to clearly identify the fee with the electronic submission; or the fee may be submitted electronically via the payment portal available through the State Agency's website.

Author: Statewide Health Coordinating Council (SHCC).

Statutory Authority: §§ 22-21-260(4)-(13), (15), Code of Alabama, 1975.

History: Effective November 22, 2004. Amended: Filed: February 1, 2013; effective: March 8, 2013. Amended: Filed: December 22, 2016; effective: February 7, 2017. Amended: Filed: \_\_\_\_\_; effective : \_\_\_\_\_.