

# **CON Progress Reports/ Six-Month Extensions**

Title 15 - MISSISSIPPI STATE DEPARTMENT OF HEALTH

Part IX – Office of Health Policy and Planning  
Division of Health Planning and Resource Development

# CON

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Subpart 91 - Certificate of Need Review Manual

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## CHAPTER 5 - FINDINGS AND ORDERS OF THE DEPARTMENT

### 100 Written Findings

100.01 The basis for CON decisions will be provided in writing. The Department may approve or disapprove a proposal for CON as originally presented in final form, or it may approve a CON by modification, by reduction only, of such proposal provided the proponent agrees in writing to such modification.

### 101 Decision and Final Order

101.01 The State Health Officer will review all applications to determine whether the proposed project substantially complies with plans, standards, and criteria prescribed for such projects by the governing legislation, by the State Health Plan, and the adopted rules and regulations of the Department. When a hearing during the course of review has been held, the completed record shall be certified to the State Health Officer, who shall consider only the record in making his decision; he shall not consider any evidence or material which is not included therein. The State Health Officer shall make his written findings and issue his orders after reviewing said records.

When a hearing during the course of review has not been held, the staff responsible for the preparation of the staff analysis and recommendation and the proponent(s) of the proposal may be present at the time the decision is announced. They shall be available to answer questions by the State Health Officer. The proponent may make a brief oral presentation, not to exceed 20 minutes. The State Health Officer may, at his discretion, request additional information and delay a final decision with respect to the proposal until said information is received and analyzed.

If the staff recommendation is to approve the project and the State Health Officer does not concur, the applicant shall have one opportunity only to submit additional information for staff analysis, and the State Health Officer shall delay his decision on the project until evaluation of the additional information is completed. Any additional information submitted must be received by the Department within 15 days of the date of the monthly CON decision meeting in which the initial project was to have been considered. The procedures to be followed at the subsequent review shall be the same as when the State Health Officer reviews a proposal for which a hearing during the course of review has not been held.

Whether or not a hearing during the course of review was held, applicants will be informed of the date of the review of their proposal by the State Health Officer at least 10 days in advance of such review and will be provided a copy of the proposed agenda.

If the State Health Officer finds that the project does conform to the applicable requirements, a decision to approve shall be rendered. If the State Health Officer finds that the project fails to satisfy the plans, standards, and criteria, a decision to disapprove will be rendered. The State Health Officer's decision to approve or deny the Certificate of Need shall be the final order of the Department and shall be announced in the monthly CON meeting and followed by written notice to the applicant. Any party aggrieved by any final order by the Department shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, as provided by Section 41-7-201 Mississippi Code of 1972 Annotated, as amended (Supplement 1993), provided however, that any appeal of an Order disapproving an application for CON may be made to the Chancery Court of the county where the proposed construction expansion or alteration was to have been located or the new service or purpose of the capital expenditure was to have been utilized.

## 102 **Designation of Record on Appeal**

- 102.01 In order to allow the Department to adequately prepare the record for appeal, any party filing an appeal, cross-appeal, or other responsive pleading to a notice of appeal shall specifically designate the record for purposes of appeal, in fashion similar to that required by the Mississippi Rules of Appellate Procedure. Such designation must specifically set out any documents received or generated by the Department subsequent to the publication of the staff analysis that the party desires to be included in the appellate record.

## 103 **Administrative Decisions**

- 103.01 The State Health Officer may approve emergency CON's and six-month extensions without providing notice to affected persons or the public or providing an opportunity for a hearing during the course of review. These applications are described in Subsequent Reviews, in Chapter 6 of this manual.

## 104 **Progress Reports**

The CON holder is required to submit a written progress report every six months, or as requested by the department, and a final report upon completion of a project, (see Progress Report / Six-Month Extension Request Format, Appendix G). For purposes of this chapter, completion shall mean when the approved proposed project is sufficiently complete so that it becomes operational for the purpose for which the certificate of need was issued. For projects that are incomplete, the CON holder is required to submit a six-month extension request 30 days prior to the expiration of the CON or any extended period (see Section regarding Six-Month Extension). The CON Holder shall certify the report and

submit documentation of the CON holder's good faith effort to implement the CON by showing substantial progress.

**105 Documentation of Commencement of Construction, Good Faith Effort to Obligate Approved Expenditure, or Other Preparation Substantially Undertaken During the Valid CON Period**

105.01 The following **documentation shall be required** to determine whether commencement of construction or other preparation has been substantially undertaken during a valid CON period and whether the applicant is making a good faith effort to obligate approved expenditures.

1. **Commencement of Construction:** [CON Holder must document all items in 1.a. through 1.j. below]:
  - a. Letter from the director of Health Facilities Licensure and Certification Division of the Department of Health stating that final plans have been submitted and are approved, that the plans were prepared by an architect or architectural firm licensed to do business within the State of Mississippi, and that the site is approved.
  - b. A copy of a legally binding and obligating written contract executed by and between the applicant and the contractor to construct and to complete the project within a reasonable designated time schedule and to commence such construction within a reasonable designated time period and which states the specific capital expenditure amount which conforms to that amount previously approved.
  - c. A copy of the contractor's Mississippi license.
  - d. A copy of the building permit issued by the municipality or other applicable governing authority, or if a building permit is not required, a letter from the municipality, county, or other governing authority stating such.
  - e. A letter from the municipality, county, or other governing authority that the proposed project is in compliance with zoning regulations, if any, and if no such regulations exist, a letter to that effect.
  - f. A statement in writing that the proposed construction project, or any preparation thereof, is not in violation of the Coastal Wetlands Protection Act, Section 49-27-1 et seq. of the Mississippi Code of 1972 Annotated, as

amended, or in violation of any federal law or regulation pertaining in any manner to construction in a federally designated "wetlands" area.

- g. Documentary proof that a progress payment of at least one percent of the total construction cost as set out in the contract has been paid by the applicant to the contractor (This payment exclusive of any site preparation cost).
- h. A written statement signed by the applicant and the contractor stating that all site preparation work has been completed.
- i. A written statement signed by the applicant and the contractor that actual bona fide construction of the proposed project has commenced and the details of such preliminary construction.
- j. A copy of the Proceed to Construction Written Order previously given to the contractor.

2. **Other Preparation Substantially Undertaken During the Valid CON Period** [Progress may be documented by providing evidence including but not limited to, the following.]

- A. Evidence Required To Document Progress - Construction Projects:
  - a. Acquisition of property (title, evidence of payment, etc.).
  - b. Completion of topographic or boundary surveys
  - c. Site preparation (contractor selection, contract, evidence of payment, etc.)
  - d. Completion of site development plan
  - e. Architectural plans/drawings (architect selection, contract, evidence of payment, statement of partial completion of plans/drawings, letter evidencing submission of plans to Health Facilities Licensure and Certification, Division of Fire Safety, letter of findings, comments or remediation; resolutions submitted; approval of commencement of construction.)

- B. Evidence Required To Document Progress – Establishment of Service
  - a. Hiring or entering contracts with necessary staff/medical professionals to provide service
  - b. Submission of a fire/life safety code inspection request.
  - c. Submission of an application for facility inspection/ licensure.
  - d. Acquisition of Equipment (Title, Lease, etc)

### 3. Good Faith Effort to Obligate Approved Expenditure

[Documentation shall include evidence of the following items in addition to items that may be supplied under subsection 1 or 2.]

- a. Document capital expenditure made to date.
- b. Show evidence that permanent financing has been obtained, if approved capital expenditure has not been obligated.
- c. If financing has not been obtained, show fund commitment from lending institution or agency.
- d. Provide evidence of contractual obligation to expend funds.

## 106 Withdrawal of a Certificate of Need

106.01 Section 41-7-195, Mississippi Code of 1972 Annotated, as amended, states in part, "If commencement of construction or other preparation is not substantially undertaken during a valid Certificate of Need period or the State Department of Health determines that the applicant is not making a good faith effort to obligate such approved expenditure, the State Department of Health shall have the right to withdraw, revoke, or rescind the Certificate."

In considering the withdrawal, revocation, or rescission of the CON in those cases where an applicant has failed to show good faith effort

through substantial progress, the Department shall take the following actions:

1. The applicant, affected persons, and the general public will be notified by appropriate means that withdrawal of the CON is under consideration by the Department and the reasons therefore;
2. Applicant so advised of contemplated action shall have 30 days from the date of the written notice to respond, and if they so desire, to request a public hearing before the State Health Officer or his designated hearing officer. If no response is received from the applicant during the 30-day period, the Department may conclude that the applicant concurs with the proposed action to withdraw, revoke or rescind the CON;
3. If a public hearing is requested by any affected party, the Department will conduct the hearing within 45 days of receipt of the written request. The State Health Officer will render his written decision within 30 days following conclusion of any hearing on withdrawal of Certificates of Need. Written notice of the date, time, and place of any hearing to be conducted on withdrawal of CON will be provided to affected persons at least five days before the date of the hearing and will be published in The Clarion-Ledger and/or other newspaper of general circulation in the area in which the project was to have been developed, if deemed appropriate by the Department.

Action taken by the Department to revoke, withdraw, or rescind a CON shall be in the form of a final written order. The same appeal rights that apply to initial review of the applications apply in the case of hearings or reviews to withdraw existing CON.

In the withdrawal of a Certificate of Need, the State Department of Health shall follow required procedures for notification of the beginning of the review; written findings and conditions; notification of the status of review; public hearing in the course of review; ex parte contact; judicial review; and annual reports of the State Department of Health.

## CHAPTER 6 - SUBSEQUENT REVIEWS

### 100 **Changes in Scope of Approved Project**

- 100.01 Applicants for a CON should clearly understand that if an approved project is changed substantially in scope - in construction, services, or capital expenditure the existing CON is void, and a new CON application is required before the proponent can lawfully proceed further.

### 101 **Re-Review of Prior Approved Projects**

- 101.01 Extenuating circumstances may prevent an applicant from proceeding with the proposed project within the valid period of the approved CON.

The Department has adopted a format for "Prior Approved Projects" that is to be used by proponents of a project when the increase in capital expenditure does not exceed the rate of inflation and no change in the intent or scope of the project has occurred.

This application is to be submitted and reviewed under procedures and criteria set forth in this manual for CON review in compliance with state regulations. To be valid, requests for re-review must be received within 60 days following the expiration of a valid CON. Requests for re-review can be entered only once for the same project.

### 102 **Six-Month Extension**

- 102.01 Certificates of Need are valid for a period not to exceed one year and may be extended by the Department for an additional period not to exceed six months. In order to continue authority for a CON under a valid CON period following the initial twelve (12) month issuance period, the CON holder is required to document substantial progress toward completion of the CON and be granted a six-month extension.

If the CON project is incomplete, the CON holder is required to file a request for a six-month extension (and submit appropriate documentation) at least 30 days prior to the expiration of the original or any extended period, (see Appendix G).

Six-month extensions shall be based upon and supported by the CON holder's submission of documentation that shows a good faith effort to implement the CON through substantial progress. Substantial progress will be determined based upon review of the documentation submitted and whether a change in project status has occurred since the previous progress reporting period.

**102.02 EXPIRATION OF A CON:** The valid period for a CON is that period stated on the CON or any subsequent extension approved by the State Health Officer. A CON holder is only authorized to proceed on the CON project including making expenditures during the valid period of a CON or any extension of the valid period. Once a CON is no longer in a valid period or any extension thereof, the CON is expired and void and the CON holder no longer has any authority under the CON and must refrain from taking any action under the expired CON. In addition, if a CON holder fails to request Department approval for an extension prior to the CON's expiration date, the CON shall be automatically void by operation of law, and shall not require any action on the part of the Department to withdraw, revoke or rescind the certificate. If the Department denies a request for a six-month extension, then the Department shall afford the CON holder 15 days notice within which to request a hearing.

- A. If a public hearing is requested, the Department will conduct the hearing within 45 days of receipt of the written request, utilizing the "Hearing During the Course of Review" procedures to the extent practicable.**
- B. A written request for such hearing must be received by the Department no later than 15 days from the date of notice and must be accompanied by the \$6,000 hearing fee.**
- C. The State Health Officer will render his written decision within 30 days following conclusion of any hearing on denial of the six-month extension request of the Certificate of Need.**

**102.03** If commencement of construction or other preparation is not substantially undertaken during a valid CON period, or if the Department of Health determines the CON holder is not making a good faith effort to obligate the approved expenditure, the Department shall have the right to withdraw, revoke, or rescind the certificate.

### **103 Cost Overrun**

**103.01** Changes in capital expenditure not associated with substantive construction or service changes require application for a cost overrun approval. It is expected that each applicant will accurately and completely represent the cost associated with the project, so that when a CON is issued, a maximum capital expenditure is authorized.

In those cases where the expenditure maximum established by the Certificate of Need is exceeded, the applicant is required to request cost

overrun approval. The following procedures shall apply to cost overrun applications.

1. The request for cost overrun shall be made in accordance with the cost overrun format.
  - a. For construction projects, a revised estimate signed by an architect licensed to practice in Mississippi or a contractor authorized by law to do business in Mississippi shall accompany the request for cost overrun. The request shall include a description of the method used to determine the revised cost estimate and the justification for each line item in the budget for which a cost overrun is requested. In addition to the above, a revised capital expenditure budget outlining all costs associated with the project and a copy of any bid quotations will be submitted.
  - b. In cost overrun requests for purchase of capital equipment, an official price quotation from the vendor or the manufacturer is required.
  - c. Cost overrun requests for construction projects shall be compared with national construction cost data as published in the latest edition of Building Construction Cost Data, Robert S. Means Co., Inc., Kingston, Massachusetts, or other bona fide reference.

Any cost overrun on a construction or a renovation project which locates cost in or above the upper one-fourth range for construction or renovation cost in the U.S. shall require additional documentation to explain the reasons.

- d. Cost overrun requests which result in part or in whole from the requirement of the licensure and certification authority of the State shall be given special consideration. Appropriate documentation from the licensing and/or certification authority shall be submitted with the request.
- e. The amount of the fee to be assessed on cost overruns will be calculated at  $0.50 \times 1\%$  of the additional capital expenditure or \$1,000, whichever is greater.

However, if the original capital expenditure required the maximum fee of **\$25,000** and the cost overrun does not contain a substantial change in construction, renovation, addition of services or purchase of equipment, the minimum fee of \$1,000 will be required.

2. For any proposal in which the estimated or actual cost exceeds the amount originally approved, a review by the State Health Officer shall be required.

#### 104 **Amendments to Certificates of Need**

- 104.01 A CON may be amended to reflect changes in the defined scope and/or physical location if said amendment is necessary to be in compliance with licensing laws of the State or for certification under Title XVIII or Title XIX of the Social Security Act. Any such necessity to be in compliance shall be documented in writing from the administrative head of the Health Facilities Licensure and Certification Division.

A CON may be amended when no substantial change exists in construction, service, or capital expenditure when extenuating circumstances or events, as determined by the State Department of Health, inhibit completion of a Certificate of Need as originally presented in final form.

Requests for amendments to CON must be submitted in writing to the Department only during the valid CON period and in the form and detail as may be required by the Department. The minimum CON assessment fee of \$1,000 is required for applications for CON amendments, provided there is no substantial change in construction or capital expenditure, and normal CON notification is applicable.

**NOTE:** Amendments which result from an additional capital expenditure or a change in scope of project will be reviewed as a separate project and will require an additional fee.

No CON will be amended after the proponent has submitted the final report to the Department indicating completion of the project for which the Certificate of Need was issued, and the State Department of Health has acknowledged in writing the receipt of said final report.



## 2. Documentation of Commencement of Construction or Other Preparation Substantially Undertaken

- A. Describe any changes in the individual business or corporate officers and directors since the original approval.
- B. Describe any agreements in existence, being planned, or that have occurred since original approval. Attach a copy of current partnership agreement or articles of incorporation, if different from that provided in the original application.
- C. Provide documentation for activities accomplished during the pre-construction phase of the project including, but not limited to, the following:
1. Acquisition of land/ property (title, evidence of payment, etc.).
  2. Completion of topographic or boundary surveys
  3. Site preparation (contractor selection, contract, evidence of payment, etc.)
  4. Completion of site development plan(s)
  5. Architectural plans/drawings (architect selection, contract, evidence of payment, statement of partial completion of plans/drawings, letter evidencing submission of plans to Health Facilities Licensure and Certification, Division of Fire Safety, letter of findings, comments or remediation; resolutions submitted; approval of commencement of construction.)
  6. If the approved expenditure has not been obligated, provide evidence that **permanent financing has been obtained**. If financing has not been obtained, provide evidence of fund commitment from lending institution or agency
- D. Provide documentation of construction activities:
1. Date construction contract offered for bid: \_\_\_\_\_
  2. Date contract awarded: \_\_\_\_\_
  3. Date any site preparation is estimated to be complete: \_\_\_\_\_
  4. Percentage of work completed: \_\_\_\_\_
  5. Estimated date of completion: \_\_\_\_\_
- E. If actual construction has not commenced, provide date it will commence and the reasons for the delay.

F. Provide documentation of activities to established services through the acquisition of capital equipment:

1. Equipment purchase/ lease agreement.
2. Date contract signed between buyer and vendor: \_\_\_\_\_
3. Name of mobile equipment vendor: \_\_\_\_\_
4. Registration/serial number of mobile equipment vendor: \_\_\_\_\_
5. Date equipment is to be delivered: \_\_\_\_\_
6. Date equipment to be placed in service: \_\_\_\_\_
7. Have there been any changes in funding sources? [  ] Yes [  ] No  
If yes, explain: \_\_\_\_\_
8. Number of procedures performed by month: \_\_\_\_\_
9. Provide evidence that the Division of Radiological Health has approved the plans for provision of radiation therapy services, if applicable.

G. If the CON is for a project involving no construction, (e.g., establishment of services), please provide documentation including, but not limited to, the following:

1. Hiring or entering contracts with necessary staff/medical professionals to provide service
2. Estimated date that any new staff required will be hired: \_\_\_\_\_
3. Estimated date any new service will be available to public: \_\_\_\_\_
4. Submission of a fire/life safety code inspection request.
5. Submission of an application for facility inspection/licensure of service.

H. Complete and sign the attached Certification page.

**CERTIFICATION**

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

I (we) do solemnly swear or affirm on behalf of \_\_\_\_\_, after diligent research, inquiry and study, that the information and material, contained in this foregoing request for a Six-Month Extension is true, accurate, and correct, to the best of my (our) knowledge and belief. I (we) understand that the Mississippi State Department of Health will rely on this information and material in making its decision as to the granting of an extension of the Certificate of Need, and if it finds that the request contains distorted facts or misrepresentation, the Department may refrain from further review of the request and consider it rejected. It is further understood that if the Certificate of Need is extended based upon the evidence contained in this request, such certificate may be revoked, canceled, or rescinded if the Mississippi State Department of Health determines its findings were based on evidence, not true, factual, accurate, and correct.

I (we) certify that no revision or alteration of the proposal submitted will be made without obtaining prior written consent of the Mississippi State Department of Health and that I (we) will furnish to the Mississippi State Department of Health a progress report and/or a request for a six-month extension on the proposal every six (6) months until the project is completed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Facility

Sworn to and subscribed before me, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires