

Title 15 - Mississippi Department of Health

Part IX – Office of Health Policy and Planning

Subpart 92 – Planning & Resource Development

Chapter 01 Regulations Governing the Issuance of Certificates of Public Advantage to Rural Hospitals that have Entered into a Cooperative Agreement to Engage in Various Common Activities

100 Section A: Statutory Authority

100.01 These regulations are promulgated pursuant to Senate Bill 2850, adopted by the Mississippi State Legislature in its regular 2004 session.

101 Section: B: Definitions

101.01 "Affected person," with respect to any application for a certificate of public advantage means:

1. The applicant(s);
2. Any person residing within the geographic service area of an applicant;
3. Health care purchasers who reimburse health care facilities located in the geographic service area of an applicant;
4. Any other person furnishing goods or services to, or in competition with, an applicant; or
5. Any other person who has notified the department in writing of his/her interest in applications for certificates of public advantage and has a direct economic interest in the decision.

Notwithstanding the foregoing, persons from other states who would otherwise be considered "affected persons" are not included, unless that other state provides for similar involvement of persons from Mississippi in a similar process in that state.

101.02 "Board" means the State Board of Health established under Section 41-3-1.

101.03 "Certificate of public advantage" means the formal written approval, including any conditions or modifications of a cooperative agreement, by the department.

101.04 "Cooperative agreement" means a contract, business, or financial arrangement, or any other activities or practices among two (2) or more rural hospitals for the sharing, allocation, or referral of patients; the sharing or allocation of personnel,

instructional programs, support services and facilities, medical, diagnostic or laboratory facilities, procedures, equipment or other health care services; the acquisition or merger of assets among or by two (2) or more rural hospitals, including agreements to negotiate jointly with respect to price or other competitive terms with suppliers. The term "cooperative agreement" includes any amendments thereto with respect to which a certificate of public advantage has been issued or applied for or with respect to which a certificate of public advantage is not required, unless the context clearly requires otherwise.

- 101.05 "Department" means the State Department of Health created under Section 41-3-15.
- 101.06 "Geographic service area" means a defined area such as a zip code or a county from which a majority of a hospital's inpatients come as identified by the department's patient origin study data.
- 101.07 "Hospital" has the meaning set forth in Section 41-9-3.
- 101.08 "Rural area" means an area with a population density of less than one hundred (100) individuals per square mile; a municipality or a county with a population of less than seven thousand five hundred (7,500) individuals; or an area defined by the most recent United States Census as rural.
- 101.09 "Rural hospital" means a private or community hospital having at least one (1) or no more than seventy-five (75) licensed acute-care beds that is located in a rural area.
- 101.10 "State" means the State of Mississippi.
- 101.11 "State Health Officer" means the State Health Officer elected by the State Board of Health.
- 102 Section C: Eligible Applicants for a Certificate of Public Advantage
- 102.01 A rural hospital and any corporation, partnership, joint venture, or any other entity, all of whose principals are rural hospitals, may negotiate and enter into cooperative agreements with other such persons in the state, subject to receipt of a certificate of public advantage governing the agreement as provided in Senate Bill 2850, Mississippi Legislature, 2004 regular session.
- 103 Section D: Application for a Certificate of Public Advantage
- 103.01 Notwithstanding any law of this state to the contrary, parties to a cooperative agreement may apply to the state health officer for a certificate of public advantage and upon compliance with these regulations and all applicable statutory requirements, may be issued a certificate of public advantage.

103.02 Each application for a certificate of public advantage shall be verified by an officer or authorized representative of the applicant. The application shall be in a form prescribed by the state health officer and shall set forth or be accompanied by the following:

1. An executed written copy of the of the cooperative agreement and a description of the nature and scope of cooperation in agreement and any consideration passing to any party under the agreement, and
2. Evidence that each of the parties to the cooperative agreement is a rural hospital or is a corporation, partnership, joint venture, or other entity all of whose principals are rural hospitals.
3. Evidence that the cooperative agreement addresses one (1) or more of the benefits listed herein below in Section E., 6., (d), (i) - (vi).

104 Section E: Department Review of the Certificate of Public Advantage Application

104.01 Within thirty (30) days of receipt of an application for a certificate of public advantage, the department may request additional information as may be necessary to complete the application.

1. The applicant has thirty (30) days from the date of the request for additional information to submit the additional information.
2. If the applicant fails to submit the requested information within the thirty-day period, or any extension requested in writing and granted by the department, the application is deemed withdrawn.

104.02 The submitted application must be accompanied by an application fee of one thousand dollars (\$1,000.00).

104.03 The department shall give notice of the application to members of the public who reside in the service areas of the applicant hospitals through newspapers of general circulation or public information channels.

104.04 The department may hold a public hearing within thirty (30) days of giving public notice if requested by an affected person. Regulations regarding public hearings are found in Section J. The department shall grant or deny the application within sixty (60) days after receipt of a completed application or from the date of the public hearing, if one is held.

104.05 The decision, along with any conditions of approval, will be in writing and will set forth the basis for the decision. A copy of the decision will be given to the applicant and any affected persons who request notification in writing.

104.06 The department shall issue a certificate of public advantage if it determines that:

1. Each of the parties to the cooperative agreement is a rural hospital or is a corporation, partnership, joint venture, or other entity all of whose principals are rural hospitals;
2. The geographic service areas of the rural hospitals who are parties to the agreement do not overlap significantly as determined by review of the department's most recent four quarters of patient origin study data;
3. The rural hospitals who are parties to the agreement are located in a rural area as defined in Section B., 8. of the regulations;
4. The cooperative agreement is likely to result in one or more of the following benefits:
 - a. Enhancement of the quality of hospital and hospital-related care provided to Mississippi citizens;
 - b. Preservation of hospital facilities and health care in rural areas;
 - c. Gains in the cost-efficiency of services provided by the hospitals involved;
 - d. Encouragement of cost-sharing among the hospitals involved;
 - e. Improvements in the utilization of hospital resources and equipment;
or
 - f. Avoidance or reduction of duplication of hospital resources or expenses, including administrative expenses.
5. When issuing a certificate of public advantage, the department shall specify the terms under which the certificate is being issued, including the authorized participants and any conditions deemed appropriate by the department.

105 Section F: Periodic Review and Monitoring of an Approved Certificate of Public Advantage

105.01 The department shall actively monitor and regulate approved agreements and may request information whenever necessary to ensure compliance with the conditions of approval.

105.02 A report on the activities under the cooperative agreement will be filed by the holder of the certificate of public advantage with the department in order to determine continued compliance with the terms of the certificate. The report shall be due every two (2) years from the date of issuance of the certificate of public advantage. The content of the report shall include an assessment of the

dollar savings and benefits realized under the agreement as well as any changes in the participants in the cooperative agreement during the reporting period.

- 105.03 The department will maintain a file of all active cooperative agreements for which certificates of public advantage have been issued. A party to a cooperative agreement who terminates or withdraws from the agreement shall notify the department within fifteen (15) days of the termination or withdrawal.
- 105.04 An annual monitoring fee of two hundred and fifty dollars (\$250.00) will be assessed as long as the certificate of public advantage remains in effect. The annual monitoring fee shall be due on the anniversary date of the issuance of the certificate of public advantage.

106 Section G: Amendments to a Cooperative Agreement

- 106.01 The parties to a cooperative agreement for which a certificate of public advantage has been issued and remains in effect must notify the department of any proposed amendment to the cooperative agreement, including an amendment to add an additional party, before the amendment takes effect. An amendment to remove or to reflect the withdrawal of a party is excluded from the requirement to notify the department, but the withdrawing party must comply with Section F, 3.
- 106.02 A certificate of public advantage must be issued by the department in the case of an amendment to a cooperative agreement. The department shall consider and rule on the application in accordance with the procedures applicable to cooperative agreements generally.
- 106.03 A fee of two hundred and fifty dollars (\$250.00) will be assessed for department review of an amendment to a cooperative agreement.

107 Section H: Revocation of a Certificate of Public Advantage

- 107.01 The department shall revoke a certificate of public advantage by giving written notice to each party to a cooperative agreement if the department finds that:
1. The cooperative agreement or activities undertaken by it are not in substantial compliance with the terms of the application or the conditions of approval;
 2. The likely benefits resulting from the cooperative agreement no longer exist; or
 3. The department's approval was obtained as a result of intentional material misrepresentation to the department or as a result of coercion, threats or intimidation toward any party to the cooperative agreement.

- 107.02 If all parties terminate their participation in the cooperative agreement, the department shall revoke the certificate of public advantage for the agreement.
- 107.03 Any applicant aggrieved by a decision of the department under the Rural Health Availability Act shall be entitled to judicial review thereof in the Circuit Court of Hinds County, First Judicial District. In the review, the decision of the department shall be affirmed unless it is arbitrary, capricious, or it is not in compliance with the Act.
- 108 Section I: Exemption from Certificate of Need
- 108.01 Nothing in the rules and regulations governing the issuance of a certificate of public advantage to rural hospitals exempts the hospitals from compliance with the provisions of Section 41-7-171 et seq. concerning certificates of need.
- 109 Section J: Conduct of Certificate of Public Advantage Public Hearings
- 109.01 An affected person has thirty (30) days from the date of publication or notice of an application for a Certificate of Public Advantage to request a public hearing.
- 109.02 A fee of two thousand dollars (\$2,000.00) per day will be assessed to cover the cost of conducting a public hearing, with a deposit of two thousand dollars (\$2,000.00) required from the requestor or requesters. If a request for a hearing and a deposit is not received by the end of business of the thirtieth day after a public notice has been given, any affected person loses all right to be afforded a public hearing.
- 109.03 If the department is notified that a request for a public hearing is being withdrawn before the hearing commences, a minimum of five hundred dollars (\$500.00) will be withheld from the deposit. Any extraordinary expenses incurred in preparing for the hearing such as extra publication expenses, expenses of hiring a court reporter, extraordinary administrative time, etc., will be deducted at a reasonable rate and the remaining portion of the deposit will be refunded. All requests for a refund must be made in writing at the time of withdrawal or within five (5) business days of notification of withdrawal. All notices of withdrawal and requests for a return of a deposit must be made no less than five business days before the date set for the public hearing. Notices of withdrawal and requests for a refund of deposit received less than five (5) business days before the date of the hearing will not entitle the requestor to a return of any portion of the deposit.
- 109.04 A copy of the presiding hearing officer's report will be made available to the applicant and the affected person(s) prior to the decision being announced by the state health officer.
- 110 Section K: Requests for Public Records

- 110.01 Requests for information pertaining to a certificate of public advantage must be made in writing and must state specifically what information is desired. Because of staff time, no open-ended requests will be honored. All requests for information in certificate of public advantage files must stand alone.
- 110.02 Requests for information contained in certificate of public advantage files will be filled not later than five (5) work days following the receipt of the request if the material requested is 50 pages or less. If the requested material exceeds 50 pages, the request will be filled not later than ten (10) work days following the receipt of the requests.
- 110.03 For information contained in the certificate of public advantage files, a fee of \$.25 per page is charged to cover the cost of copying and handling. A minimum fee of \$5.00 is charged.
- 110.04 Records are transferred to the Mississippi Department of Archives and History after three years. A minimum fee of \$15.00 is charged to retrieve files from the Mississippi of Archives and History. This fee is assessed in addition to any other applicable charge listed above. Advance payment is required for any information received from the Office of Policy and Planning.