

1 HB370
2 138030-5
3 By Representatives McClurkin and Johnson (R)
4 RFD: Health
5 First Read: 21-FEB-12

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ENROLLED, An Act,

To amend Sections 22-21-265, 22-21-270, 22-21-271, and 22-21-275, Code of Alabama 1975, relating to the State Health Planning and Development Agency and the Certificate of Need Review Board, to further provide for fees; to provide for a temporary surcharge on certificate of need applications; to provide further for costs and processing of cases; and to provide for direct appeals to the Court of Civil Appeals.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 22-21-265, 22-21-270, 22-21-271, and 22-21-275, Code of Alabama 1975, are amended to read as follows:

"§22-21-265.

"(a) On or after July 30, 1979, no person to which this article applies shall acquire, construct, or operate a new institutional health service, as defined in this article, or furnish or offer, or purport to furnish a new institutional health service, as defined in this article, or make an arrangement or commitment for financing the offering of a new institutional health service, unless the person shall first obtain from the SHPDA a certificate of need therefor. Notwithstanding any provisions of this article to the contrary, those facilities and distinct units operated by the Department of Mental Health and Mental Retardation, and those

1 facilities and distinct units operating under contract or
2 subcontract with the Department of Mental Health and Mental
3 Retardation where the contract constitutes the primary source
4 of income to the facility, shall not be required to obtain a
5 certificate of need under this article.

6 "(b) Notwithstanding all other provisions of this
7 article to the contrary, the replacement of equipment by
8 health care facilities shall be exempt from certificate of
9 need review, provided:

10 "(1) The replacement does not change the purpose,
11 use, or application of the equipment.

12 "(2) The existing equipment is taken out of service.

13 "(3) The replacement equipment does not enable the
14 health care facility to expand its health services.

15 "(4) The replacement equipment does not enable the
16 health care facility to provide any health services not
17 previously provided on a regular basis.

18 "A determination of whether the acquisition of
19 equipment is exempt from review under this section shall be
20 made by the Executive Director of the SHPDA upon the filing of
21 an application requesting the determination, on the form or
22 forms prescribed by the CON Review Board, together with a fee
23 in the amount of ~~10~~ 20 percent of the fee provided in Section
24 22-21-271. If it is determined that the replacement is not
25 reviewable pursuant to this section, the applicant shall be

1 notified in writing that no certificate of need is required.
2 The SHPDA shall define an appeals process.

3 "Any provision in this article to the contrary
4 notwithstanding, ~~no~~ a rural hospital shall only be required to
5 submit ~~an application~~ a fee equal to 25 percent of the fee
6 applicable to non-rural hospitals when filing a request for
7 determination under this section.

8 "(c) Notwithstanding any other provision of this
9 article to the contrary, the modernization or construction of
10 a nonclinical building, parking facility, or any other
11 noninstitutional health services capital item on the existing
12 campus of a health care facility shall be exempt from
13 certificate of need review, provided the construction or
14 modernization does not allow the health care facility to
15 provide new institutional health services subject to review
16 and not previously provided on a regular basis.

17 "(d) The SHPDA shall maintain the Alabama State
18 Health Plan to include separate bed need methodologies for
19 inpatient psychiatric services, inpatient rehabilitation
20 services, and inpatient/residential alcohol and drug abuse
21 services. The SHPDA shall utilize these methodologies in
22 considering all certificate of need applications.

23 "(e) Notwithstanding all other provisions of this
24 article to the contrary, the increase in the number of nursing
25 home beds of a health care facility licensed pursuant to

1 Section 22-21-260(6) as a skilled nursing care facility or an
2 intermediate care facility, but excluding an increase in the
3 bed capacity of an intermediate care facility designated as an
4 ICF-MR by the State Board of Health and operated by the state
5 Department of Mental Health and Mental Retardation which
6 facilities shall be governed by the other provisions of this
7 article, shall be exempt from certificate of need review,
8 provided:

9 "(1) The increase does not exceed 10 percent of the
10 total skilled nursing beds of the facility, rounded to the
11 nearest whole number, or 10 beds, whichever is greater.

12 "(2) The average rate of occupancy for the nursing
13 home beds of the facility is not less than 95 percent, rounded
14 to the nearest whole number, for the 24-month period ending on
15 June 30 of the year immediately preceding the application for
16 exemption from the certificate of need review.

17 "(3) The aggregate average rate of occupancy for all
18 other skilled nursing facilities and intermediate nursing
19 facilities in the same county as the requesting facility's is
20 not less than 95 percent, rounded to the nearest whole number,
21 for the 24-month period ending on June 30 of the year
22 immediately preceding the application for exemption from
23 certificate of need review.

1 "(4) The increase does not require capital
2 expenditures exceeding the capital expenditure thresholds
3 prescribed in Section 22-21-263(a) (2).

4 "(5) The facility has not been granted an increase
5 of beds under this exemption within the immediately preceding
6 24-month period.

7 "In calculating the average occupancy for the
8 facility under subdivision (2) of this subsection and for all
9 other skilled and intermediate nursing facilities in the same
10 county under subdivision (3) of this subsection, beds
11 previously granted, including beds granted after January 1,
12 1995, to the facility, and to other skilled or intermediate
13 nursing facilities in the same county as the requesting
14 facility, pursuant to a certificate of need or to this
15 exemption shall be deemed built and available for occupancy as
16 of the date granted regardless of when the beds were placed in
17 service. SHPDA shall promulgate regulations to determine how
18 occupancy shall be calculated for the purpose of this
19 subsection, taking into account certain factors such as, but
20 without limitation, disregarding beds that have not been
21 available for use for the three years next preceding the
22 period for which occupancy is being measured.

23 "(6) The facility has had an average daily census
24 comprised of 40 percent of Medicaid patients within the fiscal

1 year ended June 30 immediately prior to filing an application
2 for exemption under this section.

3 "(7) Any exemption to add beds without a certificate
4 of need shall expire and be deemed null and void unless the
5 beds are placed in service not less than 12 months after the
6 date the exemption is granted. Notwithstanding the foregoing,
7 SHPDA may promulgate rules permitting the Executive Director
8 of SHPDA to grant one extension not to exceed twelve months
9 upon a showing of substantial progress. Notwithstanding the
10 foregoing, any exemption granted by the SHPDA prior to April
11 10, 1995, for facilities which have agreed to the provisions
12 of the June 21, 1995 consent decree, is ratified and confirmed
13 and shall be deemed to have been granted in accordance with
14 this subsection. In addition, any facility which was granted
15 an exemption by the SHPDA prior to April 10, 1995, is ratified
16 and confirmed and shall be deemed to have been approved as of
17 the latter of the actual date approved or March 3, 1995 and to
18 have been granted in accordance with this subsection.

19 "A determination of whether the increase in beds is
20 exempt from review under this section shall be made by the
21 Executive Director of SHPDA upon the filing of an application
22 requesting the determination, on the form or forms prescribed
23 by the CON Review Board, together with a fee in an amount to
24 be determined by the review board in accordance with Section
25 22-21-271(a). The SHPDA shall promulgate rules affording an

1 applicant pursuant to this subsection a right to appeal
2 adverse rulings.

3 "Applications pursuant to this section for exemption
4 from certificate of need review for an increase in bed
5 capacity shall be made only during the 90-day period beginning
6 January 1 through March 31 of each year.

7 "The provisions of this section shall automatically
8 terminate and become null and void on December 31, 2005,
9 unless a bill to continue or reestablish the provisions of
10 this section shall be passed by both houses of the Legislature
11 and enacted into law.

12 "(f) Notwithstanding all other provisions of this
13 article to the contrary, an existing home health agency may
14 accept referrals of patients from outside its Medicare
15 certified service area without obtaining a certificate of
16 need, provided all of the following conditions are met:

17 "(1) The county of the referral is contiguous to a
18 county for which the home health agency holds a certificate of
19 need or an exemption granted pursuant to provisions of Section
20 22-21-263.

21 "(2) The home health agency establishes no branch
22 office in the county of the referral.

23 "(3) The home health agency incurs no capital
24 expenditures in the county of the referral in excess of five
25 hundred dollars (\$500).

1 "The home health agency shall notify the SHPDA that
2 it has begun accepting referrals from a county contiguous to
3 its service area within 14 days of the receipt of the first
4 referral from the contiguous county. No notice to the SHPDA
5 shall be required related to subsequent referrals in the same
6 contiguous county. The SHPDA shall take steps to provide for
7 the inclusion of statistical information relating to the
8 service to referrals outside the Medicare certified service
9 area in its annual statistical reports. ~~The SHPDA shall charge~~
10 ~~the home health agency no fee for servicing referrals outside~~
11 ~~the service area.~~ The SHPDA may impose, by rule, a reasonable
12 charge upon home health agencies accepting such referrals to
13 cover the additional cost of gathering and processing the
14 information.

15 "(g) Notwithstanding all other provisions of this
16 article to the contrary, the replacement, including relocation
17 in the same county, of an existing acute care hospital by the
18 construction of a new digital hospital shall be exempt from
19 certificate of need review provided the hospital meets all of
20 the following:

21 "(1) The digital hospital design incorporates a
22 fully automated centralized digital system to integrate all
23 current and future medical technologies with capabilities for
24 all systems to interface in a comprehensive medical record.
25 The integration of medical technology shall include, but not

1 be limited to, all patient medical records, diagnostic images,
2 diagnostic reports, laboratory results, pharmacy data,
3 pharmacological interactions, contraindications, surgical
4 reports, surgical streaming video, pathology reports, unique
5 patient identification, voice activated transcription,
6 wireless applications, automated billing with electronic
7 transmission capability, and electronic procurement systems.

8 "(2) The electronic medical systems shall interface
9 on a single electronic platform to produce the most favorable
10 patient outcome with a reduction in medical errors.

11 "(3) Medical records shall only be accessed by
12 authorized clinical personnel who are provided access by
13 hospital consoles, physician offices, physician homes, or any
14 remote location via unique identification requirements.

15 "(4) Patient rooms shall be designed to provide
16 optimal electronic documentation of vital signs, real-time
17 data entry, any and all treatment protocols, physician orders,
18 and patient progression.

19 "(5) The digital hospital shall have a minimum
20 project cost of one hundred million dollars (\$100,000,000) to
21 include design, systems, property, buildings, equipment, and
22 electronic software development.

23 "(6) The construction and design of the facility
24 shall utilize technology and materials for patient flow to
25 limit general public contact with patient care areas,

1 healthcare workers, and hazardous materials to reduce the
2 potential for cross-contamination and resulting direct medical
3 costs.

4 "(7) The digital hospital environment shall be
5 energy efficient, cost effective, and clinically designed to
6 produce the most favorable environment.

7 "(8) The digital hospital shall meet all of the
8 following conditions:

9 "a. Operate as an acute care hospital.

10 "b. Replace an existing acute care hospital located
11 in the same county as the digital hospital.

12 "c. Be licensed for no more than the same number of
13 hospital beds and for the same bed categories as the existing
14 acute care hospital to be replaced by the digital hospital,
15 unless otherwise approved by the Certificate of Need Review
16 Board through issuance of a certificate of need.

17 "d. Shall not exceed the same scope of health
18 services, including the same amount of diagnostic or
19 therapeutic major medical equipment, as the existing acute
20 care hospital to be replaced by the digital hospital, unless
21 otherwise approved by the SHPDA approval process.

22 "e. Shall not exceed the number of inpatient and
23 outpatient surgical suites as contained in the existing acute
24 care hospital to be replaced by the digital hospital, unless
25 otherwise approved by the SHPDA approval process.

1 "(9) The existing acute care hospital, replaced by
2 the digital hospital, shall be taken out of service as an
3 acute care hospital and shall not be converted to or used as
4 another health care facility, unless approved by the
5 Certificate of Need Review Board through issuance of a
6 certificate of need.

7 "(10) Any presently reviewable health service which
8 is proposed to be offered by the digital hospital which was
9 not offered on a regular basis within the preceding
10 twelve-month period in or through the existing acute care
11 hospital to be replaced by the digital hospital shall be
12 subject to Certificate of Need Review Board approval through
13 issuance of a certificate of need.

14 "(11) The only digital hospital exempt from
15 certificate of need review shall be the first digital hospital
16 developed in the state, and the digital hospital shall be
17 located in a county where there is located an accredited
18 medical school and teaching facility and not less than 3,000
19 licensed general hospital beds, and construction shall be
20 commenced within one year from the issuance of a certificate
21 of need by SHPDA.

22 "A determination whether the construction of a
23 digital hospital is exempt from review under this subsection
24 shall be made by the Executive Director of the SHPDA, upon the
25 filing of an application requesting the determination, on the

1 forms acceptable to the Executive Director of SHPDA together
2 with an application fee as provided in Section 22-21-271. If
3 it is determined that the replacement facility is not
4 reviewable pursuant to this section, SHPDA shall notify the
5 applicant in writing that the application is exempt from
6 certificate of need review and shall issue a certificate of
7 need. The applicant shall have a right of appeal from any
8 adverse ruling denying exemption and the SHPDA shall
9 promulgate rules affording an applicant a right to appeal
10 adverse rulings pursuant to this subsection.

11 "The provisions of this subsection shall
12 automatically terminate and become null and void upon the
13 issuance of the first certificate of need for the construction
14 and operation of a digital replacement hospital as herein
15 provided or on December 31, 2005, whichever first occurs,
16 unless a bill to continue or reestablish the provisions of
17 this subsection shall be passed by both houses of the
18 Legislature and enacted into law.

19 "§22-21-270.

20 "(a) A certificate of need issued under subsection
21 (a) of Section 22-21-265 and Section 22-21-268 shall be valid
22 for a period not to exceed 12 months and may be subject to one
23 extension not to exceed 12 months, provided the criteria for
24 extension as set forth in the rules and regulations of the
25 SHPDA are met. Applications for an extension filed under this

1 section shall be accompanied by a filing fee to be established
2 by rule, not to exceed 25 percent of the original CON
3 application fee. If no obligation has occurred within such
4 period, the certificate of need shall be considered terminated
5 and shall be null and void. Should the obligation be incurred
6 within such valid period, the certificate of need shall be
7 continued in effect for a period not to exceed one year or the
8 completion of the construction project, whichever shall be
9 later, or the inauguration of the service or the actual
10 purchase of equipment.

11 "(b) Failure to commence the construction project
12 within the time period stated in the construction contract or
13 to complete the construction project within the time period
14 specified in the construction contract, which may be extended
15 by mutual agreement of the parties to the contract, shall
16 render the certificate of need null and void, unless tolled or
17 extended pursuant to statute or SHPDA rule or regulation.
18 Provided, the SHPDA, or an administrative law judge appointed
19 by the Governor on appeal for a fair hearing, may for causes
20 beyond the control of the applicant, continue the certificate
21 of need in force if commencement of the construction project
22 is delayed for a period not to exceed 60 days or if during the
23 specified construction period the construction work should
24 cease for not more than six months, or in the event of default
25 in the construction contract by the contractor, or if, for any

1 cause, the construction work has not ceased or otherwise been
2 stopped for a period exceeding 60 consecutive days.

3 "(c) Applicants who held valid certificates of need
4 which were terminated under this section may file a new
5 application for a certificate pursuant to and subject to the
6 provisions of this article.

7 "(d) Upon completion of the construction and
8 issuance of a certificate of completion or the receipt of
9 proof of purchase of equipment, the certificate of need shall
10 be continued in force and effect.

11 "(e) A certificate of need shall not be
12 transferable, assignable, or convertible, other than between
13 members of a parent-subsidary controlled corporate group as
14 defined in Internal Revenue Code, 26 U.S.C. §1563 (a)(1), and
15 shall be valid solely to the person and purpose named thereon,
16 except to such other member of the controlled group, or by
17 change of name or merger with another corporation.

18 "(f) The transfer of stock in, or change of name or
19 merger of, a corporation which holds a certificate of need
20 shall not constitute a transfer, assignment, or conversion of
21 the certificate.

22 "§22-21-271.

23 "(a) Each application for a certificate of need
24 shall be accompanied by a fee of one percent of the estimated
25 cost of the proposed cost of the new Institutional Health

1 Service, or a maximum of ~~\$12,000.00~~ twelve thousand dollars
2 (\$12,000) (indexed) per application. Provided, that the
3 application fee shall be ~~one-half~~ three-fourths of one percent
4 of the estimated cost of the proposed ~~cost of the~~ new
5 Institutional Health Service, or a maximum of ~~\$4,000.00~~ eight
6 thousand dollars (\$8,000) if the applicant has had an average
7 daily census comprised of 50 percent or more Medicaid patients
8 within the last year prior to the filing of the application
9 and a maximum of ~~\$2,000.00~~ six thousand dollars (\$6,000) if a
10 rural hospital applicant has had an average daily census
11 comprised of 30 percent or more Medicaid/Medicare patients
12 within the last year prior to the filing of the application.
13 The minimum fee shall be set by the SHPDA. Fees shall be used
14 for the purpose of defraying the lawful operating expense of
15 the certificate of need program conducted by the SHPDA and of
16 the Statewide Health Coordinating Council.

17 "(b) Each request for an opinion from the State
18 Agency as to whether a project is subject to review under this
19 article shall be accompanied by a fee to be established by the
20 SHPDA.

21 "(c) SHPDA, by rule approved by the Certificate of
22 Need Review Board or the Statewide Health Coordinating
23 Council, as applicable, may impose additional reasonable fees
24 for any administrative filing by a health care provider for
25 which a fee is not specified in this chapter, and for any

1 non-routine data compilation or summary. Nothing in this
2 subsection shall authorize SHPDA to impose a fee for the
3 initial publication of any report or statistical update which
4 it is required to publish under law or rule.

5 "(d) In addition to all other fees, SHPDA shall
6 impose a temporary surcharge of two thousand dollars (\$2,000)
7 on each certificate of need application and three hundred
8 dollars (\$300) for each reviewability determination to defray
9 expenses incurred in developing and implementing, by January
10 1, 2014, an online, searchable filing system for filings and
11 orders in administrative proceedings and requests for
12 reviewability or exemption determinations and related agency
13 findings. The surcharge shall automatically terminate on the
14 first day of the ninth month after certification to the CON
15 Review Board by SHPDA's Executive Director that the online
16 filing system has been successfully implemented.

17 "(c)(e) There is hereby authorized to be
18 appropriated from the General Fund of the State of Alabama
19 such amounts as may be necessary from time to time to defray
20 the costs of administering this article over and above such
21 fees as may be collected under this section.

22 "(d)(f) Application fees collected under this
23 article shall not be refundable. Fees collected under this
24 article are hereby appropriated for the purposes stated in
25 this article.

1 "~~(e)~~ (g) All fees collected under this article shall
 2 be retained in a separate fund for the purpose of enforcing
 3 and administering this article, and shall be disbursed as
 4 other funds of the state are disbursed.

5 "§22-21-275.

6 "The SHPDA, pursuant to the provisions of Section
 7 22-21-274, shall prescribe by rules and regulations the
 8 procedures for review of applications for certificates of need
 9 and for issuance of certificates of need. Rules and
 10 regulations governing review procedures shall include, but not
 11 necessarily be limited to, the following:

12 "(1) Agreement with other review agencies for review
 13 procedures consistent with this article and federal
 14 regulations.

15 "(2) Application procedures and forms of the
 16 application necessary to elicit and provide all necessary
 17 information as required by the review criteria.

18 "(3) Establishment of a project review period of 90
 19 days from the date the state agency determines that the
 20 application is complete and notification thereof is made to
 21 the applicant. The rules and regulations may provide for a
 22 period of not more than 15 days for determination of the
 23 completeness of the application, notification of the beginning
 24 and termination dates of the project review period and
 25 criteria for determining by the state agency of an extension

1 of the project review period not to exceed 30 days with or
2 without the consent of the applicant. An extension of the
3 review period without limitation may be made with the written
4 consent of the applicant or shall occur automatically without
5 the consent of the applicant or the time period necessary to
6 accommodate referral to an administrative law judge under this
7 chapter and the issuance of a recommended order. All reviews
8 must be completed prior to the termination of the review
9 period. If the state agency does not make a decision within
10 the period of time specified for state agency review, the
11 proposal shall be deemed to have been found not to be needed.

12 "(4) Provision for a "nonsubstantive" review which
13 shall be a modified review applicable to proposals for capital
14 expenditures up to \$500,000.00 and which:

15 "a. Do not result in a substantial change in a
16 service; or

17 "b. Propose equipment to upgrade or expand an
18 existing service; or

19 "c. Increase the bed capacity by not more than 10
20 percent of the existing bed capacity; provided, that such
21 increase in bed capacity is consistent with the State Health
22 Plan.

23 "(5) Public notification of receipt of application,
24 review periods, public hearings, decisions of the state

1 agency, fair hearings if requested and final decisions
2 regarding a certificate of need.

3 "(6) Provisions and procedures for public hearings
4 in the course of agency review on any application for the
5 certificate of need for new institutional health service which
6 requires substantive review. The SHPDA shall make provisions
7 for a public hearing of any contested case before an
8 administrative law judge designated by the Governor, which
9 shall be conducted as a contested hearing pursuant to the
10 requirements of the Alabama Administrative Procedure Act,
11 Chapter 22 of Title 41, and regulations consistent therewith
12 adopted under this article. The fee for the administrative law
13 judge shall be based on an hourly rate approved by the
14 Executive Director of SHPDA on an annual basis and shall be
15 apportioned, on a pro rata basis, between all parties to the
16 contested case hearing, with each party paying its pro rata
17 amount within 30 days of receipt of an itemized invoice from
18 the administrative law judge. Unless extended by agreement of
19 all parties: a. Any public hearing before an administrative
20 law judge pursuant to this article shall begin within 45 days
21 of assignment to the administrative law judge and completed
22 within 90 days; and b. The administrative law judge shall
23 render proposed findings of fact and conclusions of law in
24 accordance with the Administrative Procedure Act within 30
25 days of completion of the transcript. SHPDA shall make

1 provisions that if neither the applicant nor aggrieved party
2 shall have requested the application be heard before an
3 administrative law judge, the application shall be heard
4 before SHPDA at a public hearing. Any aggrieved party to a
5 final decision of SHPDA may appeal the final decision of SHPDA
6 ~~to the circuit court in the county in which the applicant~~
7 ~~resides or of the county in which the applicant is situated or~~
8 ~~in which the new institutional health service being applied~~
9 ~~for is located~~ the Court of Civil Appeals. An appeal shall be
10 perfected by filing a written notice of appeal with the clerk
11 of the Court of Civil Appeals within 21 days after the
12 decision of the agency becomes final. The notice of appeal
13 shall be on a form prescribed by the Alabama Rules of
14 Appellate Procedure. The Court of Civil Appeals shall have no
15 discretion to refuse to hear appeals of the final decisions of
16 SHPDA timely filed under this article. Within 30 days after a
17 notice of appeal is filed, SHPDA shall transmit the
18 administrative record to the clerk, with the appealing party
19 bearing the costs associated with the preparation and
20 transmission of the record and transcript of the hearing and
21 of giving notice to the parties of the transmittal. Upon the
22 transmittal of the administrative record to the Court of Civil
23 Appeals, the appeal shall proceed in accordance with the
24 Alabama Rules of Appellate Procedure.

1 "(7) Schedule for reviews to include hearings before
2 the state agency, beginning and ending of review periods and
3 time of the review period as provided in this section.

4 "(8) Provision of the applicant to submit such
5 information that he may deem advisable in justification of the
6 application over and above the minimum information required by
7 this article and the regulations adopted hereunder.

8 "(9) Provisions for periodic reports by the health
9 provider or applicant respecting the development of the
10 proposal subject to review and for which a certificate of need
11 is issued.

12 "(10) Provisions for written findings, as
13 appropriate, which the state used as the basis for its
14 decision or any recommendation of the state agency. Such
15 findings and recommendations shall be provided to the
16 applicant and available to other interested persons upon
17 request and upon payment of a reasonable fee to cover actual
18 costs of reproduction and handling.

19 "(11) Notification upon request of providers of
20 health services and other persons subject to review of
21 findings, recommendations and decisions made under this
22 article.

23 "(12) Provision for a public hearing upon written
24 request for the reconsideration of a decision by the SHPDA and
25 for good cause by any aggrieved party, including any competing

1 applicant, or any aggrieved person who has intervened pursuant
2 to Section 41-22-14. Request for reconsideration shall be made
3 in writing not more than 15 days subsequent to the date the
4 agency (SHPDA) decision is deemed final and shall have the
5 effect of holding in abeyance the final decision and
6 suspending any certificate of need issued pursuant thereto,
7 subject to the outcome of the public hearing. The provision
8 shall state that there can be no reconsideration by the SHPDA
9 of a decision on a prior request for reconsideration; that an
10 aggrieved party shall not be required to request
11 reconsideration prior to or as a condition to requesting a
12 fair hearing; and that an aggrieved party shall not be
13 required to request reconsideration or a fair hearing prior to
14 or as a condition to seeking judicial review pursuant to
15 Section 41-22-20.

16 "(13) Provision that no decision of the SHPDA under
17 this article shall be deemed final until 15 days following the
18 date of the decision.

19 "(14) Provisions that any adverse decision of the
20 agency (SHPDA) (other than a SHPDA decision after first being
21 heard as a contested case before an administrative law judge
22 pursuant to the requirements of the Alabama Administrative
23 Procedure Act) may be appealed to an administrative law judge
24 designated by the Governor for fair hearing which appeal shall
25 be heard de novo as a contested case in accordance with

1 Sections 41-22-12 and 41-22-13. The fair hearing appeal
2 proceedings shall be conducted pursuant to the requirements of
3 the Alabama Administrative Procedure Act, Chapter 22 of Title
4 41, and regulations consistent therewith adopted under this
5 article. The fee for the administrative law judge shall be
6 based on a standard hourly rate approved by the Executive
7 Director of SHPDA and shall be apportioned, on a pro rata
8 basis, between all parties to the hearing, with each party
9 paying its pro rata amount within 30 days of receipt of an
10 itemized invoice from the administrative law judge. Unless
11 extended by agreement of all parties: a. Any public hearing
12 before an administrative law judge pursuant to this article
13 shall begin within 45 days of assignment to the administrative
14 law judge and completed within 90 days; and b. The
15 administrative law judge shall issue an order within 30 days
16 of completion of the transcript. The appeal shall be commenced
17 by a request for a fair hearing by the applicant or any
18 competing applicant, which request shall be made within 15
19 days of the date that the decision by the state agency became
20 final, or in the event of a request for reconsideration,
21 within 15 days of the date that the decision of the state
22 agency on reconsideration became final and shall have the
23 effect of holding in abeyance the decision and suspending any
24 certificate of need issued pursuant thereto subject to the
25 outcome of the fair hearing. The decision of the

1 administrative law judge in the fair hearing proceedings shall
2 be considered the final decision of the state agency (SHPDA);
3 provided, that any aggrieved party may appeal the decision to
4 ~~the circuit court of the county in which the applicant resides~~
5 ~~or of the county in which the applicant is situated or in~~
6 ~~which the new institutional health service being applied for~~
7 ~~is located~~ Court of Civil Appeals in accordance with the
8 provisions of subdivision (6).

9 "(15) Preparation and publication, at least
10 annually, of reports by the state agency of the reviews being
11 conducted, decisions reached, certificates issued and status
12 of proposals.

13 "(16) Access by the general public to applications
14 reviewed by the SHPDA and to other written material pertinent
15 to the review.

16 "(17) Provisions for letters of intent in the case
17 of construction projects by persons proposing such projects.
18 Letters of intent shall be in such detail as the SHPDA may
19 direct by regulations. Letters of intent shall not substitute
20 for the formal application for a certificate of need as
21 provided in this article.

22 "(18) Provision that the review procedure may vary
23 according to the purpose for which a particular review is
24 being conducted and/or the nature and type of service or
25 expenditure proposed."

1 Section 2. The provisions of this act amending
2 Section 22-21-275, Code of Alabama 1975, shall apply to any
3 application for a certificate of need which is filed after the
4 effective date of this act.

5 Section 3. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, and shall only apply to any certificate of need
8 application filed after that date, or its otherwise becoming
9 law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 14-MAR-12, as amended.

Greg Pappas
Clerk

Senate	<hr/>	26-APR-12	Amended and Passed
House	<hr/>	01-MAY-12	Concurred in Sen- ate Amendment