

APA-4
10/91

**CERTIFICATION OF EMERGENCY RULES
FILED WITH LEGISLATIVE REFERENCE SERVICE
JERRY L. BASSETT, DIRECTOR**

Pursuant to Code of Alabama 1975, §§ 41-22-5(b) and 41-22-6.

I certify that the attached emergency amendment is a copy as promulgated and adopted on the 17th day of March, 2010.

AGENCY NAME: State Health Planning and Development Agency

RULE NO. AND TITLE: 410-1-5C-.02ER In-Home Hospice Service Providers

EFFECTIVE DATE OF RULE: The Agency desires the Emergency Rule to become effective on the date of filing with the Legislative Reference Service - that is, March 17, 2010.

EXPIRATION DATE: The Agency desires the Emergency Rule to remain in effect for 120 days, through July 15, 2010.

NATURE OF EMERGENCY:

The Statewide Health Coordinating Council recently adopted a permanent in-home hospice services need methodology as an amendment under Section 410-2-3-.10 of the *2004-2007 Alabama State Health Plan* ("SHP"), which became effective on March 8, 2010. The Amendment replaces the temporary provisions of the SHP adopted in Emergency Rule 410-2-3-.10ER, which provided for the continued operation of existing in-home hospice service providers following the passage of Alabama Act 2009-492 and a streamlined method for such providers to obtain a Certificate of Need ("CON"). Without implementation of procedures to quickly and efficiently issue CONs pursuant to the new SHP amendment, there exists a risk that in-home hospice service providers with pending license applications, or those that have already been licensed, but did not meet the previous criteria set out in Rule 410-2-3-.10ER, will be delayed in providing hospice services. This represents an immediate threat to the health, safety and welfare of hospice patients and their families.

STATUTORY AUTHORITY: §§ 41-22-5, 22-21-260 (6), -264 and -275, Code of Alabama, 1975.

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS
 YES X NO

REC'D & FILED

MAR 17 2010

LEGISLATIVE REFERENCE SERVICE

NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

James E. Sanders, Deputy Director
State Health Planning and Development Agency
100 North Union Street
P. O. Box 303025
Montgomery, AL 36130-3025
(334) 242-4103

A handwritten signature in cursive script that reads "Alva M. Lambert". The signature is written in black ink and is positioned above a horizontal line.

Alva M. Lambert
Executive Director

FILING DATE
(For APA Use Only)

410-1-5C-.02ER IN-HOME HOSPICE SERVICE PROVIDERS

- (1) The Statewide Health Coordinating Council ("SHCC") has recently adopted an in-home hospice services need methodology as an amendment under Section 410-2-3-.10 of the 2004-2007 Alabama State Health Plan ("SHP") to identify, by county, the number of hospice providers needed to assure the continued availability, accessibility and affordability of quality hospice care services for residents of Alabama. Such SHP Amendment became effective on March 8, 2010. The Amendment replaces the temporary provisions in the SHP adopted in Emergency Rule 410-2-3-.10ER, which provided for the continued operation of existing in-home hospice service providers following the passage of Alabama Act 2009-492 (the "Act") and a streamlined method for such providers to obtain a Certificate of Need ("CON").

- (2) Section 410-2-3-.10(6)(f)3. of the SHP Amendment allows, for the first time, certain in-home hospice service providers to seek a CON if the provider:
 - (a) was licensed by the Alabama Department of Public Health ("ADPH") to provide in-home hospice services in a county, based upon a non-reviewability determination letter issued by SHPDA under ALA. CODE § 22-21-29(d) (1975 as amended) listing said county, but had not provided service by May 13, 2009, or during the preceding twelve (12) months; or

 - (b) established itself with SHPDA by obtaining a non-reviewability determination letter by July 7, 2006, under the former provisions of ALA. CODE § 22-21-29(d) (1975 as amended), and timely filed its application for licensure as a hospice provider with the ADPH in particular counties within twelve (12) months thereafter and is not deemed to have abandoned its licensure.

- (3) Pursuant to Section 410-2-3-.10(6)(f)3., hospice providers obtaining a CON under the rule are required to file a single application and shall be granted a single CON encompassing all of the qualifying counties. Such entity shall be considered a separate hospice provider for each Medicare Provider Number held at the time of application (e.g., if an entity has multiple hospice provider numbers, a separate application must be filed, and CON issued, for each); provided, however, that a corporate entity having multiple provider numbers shall not receive more than one (1) CON per county. Such CON authority may not be subsequently divided, e.g., a hospice provider may not separate such authority into separate CONs for future disposition. All applications submitted pursuant to the non-substantive review provisions of this Section shall include an acknowledgement of this restriction. Any CON authority granted pursuant to this Section shall be combined, under a

single CON, with any other CON authority obtained under the same provider number under CON Emergency Rule 410-1-5C-.01ER.

- (4) Without implementation of procedures to quickly and efficiently issue CONs pursuant to the new SHP Amendment, there exists a risk that said providers with pending license applications, or those that have already been licensed, will be delayed in providing service. This represents an immediate threat to the health, safety and welfare of hospice patients and their families. Accordingly, the following procedures are adopted for the consideration of CON applications for in-home hospice services under Section 410-2-3-.10(6)(f)3.:
- (a) Any providers that meet the criteria of Section 410-2-3-.10(6)(f)3. and affirm that their application does not involve a capital expenditure in excess of \$500,000 shall have their applications considered as part of a non-substantive review process, as allowed under ALA. CODE § 22-21-275(4) (1975 as amended) and ALA. ADMIN. CODE r. 410-1-10-.02, which shall include direct consideration and approval by the Certificate of Need Review Board. Such applications shall be filed utilizing either form HPC-CON-NS-2, attached to this rule as Appendix "A", or form HPC-CON-NS-3, attached as Appendix "B", as required.
 - (b) A fee of \$250.00 shall be charged for each CON application submitted as an in-home hospice service provider under this Section.
 - (c) Applicants should provide evidence of their license, or pending license application, as required by Section 410-2-3-.10(6)(f)3., as well as of their continuing ability to meet licensure standards.
 - (d) The granting of a CON under this Section shall be conditioned on timely compliance with any data request issued on an annual basis by the SHPDA staff in conjunction with the adoption of long-term need methodology.
 - (e) Any provider obtaining a CON pursuant to this Section that subsequently fails to substantially comply on a timely basis to an annual data request from the Agency staff, adopted in conjunction with long-term need methodology (subject to any authorized extensions), shall be assumed to have ceased operations as of the end of such period until such time as the provider complies fully with all outstanding Agency data requests. Any provider that has deemed to have ceased operations under this chapter shall be prohibited from submitting any CON application for additional authority or from seeking consideration by SHPDA of such facility's utilization data to oppose another provider's CON application. In accordance with Rule 410-1-11-.08(2), should such cessation of operation continue for an uninterrupted period of twelve (12) months or longer, the provider's CON shall be deemed abandoned. SHPDA shall report to the

ADPH any provider who is deemed to have abandoned its CON under this Section.

(f) Providers filing applications pursuant to this Section are not required to first file a Letter of Intent with SHPDA unless their application involves a construction project. Since need shall be presumed for all existing providers meeting the requirements of this Section, there will be no batching cycle established with respect to any application for a CON under the provisions of this Emergency Rule.

(g) All applications meeting the requirements of this rule must be filed by July 1, 2010.

(5) Pending applications filed by existing in-home hospice providers pursuant to Rule 410-1-5C-.01ER shall continue to be governed by the provisions of the SHP in effect at the time that their applications were filed.

Author: Certificate of Need Review Board

Statutory Authority: §§ 41-22-5, 22-21-260(6), -264 and -275, Code of Alabama (1975)

History: Effective March 17, 2010 (Emergency Rule)

APPENDIX A

ALABAMA CERTIFICATE OF NEED
APPLICATION FOR PROVIDERS OF
IN-HOME HOSPICE SERVICES LICENSED BY ALABAMA DEPARTMENT
OF PUBLIC HEALTH, WHO HAD NOT PROVIDED SERVICE
BY MAY 13, 2009, OR DURING THE PRECEDING TWELVE MONTHS

For Staff Use Only

INSTRUCTIONS: Please submit an original and twelve (12) copies of this form and the appropriate attachments to the State of Alabama, State Health Planning and Development Agency, 100 North Union Street, Suite 870, Montgomery, Alabama 36104 (Post Office Box 303025, Montgomery, AL 36130-3025)

Project # _____
Date Rec. _____
Rec by: _____

Attached is a check in the amount of \$250.00
Refer to Emergency Rule 410-1-5C-.02ER of the *Alabama Certificate of Need Program Rules and Regulations* to determine the required filing fee.

I. APPLICANT IDENTIFICATION AND PROJECT DESCRIPTION

A. _____
Name of Applicant (in whose name the CON will be issued if approved) Medicare Provider #

Address City County

State Zip Code Phone Number

B. _____
Name of Facility/Organization (if different from A)

Address City County

State Zip Code Phone Number

C. _____
Name of Legal Owner (if different from A or B)

Address City County

State Zip Code Phone Number

D. _____
Name and Title of Person Representing Proposal and with whom SHPDA should communicate

Address City County

State Zip Code Phone Number

E-Mail Address

APPENDIX A

I. APPLICANT IDENTIFICATION (continued)

E. Have changes occurred in the ownership type of this provider since the filing of the previous Certificate of Need (CON) application to provide in-home hospice services? If so, attach a separate sheet identifying the change in ownership type.

Yes No

F. Have changes occurred in the governing board members and owners of this provider since the filing of the previous CON application to provide in-home hospice services? If so, attach a separate sheet identifying the current governing board members and owners.

Yes No

II. PROJECT DESCRIPTION

A. Certificate of Need number _____ was issued on _____ for the provision of in-home hospice services in the following counties:¹

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Copies of Letter(s) of Non-Reviewability granted under Ala. Code § 22-21-29(d) (1975) associated with this Medicare Provider Number, under which this application is submitted, and for which CON authority has not been previously granted, are attached. Additional counties requested to be included in the referenced CON authorization and in which service had not been provided by May 13, 2009, or during the preceding twelve (12) months, are listed below. Please also attach a copy of the Alabama Department of Public Health (ADPH) licenses encompassing each such county.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. Evidence of Continuing Ability to Meet Licensure Standards:

1. Has the applicant received pending notice of license revocation, probation or non-renewal of licensure from the ADPH relating to its in-home hospice operations?

Yes No

¹ Pursuant to Ala. Admin. Code r. 410-2-3-.10(6)(f)3., for purposes of this application, an entity shall be considered a separate hospice provider for purposes of each Medicare Provider Number held.

APPENDIX A

If yes, please describe the nature of such notice in a separate attachment (with appropriate redaction of patient information, as needed).

2. Are the quality of care and compliance programs outlined in the previous CON application filed for in-home hospice services still in effect? If not, attach a separate sheet identifying changes occurring since the filing of the previous CON application.

Yes No

- D. Applicant is the sole hospice provider under common control applying for such counties.

Yes No

III. COST

By checking yes, the Applicant confirms that it will not incur capital expenditures in excess of \$500,000 associated with this project.

Yes

IV. ACKNOWLEDGEMENT AND CERTIFICATION BY THE APPLICANT

- I. **ACKNOWLEDGEMENT.** In submitting this application, the Applicant understands and acknowledges that:

- A. The rules, regulations and standards for health facilities and services promulgated by the SHPDA have been read, and the Applicant will comply with same.
- B. Upon the granting of a CON pursuant to this application, and licensure by the ADPH, the Applicant shall agree to provide services only in the counties encompassed by the CON, which shall result in the automatic vesting of the CON.
- C. Applicants seeking a CON herein under the non-substantive review procedures authorized by Ala. Admin. Code r. 410-2-3-.10(6)(f)3. shall be granted a single CON encompassing all of the counties proposed to be served under a single Medicare Provider Number. Such CON authority may not be subsequently divided, e.g., a hospice provider may not separate such authority into separate CONs for future disposition. Any action to transfer or assign the certificate in violation of this or any other restriction found in Alabama law or the SHPDA rules will render it null and void.
- D. Pursuant to Ala. Admin. Code r. 410-2-3-.10(6)(f)5., the granting of a CON under this provision shall be conditioned on timely compliance with any data request issued on an annual basis by the SHPDA staff in conjunction with the adoption of long-term need methodology.
- E. Pursuant to Ala. Admin. Code r. 410-2-3-.10(6)(f)5., a hospice services provider that obtains a CON and subsequently fails to substantially comply on a timely basis (subject to any authorized extensions) to an annual data request from the SHPDA staff adopted in conjunction with long-term need methodology shall be assumed to have ceased operations as of the end of such period until the provider complies fully with all outstanding SHPDA data requests. Any provider that has deemed to have ceased operations under such provision shall be prohibited from submitting any CON application for additional authority or from seeking consideration by SHPDA of such facility's utilization data to oppose another provider's CON application. In accordance with Ala. Admin. Code r. 410-1-11-.08(2), should such cessation of operation continue for an uninterrupted period of twelve (12) months or longer, the provider's CON shall be deemed abandoned. SHPDA

APPENDIX A

shall report to the ADPH any provider who is deemed to have abandoned its CON under this section.

- F. The Applicant will notify SHPDA when a project is started, completed, or abandoned.
- G. The Applicant must comply with all state and local building codes, and failure to comply will render the CON null and void.
- H. The Applicants and their agents will construct and operate in compliance with appropriate state licensure rules, regulations, and standards.
- I. Projects are limited to the work identified in the CON as issued.
- J. Any expenditure in excess of the amount approved on the CON must be reported to SHPDA and may be subject to review.
- K. The Applicant will comply with all state statutes for the protection of the environment.
- L. The Applicant was licensed by the ADPH to provide in-home hospice services in a county based upon a Letter(s) of Non-Reviewability issued by SHPDA under ALA. CODE § 22-21-29(d) (1975 as amended) listing said county, but had not provided service therein by May 13, 2009, or during the preceding twelve (12) months.
- M. The Applicant is not presently operating with a probational (except as may be converted by this application) or revoked license.

II. CERTIFICATION

The information contained in this application is true and correct to the best of my knowledge and belief, and I agree to be bound by the restrictions contained herein.

Signature of Applicant

Applicant's Name and Title
(Type or Print)

_____ day of _____ 20_____

Alabama Notary Public (Affix seal on Original)

Author: Alva M. Lambert

Statutory Authority: § 22-21-267, 271, 275, Code of Alabama, 1975

History: Adopted, March [], 2010

**ALABAMA CERTIFICATE OF NEED
APPLICATION FOR PROPOSED PROVIDERS OF
IN-HOME HOSPICE SERVICES, PENDING
ALABAMA DEPARTMENT OF PUBLIC HEALTH LICENSURE**

For Staff Use Only

INSTRUCTIONS: Please submit an original and twelve (12) copies of this form and the appropriate attachments to the State of Alabama, State Health Planning and Development Agency, 100 North Union Street, Suite 870, Montgomery, Alabama 36104 (Post Office Box 303025, Montgomery, AL 36130-3025)

Project # _____
Date Rec. _____
Rec by: _____

Attached is a check in the amount of \$250.00
Refer to Emergency Rule 410-1-5C-.02ER of the *Alabama Certificate of Need Program Rules and Regulations* to determine the required filing fee.

I. APPLICANT IDENTIFICATION AND PROJECT DESCRIPTION

A. _____
Name of Applicant (in whose name the CON will be issued if approved) Medicare Provider #

Address City County

State Zip Code Phone Number

B. _____
Name of Facility/Organization (if different from A)

Address City County

State Zip Code Phone Number

C. _____
Name of Legal Owner (if different from A or B)

Address City County

State Zip Code Phone Number

D. _____
Name and Title of Person Representing Proposal and with whom SHPDA should communicate

Address City County

State Zip Code Phone Number

E-Mail Address

I. APPLICANT IDENTIFICATION (continued)

E. Type Ownership and Governing Body

- 1. Individual
- 2. Partnership
- 3. Corporate (for profit) _____
Name of Parent Corporation
- 4. Corporate (non-profit) _____
Name of Parent Corporation
- 5. Public
- 6. Other (specify) _____

F. Names and Titles of Governing Body Members and Owners of This Facility

OWNERS	GOVERNING BOARD MEMBERS
_____	_____
_____	_____
_____	_____

II. PROJECT DESCRIPTION

A. Please attach a copy of the Letter(s) of Non-Reviewability granted by July 7, 2006, under which this application is submitted. List all counties for which Applicant filed its application for licensure with the Alabama Department of Public Health (ADPH) within twelve (12) months of the date of issuance of the Letter(s) of Non-Reviewability, for which this Certificate of Need (CON) is sought, and provide copies of the pending license applications with ADPH.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Applicant is the sole hospice provider under common control applying for such counties.

- Yes No

C. Evidence of Continuing Ability to Meet Licensure Standards:

1. Has the Applicant received pending notice of license revocation, probation or non-renewal of licensure from the ADPH relating to in-home hospice operations of any licensed providers under common ownership?

- Yes No

If yes, please describe the nature of such notice in a separate attachment (with appropriate redaction of patient information, as needed).

APPENDIX B

2. By checking yes, the Applicant agrees to provide SHPDA with a copy of the quality of care and compliance programs as approved by ADPH upon licensure.

Yes

III. COST

By checking yes, the Applicant confirms that it will not incur capital expenditures in excess of \$500,000 associated with this project.

Yes

IV. ACKNOWLEDGEMENT AND CERTIFICATION BY THE APPLICANT

- I. **ACKNOWLEDGEMENT.** In submitting this application, the Applicant understands and acknowledges that:
- A. The rules, regulations and standards for health facilities and services promulgated by the SHPDA have been read, and the Applicant will comply with same.
- B. Upon the granting of a CON pursuant to this application, and licensure by the ADPH, the Applicant shall agree to provide services only in the counties encompassed by the CON, which shall result in the automatic vesting of the CON.
- C. Applicants seeking a CON herein under the non-substantive review procedures authorized by Ala. Admin. Code r. 410-2-3-.10(6)(f)3. shall be granted a single CON encompassing all of the counties proposed to be served under a single Medicare Provider Number. Such CON authority may not be subsequently divided, e.g., a hospice provider may not separate such authority into separate CONs for future disposition. Any action to transfer or assign the certificate in violation of this or any other restriction found in Alabama law or the SHPDA rules will render it null and void.
- D. Pursuant to Ala. Admin. Code r. 410-2-3-.10(6)(f)5., the granting of a CON under this provision shall be conditioned on timely compliance with any data request issued on an annual basis by the SHPDA staff in conjunction with the adoption of long-term need methodology.
- E. Pursuant to Ala. Admin. Code r. 410-2-3-.10(6)(f)5., a hospice services provider that obtains a CON and subsequently fails to substantially comply on a timely basis (subject to any authorized extensions) to an annual data request from the SHPDA staff adopted in conjunction with long-term need methodology shall be assumed to have ceased operations as of the end of such period until the provider complies fully with all outstanding SHPDA data requests. Any provider that has deemed to have ceased operations under such provision shall be prohibited from submitting any CON application for additional authority or from seeking consideration by SHPDA of such facility's utilization data to oppose another provider's CON application. In accordance with Ala. Admin. Code r. 410-1-11-.08(2), should such cessation of operation continue for an uninterrupted period of twelve (12) months or longer, the provider's CON shall be deemed abandoned. SHPDA shall report to the ADPH any provider who is deemed to have abandoned its CON under this section.
- F. **The Applicant will notify SHPDA when a project is started, completed, or abandoned.**
- G. The Applicant must comply with all state and local building codes, and failure to comply will render the CON null and void.
- H. The Applicants and their agents will construct and operate in compliance with appropriate state licensure rules, regulations, and standards.

APPENDIX B

- I. Projects are limited to the work identified in the CON as issued.
- J. Any expenditure in excess of the amount approved on the CON must be reported to SHPDA and may be subject to review.
- K. The Applicant will comply with all state statutes for the protection of the environment.
- L. The application for licensure was timely submitted to the ADPH within twelve (12) months of the issuance of the Letter(s) of Non-Reviewability by SHPDA on or before July 7, 2006, under the former provisions of ALA. CODE § 22-21-29(d) (1975 as amended), and the application for licensure has not been deemed to have been abandoned.

II. CERTIFICATION

The information contained in this application is true and correct to the best of my knowledge and belief, and I agree to be bound by the restrictions contained herein.

Signature of Applicant

Applicant's Name and Title
(Type or Print)

_____ day of _____ 20____

Alabama Notary Public (Affix seal on Original)

Author: Alva M. Lambert

Statutory Authority: § 22-21-267, 271, 275, Code of Alabama, 1975

History: Adopted, March [], 2010