

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE REFERENCE SERVICE
JERRY L. BASSET, DIRECTOR**

(Pursuant to Code of Alabama 1975, § 41-22-6, as amended).

I certify that the attached is/are a correct copy/copies of rule/s as promulgated and adopted on the 17th day of August, 2016, and filed with the agency secretary on the 23rd day of August, 2016.

AGENCY NAME: State Health Planning and Development Agency
(Certificate of Need Review Board)

Amendment; New; Repeal; (Mark appropriate space)

Rule No. 410-1-8-.02(1), (2), (4), (5), (7), and (8)

(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

Rule Title: Contested Case Before Administrative Law Judge

ACTION TAKEN: State whether the rule was adopted without changes from the proposal due to written or oral comments;

No public comments were received; the rule was adopted without changes and as published for comment in the Alabama Administrative Monthly.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXXIV

ISSUE NO. 9, DATED JUNE 30, 2016.


Statutory Rulemaking Authority: Code of Alabama, 1975 §§ 22-21-271, -274 and -275.

(Date Filed)
(For LRS Use Only)

REC'D & FILED

AUG 23 2016

LEGISLATIVE REF SERVICE


Alva M. Lambert, Executive Director
State Health Planning and Development Agency
(Certifying Officer or his or her Deputy)

(NOTE: In accordance with § 41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

410-1-8-.02 Contested Case Before Administrative Law Judge

- (1) Upon timely written request of the applicant or intervenor of record that the application be assigned to an Administrative Law Judge, the Executive Director shall direct that the public hearing on the application or applications be held before an Administrative Law Judge appointed by the Governor of the State of Alabama. The assignment to an Administrative Law Judge shall occur within ten (10) days of the request, unless extended by agreement of the parties or as required to identify and resolve scheduling or conflict issue involving a potential judge. The Administrative Law Judge shall conduct the contested case proceedings in accordance with the Alabama Administrative Procedure Act, and shall file with the Board proposed findings of fact and conclusions of law with the Board in accordance with ALA. CODE §§ 41-22-15 & -16 (1975 as amended).
- (2) In the case of competing or batched applications, if one competing applicant or intervenor makes request pursuant to Rule 410-1-8-.02(1) for a contested case hearing, then all applications which are competing or batched with that applicant shall be also conducted as contested cases, regardless of whether such request for contested case status is made by those applicants.
- (3) A fee not to exceed the cost of the contested case proceeding, including the fee paid to the Administrative Law Judge, will be imposed upon the parties to the contested case proceeding. The parties shall each be responsible for their own legal fees.
- (4) Security for costs shall be filed with the request for a contested case proceeding. If the requester desires to post cash in lieu of security for costs, application shall be made to the Agency and the amount of cash to be posted shall be set by the State Agency. Security for costs shall be approved by the State Agency. Any cash security shall be conditioned and deposited to secure the payment of the Administrative Law Judge, at the conclusion of the contested case proceeding. Failure to file security for costs with the request for a contested case proceeding shall result in the contested case proceeding request being deemed incomplete.
- (5) In contested cases the presiding officer of the Certificate of Need Review Board, or, if the case is assigned to an Administrative Law Judge, the Administrative Law Judge, may in his or her discretion, issue a discovery order requiring applicants and intervenors, a reasonable time before the contested case hearing, to exchange lists of expected witnesses, together with a general summary of each witness' testimony, copies of documents to be offered as evidence at the hearing and if specifically requested, copies of any documents referred to in the Certificate of Need application not otherwise available to the public. Unless extended by written agreement of all parties: (a) any public hearing before an Administrative Law Judge pursuant to this section shall begin within forty-five (45) days of assignment to the Administrative Law Judge and be completed within ninety (90) days; and (b) the Administrative Law Judge shall render proposed findings of fact and conclusions of law in accordance with the Alabama Administrative Procedure Act within thirty (30) days of completion of the transcript.

- (6) In contested cases heard before an Administrative Law Judge, the Administrative Law Judge may require the direct or redirect examination of a witness through pre-filed testimony in lieu of oral examination. Such pre-filed testimony shall be in written question and answer form and shall be filed at least 10 calendar days prior to the hearing, unless directed otherwise by the Administrative Law Judge. At the hearing, such pre-filed testimony may, upon motion, be incorporated into the record as if the questions had been asked of the witness and the answers had been given orally, provided such testimony has been properly identified and authenticated under oath by the witness for whom it is presented and further provided that such witness is made available for cross-examination. In such cases, witnesses may also summarize their testimony orally. Pre-filed testimony may be stricken by the Administrative Law Judge on the same grounds applicable to testimony presented through oral examination. An Administrative Law Judge may take other measures to streamline the hearing process, including reasonable limitations on the number of witnesses, time of presentation, and restrictions on the presentation of testimony that is purely cumulative in nature.
- (7) Because substantial information is contained in applications for Certificates of Need, in supplemental filings, and in filings required of intervenor-opponents, it is the Agency's experience and judgment that the probative value of additional information obtained through more extensive discovery rarely justifies the accompanying burdens in time and expense, even though there is always additional information which is arguably "relevant" or "material." Therefore, depositions, interrogatories, document production requests, requests for admission, subpoenas, or subpoenas duces tecum, are not favored, and it is recommended that the discretion to authorize such discovery be exercised against permitting such discovery, or that any such discovery be limited to the most rare and unusual circumstances.
- (8) All written requests filed pursuant to this rule must be filed in accordance with the provisions of Rule 410-1-3-.09.

Author: Alva M. Lambert

Statutory Authority: § 41-22-12, § 41-22-15 and § 41-23-16, Code of Alabama, 1975.

History: Amended: Filed April 22, 1992. Amended: Filed October 17, 1996; effective November 21, 1996. Amended: Filed March 13, 1997; effective April 18, 1997. Amended: Filed February 1, 2000; effective March 7, 2000. Amended: Filed August 18, 2011, effective September 22, 2011. Amended: Filed January 20, 2012; effective February 24, 2012. Amended: Filed September 23, 2014; effective: October 29, 2014. Amended: Filed August 23, 2016; effective October 7, 2016.