

**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 16<sup>th</sup> day of March, 2016, and filed with the agency secretary on the 18<sup>th</sup> day of March, 2016.

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

\_\_\_\_\_ Amendment;  X  New; \_\_\_\_\_ Repeal; (Mark appropriate space)

**Rule No. 410-1-3-11**

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

**Rule Title: Submission of Mandatory Reports; Administrative Penalties**

**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. 4, DATED JANUARY 29, 2016.**

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

(Date Filed)  
(For LRS Use Only)

REC'D & FILED

MAR 18 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.)

**410-1-3-.11 Submission of Mandatory Reports; Administrative Penalties**

(1) For purposes of this rule:

(a) the term “Mandatory Report” shall include every annual report required to be filed with SHPDA by statute or rule and any other reporting requirement imposed by these rules or the *State Health Plan* that is not clearly identified therein as optional. The term shall not include discovery that may be authorized by the Certificate of Need Review Board or an Administrative Law Judge as part of a contested case proceeding or fair hearing, which shall be subject to such requirements as authorized under the Alabama Administrative Procedure Act or other regulations.

(b) For purposes of this rule only:

(1) a “rural health care provider” is a provider or applicant or hospital which is designated by the United States government Health Care Financing Administration (now Centers for Medicare and Medicaid Services) as rural, as specified in the SHPDA statutes at Ala. Code § 22-21-260(12); and

(2) a “small provider” is:

(i) a hospital or other health care provider providing in-patient care which is not a rural provider and has less than 65 licensed beds;

(ii) a health care provider holding CON authority solely to provide in-home services, such as in-home hospice or home health service, which holds CON authority to provide such in-home care in (a) an area of six counties or less, which does not include Jefferson, Madison, Mobile or Montgomery County; or (b) three counties or less, which includes Jefferson, Madison, Mobile or Montgomery County; or

(iii) any ambulatory surgery center, multi- or single specialty, performing procedures four (4) days a week or less;

(iv) any other health care provider which does not provide in-patient care and which holds a CON authorizing health care services to be provided at a single location.

(v) For purposes of this subsection (2), a health care provider’s CON authority shall be aggregated with all other CON authority held by entities under common ownership and control, as defined in Ala. Code § 22-21-270(e). In addition, a health care provider shall not be considered a “small provider” if any entity under common ownership and control holds CON authority for a facility or service that would not qualify for the small provider exception on a standalone basis. For illustration only:

1. A business entity holds a CON to provide home health care services in six counties, which do not include Jefferson, Madison, Mobile or Montgomery County. It is under common ownership and control with

two other business entities which each hold CON authority in two counties to provide the same service. None of these affiliated entities would be considered a "small provider" for purposes of the rule.

2. A business entity holding a CON to provide methadone treatment at a single location in Alabama is under common control and ownership with another methadone clinic holding CON authority. None of these affiliated entities would qualify as a "small provider" under this rule.
3. A non-rural hospital with less than 65 licensed beds is under common ownership and control with a business entity holding CON authority to provide ambulatory surgical service. None of these affiliated entities would be considered a "small provider" for purposes of this rule.

(c) When computing any time period stated in days or a longer unit of time, the Agency or health care reporter shall, for the purposes of this rule:

- (i) exclude the day of the event that triggers the period;
- (ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) The filing of a Mandatory Report shall be deemed received and filed on the date of electronic submission to the Agency, pursuant to SHPDA Rule 410-1-3-.09.

(a) Failure to File or Filing Incomplete Report: Any health care reporter failing to meet a filing deadline for a Mandatory Report, or who files a Mandatory Report deemed to be materially incomplete by the State Agency, shall be notified by the State Agency staff that they are not in compliance with this rule within seven (7) days of the filing deadline (in the case of a failure to file) or within seven (7) days of the date of receipt of the filing (in the case of a report deemed materially incomplete by Agency staff). Such health care reporter shall have sixty (60) days from the original due date of the report to correct the deficiency. Any facility that is noncompliant under this rule, either due to failure to file or due to a filing being deemed materially incomplete, shall be deemed to be in a probationary status in regard to the enforcement of penalties under this section for a period not to exceed sixty (60) days from the date of filing deadline.

(b) Failure of the health care reporter to bring its report into compliance within the required sixty (60) days will result in the report being deemed not properly filed and subject the health care reporter to the administrative penalty provisions of Section 3 applicable to delinquent filings, with such penalties to apply from the original due date of the report.

(c) SHPDA shall track the total number of Mandatory Reports that are not filed on or before the initial deadline, as well as the total number of Mandatory Reports deemed materially

incomplete when initially filed. This information, which shall include the names of the non-compliant health care reporters, shall be reported to the Certificate of Need Review Board, the Health Care Information and Data Advisory Council and the Statewide Health Coordinating Council at their regularly scheduled meetings immediately following the end of the grace period.

(3) In addition to any other provisions contained in these rules or the *State Health Plan*, a health care reporter that fails to submit a compliant Mandatory Report within any applicable probationary period under subsection (2)(a), shall be assessed a penalty equal to:

(a) A flat fee of \$1,000 for a non-rural health care provider and \$500 for a rural health care provider or small provider, plus

(b) An additional penalty of \$100 for non-rural health care providers and \$50 for rural and small health care providers for each day of delinquency, calculated from the day after the due date for filing (without regard to any probationary period) through the date of filing, up to a maximum penalty of \$10,000 for non-rural health care providers (except for small providers) and \$5,000 for rural health care providers and small providers.

(4) A delinquent Mandatory Report must meet the requirements of Section 2 above and be accompanied by payment of any administrative penalty prescribed in Section 3 above in order to be deemed received and filed with the Agency. Such payment shall be submitted in accordance with SHPDA Rule 410-1-3-.09, including the provisions related to the submission of fees.

(5) The Executive Director may waive imposition of a penalty under this rule only upon a written finding that a timely filing was rendered impossible due to an act of God comparable to (a) an electrical outage or weather emergency applicable to all businesses in the area of the health care reporter; (b) the unanticipated closure of SHPDA offices (other than state holidays or weekends); or (c) an outage rendering SHPDA's filing system inoperable. Any such waiver shall extend only to the period of time that the filing was rendered impossible by the qualifying circumstances. The Executive Director shall advise the Certificate of Need Review Board of the status of all waiver requests at its regular monthly meeting.

(6) A health care provider who is non-compliant under the terms of this rule may not participate in the Certificate of Need review process, either as an applicant for a Certificate of Need or in opposition to a Certificate of Need application (through intervention or other statements in opposition), (without regard to the probationary period set forth in Section 2(a)). A health care provider shall maintain compliance from the date of the initial filing of such provider's application or opposition and for the duration of such provider's participation in the administrative and/or judicial process. A provider deemed non-compliant due to a Mandatory Report being deemed materially incomplete by Agency staff or for filing after the due date shall have seven (7) days from the date of notification of such deficiency to bring such report into compliance prior to being disqualified from any pending proceeding in which the provider is a party.

(7) A health care reporter required to file a Mandatory Report shall maintain a current listing with the Agency of the name, title, phone number and e-mail address of at least two individuals designated as the contact of record for purposes of all reports filed with the Agency and shall designate at least one such contact person as the primary contact in each report that is filed. The failure to maintain a current contact listing shall not constitute grounds for the waiver of any penalties imposed under this rule.

Author: Alva M. Lambert

Statutory Authority: §§ 22-4-34, -35 and -37, Code of Alabama, 1975

History: New Rule Filed: March 18, 2016; effective: May 2, 2016.