

# Mississippi CONewsletter

## Update: Proposed Changes to the FY 2010 Mississippi State Health Plan and Revisions to the Mississippi Certificate of Need Review Manual

### **FY 2010 Mississippi State Health Plan**

In Phelps Dunbar's Mississippi Certificate of Need (CON) Alert issued on March 20, 2009, attached as Exhibit A, we advised that the Mississippi State Department of Health, Division of Health Planning and Resource Development (Division) had proposed changes to the criteria and standards of the FY 2010 State Health Plan. The more significant proposed changes were in the areas of acute care hospitals, obstetrical services and neonatal special care services. The Division has further revised some of the proposed changes discussed in our March 20, 2009 CON Alert. The following is a summary of the initial proposed changes and recent revisions:

- Modifying the General Hospital Service Areas (GHSA) Planning Areas to be composed of nine Planning Areas rather than seven Planning Areas;
  - The Division made no further changes to the GHSA Planning Areas. However, the GHSA Map has been renumbered from Map 11-1 to Map 5-1.
- Establishing new General Acute Care Hospital criteria for counties located in underdeveloped GHSA with rapidly growing populations;
  - One of the conditions for any person proposing a new hospital under this provision is that the applicant must fully participate in the Trauma Care System at a level to be determined by the Department of Health for a reasonable number of years to be determined by the State Health Officer.

The Division added the following definition of "fully participate": "Fully participate means play in the Trauma Care System as provided in the Mississippi Trauma Care System Regulations and the new hospital shall not choose or elect to pay a fee not to participate or participate at a level lower than the level lower than the level specified in the CON."

- The Division has added an additional condition for any person proposing a new hospital under this provision. The fifth criteria is that the new hospital must participate in the Mississippi State Employees Insurance Program; and
- The Division added an additional provision to this section, 102.01(c)(7), which states: "A health care facility that has ceased to operate for a period of 60 months or more shall require a Certificate of Need prior to reopening."
- Revising the criteria and standards for the provision of obstetrical services; and
  - The Division made no further changes to these criteria and standards.
- Revising the criteria and standards for the provision of neonatal special care services.
  - The Division has chosen to retain the statement that the Department of Health will use Perinatal Planning Areas to determine the need for "obstetrical services" rather than for "neonatal special care services."
  - The Division has chosen to retain the definition of "optimum utilization."

On July 8, 2009, the Division will request that the Mississippi State Board of Health adopt the FY 2010 Mississippi State Health Plan.

### **Mississippi Certificate of Need (CON) Review Manual**

The Division has also proposed several revisions to the Mississippi Certificate of Need Review Manual (CON Review Manual). The Division stated that these revisions are necessary to "clarify rules, further transparency and add considerations of economic impact to review of CON applications."

Proposed revisions to the CON Review Manual include the following:

- Clarifying that CON applications filed with the Department are available for inspection and copying only after they have been deemed complete by Division staff and entered into a review cycle (Chapter 1, Section 110.01);

- Allowing records to be transferred to the Mississippi Department of Archives and History upon completion of a project rather than "after three years, or upon completion of the project," allowing for a greater archive of records (Chapter 1, Section 112.01);
- Clarifying the definition of "Determination of Reviewability," stating: "Determination of Reviewability means written findings of the Department setting forth the Department's decision as to the requirement for certificate of need review regarding a proposal pending before it, pursuant to Section 41-7-171 et seq." (Chapter 1, Section 113.14);
- Clarifying the statutory exemption of veterans homes from the CON process, stating: "The new construction, renovation or expansion of or addition to any veterans home or domiciliary for eligible veterans of the State of Mississippi as authorized under Section 35-1-19 shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary" (Chapter 2, Section 101.03);
- Clarifying that Notices of Intent shall be valid for 180 days (six (6) months) from the date of receipt (Chapter 3, Section 100.01);
- Defining "shell application" as not meeting the requirements to be considered an incomplete application, stating: "A shell application that has numerous deficiencies and/or is less than 50 percent complete at the time of original filing shall not be considered as an 'incomplete application'..." (Chapter 3, Section 104.01);
- Clarifying the requirements for a Determination of Reviewability, stating: "Prospective applicants proposing a capital expenditure, the renovation or refurbishment of a facility; expansion of ESRD facility, relocation of a health care facility or service, an addition of health services, a change of ownership, a bed conversion, or any other activity wherein the provisions of Section 41-7-173 et seq., Mississippi Code of 1972, Annotated, as amended, are potentially applicable, shall submit a written request to the Department for a determination of reviewability" (Chapter 3, Section 115.01); and
- Adding Economic Considerations to the general review criteria for CON applications, considering the economic impact of the project to the local and state economy and including an analysis of the following for the first three years of the project's operation:
  - o The number of new full time and part time jobs, and ancillary jobs created due to the project;
  - o An estimate of the direct and ancillary benefits to the local and state economy as a result of the project; and
  - o An estimate of local and state taxes to be paid by type for the project (Chapter 8, Section 17).

On July 8, 2009, the Division will request that the Mississippi State Board of Health adopt the revisions to the CON Review Manual.

#### Comment Period and Hearing

If you would like to comment on the proposed changes or would like Phelps Dunbar to submit a comment for you, written comments on the proposed changes are being accepted between June 4, 2009 and July 6, 2009. Additionally, a hearing on the proposed changes will be held on June 26, 2009 at 10:00 a.m. in the Health Services Conference Room, 2nd Floor, Osborne Building, at the Mississippi State Department of Health, 570 East Woodrow Wilson Avenue, Jackson, Mississippi. In order to speak and present evidence at the hearing, you must make a written request to the Mississippi State Department of Health at least five days prior to the hearing.

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