

1 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4000 (2008)*

22-4000. GENERAL PROVISIONS

4000.1 The provisions of chapters 40 through 45 of this title, adopted under § 17 of the D.C. Certificate of Need Act of 1980 (the "Act"), D.C. Law 3-99 (effective September 16, 1980) by the D.C. State Health Planning and Development Agency (also referred to as the "SHPDA"), a unit of the Department of Human Services, shall apply to all reviews of applications for certificates of need required under the Act.

4000.2 No person shall undertake any activity for which a Certificate of Need is required even though the necessary Certificate of Need was issued if that Certificate of Need is not renewed as necessary under §§ 4010 through 4012 of this title, or if the Certificate of Need has been revoked or withdrawn under §§ 4020 or 4312 of this title.

4000.3 Certificates of Need shall be valid for one (1) year unless a shorter period is requested in writing by the applicant.

4000.4 Certificates of Need issued as a result of reconsideration by the SHPDA of an approved Certificate of Need shall be valid only for the period of validity of the Certificate of Need that was reconsidered.

4000.5 Certificates of Need shall be valid upon their issuance. However, because a Certificate of Need may be revoked or modified by the SHPDA as a result of a reconsideration or appeal decision, each applicant shall proceed solely at their own risk during the period in which reconsideration or appeal may be requested and during any period that any reconsideration or appeal is in process.

4000.6 The issuance of a Certificate of Need, if required under the Act, shall be a condition precedent to the issuance of any license, permit, or any other type of official approval (except zoning approval) by any agency or officer or employee of the District government that is necessary for the project in addition to the Certificate of Need.

4000.7 For purposes of § 4000.6, the term "official approval" shall mean final approval by the District government subject only to appeal.

4000.8 In the case of appropriation of funds for projects subject to inclusion in any District budget, the issuance of a Certificate of Need shall not be required before administrative budget review bodies may approve a budget request for consideration by the D.C. Council.

2 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

CDCR 22-4001

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4001 (2008)*

22-4001. STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

4001.1 The review process of the D.C. State Health Planning and Development Agency shall be an open process.

4001.2 The project application and review files of the SHPDA shall be open for public inspection and review during regular business hours.

4001.3 Documents shall be duplicated for any person upon request and upon payment of the reasonable costs of duplicating the requested document.

4001.4 The SHPDA Director shall provide information of the status of any review or the status of any outstanding Certificate of Need upon request.

4001.5 The SHPDA Director may establish charges for all SHPDA studies, reports, data compilations, publications, or other types of documents. The charges shall be reasonably related to the costs of preparation, development, retrieval, duplication, and postage, where applicable.

4001.6 The review meetings of the SHPDA and the Statewide Health Coordinating Council (the "SHCC") shall be open to the public. Members of the public and press shall be invited to attend.

4001.7 Notification to the public of meeting dates and review results shall be made in at least one (1) newspaper of general circulation in the District.

3 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4002 (2008)*

22-4002. PREAPPLICATION CONSULTATION WITH PROSPECTIVE APPLICANTS

4002.1 Prospective applicants for a Certificate of Need shall consult with a designated member of the SHPDA staff prior to the submission of a Letter of Intent for any project and throughout the process of submission of an application.

4002.2 The purpose of the consultation shall be to allow the SHPDA staff member to review with the prospective applicant the procedures and criteria that will be followed during the course of SHPDA processing of the application once it is received, to offer technical assistance on information that should be contained in the application, to provide a tentative schedule for review of the application, and to provide other assistance that may be helpful to the applicant.

4002.3 Prior consultation shall not alter the requirement to file a formal Letter of Intent. Prior consultation shall not commit the SHPDA to the issuance of a Certificate of Need, or represent the official position of the SHPDA.

4 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4003 (2008)*

22-4003. LETTERS OF INTENT

4003.1 Prior to the submission of a formal application for a Certificate of Need, the prospective applicant shall submit a Letter of Intent to the SHPDA Director or a designee.

4003.2 The purposes of the Letter of Intent shall be to formally notify the SHPDA that an application for a Certificate of Need will be forthcoming, to permit the SHPDA to prepare for review, and to allow the SHPDA to assist the prospective applicant to file an application.

4003.3 The Letter of Intent shall be submitted as early as possible in the course of planning a project and at least sixty (60) but not more than one hundred eighty (180) days prior to the filing of the application for a Certificate of Need.

4003.4 The SHPDA may waive the time requirement to allow submission of an application before expiration of the sixty (60) day period if good cause is shown.

4003.5 The Letter of Intent shall include at least the following:

- (a) The name, address, and telephone number of the applicant;
- (b) The name of an individual authorized to respond to SHPDA staff questions regarding the application;
- (c) The proposed location for the health care facility, health service, or other entity;
- (d) A brief description of the proposed health care facility, health service, or other entity, including its cost and the projected date of implementation; and
- (e) A copy of an advertisement placed in a newspaper of general circulation in the District.

4003.6 The advertisement shall generally describe the proposed project and state that a Letter of Intent to apply for a Certificate of Need is being filed with the SHPDA.

4003.7 The Letter of Intent shall be signed by the applicant's chief executive officer or a designee.

4003.8 Upon filing of a Letter of Intent, a SHPDA staff member shall be designated to assist the applicant.

4003.9 If a Certificate of Need application has not been submitted within one hundred eighty (180) days of the date of submission of the Letter of Intent, the Letter of Intent shall be considered void.

## CDCR 22-4003

4003.10 An applicant may request, in writing, an extension of time beyond the one hundred eighty (180) day application period; Provided, that only one (1) extension of no more than one hundred eighty (180) days shall be granted to an applicant.

4003.11 The SHPDA may use the period of time after receipt of a Letter of Intent and prior to receipt of a formal application for a Certificate of Need to do the following:

- (a) Answer inquiries concerning the requirements for a Certificate of Need;
- (b) Advise the applicant on appropriate joint planning with other health care facilities, HMOs, and affected parties; and
- (c) Advise the applicant on the involvement of other community and public agencies, providers, and consumers in the long and short-range planning of the applicant.

4003.12 The SHPDA shall provide technical assistance to individuals and public and private entities in obtaining and completing the form necessary for the development of an application.

## 5 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4004 (2008)*

22-4004. Standards For Exemption of Transactions and Projects From the Certificate of Need Process

4004.1 The Office of Health Systems Development (OHSD) shall exempt transactions or projects from the Certificate of Need process in accordance with the provisions of this section and Section 22 of D.C. Act 11-151 as follows:

- (a) The project or transaction was initiated or letter of intent was submitted to the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) prior to July 25, 1995; and
- (b) Expenditures of at least \$ 100,000 were made on the project planning.

4004.2 An applicant shall apply for an exemption from the OHSD and shall demonstrate that specific negotiations were undertaken with a third party (i.e. a vendor, a landlord, or another health care provider) and that the applicant has submitted documentation to DCRA with the intent to:

- (a) Establish or acquire a health service or facility;
- (b) Acquire medical equipment; or
- (c) Otherwise establish or provide a new institutional health service.

4004.3 An applicant shall submit a copy of the letter of intent that has been filed with DCRA which indicates that the applicant intends to comply with the requirements of § 4004.2. The letter of intent shall include the following:

- (a) A description of the proposed health care facility, health service, major medical equipment, or other health entity;

- (b) An estimated capital expenditure associated with the project and the schedule of implementation of the project;
- (c) A description of the target population to be served; and
- (d) The location of the proposed facility or service.

4004.4 For purposes of this section, planning expenditures means reasonable expenditures made by a health care provider to cover planning costs of a specific project prior to its implementation. Planning expenditures may include, but are not limited to, the following activities:

- (a) Project feasibility studies;
- (b) Market share studies; and
- (c) Legal and consultant fees incurred during the planning stage of the project.

4004.5 If an applicant seeks to qualify for the exemption set forth in this section, the applicant shall provide:

- (a) Documentation demonstrating that the planning expenditures were specifically made for the project for which the exemption is sought; and
- (b) Evidence that the applicant has incurred expenses of at least \$ 100,000 in planning expenditures and that the expenses were incurred between December 29, 1994 and July 25, 1995.

4004.6 For purposes of this section, documentation of the \$ 100,000 expenditure as required in § 4004.5 shall include, at a minimum, the following:

- (a) Invoices for expenditures as outlined in § 4004.4;
- (b) Proof of salaries of dedicated staff as outlined in § 4004.7; and
- (c) Any other expenditure that may be documented as a planning expenditure.

4004.7 Planning expenditures shall not include the following costs:

- (a) Acquisition of real property, equipment, or leases; or
- (b) Costs of in-house professional staff (e.g., executives, lawyers, accountants, engineers) assigned to the specific project for less than 75% of their time.

4004.8 OHSD reserves the right to review each submittal of planning expenditures to determine if those expenditures are in compliance with these rules.

4004.9 If OHSD determines that an applicant's documentation of concrete negotiations or letter of intent and planning expenditures fail to comply with this section, OHSD shall reject the applicant's request for an exemption.

History of Rules since Last Compilation by Agency (August 1986)  
Chapter 40, Sec. 4004, Standards for Exemption of Transactions and Projects from the Certificate of Need Process, 42 DCR 7286 (12-29-95) (DHS)

6 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE

CDCR 22-4005

## CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4005* (2008)

## 22-4005. CONDITIONAL CERTIFICATES OF NEED

4005.1 The SHPDA may attach conditions to the approval of a Certificate of Need as long as the conditions relate directly to any adopted SHPDA review criteria.

4005.2 The expiration date, if any, of each condition shall be specified in the Certificate of Need.

4005.3 If so specified, conditions shall continue to be valid after a project is completed or after a Certificate of Need is terminated.

4005.4 In any case where the SHPDA finds that an approved project does not satisfy SHPDA's access criteria based on the considerations in §§ 127.1(e), (f), and (g), it may, if it approves the application, impose the condition that the applicant take affirmative steps to meet those criteria.

4005.5 If the SHPDA finds a condition on which a Certificate of Need was issued has been violated, it may withdraw the Certificate of Need through use of the procedure for noncompliance with the Certificate of Need Act and regulations, as specified in § 4020.

4005.6 In the case of an application approved for a Certificate of Need with conditions, the SHPDA may (if no licensing or operating approval is required by any other District agency) grant the Certificate holder the authority to begin "provisional operation" while the Certificate of Need holder demonstrates its compliance with the conditions attached to the Certificate of Need.

4005.7 If the SHPDA determines that conditions have been violated and the applicant is not permitted to begin full operation, the applicant may appeal in the same manner as with any decision to issue or not issue a Certificate of Need.

4005.8 The completed application for a Certificate of Need and related documentation shall be considered to be a part of any Certificate of Need issued after review of the application.

4005.9 The holder of a Certificate of Need shall proceed only in conformance with the Certificate of Need and the related application and documentation except insofar as the SHPDA has approved modifications in accordance with § 4006.

7 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4006* (2008)

## 22-4006. PROPOSED CHANGES IN APPROVED PROJECTS

4006.1 In issuing a Certificate of Need, the SHPDA shall specify in the Certificate the maximum amount of capital expenditure that may be obligated under the Certificate.

4006.2 As specified in this section, a Certificate of Need holder shall report proposed changes in the project budget which will result in expenditures in excess of the maximum capital expenditure specified in the Certificate of Need.

4006.3 The SHPDA shall review and approve or disapprove a proposed budget change as set forth in this section.

4006.4 Each project shall be assigned a "base amount" defined as one-half of one percent (0.5%) of the approved maximum capital expenditure.

4006.5 In no case shall the base amount be less than ten thousand dollars (\$ 10,000) or more than two hundred fifty thousand dollars (\$ 250,000).

4006.6 Except for routine construction change orders, the purpose of which is to correct architectural or engineering errors or to compensate for errors in "as built" drawings of existing buildings, errors in surveys, or similar types of errors, all proposed changes to an approved project budget shall be promptly reported to the SHPDA.

4006.7 Budget changes resulting from routine construction change orders shall be reported only when project completion is reported or when those changes combined with other proposed or approved changes total more than a project's "base amount."

4006.8 Any request for a budget that is equal to project's "base amount" or less shall be approved; Provided, that if more than one (1) request for automatic approval is made during the course of a project, no request that makes the cumulative total of those requests exceed the project's original "base amount" shall be automatically approved.

4006.9 One-time or cumulative budget changes of more than the project's "base amount," but less than four hundred thousand dollars (\$ 400,000) shall be reviewed for approval or disapproval by the SHPDA staff, without referral to the SHCC. The SHPDA Director shall act after receiving recommendations from designated staff members.

4006.10 Any one-time or cumulative budget change of more than four hundred thousand (\$ 400,000) shall be reported to the SHPDA for determination of the type of approval necessary.

4006.11 If patient care is not significantly affected, and if either of the following conditions is met, the SHPDA shall approve or disapprove the change without referral to the SHCC, and shall notify the SHCC within five (5) days:

(a) The cost increase is directly related to inflation, unforeseen construction difficulties or changes in building plans in the nature of routine change orders consistent with the Certificate of Need application approved by SHPDA; or

(b) The cost increase involves changes in acquisition plans from lease or similar arrangements to purchase or vice versa (if the change is economically justifiable as determined by the SHPDA).

4006.12 For all other (not listed in § 4006.11) proposed changes to the project budget of more than four hundred thousand dollars (\$ 400,000), including all those deemed to affect patient care, the Certificate of Need holder shall submit a new application for a Certificate of Need for the change.

4006.13 Any change that would result in an increase in patient charges of ten percent (10%) or more shall be deemed to affect patient care.

4006.14 Even if a project budget is not affected, Certificate of Need holders shall also report all proposed changes to the specifications (as stated in the Certificate of Need application or approved Certificate of Need) of projects for which a Certificate of Need has been issued. This requirement shall include reporting all services, equipment, and any other types of change whatsoever to the specifications of an approved project.

4006.15 If the SHPDA determines that a proposed non-budgetary change will not significantly affect patient care, the SHPDA shall inform the Certificate of Need holder that the change may be made (subject to reconsideration and appeal) without further action by the SHPDA.

4006.16 The SHPDA shall update its files concerning the nature of the change and shall notify the SHCC within five (5) days.

4006.17 If the SHPDA finds that a proposed non-budgetary change would substantially affect patient care, the SHPDA shall require the Certificate of Need holder to apply for and receive a new Certificate of Need before the proposed change may be implemented.

4006.18 If a new Certificate is required under § 4006.17, the SHPDA shall consider the date of issuance of the original Certificate to be the date of issuance of the consolidated Certificate for all SHPDA purposes, including quarterly reports and renewal schedules.

4006.19 A proposed change in a completed project associated with a capital expenditure for which the SHPDA has previously issued a Certificate of Need shall require review and issuance of a Certificate of Need if the change is proposed within two (2) years after the date the activity for which the expenditure was approved is undertaken. (For example, where a hospital receives approval to construct a new wing, the hospital will "undertake the activity" when it begins to provide services in the wing. If, in the two (2) years after "undertaking the activity," the hospital decides to increase the number of beds in the wing by a number that would not otherwise trigger a review, a review would still be required).

4006.20 The provisions of § 4006.19 shall apply to changes associated with capital expenditures that are subject to review under this title.

4006.21 SHPDA review and approval shall be required whether or not a capital expenditure is associated with the proposed change itself.

4006.22 A "change in a project" shall include, at a minimum, any change in the bed capacity of a facility and the addition or termination of a health service.

8 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4007 (2008)*

22-4007. PREOPERATIONAL INSPECTIONS

4007.1 No Certificate of Need holder shall begin full operation of an approved project (as contrasted to "provisional" operation which may be authorized in accordance with § 4005) until the SHPDA has conducted a preoperational inspection and review to determine compliance with the Certificate of Need requirements.

4007.2 In the case of large projects that may be completed in phases, the Certificate of Need holder may request approval to begin operation of phases as the phases are completed.

4007.3 The holder of a Certificate of Need shall inform the SHPDA of the proposed date for the initiation of operation of the facility or service (or a part of the facility) approved under a Certificate of Need no later than thirty (30) days before the proposed date for the beginning of operation.

4007.4 After notification as required in § 4007.3, the SHPDA shall conduct an on-site preoperational inspection and review for compliance with all Certificate of Need requirements.

4007.5 The Certificate of Need holder shall make all sections of the facility (if any) available to the SHPDA, and shall produce all records, including cost records, judged necessary to determine compliance with the specifications approved by the SHPDA.

4007.6 If the SHPDA inspector determines that a project or an operational portion of a project is substantially complete, and that all requirements and specifications of the Certificate of Need have been adhered to, the SHPDA shall

issue a letter to that effect to the Certificate of Need holder. The Certificate of Need holder shall not begin operation without this letter.

4007.7 If all phases of a project are completed, receipt of the letter of completion issued under § 4007.6 terminates the Certificate of Need; Provided, that all conditions imposed upon the issuance of the Certificate of Need that have continuing applicability after project completion shall remain in effect.

4007.8 If the SHPDA inspector determines that a project or an operational portion of a project is not substantially complete or not in compliance with all requirements and specifications of the Certificate of Need, the SHPDA shall issue a letter to that effect to the Certificate of Need holder.

4007.9 The letter issued under § 4007.8 shall specify in what way the project is not complete or does not conform to requirements or specifications and what steps are necessary to rectify the situation.

4007.10 A holder of a Certificate of Need who has received a letter described in § 4007.8 who disagrees with the letter may ask for reconsideration and then appeal just as if the letter were a denial of a Certificate of Need, as specified in chapter 43 of this title.

9 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4008 (2008)*

22-4008. EMERGENCY ISSUANCE OF A CERTIFICATE OF NEED

4008.1 If there is an emergency in which repair or replacement of a facility or equipment is needed to prevent or rectify an immediate threat to the health and safety of patients, providers, or visitors, a person subject to Certificate of Need requirements may request emergency issuance of a Certificate of Need.

4008.2 The request for emergency issuance of a Certificate of Need shall specify the nature of the emergency and the nature of the threat to health and safety resulting from the emergency.

4008.3 Within one (1) working day after a request for emergency issuances of a Certificate of Need, the SHPDA shall assess the claim of emergency and determine whether an emergency exists.

4008.4 If an emergency is declared according to the provisions of § 4008.3, the SHPDA shall immediately determine whether alternatives to immediate repair or replacement are feasible.

4008.5 If alternatives to immediate repair or replacement are feasible (such as transfer of patients to other available facilities or services), the SHPDA shall not issue an emergency Certificate of Need, and the applicant shall apply for a Certificate of Need through the appropriate normal process.

4008.6 If alternatives to immediate repair or replacement are not feasible, the SHPDA shall immediately issue a Certificate of Need to allow necessary resumption of operations and the provision of services at the level provided before the emergency.

CDCR 22-4009

10 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4009* (2008)

22-4009. RESERVED

11 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4010* (2008)

22-4010. RENEWAL OF CERTIFICATES OF NEED

4010.1 Each Certificate of Need shall be issued for a period of one (1) year unless the applicant requests a shorter period.

4010.2 There shall be no limit to the number of times a Certificate of Need may be renewed if it meets the requirements for renewal.

4010.3 The SHPDA may renew an expiring Certificate of Need up to four (4) times (for a total period of five (5) years, including the original year, plus any administrative extensions that may have been granted) upon a showing of substantial progress or a justification for lack of progress.

4010.4 Renewals for a fifth (5th) time shall be processed under § 4011.

4010.5 For purposes of this section, the phrase "substantial progress" shall mean reasonable compliance with the SHPDA-approved schedule for the project as defined in this section.

4010.6 For purposes of this section, the phrase "justification for lack of progress" shall mean an explanation acceptable to the SHPDA for the Certificate of Need holder's non-compliance with the SHPDA-approved schedule, and may include factors beyond the control of the Certificate of Need holder.

4010.7 The SHPDA shall base its findings on review of the required quarterly progress reports filed by the holder of the Certificate of Need as well as additional information required by this section.

4010.8 Progress shall be deemed "satisfactory" if there is a finding of substantial progress or an adequate justification for lack of progress.

4010.9 Each renewal review that is based on a showing of substantial progress shall consider questions of progress in terms of the degree to which the applicant has met the most recent SHPDA-approved schedule for the project and in terms of the degree to which the project continues to meet all review criteria other than those for need and conformance with the State Health Plan.

4010.10 The "SHPDA-approved schedule" shall be the latest of the following:

- (a) The final schedule submitted for approval in the applicant's Certificate of Need application;
- (b) The schedule required by the SHPDA in any condition that may have been attached to a Certificate of Need; or
- (c) The schedule approved by the SHPDA in the most recent renewal.

4010.11 If "satisfactory" progress has not been made, the SHPDA shall issue a ninety (90) day administrative extension of the Certificate of Need for the purpose of allowing the SHPDA to commence proceedings for withdrawing the Certificate of Need under the provisions of § 4020.

4010.12 In issuing the renewal, if progress is "satisfactory" but there has been a deviation from any other aspect of the approved application, the SHPDA may require the applicant to conform to the previously approved requirements or a SHPDA-approved modification of those requirements.

4010.13 Renewal of a Certificate of Need may be appealed under the provisions of chapter 43 of this title.

4010.14 Except as provided in § 4011.4, the SHPDA administratively may extend the one (1) year period of validity of a Certificate of Need for up to ninety (90) days for good cause, which may include a showing that the project is within ninety (90) days of completion.

4010.15 A Certificate that is not renewed by the end of one (1) or more extensions (totaling no more than one hundred eighty (180) days, except as provided in § 4011.6) shall be void.

12 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4011 (2008)*

22-4011. FIFTH RENEWALS OF CERTIFICATES OF NEED

4011.1 A Certificate of Need holder requesting a fifth (5th) renewal of a Certificate of Need shall submit a complete new application for a Certificate of Need for the project to the SHPDA no later than six (6) months prior to the expiration of the Certificate of Need.

4011.2 The SHPDA shall review this application for a fifth (5th) renewal of a Certificate of Need for completeness in accordance with the provisions of chapter 42 of this title.

CDCR 22-4011

4011.3 The Certificate of Need holder shall submit whatever information is needed to render the application complete by the tenth (10th) of the month before the beginning of the last review cycle which would be completed before the Certificate's expiration.

4011.4 The application for a fifth (5th) renewal of a Certificate of Need shall be reviewed as if it were a new application.

4011.5 Any Certificate of Need issued following a review under this section shall be eligible for up to four (4) annual renewals without further full review for need and other required factors.

4011.6 If a holder of a Certificate of Need requesting a fifth (5th) renewal gives written assurances that the project will be completed within six (6) months of the expiration of its current Certificate of Need, the SHPDA administratively may extend the current Certificate of Need for up to six (6) months and shall not require submission of a new Certificate of Need application.

4011.7 Each holder of a Certificate of Need that on September 16, 1980 (the effective date of D.C. Law 3-99) had been renewed four (4) or more times by the SHPDA shall be subject to the provisions of this section for the first (1st) Certificate of Need renewal requested to be effective on or after July 17, 1983.

13 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4012 (2008)*

22-4012. PROGRESS REPORTS

4012.1 The holder of a Certificate of Need shall make progress reports at least quarterly to the SHPDA.

4012.2 The progress report at the end of the third (3rd) quarter in any year of a Certificate of Need shall be considered a request for renewal of the Certificate, unless the holder of the Certificate indicates that the project will essentially be completed by the expiration date of the current Certificate, or unless the Certificate of Need holder is subject to the provisions of § 4011 and must submit a complete new application.

4012.3 Progress reports shall include at least the following information, if applicable:

- (a) Identifying information, including the originally assigned registration number;
- (b) Status of construction of the project (including current estimated completion date) in relation to the SHPDA-approved construction schedule (include copy), and any revised construction schedule reported in previous quarterly progress reports but not yet approved by the SHPDA (include copy);
- (c) Reasons for not progressing at the rate contemplated in the most recently submitted schedule, if applicable;
- (d) Any events that might delay or halt future progress, and actions to be taken in response to these events;
- (e) Any changes in the proposed schedule and justification for those changes;

## CDCR 22-4012

(f) Changes in the scope of the project or program from that was approved in the Certificate of Need (if there are changes, submit copies of revised construction drawings, specifications, leases, or other relevant documentation);

(g) An itemization of any changes in the project's cost from those approved by the SHPDA, and as modified in previous quarterly progress reports;

(h) A statement of the current means of financing the project, and the continued adequacy of the financing;

(i) Any events that might be foreseen which might place financing in jeopardy, and action to be taken in response to those events (submit pertinent documentation if available);

(j) A description of efforts toward compliance with any conditions attached to the Certificate of Need; and

(k) Other pertinent supplemental information the Certificate of Need holder wishes to bring to the attention of the SHPDA or other information specifically requested by the SHPDA if that information is related to the project.

4012.4 Upon receipt of any progress report, the SHPDA may request additional information in order to judge the report complete.

4012.5 Except as provided in § 1412.6, all requests for renewal of Certificates of Need except those requiring submission of a new application and full review shall be reviewed and approved or disapproved by the SHPDA without submission of the renewal to the SHCC for review and recommendation.

4012.6 If the SHCC requests at its last meeting four (4) months before the expiration of a Certificate of Need to review and make a recommendation concerning renewal of that Certificate, the SHPDA staff shall submit the memorandum prepared as specified in § 4012.7 to the SHCC and any SHCC committee designated by the SHCC in a timely manner, to allow the SHCC to review the issues and make a recommendation before expiration of the current Certificate of Need.

4012.7 Upon receipt of a complete progress report at the end of the third (3rd) quarter of the period of Certificate of Need, the assigned SHPDA staff person shall prepare a memorandum of the progress made by the Certificate of Need holder. The analysis shall consider at least the following criteria:

(a) The degree to which the project is progressing according to the most recent SHPD-approved schedule for the project;

(b) If applicable, the degree to which delays are beyond the control of the Certificate of Need holder;

(c) The degree to which the holder of the Certificate has exercised diligence to ensure the project will be completed on schedule;

(d) If applicable, the reasonableness of changes in the proposed schedule in relation to the health requirements of District residents and visitors;

(e) If applicable, the degree to which any changes in cost exceed the rate of inflation for construction projects in the District;

(f) The degree to which the Certificate of Need holder has exercised diligence in minimizing costs;

(g) The continued adequacy of financing for the project;

(h) If applicable, compliance with conditions attached to the original Certificate of Need; and

(i) The continued adequacy of the project in relation to all review criteria except those for need and conformance to the State Health Plan.

4012.8 The memorandum specified in § 4012.7 and a staff recommendation shall be provided to the SHPDA Director for his or her use in deciding whether to issue a renewed Certificate of Need or to take action under §§ 4010 and 4020 to withdraw a Certificate of Need.

14 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4013 (2008)*

4013-4014. RESERVED

15 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4015 (2008)*

22-4015. SALE OR TRANSFER OF EFFECTIVE CONTROL

4015.1 In accordance with D.C. Code, § 32-307(c), the sale or transfer of effective control over a project for which a current Certificate of Need has been granted shall cause withdrawal of the Certificate of Need, effective as of the time at which the sale or transfer occurs, unless the sale or transfer has first been reviewed and approved by the SHPDA, as specified in §§ 4015.6 through 4015.8.

4015.2 For purposes of this section, the term "effective control" means the ability of any person, by reason of a direct or indirect ownership interest (whether of record or beneficial) in a corporation, partnership, or other entity that holds a Certificate of Need, to direct or cause the direction of the management or policies of that corporation, partnership, or other entity.

4015.3 If a current Certificate of Need is held by a partnership, either general or limited, the addition of a general partner who was not identified as a general partner in the certificate of partnership on file with the SHPDA at the time the original Certificate of Need was issued, or the succession of a general partner who was named as a general partner by another person at any time after issuance of the original Certificate of Need shall be reviewed and approved by the SHPDA, or shall cause withdrawal of the Certificate of Need, effective as of the time at which the addition or succession of a general partner occurs.

4015.4 If the holder of record of a Certificate of Need is a corporation, general partnership, limited partnership, or other entity that is or will be the operator of a health care facility or health maintenance organization, any transfer, as-

signment, or other disposition of ten percent (10%) or more of the stock or voting rights of that entity, or any transfer, assignment, or other disposition of stock or voting rights that results in the ownership or control of more than ten percent (10%) of the stock or voting rights of the entity by any person shall, when that entity holds a current Certificate of Need, cause the withdrawal of the Certificate of Need, unless the transfer, assignment, or other disposition has first been reviewed and approved by the SHPDA.

4015.5 In the case of partnerships, "ten percent (10%) of the stock or voting rights" shall include any of the following:

(a) The obligation of any partner to provide ten percent (10%) or more, including property and services, of the total capital contribution of the partnership, as reflected in an amendment of the original certificate of partnership; or

(b) The right of any partner to receive distribution of ten percent (10%) or more of the profits of the partnership, as reflected in an amendment of the original certificate of partnership; or

(c) The right of any partner, upon dissolution of the partnership to receive ten percent (10%) or more of partnership assets remaining after payment of all partnership debts, as reflected in an amendment of the original certificate of partnership.

4015.6 Where the sale or transfer of effective control over a project for which a Certificate of Need has been granted, or the transfer, assignment, or other disposition of stock or voting rights (as described in §§ 4015.4 and 4015.5) of an entity which is the holder of a Certificate of Need is contemplated or intended, either voluntarily or involuntarily, a new Certificate of Need shall be applied for by the party proposing to gain effective control. No Letter of Intent shall be required in these circumstances.

4015.7 All criteria and standards normally applicable to these applications shall apply. In addition, the SHPDA shall give particular concern and weight to the qualifications of the party proposing to gain effective control.

4015.8 SHPDA reviews conducted under § 4015.6 shall include an examination of the financial responsibility and business interests of the person or entity seeking to obtain the effective control, stock or voting rights in question, in addition to all other prescribed and published SHPDA review criteria.

4015.9 In accordance with D.C. Code, § 32-307(c), failure to obtain a new Certificate of Need prior to effecting the sale, transfer, assignment, or other disposition of effective control over, or the stock or voting rights, in the holder of record of a current Certificate of Need shall cause the automatic withdrawal of the current Certificate of Need, effective as of the time at which the sale, transfer, assignment, or other disposition occurs.

16 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4016 (2008)*

4016-4019. RESERVED

CDCR 22-4020

17 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4020 (2008)*

22-4020. ENFORCEMENT AND REMEDIES FOR NONCOMPLIANCE

4020.1 As provided in the Act, as amended, only those obligations of capital expenditures, offerings of new institutional health services, and acquisitions of major medical equipment which are found to be needed shall be issued a Certificate of Need.

4020.2 Persons shall only obligate capital expenditures, offer new institutional health services, or acquire major medical equipment after a Certificate of Need has been issued, or after an HMO exemption (if applicable) has been obtained.

4020.3 Persons shall not obligate capital expenditures, offer new institutional health services, or acquire major medical equipment if a Certificate of Need authorizing that obligation, offering, or acquisition has been withdrawn by the SHPDA.

4020.4 In any case in which the SHPDA Director believes that a violation of the terms of the Act or chapter 40 through 45 of this title has occurred, the SHPDA Director may formally request that the District's Corporation Counsel seek an injunction as specified in D.C. Code, § 32-312(b).

4020.5 The SHPDA Director may ask the appropriate law enforcement authorities to take action if it is believed there is a criminal violation specified in D.C. Code, §§ 32-312(c) and (d).

4020.6 The Director shall give notice to the alleged violator that the matter is being referred to law enforcement authorities.

4020.7 The SHPDA Director also may enforce D.C. Code, §§ 32-312(c) and (d), through withdrawal of any Certificate of Need involved in an alleged violation of those sections after holding a public hearing to ascertain the facts.

4020.8 The SHPDA Director also may withdraw a Certificate of Need for which substantial progress has not been found to have been made under § 4010 of this chapter.

4020.9 Before withdrawing a Certificate of Need under the provisions of § 4010, the SHPDA shall publish a notice of alleged violation or lack of substantial progress in a newspaper of general circulation in the District, and shall notify all interested parties, including the holder of the Certificates of Need.

4020.10 The notice shall specify in general terms the nature of the alleged violation or lack of substantial progress, and shall provide the time and location of a public hearing to consider the alleged violation.

4020.11 The Certificate of Need holder shall also be given a more detailed specification of the nature of the alleged violation or lack of substantial progress.

4020.12 The public hearing specified in § 4020.7 shall be held no sooner than fourteen (14) days from the date of the notice and no later than thirty (30) days from that date.

4020.13 The hearing shall be conducted in accordance with the procedures specified in chapter 43 of this title for reconsideration hearings except that the SHPDA staff person in charge of Certificate of Need review or a designee shall

CDCR 22-4020

have up to one (1) hour to present the alleged violation or lack of substantial progress. Following this presentation, the SHPDA staff person may be questioned by the Certificate of Need holder.

4020.14 Following the presentation by the Certificate of Need holder, who shall have up to one (1) hour following the SHPDA staff presentation, the SHPDA staff may ask questions of the Certificate of Need holder. Other persons may then testify.

4020.15 Following all testimony, the Certificate of Need holder may make a ten (10) minute closing statement.

4020.16 A decision to withdraw a Certificate of Need shall be made within thirty (30) days following the close of the public hearing, shall be made in writing, and shall be based on the complete record of the withdrawal action.

4020.17 The decision shall include findings of fact and conclusions of law.

4020.18 There shall be no ex parte contacts following the public hearing and before the issuance of the decision.

4020.19 In accordance with D.C. Code, § 32-309(a), a decision to withdraw a Certificate of Need may be appealed to the Board of Appeals and Review without further reconsideration by the SHPDA Director.

18 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4021* (2008)

4021-4029. RESERVED

19 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4030* (2008)

22-4030. NOTICE OF CERTAIN CAPITAL EXPENDITURES

4030.1 Any health care facility (except one covered by the HMO exemption described in § 106) that intends to obligate an expenditure of one hundred thousand dollars (\$ 100,000) or more for construction, repairs, or renovation of facilities, when that action requires issuance of any type of permit from the D.C. government, shall notify the SHPDA of that intention, notwithstanding that the capital expenditure intended is less than the Certificate of Need review threshold.

4030.2 Notification shall be by submission of either of the following:

- (a) A summary of the project, including total estimated capital expenditure; or
- (b) A copy of the required permit application(s) filed with appropriate D.C. government agency or agencies.

4030.3 Notification also shall contain a description of any related capital construction, repairs, or renovation that the facility may consider undertaking within two (2) years of the completion of the work for which notification is presently being given.

4030.4 Notification shall be filed with the SHPDA at least thirty (30) days prior to the actual undertaking of the construction, repairs, or renovation in question.

4030.5 Any health care facility (except one covered by the HMO exemption described in chapter 41) that intends to obligate an expenditure of one hundred thousand dollars (\$ 100,000) or more, or to acquire by lease, donation, or other transfer, data processing, diagnostic, or medical treatment equipment (including the replacement of parts of existing equipment that enhance the original capabilities of the equipment), whether a single unit or system with related functions, the fair market value of which is greater than one hundred thousand dollars (\$ 100,000) but less than four hundred thousand dollars (\$ 400,000), shall notify the SHPDA of that intention at least thirty (30) days prior to the acquisition of the equipment.

4030.6 Any health care facility (except one covered by the HMO exemption described in chapter 41) that intends to acquire by lease, donation, or any other type of transfer data processing, diagnostic, or medical treatment equipment (including the replacement of parts of existing equipment that enhance the original capabilities of the equipment), whether a single unit or system with related functions, the fair market value of which is greater than one hundred thousand dollars (\$ 100,000) but less than four hundred thousand dollars (\$ 400,000), shall notify the SHPDA of that intention at least thirty (30) days prior to the acquisition of the equipment.

4030.7 Notification as required in §§ 4030.5 and 4030.6 shall be by submission of a summary of the proposed acquisition, describing at least the following:

- (a) The purchase price or fair market value of each item of equipment to be obtained, and the function of each item;
- (b) The facility's services and locations that will be affected by the equipment acquisition; and
- (c) A description of functionally related equipment extensions or enhancements that the facility may consider purchasing within two (2) years of the beginning of operation of the equipment it presently intends to acquire.

4030.8 The notification requirements prescribed in §§ 4030.5 and 4030.6 shall be for the purpose of enabling the SHPDA to determine whether the intended action, when viewed together with any related future capital expenditures and equipment acquisitions proposed in the facility's long-range plan, or of which the SHPDA otherwise has knowledge, is subject to Certificate of Need review.

4030.9 If, after reviewing the notification of intended action required of a facility under this section, the SHPDA determines that the action in question is related to some or all of the subsequent actions to be undertaken in the two (2) year period specified so that they must be viewed as components of the same project, a Certificate of Need review shall be required when the total cost of the present and subsequent actions will exceed the Certificate of Need capital expenditure threshold.

4030.10 If a health care facility has submitted a notification of intended action to the SHPDA and, within the applicable two (2) year period, intends to undertake any related construction, repairs, or renovations, or intends to acquire any functionally related equipment, extensions, or enhancements not described in the initial notification of intended

action, the additional construction repairs, renovation, or acquisition shall be subject to Certificate of Need review if the total cost of the initial and subsequent actions would exceed the Certificate of Need capital expenditure threshold.

4030.11 The SHPDA shall conduct an expedited review (no SHCC review) of any Certificate of Need application required under § 4030.10. No Letter of Intent shall be required in that circumstance.

4030.12 Any determination made by the SHPDA under this section as to whether any intended action of a health care facility is subject to Certificate of Need review may be appealed by any affected person, following the procedures specified in chapter 43 of this title.

4030.13 Any decision by the SHPDA to issue or deny a Certificate of Need application required under this section may be appealed by any affected person, for good cause shown, following procedures specified in chapter 43 of this title.

20 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4031* (2008)

4031-4039. RESERVED

21 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4040* (2008)

22-4040. NOTICE OF SHPDA PROCEDURE AND CRITERIA

4040.1 The SHPDA shall distribute copies of its proposed review procedures and criteria, and proposed revisions of its procedures and criteria, to health agencies and organizations in the District, the Statewide Health Coordinating Council, and any agency that establishes rates for health care facilities or HMOs in the District.

## CDCR 22-4040

4040.2 The SHPDA shall publish in a newspaper of general circulation in the District a notice stating that review procedures and criteria, or revisions, have been proposed for adoption and are available at specified locations for inspection and copying.

4040.3 The SHPDA shall distribute copies of its adopted review procedures and criteria, and any revisions, to the agencies and organizations specified in § 4040.1 and to the Secretary of the Department of Health and Human Services, and shall provide copies to other persons upon request.

4040.4 The SHPDA shall distribute a description of the scope of coverage of the Certificate of Need program, and any revisions, to health care facilities and HMOs in the District, and shall publish the scope of coverage, and any revisions, in a newspaper of general circulation in the District.

4040.5 No application not previously within the scope of review shall be reviewed prior to publication of the description of the scope of coverage and any revisions.

22 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4041* (2008)

4041-4049. RESERVED

23 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4050* (2008)

22-4050. GENERAL CRITERIA AND STANDARDS FOR REVIEW

4050.1 The District of Columbia Certificate of Need Act of 1980, D.C. Law 3-99 (*D.C. Code*, § 32-304, 1981 edition), became effective on September 16, 1980. Section 17 of this law authorizes the D.C. State Health Planning and Development Agency (SHPDA), a unit of the Department of Human Services, to adopt any regulations necessary to carry out the purposes of the Act. Section 5 of the Act requires the SHPDA to adopt and revise Certificate of Need re-

view criteria meeting at a minimum the requirements of the national Health Planning Act and any federal regulations issued under the National Health Planning Act. The Certificate of Need general criteria and standards set forth in this section, in addition to specific criteria for particular health services as specified in the D.C. State Health Plan and criteria and standards adopted by the SHPDA for use in the conduct of Appropriateness Reviews, shall be applied by the SHPDA during the conduct of Certificate of Need reviews, as applicable.

4050.2 The criteria and standards set forth in §§ 4050.3 through 4050.32 shall be applicable to certificate of need applications which do not propose to reduce bed capacity or close a service; which are not submitted by a health maintenance organization; and which do not propose capital expenditures solely to correct imminent safety hazards, comply with licensure standards, or comply with certain accreditation standards.

4050.3 Criterion: Consistency of the project with defined priorities, goals, objectives, and criteria and standards of the State Health Plan (SHP) and the Annual Implementaiton Plan (AIP) for the development of health facilities and/or services, if applicable.

Standard: The project shall be in conformance with the general provisions priorities, goals, objectives, recommended actions, and criteria and standards contained in the SHP and AIP, if applicable.

4050.4 Criterion: Consistency of project with the applicant's long range development plan.

Standard: The project shall be consistent with the applicant's current long range development plan, if any, or the applicant shall demonstrate special circumstances which render that plan not applicable.

4050.5 Criterion: Consistency with non-health sector plans for the service area of the proposed facility or service.

Standard: The applicant shall show evidence that it has considered other plans adopted or endorsed by the District Government (e.g., public and private transportation, housing, economic development) which have impact on the area which the facility serves and that the proposal is consistent with these plans.

4050.6 Criterion: Need for the project on a system-wide basis (applicable only to projects which substantially affect patient care).

Standards:

(a) The project shall be needed to meet service and/or facility levels required for the District as specified in the D.C. State Health Plan. In the case of proposals to serve a geographic area larger than the District, project shall be needed to meet the service or facilities requirements of the larger area as specified in the D.C. State Health Plan;

(b) In cases in which the D.C. State Health Plan does not specify need, the project shall be found to be needed by the SHPDA Director on the basis of a special analysis of District or larger area service and facility needs. Such a study shall consider the appropriateness of utilization rates of the same or similar services of the applicant and other providers;

(c) In the case of applications involving new technology, the study referred to in § 4050.6(b) shall consider the developmental level of the technology and the extent to which it has been demonstrated to be beneficial in controlled trials comparing its use with the use of conventional techniques or equipment. Applications involving new technology which has not been demonstrated to the satisfaction of the SHPDA Director to be beneficial in such controlled trials shall not be considered needed unless the applicant proposes to conduct such trials in addition to providing patient care;

(d) Applications involving new technology which has been demonstrated to be beneficial to the satisfaction of the SHPDA Director in such controlled trials shall demonstrate that other actual or potential applicants which might more appropriately be given approval for acquisition of the new technology either:

(1) Already have the technology or have SHPDA approval for its acquisition and that an additional need for the technology to meet patient requirements exists; or

## CDCR 22-4050

(2) Will not seek approval to acquire such new technology within the coming twelve (12) months. Other actual or potential applicants shall be identified based on consideration of the following:

- (A) The number of beds operated;
- (B) Teaching programs;
- (C) Research programs;
- (D) Current or approved specialized units or specialized services provided; and
- (E) Current or approved special capabilities in terms of equipment and personnel skills.

(e) In cases of applications from entities which provide a substantial portion of their services or resources, or both, to individuals from outside the metropolitan area, the special need and circumstance of such applicants shall be considered.

4050.7 Criterion: Need for the project on an institutional basis (applicable only to projects which have no substantial effect on patient care).

Standard: For projects which do not substantially affect the availability of consumer services, the applicant shall demonstrate that the project is required to meet institutional needs.

4050.8 Criterion: Availability of training opportunities.

Standards:

(a) Proposed projects shall not negatively impact opportunities for training of health professionals if a health profession school or program asserts, and the SHPDA Director agrees, that training opportunities are necessary; and

(b) In the case of projects not otherwise found to be needed by the SHPDA Director in accordance with the criteria in §§ 4050.5 and 4050.6, a project may be found to be needed if the SHPDA Director finds the project to be essential to the provision of reasonable access to training opportunities in operating services.

4050.9 Criterion: Requirements of research projects and programs.

Standards:

(a) Proposed projects shall not negatively impact the availability of facilities and equipment needed for biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages, as determined by the SHPDA Director; and

(b) In the case of projects not otherwise found to be needed by the SHPDA Director, a project may be found to be needed if the SHPDA Director finds the project to be essential to meeting the reasonable needs of biomedical or behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages, as determined by the SHPDA Director.

4050.10 Criterion: Availability of services and facilities for allopathic and osteopathic physicians and their patients.

Standards:

(a) Proposed projects shall not negatively impact on the availability of services or facilities for allopathic and osteopathic physicians and their patients; and

(b) In case of projects not otherwise found to be needed by the SHPDA Director, a project may be found to be needed if the SHPDA Director finds that the project is essential to the provision of reasonable access to services or facilities by allopathic or osteopathic physicians and their patients.

4050.11 Criterion: Schedule for project implementation.

## CDCR 22-4050

Standard: The applicant shall demonstrate that the proposal, if approved, will be implemented in a prompt and orderly fashion consistent with public need for the service or facility and cost containment in project implementation.

4050.12 Criterion: Effect of operating policies, capabilities of personnel and physical structure on the proposed project's care on patients' accessibility to and understanding of medical care.

Standards:

(a) The project shall not negatively impact services available to the following:

- (1) Service area ethnic populations who speak a language other than English;
- (2) Low-income residents;
- (3) Physically and/or mentally handicapped persons;
- (4) Racial and ethnic minorities;
- (5) Women;
- (6) The elderly;
- (7) Those whose care is paid for by Medicaid, Medicare, D.C. Medical Charities, or other public programs;
- (8) Persons who are uninsured or who have limited insurance coverage; and
- (9) Other underserved groups.

(b) The applicant shall demonstrate that access to care is not unreasonably restricted in terms of admissions policies or requirements and hours of operation. In the case of applications for major medical equipment, unless otherwise specified in the State Health Plan for specific types of equipment, this criterion shall not be considered met unless the equipment is regularly scheduled for operation at least fifty (50) hours per week, fifty-two (52) weeks per year and is also available for emergency use at all other times if the equipment is of a type reasonably expected to be necessary for emergency care.

4050.13 Criterion: Compliance with free care and community service requirements of § 6 of D.C. Law 3-99 (*D.C. Code, § 32-305*):

Standards: The applicant shall demonstrate compliance with applicable provisions of § 6 of D.C. Law 3-99 (*D.C. Code, § 32-305*):

(a) Applicants not previously holding a Certificate of Need must demonstrate compliance prospectively; and

(b) Applicants previously holding a Certificate of Need shall demonstrate compliance both prospectively and retrospectively since the applicant first obtained a new Certificate of Need or renewal if that new or renewal Certificate of Need was obtained after September 16, 1980.

4050.14 Criterion: Involvement of the community in the process of project planning and/or development.

Standard: The applicant shall demonstrate that an opportunity for community participation in the preparation and development of the project has been provided at least through the following:

- (a) Public notice of the project, including notice to affected ANCs; and
- (b) Consideration of comments from community agencies, groups, and individuals if such comments have been received.

4050.15 Criterion: Impact of the proposed project on the health system and the health of District residents and visitors.

Standard: The applicant shall demonstrate that its project, if it involves a direct patient care service, will positively impact the health care system and the health of the public in terms of health status, admissions, lengths of stay, and other relevant measures.

4050.16 Criterion: Observance of rights of patients.

Standard: Documentation shall be provided detailing the applicant's mechanism for guaranteeing patient's rights. This documentation should, at a minimum, indicate compliance with all applicable federal and district requirements.

4050.17 Criterion: Assurance that the care to be provided is of acceptable quality.

Standard: The applicant shall provide evidence that professional and community standards of quality care will be met. Documentation shall be provided to demonstrate that, if applicable, the project conforms to the requirements of District and federal regulatory agencies and recognised accreditation bodies including, but not limited to, the Joint Commission on the Accreditation of Hospitals and the Commission on Accreditation of Rehabilitation Facilities.

4050.18 Criterion: Compliance with building and equipment requirements.

Standard: All new construction shall meet the standards contained in "Minimum Requirements of Construction and Equipment for Hospitals and Medical Facilities," (DHEW Publication No. (HRA)79-14500), as amended, and District construction and licensing codes and regulations, as applicable to the type of project proposed. Projects involving remodeling shall meet the above requirements insofar as reasonably practical, as determined by the SHPDA Director acting in consultation with District licensing and construction authorities.

4050.19 Criterion: Selection of the best of alternative means of providing the project's services.

Standard: The applicant shall provide documentation describing alternatives considered, and the findings which led the applicant to select the proposed approach and to eliminate alternatives. The applicant shall select the most favorable alternative available by evaluating and comparing the final selected plan with the following alternative means:

(a) Shared services - if shared services are not proposed, the applicant shall demonstrate why shared services are not practical or cost effective;

(b) Merger - if a merger is not proposed, the applicant shall demonstrate that a merger agreement is not desirable or practical;

(c) Contract services - if contract services are proposed instead of in-house provision, or vice versa, the applicant shall demonstrate that the method proposed is more desirable than the method not proposed. Where applicable, the estimated costs for both contract and in-house services should be presented;

(d) Do-nothing option - the applicant shall demonstrate that the option of taking no action is not desirable; or

(e) Other alternatives - the applicant shall demonstrate that other alternatives were considered and demonstrate why they are considered less desirable.

4050.20 Criterion: The effect of operational costs of the project on the costs, rates, or consumer charges.

Standard: The project shall reduce costs or charges for service in question and for related services to the maximum practical extent or increase cost and charges to the minimum practical extent consistent with benefits provided, if any. Unless a different standard is adopted in the SHP for a specific service, projects which are projected to operate at less than eighty percent (80%) utilization of available capacity in their third (3rd) year of operation (given operating hours determined by the SHPDA Director to be reasonable) shall be deemed not to meet this standard. Special circumstances concerning utilization for teaching and research shall be considered by the SHPDA Director in determining compliance with the utilization rate standard.

4050.21 Criterion: The effect of operational costs of the project on the applicant's budget.

Standard: The applicant's operating cost and revenue analysis shall demonstrate that the project will not substantially negatively affect the applicant's continuing financial operational viability, given reasonable revenue and volume projections.

4050.22 Criterion: Adoption of energy conservation techniques.

Standards:

(a) In the case of projects designed to conserve energy, the applicant shall demonstrate that the proposal is the most cost effective and practical means available and that over the life cycle of the facility the proposal will result in reduced costs; and

(b) In the case of projects not designed primarily to conserve energy, if construction or equipment replacement is involved in the project, the applicant shall demonstrate that the project incorporates the most cost effective and practical energy conservation techniques over the life cycle of the project.

4050.23 Criterion: Effect on competition.

Standards:

(a) In the case of new services not involving capital expenditures of an amount which would otherwise require a Certificate of Need review, the applicant shall demonstrate that the project will positively affect competitive factors and result in a more appropriate supply of services at lower charges or at charges no higher than is justified by the benefits of its more appropriate availability, quality, and other features; and

(b) In the case of all other projects, including acquisitions, the applicant shall demonstrate that the project will not adversely affect competitive factors or the provision of an appropriate supply of services.

4050.24 Criterion: Efficiency and effectiveness of existing services.

Standards:

(a) In the case of an application proposing to modernize services, to replace equipment or to expand services, the applicant shall demonstrate that the results of the proposed modernization, service expansion or equipment replacement cannot be achieved by reasonable increases in the applicant's efficiency or effectiveness, including, but not limited to, reasonable changes in operating hours, more efficient use of other equipment, use of revised procedures, better scheduling of services, and/or referral to other providers; and

(b) In the case of proposed new services, the applicant shall demonstrate that the proposal is the most efficient and effective, practical manner of providing needed services, considering not only alternatives which the applicant might offer but also the operations or potential operations of other providers.

4050.25 Criterion: Construction plan design and specification alternatives.

Standard: The applicant shall demonstrate that the construction methods and material specifications selected are the most cost effective over the life cycle of the proposed project, taking construction, energy, operating, and maintenance costs into consideration.

4050.26 Criterion: Availability of required capital.

Standard: Proposed sources of funds, including loans, shall be fully described to the extent possible at the time of proposal submission for the project review. All proposed loan agreements shall be accompanied by information on duration and repayment terms. The applicant shall demonstrate that more favorable financial arrangements cannot be obtained. Such arrangements shall be reasonable when compared to those for other similar projects.

4050.27 Criterion: Compatibility with the reimbursement policies of third-party payors, where applicable.

Standard: The applicant shall demonstrate that its proposed services are reimbursable by third-party payors (including Medicare and Medicaid) if such third-party payors reimburse other providers in the District for providing the same services.

4050.28 Criterion: Availability of personnel.

## CDCR 22-4050

Standard: The proposal shall demonstrate that adequate numbers of qualified personnel of the necessary kinds are proposed and that the required personnel can be obtained without substantial negative effects on other services offered by the applicant or other providers.

4050.29 Criterion: Extent of management capability.

Standard: The applicant shall demonstrate a stable and competent background in the administration and conduct of existing programs, if any, and shall be able to demonstrate the ability to conduct the proposed program in a competent and effective manner.

4050.30 Criterion: Availability of ancillary services as required.

Standard: Required ancillary or support services necessary for operation of a proposed facility or service shall be available within the applicant's existing operation, through supply agreement with another provider, or as a part of the proposal.

4050.31 Criterion: Financial viability of project operation.

Standard: The applicant shall demonstrate that sufficient financial resources are available not only to complete the project but also to sustain operations for at least two (2) years. Financial resources which may be used to meet this requirement shall include at least:

(a) Reserves for start-up costs; and

(b) Patient revenues based on estimates of patient volumes, payor mix and reimbursements determined to be reasonable by the SHPDA Director. Reimbursements and patient volumes projected by applicants shall not be considered reasonable if such projections are based, in whole or in part, on provision of services found inconsistent with the Criterion and Standard specified in § 4050.27.

4050.32 Criterion: Relationship of the project to the health care system.

Standard: The applicant shall clearly define the relationship of the proposed project to existing services and facilities in the health care system, and the effect of the project on other facilities and services, including those of other providers. Appropriate linkages to ensure continuity of care shall be demonstrated.

4050.33 The general criteria set forth in §§ 4050.34 and 4050.35 shall be applicable to applications submitted by health maintenance organizations.

4050.34 Criterion: Need for the project to meet the needs of enrolled members of the health maintenance organization (or combination of health maintenance organizations) and to meet the needs of reasonably anticipated new members.

Standard: The applicant shall demonstrate that the proposed project is reasonably required to meet the health care needs of the HMO members or future members who can be expected to use the proposed service or facility.

4050.35 Criterion: Reasonable availability of the proposed service or facility only through direct provision by the applicant HMO.

Standard: A proposed service or facility is presumed not to be reasonably available to an HMO other than by direct provision by the HMO (or group of HMOs) unless the SHPDA Director determines that the proposed facility or service:

(a) Would be available to the HMO under a contract, lease, or similar arrangement of at least five years duration;

(b) Would be reasonably available and conveniently accessible through physicians and other health professionals associated with the HMO (for example, HMO physicians having full staff privileges at a non-HMO hospital);

(c) Would not cost appreciably more than if the facility or service was provided directly by the HMO; and

(d) Would be available in a manner which is administratively feasible to the HMO.

4050.36 The general criteria set forth in §§ 4050.37 shall be applicable to applications proposing capital expenditures to prevent imminent safety hazards, comply with licensure standards, or comply with certain accreditation standards.

4050.37 Applications found by the SHPDA Director to relate to capital expenditures solely to eliminate or prevent imminent safety hazards (as defined by federal or District Government fire, building, or life safety codes), to comply with District Government licensure standards, or to comply with accreditation standards which shall be met to receive reimbursement under Title XVIII or XIX of the Social Security Act shall be judged only on the following criteria and standards:

(a) The criterion and standard specified in § 4050.3, insofar as the State health Plan (not Annual Implementation Plan) is concerned; and

(b) The criterion and standard specified in § 4050.4 of this section.

4050.38 The general criteria set forth in §§ 4050.39 through 4050.43 shall be applicable to applications proposing decreases in bed capacity or closure of services.

4050.39 In the case of proposed closure of beds or a service which the SHPDA Director has determined is not in compliance with life safety and/or licensure codes, the following criterion and standard only shall apply:

Criterion: Financial capability of the applicant to bring the facility, beds, or service into compliance with life safety and/or licensure standards.

Standard: The applicant shall be financially incapable of taking actions necessary to bring the beds or service into code or standards compliance.

4050.40 In the case of a proposed closure of beds or a service based on the applicant's claim of financial infeasibility of continued operations, the following criterion and standard only shall apply.

Criterion: Financial feasibility of continued operations.

Standard: The applicant shall demonstrate that, despite operation of the facility in accordance with recognized management procedures and reasonable levels of efficiency, continued operation of the beds or service would produce continuing significant long term financial losses.

4050.41 In cases of proposed bed reductions or service closures not subject to §§ 4050.39 or 4050.40, the criteria and standards specified in §§ 4050.42 and 4050.43 shall apply:

4050.42 Criterion: Consistency of the proposed bed reduction or service closure with the goals of the State Health Plan and Annual Implementation Plan.

Standard: The project shall be in conformance with the goals of the State Health Plan and Annual Implementation Plan.

4050.43 Criterion: Degree of Patient Impact.

Standard: Consumers of health care services shall not be affected by a proposed reduction or closure so as to do the following:

- (a) Significantly increase the cost of health care;
- (b) Significantly reduce the quality of health care;
- (c) Significantly reduce the availability of health care;
- (d) Significantly reduce the acceptability of health care;
- (e) Significantly reduce continuity of health care; or
- (f) Significantly reduce the accessibility of health care.

CDCR 22-4099

24 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 40. CERTIFICATES OF NEED

*CDCR 22-4099 (2008)*

22-4099. DEFINITIONS

4099.1 All definitions contained in § 3 of D.C. Law 3-99 are incorporated by reference in this chapter, and shall apply to chapters 40 through 45 of this title.

4099.2 When used in chapters 40 through 45 of this title, the following terms and phrases shall have the meanings ascribed:

Acute long-term care - services provided by a hospital in a separate unit set aside for patients requiring hospital level care for periods longer than thirty (30) days.

Ambulatory care facility or clinic - includes the following:

(a) Any institution, place, or building devoted primarily to the provision of health care services to outpatients through any organizational arrangement other than solely through the private practice of one (1) or more physicians acting as a solo practitioner or a group practice; any arrangement in which one (1) or more physicians are hired as employees to provide health services is not considered to be a group practice;

(b) Any entity that received federal grant support under the Urban Health Initiatives program, a block grant, or other program for the operation of a community or neighborhood health center; or

(c) Any entity that receives donations for the provision of health services to outpatients.

The term "ambulatory care facility or clinic" does not include facilities maintained by employers solely to provide first aid or primary health care services to their employees during the employees' hours of work.

Ambulatory surgical facility - a facility, not a part of a hospital, that provides surgical treatment to patients not requiring hospitalization, and that is licensed or proposed to be licensed as an ambulatory surgical treatment center by the District under D.C. Law 2-66 (the D.C. Ambulatory Surgical Treatment Center Licensure Act, April 6, 1978, 24 DCR 6836), and that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000). This term does not include the offices of private physicians or dentists, whether for individual or group practice.

Annual operating budget - the actual cost of operation for the twelve (12) month period beginning October 1, 1979, and each subsequent twelve (12) month period beginning October 1st of each year.

Appropriateness review - the review of existing institutional and home health services mandated by Title XV, Part C, § 1523(a)(6) of the Public Health Service Act, as amended by the Health Planning and Resources Development Amendments of 1979.

Diagnostic health care facility - a facility, not operated by a hospital, that provides diagnostic services to patients not requiring hospitalization. The term does not include the offices of private physicians or dentists, whether for indi-

vidual or group practice, unless one (1) or more pieces of major medical equipment is located within the offices and the offices have an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000).

Freestanding hemodialysis facility - a kidney disease treatment facility, not located within a hospital, that provides chronic maintenance hemodialysis services, and that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000).

General hospital - an institution that primarily provides to inpatients, by or under the supervision of physicians diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and that is licensed or proposed to be licensed as a hospital by the District government and has an annual budget of at least two hundred fifty thousand dollars (\$ 250,000).

Home health agency - a public agency or private organization, or a subdivision of an agency or organization, that is primarily engaged in providing skilled nursing services and at least one (1) other therapeutic service to individuals in their residences, that has at least one (1) employee in addition to the proprietor if the agency is a sole proprietorship, and that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000).

Intermediate care facility - an institution that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility provides, but who, because of their mental or physical condition, require health-related care and services (above the level of room and board); that is licensed or proposed to be licensed as an intermediate care facility by the District government; and that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000).

Kidney disease treatment center - a facility that is primarily engaged in the provision of chronic maintenance treatment services, by or under the supervision of a physician, to persons suffering from chronic kidney disease, and that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000).

Other specialty hospital - an institution primarily engaged in providing to inpatients diagnosis and treatment for the limited category of illness or illnesses for which the institution is or proposes to be licensed as a "special hospital" by the District government, and that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000). The term does not include a psychiatric hospital, rehabilitation facility, or rehabilitation hospital.

Psychiatric hospital - an institution that primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment, and rehabilitation of mentally ill and emotionally disturbed persons, that is licensed or proposed to be licensed as a hospital by the District government, and that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000).

Rehabilitation facility or rehabilitation hospital - a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision, that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000), and that, if it serves inpatients, is licensed or proposed to be licensed as a "special hospital" by the District government.

Skilled nursing facility - an institution or a distinct part of an institution that primarily provides to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, that is licensed or proposed to be licensed as a skilled nursing facility by the District government, and that has an annual operating budget of at least two hundred fifty thousand dollars (\$ 250,000).

25 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*

\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4100 (2008)*

22-4100. NEW HEALTH SERVICES

4100.1 Unless a Certificate of Need has been obtained, no person shall construct, develop, or otherwise establish a new institutional health service including a new health care facility, health care service, or home health or nursing service.

4100.2 At least the following shall be deemed institutional health services for purposes of this title:

- (a) Acute medical-surgical services not otherwise specified;
- (b) Cardiac catheterization services;
- (c) Cardiac surgery services;
- (d) Coronary care services;
- (e) Computed tomography services;
- (f) Neonatal intensive care services;
- (g) Newborn services;
- (h) Obstetric services;
- (i) Pediatric services;
- (j) Pediatric cardiac surgery services;
- (k) Physical medicine and rehabilitation services;
- (l) Psychiatric care services, short-term;
- (m) Psychiatric care services, long-term;
- (n) Clinical laboratory services;
- (o) Emergency medical services;
- (p) Physical therapy services;
- (q) Occupational therapy services;
- (r) Home health services;
- (s) Hospice care;
- (t) Diagnostic radiology magnetic resonance imaging and ultrasound services;
- (u) Radiation therapy services;
- (v) Burn services;
- (w) Ambulatory surgery services;
- (x) Primary care centers' services;
- (y) Alcoholism-chemical dependency services;
- (z) Acute long-term services;
- (aa) Skilled nursing services;

- (bb) Acute dialysis services, including inpatient hemodialysis and inpatient intermittent peritoneal dialysis;
- (cc) Outpatient staff-assisted in-facility chronic maintenance hemodialysis services;
- (dd) Outpatient self-care in-facility chronic maintenance hemodialysis services, including training;
- (ee) Outpatient self-care in-facility intermittent peritoneal dialysis services, including training;
- (ff) Training for home intermittent peritoneal dialysis;
- (gg) Training and follow-up services for continuous ambulatory peritoneal dialysis;
- (hh) Renal dialysis services based on dialysis technologies not otherwise specified; and
- (ii) Renal transplantation services.

4100.3 The SHPDA shall assess and update the list set forth in § 4100.2 periodically, as warranted by changes in medical technology.

4100.4 The SHPDA shall add a health service to the list when in its judgment a new medical technique is of a highly specialized nature.

4100.5 Notice of proposed additions to the list shall be given to persons on the SHPDA mailing list. An opportunity to comment of not less than thirty (30) days shall be provided.

4100.6 The SHPDA shall give notice of any action after consideration of comments, and shall make its current list of institutional health services available to any person upon request.

History of Rules since Last Compilation by Agency (August 1986)  
 Chapters 41 & 46, Sec. 4100.2, 4600-4607, 4699; Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

26 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4101 (2008)*

22-4101. NEW HEALTH SERVICE DETERMINATIONS

4101.1 Prior to offering any new medical technique of a highly specialized nature not appearing on the list of health services, a person shall request a determination from the SHPDA as to whether the technique constitutes a new institutional health service subject to review.

4101.2 No person shall offer any new medical technique other than on a research or emergency basis prior to receiving from the SHPDA a final determination as to whether the technique constitutes a new health service.

4101.3 A determination whether a medical technique constitutes a new health service shall be made within sixty (60) days of the receipt of the request, inclusive of the thirty (30) day comment period specified in § 4100.5.

27 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4102 (2008)*

22-4102. CAPITAL EXPENDITURES

4102.1 Unless a Certificate of Need has been obtained, no person shall make or obligate either of the following capital expenditures related to a health service or facility:

- (a) A capital expenditure of six-hundred thousand dollars (\$ 600,000) or more; or
- (b) A capital expenditure for major medical equipment of four-hundred thousand dollars (\$ 400,000) or more.

4102.2 The amount of capital expenditure under § 4102.1 shall include the cost of any studies, surveys, designs, plans, working drawings, specifications, or other services (including staff effort) associated with the capital expenditure.

4102.3 Any capital expenditure by an existing health facility or service made for any purpose whatsoever (including expenditures for parking lots, office buildings, or other facilities or services) shall be deemed to be "related" to a health facility or service.

4102.4 Capital expenditures by non-health facility components of a larger institution that also includes a hospital or other health facility or service (such as those made by a university or medical school that operates a hospital) are not considered to be related to a health service or facility unless either of the following applies:

- (a) Any part of the capital expenditure is made by or represents an obligation of the health facility or service component; or
- (b) The expenditure actually or potentially directly affects patient charges or the cost of providing care.

4102.5 An obligation for a capital expenditure shall be considered to be incurred by or on behalf of a health care facility under the following circumstances:

- (a) When a contract enforceable under law is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;
- (b) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or
- (c) In the case of donated property, on the date on which the gift is completed under applicable law.

4102.6 An obligation for a capital expenditure that is contingent on the issuance of a Certificate of Need shall be considered not to be incurred until the Certificate of Need is issued.

4102.7 The provisions of § 4102.1 shall not limit any form of preliminary budget approval for inclusion in the budget by the appropriate administrative review authority.

## CDCR 22-4102

4102.8 Budget inclusion, if required, shall be a prerequisite for the submission of a complete application for a Certificate of Need in the circumstances specified in chapter 42 of this title.

28 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4103 (2008)*

22-4103. MAJOR MEDICAL EQUIPMENT

4103.1 Except as provided in §§ 4103.2, 4103.3, and 4103.4, a health care facility shall not be required to obtain a Certificate of Need for the acquisition of major medical equipment to be used solely for research, for new institutional health services to be offered solely for research, or for the obligation of a capital expenditure to be made solely for research if the acquisition, offering, or obligation does not do the following:

- (a) Affect the costs or charges of the facility for the provision of medical or other patient care services other than the services that are included in the research;
- (b) Change the bed capacity of the facility; or
- (c) Substantially change the medical or other patient care services of the facility which were offered before the proposed acquisition, offering, or obligation.

4103.2 Before a health care facility acquires major medical equipment to be used solely for research, offers a new institutional health service solely for research, or obligates a capital expenditure solely for research under the provisions of § 4103.1, the health care facility shall notify the SHPDA in writing of its intent and the use to be made of the major medical equipment, new institutional health service, or capital expenditure.

4103.3 A Certificate of Need shall be required for an acquisition, offering, or obligation proposed to be made under the provisions of § 4103.1 if the SHPDA finds within sixty (60) days after the date it receives the facility's notification that the proposed acquisition, offering, or obligation will do any of the following:

- (a) Affect the costs or charges of the facility for the provision of medical or other patient care services other than the services that are included in the research;
- (b) Change the bed capacity of the facility; or
- (c) Substantially change the medical or other patient care services of the facility that were offered before the proposed acquisition, offering, or obligation.

4103.4 A Certificate of Need shall also be required for an acquisition, offering, or obligation proposed to be made under the provisions of § 4103.1 if the required notice is not filed with the SHPDA.

4103.5 If major medical equipment is acquired, a new institutional health service is offered, or a capital expenditure is obligated under § 4103.1, the equipment or services or facilities acquired through the obligation of this capital expenditure shall not be used to do any of the following:

CDCR 22-4103

- (a) Affect the costs or charges of the facility for the provision of patient care services other than the service included in the research;
- (b) Change the bed capacity of the facility; or
- (c) Substantially change the medical or other patient care services of the facility that were offered before the acquisition, offering, or obligation unless the facility applies for and obtains a Certificate of Need from the SHPDA for that use.

4103.6 For purposes of this section, the term "solely for research" shall include patient care provided on an occasional and irregular basis (such as in connection with a natural disaster, major accident, or equipment failure until repairs can be made or a replacement obtained) and not as part of a research program.

29 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 41. CERTIFICATE OF NEED REVIEW

CDCR 22-4104 (2008)

## 22-4104. ACQUISITION BY LEASE, RENTAL, OR DONATION

4104.1 Unless a Certificate of Need has been obtained, no person shall acquire (in whole or in part) for use by or in a health care facility or health service through lease, rental, donation, or any comparable arrangement any facility or major medical equipment (a single unit or system with related functions) which, if acquired through purchase at fair market value, would be considered a capital expenditure of four hundred thousand dollars (\$ 400,000) or more.

4104.2 An acquisition made at less than fair market value shall be reviewed if the acquisition, at fair market value, would be subject to review under § 4102 or this chapter.

4104.3 If an acquisition is to be made under a lease or comparable arrangement, or any other type of transfer by two (2) or more persons acting in concert, and if the aggregate cost of the acquisition would constitute a capital expenditure of more than four-hundred thousand dollars (\$ 400,000) if the acquisition had been by purchase at fair market value, the acquisition shall be deemed a capital expenditure of more than four-hundred thousand dollars (\$ 400,000) for the Certificate of Need review, notwithstanding the fact that the cost or value to each participating person of that acquisition may be less than four-hundred thousand dollars (\$ 400,000).

30 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

CDCR 22-4105

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 41. CERTIFICATE OF NEED REVIEW*CDCR 22-4105 (2008)*

4105-4109. RESERVED

31 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 41. CERTIFICATE OF NEED REVIEW*CDCR 22-4110 (2008)*

## 22-4110. REVIEW OF PROPOSALS: BEDS

4110.1 Unless a Certificate of Need has been obtained, no person shall increase, decrease, or redistribute among health service categories the bed capacity of a health care facility by ten percent (10%) or ten (10) beds, whichever is less, in any two (2) year period if the increase, decrease, or redistribution involves a capital expenditure in any amount.

4110.2 The initial distribution of beds in facilities is set forth in the "Table of Distribution of Beds by Service" established by SHPDA, as set forth in § 4120.

4110.3 The SHPDA shall revise and adopt a revised distribution as necessary, but no less often than one (1) time each year and in each edition of the State Health Plan.

4110.4 Publication of a revised distribution in an adopted State Health Plan shall constitute valid adoption of a revised distribution.

4110.5 In revising the distribution of beds, the SHPDA shall take notice of beds opened and closed under the authority of a Certificate of Need and those lawful openings and closures for which no Certificate of Need is required.

4110.6 The distribution of bed types shall use the following categories:

- (a) Medical-surgical;
- (b) Coronary care;
- (c) Obstetrics-gynecology;
- (d) Obstetrics-gynecology swing;
- (e) Normal nursery and neonatal intermediate care;
- (f) Neonatal intensive care;
- (g) Pediatrics;
- (h) Alcoholism, chemical dependency;
- (i) Rehabilitation;

- (j) Extended acute long-term care;
- (k) Medical-surgical/skilled nursing swing;
- (l) Skilled nursing (skilled nursing facility);
- (m) Intermediate care (intermediate care facility); and
- (n) Skilled nursing/intermediate care swing (in a facility licensed as both a SNF and ICF).

4110.7 For purposes of this section, a bed lawfully closed without the issuance of a Certificate of Need shall be defined as follows:

- (a) A bed that a health care facility has not staffed or otherwise held ready for immediate use by patients for one (1) year;
- (b) A bed for which closure no capital expenditure is involved, or for which a capital expenditure of less than six-hundred thousand dollars (\$ 600,000) is involved; and
- (c) A bed that taken together with the sum of all other beds closed and opened does not represent more than a net change of ten (10) beds or ten percent (10%) of the total number of beds in a facility or particular service over the most recent two (2) year period preceding the date of the closure (the end of the one (1) year period specified in § 4110.5(a)).

4110.8 The date of the removal of the last patient from a recognized unit shall be considered the beginning of the one (1) year period under § 4110.5(a) for all beds in that unit.

4110.9 The reopening of one (1) or more beds by restaffing them and otherwise holding them ready for immediate use, while at the same time removing the staffing and otherwise making the same or a similar number of other beds of the general type not ready for immediate use by patients, shall not constitute the beginning of another one (1) year period.

4110.10 Rotating short-term suspensions of individual beds or units shall not be used to circumvent the one (1) year period specified in § 4110.5.

4110.11 Health care facilities shall maintain nurse staffing schedules, daily patient census, and other relevant records in a manner that conforms with the §§ 4110.5 through 4110.7 and that may be readily demonstrated, and shall permit SHPDA inspection of those records upon request.

4110.12 A bed lawfully opened without a Certificate of Need shall be defined as follows:

- (a) A bed opened without any amount of capital expenditure; or
- (b) A bed opened with a capital expenditure of less than six-hundred thousand dollars (\$ 600,000) being made, and which taken together with the total of all other beds opened and closed over the most recent two (2) year period preceding the opening does not represent a net increase of more than ten (10) beds or ten percent (10%) of the beds of a facility or particular service.

4110.13 Unless a Certificate of Need has been obtained, no person shall relocate more than ten (10) beds or ten percent (10%) of the beds, whichever is less, of a facility or service category from one (1) physical facility or site to another, if a capital expenditure in any amount is involved.

4110.14 The physical relocation of beds within the same medical campus not otherwise subject to Certificate of Need requirements shall not constitute a relocation of beds subject to review.

CDCR 22-4111

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4111 (2008)*

22-4111. REVIEW OF PROPOSALS: NEW SERVICES

4111.1 Unless a Certificate of Need has been obtained, no person shall offer any institutional health service through a health care facility that was not offered by the same facility on a regular basis within the twelve (12) month period prior to the time the service would be offered if the service entails an annual operating budget of two-hundred and fifty thousand dollars (\$ 250,000) or more, or if it results from a capital expenditure in any amount.

4111.2 For purposes of this section, the term "annual operating budget" shall mean actual costs of operation for the twelve (12) month period beginning with October, 1979, and for each twelve (12) month period thereafter.

4111.3 For purposes of this section, the term "offer a service on a regular basis" shall mean being staffed and otherwise prepared to deliver the service at all times or on a regularly scheduled basis. Inability to deliver a service as scheduled for reasons beyond the control of the provider in emergency situations of short duration shall not affect a provider's offering of a service on a regular basis.

4111.4 Services offered "through" a health care facility or a health maintenance organization (HMO) include those services not offered physically in the institution subject to review, but which are offered to a substantial extent (as determined by the SHPDA) on behalf of that institution by others.

33 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4112 (2008)*

22-4112. REVIEW OF PROPOSALS: RENAL DIALYSIS

4112.1 Unless a Certificate of Need has been obtained, no person shall increase the number of renal dialysis stations in a facility or move stations from one (1) facility to another.

4112.2 For purposes of this section, a "renal dialysis station" shall be defined as a station certified for participation in the Federal End Stage Renal Disease (ESRD) Program under Medicare.

4112.3 Renal dialysis services not participating in the ESRD program shall not be considered "stations."

4112.4 Renal dialysis stations shall be categorized into the following five (5) types, with each type considered a separate health care service:

- (a) Acute dialysis services, including inpatient hemodialysis and inpatient intermittent peritoneal dialysis;
- (b) Outpatient staff-assisted, in-facility, chronic maintenance hemodialysis services;
- (c) Outpatient self-care, in-facility, chronic maintenance hemodialysis services, including training;
- (d) Outpatient self-care, in-facility, intermittent peritoneal dialysis services, including training; and
- (e) Training for home intermittent peritoneal dialysis.

4112.5 The initial distribution of renal dialysis stations is set forth in the "Table of Renal Dialysis Stations" established by SHPDA, as set forth in § 4121.

4112.6 The SHPDA shall revise and adopt a revised distribution as necessary, but no less often than one (1) time each year and in each edition of the State Health Plan.

4112.7 Publication of a revised distribution in an adopted State Health Plan shall constitute valid adoption of a revised distribution.

4112.8 An increase in renal dialysis services not involving stations may be subject to Certificate of Need review under other provisions of chapters 40 through 45 of this title.

34 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4113 (2008)*

#### 22-4113. REVIEW OF PROPOSALS: CLOSURES

4113.1 Unless a Certificate of Need has been obtained, no person shall permanently close a health care facility or service, if closure involves a capital expenditure in any amount.

4113.2 For purposes of this section, the phrase "permanently close a health care or service" means removal of staff or equipment necessary to operate a facility or service for a period longer than one (1) year.

4113.3 Removal of equipment shall include circumstances in which equipment is not operational although it is not physically removed.

4113.4 In the case of inpatient facilities, the date of the removal of the last patient from the facility shall be considered the beginning of the one (1) year period under § 4113.2.

4113.5 Health care facilities shall maintain nurse staffing schedules, daily patient census, and other relevant records so that compliance with the requirements of this section may be readily demonstrated, and shall permit SHPDA inspection of those records on request.

4113.6 Any person proposing to permanently close a health care facility, health service, or HMO shall notify the SHPDA of the proposed closing no later than ninety (90) days prior to the proposed closing.

## CDCR 22-4113

4113.7 If the facility, service, or HMO being closed is subject to the requirements of § 4113.1, the notice required under § 4113.6 shall be in the form of a Letter of Intent and shall be submitted in accordance with the requirements of § 4003 of chapter 40.

4113.8 If a proposed closure is not subject to Certificate of Need review as specified in § 4113.1, the letter required by § 4113.6 shall include the following information:

- (a) A description of what is to be closed;
- (b) The name of the person who owns the facility or service to be closed;
- (c) The expected date of closure;
- (d) The number, type, and condition of patients affected;
- (e) Provisions that the provider is making for the continuing care of the affected patients;
- (f) A statement that no capital expenditure is involved in the closure; and
- (g) The reason for the closure.

4113.9 To the extent it is necessary and the SHPDA has available resources to do so, the SHPDA shall coordinate with other providers to provide for an orderly transition of patient care when a closure occurs.

35 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4114 (2008)*

22-4114. ACQUISITIONS, SERVICE INCREASES, AND PLANNING

4114.1 Unless a Certificate of Need has been obtained, no person shall acquire an existing health care facility by purchase, lease, or other arrangement to gain effective control over a facility.

4114.2 For purposes of this section, the phrase "effective control" shall mean the ability of any person under a lease or comparable arrangement or by reason of direct or indirect ownership interest (whether of record or beneficial) in a corporation, partnership, or other entity functioning as a health care facility or service, to direct or cause the direction of the management or policies of that facility or service.

4114.3 Unless a Certificate of Need has been obtained, no person shall make a capital expenditure in any amount if the expenditure is intended to permit the increase of the patient load or the units of service provided in a health care facility by forty percent (40%) or more over present capacity. Units of service shall be based on the services specified in § 4100.2.

4114.4 Unless a Certificate of Need has been obtained, no person shall make an expenditure of one-hundred fifty thousand dollars (\$ 150,000) or more in planning, development, or preparation for any activity specified in §§ 4100.2, 4102.1, 4103.3, 4103.4, 4104.1, 4110.11, 4111.1, 4112.1, 4114.1, or 4114.1.

4114.5 Planning, development, or preparation shall include studies, surveys, designs, plans, working drawings, specifications, and site acquisition essential to the offering or development of the service, facility, or HMO.

4114.6 The issuance of a Certificate of Need for planning, development, or preparation in no way commits the SHPDA to issue a Certificate of Need for the actual establishment of the proposed new health service, health facility, or HMO.

36 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4115 (2008)*

22-4115. HEALTH MAINTENANCE ORGANIZATIONS

4115.1 Notwithstanding any other provision of this title, a Health Maintenance Organization (HMO) shall obtain a Certificate of Need when a Certificate of Need would be required of another type of provider only when proposing one (1) of the following:

- (a) An inpatient institutional health service;
- (b) The obligation of a capital expenditure for the provision of an inpatient institutional health service; or
- (c) The acquisition of major medical equipment, including major medical equipment for the use in an ambulatory care facility of an HMO.

4115.2 An HMO may also be exempt from obtaining a Certificate of Need if it meets the requirements set forth in § 4115.4 and submits to the SHPDA a written application for exemption in letter form as specified in this section.

4115.3 If an HMO or a health care facility that is controlled (directly or indirectly) by an HMO, applies for a Certificate of Need, the SHPDA shall not disapprove the application solely because the proposal is not discussed in the applicable Annual Implementation Plan or State Health Plan.

4115.4 An application by an HMO or combination of HMO's for exemption as specified in § 4115.1 shall be granted by the SHPDA after a review of no more than fifteen (15) days if the proposed health care facility (or portion of a facility) or major medical equipment has not begun to provide health services on the date an application is submitted for an exemption for the facility (or portion of the facility) or major medical equipment and the applicant HMO (or combination of HMOs) requests the exemption in writing and provides the information set forth in § 4115.5.

4115.5 In its application for exemption, the applicant HMO (or combination of HMOs) shall provide information to demonstrate the following:

- (a) It has or will have by the proposed implementation date in the service area of the HMO (or the service areas of the combined HMOs) an enrollment of at least fifty thousand (50,000) individuals;
- (b) The facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals; and

(c) At least seventy-five percent (75%) of the patients who can reasonably be expected to receive the health service will be individuals enrolled in the HMO (or HMOs in combination).

4115.6 An HMO or combination of HMOs shall obtain a Certificate of Need before undertaking any activities for which a Certificate of Need is required by § 4115.1, unless the SHPDA approves an exemption application as specified in § 4115.4.

4115.7 A health care facility shall be granted the HMO exemption specified in § 4115.1 after a review of no more than fifteen (15) days if it has not begun to provide health care services on the date an application is submitted for an exemption and if it meets all of the criteria in paragraphs (a) through (d), or if it meets all of the criteria in paragraphs (e) through (g) of this subsection, as follows:

(a) It primarily provides or will provide inpatient health services;

(b) It is or will be controlled (directly or indirectly) by an HMO (or combination of HMOs) which has in the service area of the HMO (or service areas of the combined HMOs) an enrollment of at least fifty thousand (50,000) individuals;

(c) It is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals; and

(d) At least seventy-five percent (75%) of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO (or combined HMOs).

OR:

(e) It is or will be leased by an HMO (or combination of HMOs) that has, in the service area of the HMO (or the service areas of the combined HMOs), an enrollment of at least fifty thousand (50,000) individuals and, on the date the application is submitted, at least fifteen (15) years remain in the term of the lease;

(f) The facility is or will be geographically located so that the service will be reasonably accessible to enrolled individuals; and

(g) At least seventy-five percent (75%) of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO (or combination of HMOs).

4115.8 Any decision of the SHPDA to approve or disapprove an application for an HMO exemption under §§ 4115.1 and 4115.4 shall be based solely on the record established in the administrative proceedings held with respect to the application.

4115.9 The method of payment for services (prepaid or fee for service) shall not be relevant in determining whether a proposed activity should be granted an exemption.

4115.10 No exemption shall be granted solely because the SHPDA failed to reach a decision within the fifteen (15) day review period.

4115.11 An organization operating in the District that believes it qualifies as a health maintenance organization under § 4115.14 shall apply to the SHPDA for designation as an HMO.

4115.12 For purposes of this section, a "health maintenance organization" (HMO) shall include any public or private organization organized under the laws of any state, that is a qualified health maintenance organization under § 1310(d) of the Public Health Service Act, or that meets the following requirements:

(a) It provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services:

- (1) Usual physician services;
- (2) Hospitalization;
- (3) Laboratory, x-ray, emergency, and preventive services; and
- (4) Out-of-area coverage;

## CDCR 22-4115

(b) It is compensated (except for co-payments) for provision of the basic health care services listed in paragraph (a) of this subsection to enrolled participants by payments made on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(c) It provides physician services primarily directly through physicians who are either employees or partners of the organization, or through arrangements with individual physicians or one (1) or more groups of physicians organized on a group practice or individual practice basis.

4115.13 A health care facility (or portion of a health care facility) or medical equipment for which an exemption was granted under this section shall not be sold or leased unless the SHPDA grants a Certificate of Need for the sale or lease.

4115.14 A controlling interest in the facility or equipment or in a lease of the facility or equipment for which an exemption was granted under this section shall not be acquired unless the SHPDA grants a Certificate of Need for the acquisition.

4115.15 A health care facility described in § 4115.7 that was exempted under this section may not be used by any person other than the leasee unless the SHPDA issues a Certificate of Need for the use.

4115.16 Notwithstanding the provisions of §§ 4115.11 through 4115.13, a sale, lease, acquisition, or use may be permitted by the SHPDA without the granting of a Certificate of Need if the SHPDA determines, upon application, the following:

(a) The entity that intends to purchase or lease the facility or equipment, or acquire the controlling interest in it, or which intends to use it, is an HMO or a combination of HMOs that meets the requirements for the exemptions; and

(b) With respect to the facility or equipment, the entity meets the requirements for the exemption.

37 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4116 (2008)*

4116-4119. RESERVED

38 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

CDCR 22-4120

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4120 (2008)*

22-4120. DISTRIBUTION OF BEDS BY SERVICE

| BED CATEGORY                              | FACILITY                 |   |                                      |
|---|--------------------------|---|--------------------------------------|
|   | D.C. General<br>Hospital | George Washington<br>University<br>Medical Center | Georgetown<br>University<br>Hospital |
| Total Beds                                | 500                      | 520   | 535                                  |
| Total Bassinets                           | 57                       | 56  | 62                                   |
| Medical-Surgical                          | 437                      | 407   | 390                                  |
| Coronary Care                             | 6                        | 8   | 19                                   |
| Obstetrics                                | 36                       | 45  | 20                                   |
| OB-GYN Swing                              | 0                        | 0   | 17                                   |
| Normal Nursery                            | 22                       | 38  | 24                                   |
| Neonatal Intensive Care                   | 32                       | 18  | 32                                   |
| Pediatrics                                | 21                       | 0   | 36                                   |
| Psychiatric                               | 0                        | 34  | 17                                   |
| Alcoholism-Chemical<br>Dependency         | 0                        | 0   | 0                                    |
| Rehabilitation                            | 0                        | 18  | 0                                    |
| Acute Long Term Care                      | 0                        | 0   | 0                                    |
| Medical-Surgical/Skilled<br>Nursing Swing | 0                        | 0   | 0                                    |
| Skilled Nursing (SNF)                     | 0                        | 0   | 0                                    |
| Intermediate Care (ICF)                   | 0                        | 0   | 0                                    |
| SNF-ICF Swing                             | 0                        | 0   | 0                                    |
| Beds Not in Service                       | 0                        | 8   | 36                                   |
| Bassinets Not in Service                  | 0                        | 0   | 6                                    |



CDCR 22-4120

| BED CATEGORY                           | FACILITY                 |   |                                |
|--|--------------------------|---|--------------------------------|
|  | D.C. General Hospital    | George Washington University Medical Center | Georgetown University Hospital |
| Total Bassinets                        | 83                       | 26  | 0                              |
| Medical-Surgical                       | 372                      | 259   | 0                              |
| Coronary Care                          | 4                        | 5   | 0                              |
| Obstetrics                             | 30                       | 23  | 0                              |
| OB-GYN Swing                           | 0                        | 0   | 0                              |
| Normal Nursery                         | 28                       | 20  | 0                              |
| Neonatal Intensive Care                | 7                        | 6   | 0                              |
| Pediatrics                             | 38                       | 0   | 0                              |
| Psychiatric                            | 26                       | 20  | 200                            |
| Alcoholism-Chemical Dependency         | 0                        | 37  | 0                              |
| Rehabilitation                         | 0                        | 0   | 80                             |
| Acute Long Term Care                   | 0                        | 0   | 0                              |
| Medical-Surgical/Skilled Nursing Swing | 0                        | 0   | 0                              |
| Skilled Nursing (SNF)                  | 0                        | 0   | 0                              |
| Intermediate Care (ICF)                | 0                        | 0   | 0                              |
| SNF-ICF Swing                          | 0                        | 0   | 0                              |
| Beds Not in Service                    | 30                       | 11  | 34                             |
| Bassinets Not in Service               | 48                       | 0   | 0                              |
| BED CATEGORY                           | FACILITY                 |   |                                |
|  | Sibley Memorial Hospital | Washington Hospital Center                  | Army Distaff Hall              |
| Total Beds                             | 362                      | 864   | 48                             |
| Total Bassinets                        | 24                       | 58  | 0                              |
| Medical-Surgical                       | 312                      | 713   | 0                              |
| Coronary Care                          | 0                        | 12  | 0                              |
| Obstetrics                             | 24                       | 42  | 0                              |

## CDCR 22-4120

| BED CATEGORY                           | FACILITY              |   |                                |                              |
|--|-----------------------|---|--------------------------------|------------------------------|
|  | D.C. General Hospital | George Washington University Medical Center | Georgetown University Hospital |                              |
| OB-GYN Swing                           | 0                     | 0   | 0                              |                              |
| Normal Nursery                         | 24                    | 38  | 0                              |                              |
| Neonatal Intensive Care                | 0                     | 20  | 0                              |                              |
| Pediatrics                             | 0                     | 0   | 0                              |                              |
| Psychiatric                            | 26                    | 42  | 0                              |                              |
| Alcoholism-Chemical Dependency         | 0                     | 44  | 0                              |                              |
| Rehabilitation                         | 0                     | 0   | 0                              |                              |
| Acute Long Term Care                   | 0                     | 0   | 0                              |                              |
| Medical-Surgical/Skilled Nursing Swing | 0                     | 0   | 0                              |                              |
| Skilled Nursing (SNF)                  | 0                     | 0   | 0                              |                              |
| Intermediate Care (ICF)                | 0                     | 0   | 48                             |                              |
| SNF-ICF Swing                          | 0                     | 0   | 0                              |                              |
| Beds Not in Service                    | 0                     | 11  | 0                              |                              |
| Bassinets Not in Service               | 0                     | 0   | 0                              |                              |
| BED CATEGORY                           | FACILITY              |   |                                |                              |
|  | D.C. Village          | Forest Haven                                | J.B. Johnson                   | MarSalle Convalescent Center |
| Total Beds                             | 700                   | 492   | 226                            | 202                          |
| Total Bassinets                        | 0                     | 0   | 0                              | 0                            |
| Medical-Surgical                       | 0                     | 0   | 0                              | 0                            |
| Coronary Care                          | 0                     | 0   | 0                              | 0                            |
| Obstetrics                             | 0                     | 0   | 0                              | 0                            |
| OB-GYN Swing                           | 0                     | 0   | 0                              | 0                            |
| Normal Nursery                         | 0                     | 0   | 0                              | 0                            |
| Neonatal Intensive Care                | 0                     | 0   | 0                              | 0                            |

## CDCR 22-4120

| BED CATEGORY                           | FACILITY              |   |                |                                |
|--|-----------------------|---|----------------|--------------------------------|
|  | D.C. General Hospital | George Washington University Medical Center |                | Georgetown University Hospital |
| Pediatrics                             | 0                     | 0   | 0              | 0                              |
| Psychiatric                            | 0                     | 0   | 0              | 0                              |
| Alcoholism-Chemical Dependency         | 0                     | 0   | 0              | 0                              |
| Rehabilitation                         | 0                     | 0   | 0              | 0                              |
| Acute Long Term Care                   | 0                     | 0   | 0              | 0                              |
| Medical-Surgical/Skilled Nursing Swing | 0                     | 0   | 0              | 0                              |
| Skilled Nursing (SNF)                  | 51                    | 0   | 81             | 41                             |
| Intermediate Care (ICF)                | 649                   | 492   | 145            | 161                            |
| SNF-ICF Swing                          | 0                     | 0   | 0              | 0                              |
| Beds Not in Service                    | 0                     | 0   | 0              | 0                              |
| Bassinets Not in Service               | 0                     | 0   | 0              | 0                              |
| BED CATEGORY                           | FACILITY              |   |                |                                |
|  | Lisner Home           | Masonic and Eastern Star Home               | Methodist Home | National Child Center          |
| Total Beds                             | 25                    | 116   | 27             | 50                             |
| Total Bassinets                        | 0                     | 0   | 0              | 0                              |
| Medical-Surgical                       | 0                     | 0   | 0              | 0                              |
| Coronary Care                          | 0                     | 0   | 0              | 0                              |
| Obstetrics                             | 0                     | 0   | 0              | 0                              |
| OB-GYN Swing                           | 0                     | 0   | 0              | 0                              |
| Normal Nursery                         | 0                     | 0   | 0              | 0                              |
| Neonatal Intensive Care                | 0                     | 0   | 0              | 0                              |
| Pediatrics                             | 0                     | 0   | 0              | 0                              |
| Psychiatric                            | 0                     | 0   | 0              | 0                              |
| Alcoholism-Chemical                    |                       |   |                |                                |

## CDCR 22-4120

| BED CATEGORY                           | FACILITY                  |   |    |                                     |
|--|---------------------------|---|----|-------------------------------------|
|  | D.C. General Hospital     | George Washington University Medical Center |    | Georgetown University Hospital      |
| Dependency                             | 0                         | 0   | 0  | 0                                   |
| Rehabilitation                         | 0                         | 0   | 0  | 0                                   |
| Acute Long Term Care                   | 0                         | 0   | 0  | 0                                   |
| Medical-Surgical/Skilled Nursing Swing | 0                         | 0   | 0  | 0                                   |
| Skilled Nursing (SNF)                  | 0                         | 57  | 0  | 0                                   |
| Intermediate Care (ICF)                | 25                        | 59  | 27 | 50                                  |
| SNF-ICF Swing                          | 0                         | 0   | 0  | 0                                   |
| Beds Not in Service                    | 0                         | 0   | 0  | 0                                   |
| Bassinets Not in Service               | 0                         | 0   | 0  | 0                                   |
| BED CATEGORY                           | FACILITY                  |   |    |                                     |
|  | Presbyterian Home of D.C. | Thomas House                                |    | Washinton Center for Aging Services |
| Total Beds                             | 32                        | 50  |    | 275                                 |
| Total Bassinets                        | 0                         | 0   |    | 0                                   |
| Medical-Surgical                       | 0                         | 0   |    | 0                                   |
| Coronary Care                          | 0                         | 0   |    | 0                                   |
| Obstetrics                             | 0                         | 0   |    | 0                                   |
| OB-GYN Swing                           | 0                         | 0   |    | 0                                   |
| Normal Nursery                         | 0                         | 0   |    | 0                                   |
| Neonatal Intensive Care                | 0                         | 0   |    | 0                                   |
| Pediatrics                             | 0                         | 0   |    | 0                                   |
| Psychiatric                            | 0                         | 0   |    | 0                                   |
| Alcoholism-Chemical Dependency         | 0                         | 0   |    | 0                                   |
| Rehabilitation                         | 0                         | 0   |    | 0                                   |
| Acute Long Term Care                   | 0                         | 0   |    | 0                                   |
| Medical-Surgical/Skilled               |                           |   |    |                                     |

CDCR 22-4120

| BED CATEGORY                           | FACILITY              |   |                                |
|--|-----------------------|---|--------------------------------|
|  | D.C. General Hospital | George Washington University Medical Center | Georgetown University Hospital |
| Nursing Swing                          | 0                     | 0   | 0                              |
| Skilled Nursing (SNF)                  | 0                     | 0   | 50                             |
| Intermediate Care (ICF)                | 32                    | 50  | 225                            |
| SNF-ICF Swing                          | 0                     | 0   | 0                              |
| Beds Not in Service                    | 0                     | 0   | 0                              |
| Bassinets Not in Service               | 0                     | 0   | 0                              |
| BED CATEGORY                           | FACILITY              |   |                                |
|  | The Washington Home   | Wisconsin Avenue Nursing Home               |                                |
| Total Beds                             | 178                   | 327   |                                |
| Total Bassinets                        | 0                     | 0   |                                |
| Medical-Surgical                       | 0                     | 0   |                                |
| Coronary Care                          | 0                     | 0   |                                |
| Obstetrics                             | 0                     | 0   |                                |
| OB-GYN Swing                           | 0                     | 0   |                                |
| Normal Nursery                         | 0                     | 0   |                                |
| Neonatal Intensive Care                | 0                     | 0   |                                |
| Pediatrics                             | 0                     | 0   |                                |
| Psychiatric                            | 0                     | 0   |                                |
| Alcoholism-Chemical Dependency         | 0                     | 0   |                                |
| Rehabilitation                         | 0                     | 0   |                                |
| Acute Long Term Care                   | 0                     | 0   |                                |
| Medical-Surgical/Skilled Nursing Swing | 0                     | 0   |                                |
| Skilled Nursing (SNF)                  | 0                     | 50  |                                |
| Intermediate Care (ICF)                | 0                     | 277   |                                |
| SNF-ICF Swing                          | 178                   | 0   |                                |

CDCR 22-4120

| BED CATEGORY             | FACILITY              |   |                                |
|--------------------------|-----------------------|---|--------------------------------|
|                          | D.C. General Hospital | George Washington University Medical Center | Georgetown University Hospital |
| Beds Not in Service      | 0                     |   | 0                              |
| Bassinets Not in Service | 0                     |   | 0                              |

39 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 41. CERTIFICATE OF NEED REVIEW

CDCR 22-4121 (2008)

## 22-4121. RENAL DIALYSIS STATIONS

4121.1 The initial distribution of renal dialysis stations by facility is set forth in the following table:

| FACILITY   | TYPES OF STATIONS (See § 4121.2) |     |     |     |     |
|--|----------------------------------|-----|-----|-----|-----|
|  | (a)                              | (b) | (c) | (d) | (e) |
| BMA Capitol Hill                                   | 0                                | 26  | 0   | 0   | 0   |
| BMA Columbia Heights<br>(Washington Kidney Center) | 0                                | 20  | 0   | 0   | 0   |
| BMA Dupont Circle                                  | 0                                | 28  | 1   | 0   | 0   |
| BMA Takoma Park                                    | 0                                | 5   | 0   | 0   | 0   |
| Children's Hospital<br>National Medical Center     | (See § 4121.3)                   |     | 0   | 0   | 0   |
| D.C. General Hospital                              | 4                                | 0   | 0   | 0   | 0   |
| George Washington University<br>Medical Center     | (See § 4121.5)                   |     | 0   | 0   | 2   |
| Georgetown University Hospital                     | (See § 4121.6)                   |     | 0   | 0   | 0   |
| Greater Southeast Community                        | 0                                | 9   | 0   | 0   | 0   |
| Howard University Hospital                         | 6                                | 22  | 0   | 0   | 0   |

## CDCR 22-4121

| FACILITY                   | TYPES OF STATIONS (See § 4121.2) |     |     |     |     |
|----------------------------|----------------------------------|-----|-----|-----|-----|
|                            | (a)                              | (b) | (c) | (d) | (e) |
| Washington Hospital Center | 8                                | 0   | 0   | 0   | 0   |

4121.2 The types of stations, as listed in § 4121.1, shall be as follows:

- (a) Stations for acute dialysis services, including inpatient hemodialysis and inpatient intermittent peritoneal dialysis;
- (b) Stations for outpatient staff-assisted, in-facility, chronic maintenance hemodialysis services;
- (c) Stations for outpatient self-care, in-facility, chronic maintenance hemodialysis services;
- (d) Stations for outpatient self-care, in-facility, intermittent peritoneal dialysis services, including training; and
- (e) Stations for training for home intermittent peritoneal dialysis.

4121.3 Children's Hospital National Medical Center has six (6) hemodialysis stations used either as type "a" or as type "b" stations, depending on the patient's needs.

4121.4 D.C. General Hospital has four (4) type "a" stations, two (2) of which are hemodialysis and two (2) of which are peritoneal dialysis.

4121.5 George Washington University Medical Center has seven (7) stations used either as type "a" or type "b" stations, depending on patient needs. Of the seven (7) stations, six (6) are hemodialysis stations and one (1) is a peritoneal dialysis station.

4121.6 Georgetown University Hospital has ten (10) stations used as either type "a" or type "b" stations, depending on patient needs. Six (6) of the ten (10) stations are designated as pediatric and four (4) of the stations are designated as adult.

4121.7 Howard University Hospital has twenty-two (22) type "b" stations, twenty-one (21) of which are hemodialysis stations and one (1) of which is a peritoneal dialysis station.

40 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 41. CERTIFICATE OF NEED REVIEW

*CDCR 22-4199 (2008)*

#### 22-4199. DEFINITIONS

4199.1 The provisions of § 4099 of chapter 40 of this title, and the definitions set forth in that section shall apply to this chapter.

## 41 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 42. APPLICATION FOR CERTIFICATE OF NEED REVIEW

*CDCR 22-4200 (2008)*

22-4200. SUBMISSION OF APPLICATIONS

4200.1 An application for a Certificate of Need shall be submitted in writing and on the forms prescribed by the SHPDA, and shall contain the information that the SHPDA shall uniformly prescribe and publish as requirements for all applicants.

4200.2 An application for major medical equipment or a capital expenditure shall specify both the time and a timetable the applicant will require to make that service or equipment available and to complete the project, as well as other information the SHPDA shall require to judge the application in relation to the review criteria, the State Health Plan, and the requirements of the D.C. Certificate of Need Act of 1980.

4200.3 The SHPDA shall use a single application form for all applications, even though not all questions on the form may be relevant for any particular class of proposals. The SHPDA shall specify for each applicant which questions must be answered in a preapplication meeting between the applicant and an assigned SHPDA staff member.

4200.4 If upon receipt of an application the SHPDA determines that responses to the required questions indicate that responses to questions not previously required are necessary, the SHPDA shall find the application to be incomplete and shall request the needed additional information in accordance with the requirements of §§ 4200.5 through 4200.8.

4200.5 Upon receipt of a Certificate of Need application, the SHPDA shall, within fifteen (15) working days, determine whether the application is complete; and shall request further information from the applicant if the application is judged not to be complete. These information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

4200.6 Requests for information (whether in application forms or otherwise) in connection with a Certificate of Need review shall be limited to only that information which is necessary for the SHPDA and SHCC to perform the review.

4200.7 The SHPDA shall require no information of a person subject to review that is not prescribed and published in an application form, regulation, review criteria, or applicable plans as being required.

4200.8 All requests for additional information shall be in writing and shall be reviewed by a designee of the SHPDA Director to ensure that only information that is necessary for the performance of the review is requested.

4200.9 The SHPDA shall notify the applicant when it is satisfied that the application is complete, but in no case will it do so later than fifteen (15) working days after the receipt of the information as ultimately makes the application complete.

4200.10 If an applicant is notified of incompleteness of an application a second or subsequent time, the applicant may decline to answer the SHPDA's questions and may request review of the application despite its incompleteness. In that case, the SHPDA shall review the incomplete application, but may base its findings on the nonavailability of necessary information to demonstrate compliance of the application with the State Health Plan or with applicable criteria and standards.

4200.11 If the SHPDA has completed an Appropriateness Review of a health service under § 1523(a)(6) of the Public Health Service Act (*42 U.S.C. 300m-2*) and has found that the service is not appropriate in one (1) or more aspects at a specific institution, the SHPDA shall not find to be complete (and therefore shall not review and approve or disapprove) any application related to that service submitted by that institution unless the following apply:

(a) The project for which the Certificate of Need is sought is designed in whole or in part to rectify the inappropriate conditions found by the SHPDA; and

(b) The application addresses in detail how the project will rectify the inappropriate conditions.

4200.12 If the SHPDA has completed an Appropriateness Review of a health service under § 1523(a)(6) of the Public Health Service Act (*42 U.S.C. 300m-2*) and has found that the service is inappropriate but the SHPDA did not identify deficiencies at a specific institution applying for a Certificate of Need related to that service, the SHPDA shall not find the institution's application to be complete (and therefore shall not review and approve or disapprove the application, unless the following applies:

(a) The findings of the Appropriateness Review of the service indicated specifically that the inappropriate conditions could not be improved by actions which might be taken by the applicant; or

(b) The project for which the Certificate of Need is sought is designed in whole or in part to assist in rectifying the inappropriate conditions found by the SHPDA; and the application addresses in detail how the project will assist in rectifying the inappropriate conditions.

4200.13 In the case of District government projects for which Capital Program Review Committee or other similar review and approval is required for budget approval, no application shall be found to be complete unless that approval has been granted.

42 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 42. APPLICATION FOR CERTIFICATE OF NEED REVIEW

*CDCR 22-4201 (2008)*

#### 22-4201. NOTICE OF REVIEW

4201.1 Timely written notification of the beginning of the review shall be given to all affected persons and to any person who has asked to be placed on the SHPDA notification mailing list. Except as provided for in § 4201.3, all notification shall be made by mail.

4201.2 For purposes of this section, the term "affected person" shall mean the person whose proposal is being reviewed; health care facilities (HCFs) and HMOs in the District that provide similar health services to those proposed; Health Systems Agencies (HSAs) in contiguous jurisdictions; any agency that establishes rates for HCFs or HMOs in the District; the SHOC and members of the public who reside in or regularly use health services in the geographic area served or to be served by the applicant; any HCF or HMO that, prior to the receipt of the application, indicated to the SHPDA through a Letter of Intent its intention to provide similar services; and any third party payors that reimburse health care facilities in the area the facility will serve.

4201.3 Notification to the public and third party payors shall be given by means of publication of a notice in a newspaper of general circulation in the District.

4201.4 The notice of the beginning of the review shall include the proposed schedule of the review, the time period during which affected persons may request a public hearing, the manner in which notification will be provided of the time and place of any public hearing, and the expected date of closure of the record.

4201.5 The date of notification is the date on which the notice is mailed or the date the notice first appears in a newspaper, whichever is later. This notification shall be considered timely if it is made by the commencement of a review cycle, as specified in §§ 4201.7 and 4201.8.

4201.6 Upon receipt of a request, the SHPDA shall give notice within five (5) days to the applicant or any other person of the status of any SHPDA review, findings made in the course of the review, and other appropriate information regarding any review.

43 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 42. APPLICATION FOR CERTIFICATE OF NEED REVIEW

*CDCR 22-4202 (2008)*

22-4202. REVIEW PROCESS

4202.1 Except in emergencies as specified in § 4008, the SHPDA shall begin all reviews at the commencement of one (1) of twelve (12) review cycles to be held each year.

4202.2 Each review cycle shall begin on the twentieth (20th) of each month, or if the twentieth (20th) falls on a weekend or holiday, the first (1st) regular work day following the twentieth (20th). Except as provided in §§ 4202.3 through 4202.8, in the case of expedited reviews (as specified in chapter 43), the review period shall end thirty (30) days later. In the case of regular reviews, the review period shall end (90) days later.

4202.3 The SHPDA review shall take no longer than the time period specified in § 4202.1 except as specified in § 4202.9 unless the applicant requests that the SHPDA extend the review period, and the review period is extended.

4202.4 If the SHPDA fails to approve or disapprove an application within that period, the applicant may, within a reasonable period of time following expiration of that period, bring an action in Superior Court to require the SHPDA to approve or disapprove the application. No Certificate of Need shall be issued solely because the SHPDA failed to reach a decision within the review period.

4202.5 An applicant may request that the regular ninety (90) day review period or the thirty (30) day expedited review period be extended for any length of time desired by written request to the SHPDA. At its option, the SHPDA may grant some or all of the extension of the review period.

4202.6 In the case of batched reviews, any requested extension of the review period shall affect all applications in the batched review, but shall not be granted unless there is agreement from all applicants involved in that particular batched review.

4202.7 If all affected applicants in this situation do not agree to the extension, the SHPDA shall give any applicant requesting an extension one (1) of the following options:

CDCR 22-4202

(a) No extension of the review period; or

(b) Extension of the review period for that applicant until the end of the next regularly scheduled batched review period for that type of application, with no action taken on the application until action can also be taken on other similar applications during the next regularly scheduled batching of applications of that type.

4202.8 If after the review period has begun the SHPDA or SHCC requires that additional information necessary to perform the review be submitted by an applicant in accordance with prescribed and published requirements, the applicant shall have at least fifteen (15) days to provide the information.

4202.9 If, after the review period has begun, the SHPDA or SHCC requires that additional information necessary to perform the review be submitted by an applicant in accordance with prescribed and published requirements, the applicant shall have at least fifteen (15) days to provide the information. In that instance, the applicant may, but is not required to, request that the review period be extended in accordance with the provisions of this section.

4202.10 The SHPDA may find it impractical to complete a review within ninety (90) days in the following circumstances:

(a) Instances of application modifications that are not so substantial as to require withdrawal and re-submittal under §§ 4205.1 and 4205.2, as the SHPDA deems necessary;

(b) Instances in which the SHCC or a SHCC committee requests that the SHPDA perform additional staff analysis of an application modified as described in paragraph (a) of this subsection after the initial staff analysis has been substantially completed;

(c) Instances of sudden and unexpected major disruptions of normal SHPDA operations, including but not limited to those resulting from utility failure, natural disasters, equipment failure, and the like; and

(d) Instances in which a public hearing is held in accordance with the provisions of § 115.1 or 116.3.

4202.11 In the circumstances described in § 4202.9, the SHPDA shall complete the review as expeditiously as is reasonable in the circumstances, and shall inform the applicant and others upon request of the projected timetable for completion of the review.

44 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 42. APPLICATION FOR CERTIFICATE OF NEED REVIEW

*CDCR 22-4203 (2008)*

4203-4204. RESERVED

45 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS

CDCR 22-4205

Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 42. APPLICATION FOR CERTIFICATE OF NEED REVIEW

*CDCR 22-4205 (2008)*

22-4205. SUBSTANTIAL MODIFICATION OF APPLICATION

4205.1 Substantial modification of a Certificate of Need application requires withdrawal of the original application and submission of a new application reflecting the modifications.

4205.2 The new application constitutes a wholly separate application and is subject to all elements of the review process, including submission of a Letter of Intent for the new application; Provided, that the SHPDA shall waive the normally required sixty (60) day waiting period following the submission of a Letter of Intent for the new application.

4205.3 For purposes of this section, the term "substantial modification" means any one (1) of the following:

- (a) A change of ten (10) beds or ten percent (10%), whichever is greater, from the number originally proposed for a category of beds, or any change in the location of beds;
- (b) A change in the number of renal dialysis stations greater than twenty percent (20%) of the number originally proposed, or any change in the location of dialysis stations;
- (c) In the case of projects with a budget originally proposed to be one hundred fifty thousand dollars (\$ 150,000) or more, a change of ten percent (10%) or more from the original budget;
- (d) In the case of projects with a budget originally proposed to be less than one hundred thousand dollars (\$ 150,000), a change of fifteen thousand dollars (\$ 15,000) or more from the original budget;
- (e) A change providing for an increase or decrease of patient load or units of service by forty percent (40%) or more from the capacity originally proposed; or
- (f) Any change in the ownership or effective control of the entity seeking to obtain a Certificate of Need which, if the entity already held a valid Certificate of Need, would cause the withdrawal of the Certificate of Need, as described in § 4015 of this title.

46 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 42. APPLICATION FOR CERTIFICATE OF NEED REVIEW

*CDCR 22-4206 (2008)*

CDCR 22-4206

4206-4209. RESERVED

47 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 42. APPLICATION FOR CERTIFICATE OF NEED REVIEW

*CDCR 22-4210 (2008)*

## 22-4210. MORATORIUM ON APPLICATIONS

4210.1 The SHPDA Director may at any time impose a moratorium on consideration of all applications for a specific type of facility or service for which review has not begun if it is determined that the SHPDA needs additional time to develop and adopt criteria and standards.

4210.2 Development and adoption of criteria and standards shall be interpreted to include development and adoption of a revision of the State Health Plan, if the revised plan will contain the required criteria and standards.

4210.3 A moratorium shall be imposed for no more than one hundred twenty (120) days.

4210.4 At the conclusion of a moratorium, all completed applications that were under moratorium shall be reviewed at the next review cycle in accordance with § 4300 of chapter 43 of this title.

4210.5 To impose a moratorium, the SHPDA Director shall send a notice to all persons who have submitted Letters of Intent or applications for the type of service or facility being placed under the moratorium. The Letter of Intent shall specify the beginning and ending dates of the moratorium.

4210.6 The SHPDA Director may end a moratorium at any time by sending a letter declaring an end to the moratorium to all applicants affected by it.

4210.7 Any moratorium shall apply equally to all applications for the type of facility or service placed under it.

48 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 42. APPLICATION FOR CERTIFICATE OF NEED REVIEW

CDCR 22-4299

*CDCR 22-4299 (2008)*

## 22-4299. DEFINITIONS

4299.1 The provisions of § 4099 of chapter 40 of this title, and the definitions set forth in that section shall apply to this chapter.

49 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4300 (2008)*

## 22-4300. REVIEW SCHEDULES

4300.1 All applications judged complete by the tenth (10th) of any month shall be reviewed in the review cycle that begins on or after the twentieth (20th) of the same month unless the application is subject to a batched review scheduled for a later cycle.

4300.2 Applications judged complete after the tenth (10th) of any month shall not be reviewed before the beginning of the next regular review cycle which begins on or after the twentieth (20th) of the following month. If an application is subject to a batched review scheduled for a later cycle, it shall be reviewed at the scheduled time for its batched review.

4300.3 Except as specified in §§ 4300.5 through 4300.8, the SHPDA shall conduct batched reviews for the types of applications specified in the following schedule:

| APPLICATION TYPE   | MONTHS           |
|--|------------------|
| Acute long-term services   | April, October   |
| Alcoholism/chemical dependency services                            | January, July    |
| Burn services  | April, October   |
| Cardiac surgery and catheterization services (adult and pediatric) | February, August |
| CT scanning services   | January, July    |
| Diagnostic radiology and Ultrasound services                       | February, August |
| General medical-surgical services                                  | June, December   |
| Home health services   | April, October   |
| Intermediate care services   | May, November    |
| Neonatal special care services                                     | March, September |
| Obstetrics and gynecology services                                 | February, August |
| Pediatric services   | March, September |
| Psychiatric services   | January, July    |
| Radiation therapy services   | May, November    |
| Renal disease services (all types)                                 | March, September |
| Skilled nursing services   | May, November    |

4300.4 The review of all completed applications to be reviewed in accordance with § 4300.1 shall begin on or about the twentieth (20th) of the month indicated in the schedule set forth in § 4300.3.

4300.5 Batched reviews shall not be conducted for services that are required for the operation of any health facility or service, as determined by the SHPDA. Those services include but are not limited to central sterile supply, facility administration, facility utility, pharmacy, and dietary services.

4300.6 Batched reviews also shall not be conducted for any application that is qualified for expedited review, as specified in § 4301.2.

4300.7 Certificate of Need applications for emergency replacements, as specified in § 4008, also may be processed without regard to batching of applications.

4300.8 If only one (1) Letter of Intent relating to an application type specified in the schedule set forth in § 4300.3 has been received by the SHPDA by the first (1st) day of the month three (3) months preceding a review month specified in the schedule for that type of application, the SHPDA shall begin review of any complete application without regard to batching.

50 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4301 (2008)*

22-4301. REGULAR AND EXPEDITED REVIEWS

4301.1 The SHPDA shall review each application for a Certificate of Need through use of one (1) of two (2) established review processes: regular and expedited.

4301.2 Except as provided in § 4301.3, the expedited review process shall be used for all applications that propose a capital expenditure of four hundred thousand dollars (\$ 400,000) or more, but less than one million dollars (\$ 1,000,000), or the equivalent through donation, lease, rental, or similar arrangement, and which:

- (a) Involve necessary replacement of equipment that would not alter the type of service provided or significantly alter the quality of service provided; or
- (b) Do not involve direct patient care services and will have no significant impact on the cost and quality of patient care services.

4301.3 Expedited reviews shall not be conducted for any otherwise qualified project related to a service for which the State Health Plan states there is an excess of capacity.

4301.4 In addition, at the request of an applicant, the SHPDA shall review an application through the use of the regular review process even though the application qualifies for expedited review.

4301.5 Expedited reviews shall be conducted by the SHPDA staff and shall not be referred to the SHCC.

4301.6 The results of all expedited reviews shall be reported to the SHCC at the next regularly scheduled SHCC meeting.

4301.7 The review of an application by the SHPDA through use of the expedited review process shall in no way imply automatic approval of the application by the SHPDA. The application shall be reviewed by the staff using the same criteria and standards that apply to projects reviewed through use of the regular process.

4301.8 The only differences between the two (2) processes (regular and expedited) are as follows:

- (a) Applications reviewed through use of the expedited process are not referred to the SHCC for review and comment; and
- (b) The time period for review of expedited applications is shorter.

4301.9 The SHPDA shall conduct a limited regular review as specified in § 4301.12 if an application for a Certificate of Need for a capital expenditure is made for one (1) of the following:

- (a) To eliminate or prevent imminent safety hazards as defined by federal or District fire, building, or life safety codes or regulations;
- (b) To comply with District government licensure standards; or
- (c) To comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that Act.

4301.10 The SHPDA shall conduct a regular review using the regular criteria if it determines that the proposed project does not meet any of the conditions in § 4301.9.

4301.11 The SHPDA shall review those portions of a proposed project that are not essential to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards, as specified in § 4301.9, using the regular criteria.

4301.12 In conducting limited regular reviews for applications or parts of applications that meet the requirements of § 4301.9, the SHPDA shall follow the regular review procedures and shall determine the following:

- (a) Whether the facility or service for which the capital expenditure is proposed is needed;
- (b) Whether the obligation of the capital expenditure is consistent with the State Health Plan; and
- (c) Whether the applicant is in compliance with D.C. Code, § 23-305(a) and § 4400 of this title regarding uncompensated services.

4301.13 As required by § 4309.13, the SHPDA shall issue a Certificate of Need for the project (or the exempt portion of the project) if it determines in the affirmative for paragraph of § 4301.12.

51 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4302 (2008)*

22-4302. PUBLIC HEARINGS DURING REVIEWS

4302.1 The SHPDA on its own initiative may call a public hearing on any application during the first (1st) thirty (30) days of the review period.

4302.2 The SHPDA shall also afford an opportunity for a public hearing to any affected person, if so requested in writing no later than thirty (30) days after the beginning of the review period or the date of notification of the review period, whichever is later.

4302.3 In a hearing, any person shall have the right to be represented by counsel and to present oral or written argument and evidence relevant to the matter that is the subject of the hearing.

4302.4 Any person affected by the matter that is the subject of the hearing may conduct reasonable (as determined by the Hearing Officer) questioning of persons who make factual allegations relevant to the matter, and a verbatim record of the hearing shall be maintained by the SHPDA.

4302.5 Notification of any public hearing to be held shall be made by the SHPDA in a newspaper of general circulation in the District and by mail to those persons on the SHPDA Certificate of Need mailing list.

4302.6 The hearing shall be held no sooner than fourteen (14) days from the date of notification of the hearing.

4302.7 No fee shall be charged by the SHPDA to hold a public hearing.

4302.8 The SHPDA shall make a copy of the hearing record available for review to any person upon request.

52 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4303 (2008)*

#### 22-4303. STATEWIDE HEALTH COORDINATING COUNCIL

4303.1 Unless the SHPDA has found it impossible to complete a review within ninety (90) days for a reason specified in § 4200, no later than fifty-five (55) days after the beginning of the review process the SHPDA shall forward to the members of the appropriate Statewide Health Coordinating Council (SHCC) committee or the entire SHCC, as directed by the SHCC, a staff analysis of any application for a Certificate of Need being reviewed under the regular review process.

4303.2 The SHPDA analysis under § 4303.1 shall include both the positive and negative aspects of the application in relation to the State Health Plan and adopted criteria.

4303.3 After receipt of the SHPDA staff analysis, the SHCC and any of its committees (as specified by the SHCC) shall review and comment on the application pursuant to the SHCC bylaws.

4303.4 SHCC members having a conflict of interest concerning any application shall follow the provisions of the SHCC bylaws relating to conflicts of interest.

4303.5 During the period of SHCC review, but prior to the SHCC's adoption of a formal recommendation, the SHCC may, upon majority vote, request a public hearing on the application.

## CDCR 22-4303

4303.6 The SHPDA Director shall grant a request for a public hearing made under § 4303.5, and shall conduct the hearing in conjunction with the SHCC, in accordance with procedures specified in § 4302.

4303.7 The failure of the SHCC to make a recommendation concerning an application shall not delay the SHPDA from completing its review within the required schedule.

4303.8 The recommendation of the SHCC shall be considered by the SHPDA Director in making a decision.

4303.9 If the decision of the SHPDA is not in agreement with the recommendation of the SHCC, the SHPDA shall provide a written explanation and justification for the difference. The explanation and justification shall be provided to the SHCC at or before its next regularly scheduled meeting.

## 53 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4304 (2008)*

22-4304. RESERVED

## 54 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4305 (2008)*

22-4305. INSPECTION OF RECORDS

4305.1 Except as provided in § 4305.3, any person may inspect any application and other information contained in the SHPDA project files at any time during regular business hours.

4305.2 Any document subject to inspection may be copied by any person upon the payment of a reasonable fee to cover the cost of reproduction.

4305.3 Members of the public may not inspect or copy portions of applications or other documents that contain detailed technical descriptions of security systems, medical records systems, or controlled substance storage systems, if those portions of an application have been designated as "restricted" by the SHPDA.

4305.4 The SHPDA shall designate a portion of an application as "restricted" only if the following apply:

(a) The applicant requests the SHPDA to do so at a presubmission meeting with the SHPDA staff person in charge of the Certificate of Need review. All material to be categorized as "restricted" shall be presented at this meeting, but it shall not be retained in the SHPDA files at that time;

(b) The SHPDA staff person in charge of the Certificate of Need review agrees that the information in question would assist a technically sophisticated person to violate the security of the system in question;

(c) Upon formal submission of the information agreed to be classified as "restricted," the applicant provides a nonrestricted and nontechnical summary of the "restricted" material; and

(d) The applicant, upon formal submission of the information agreed to be classified as "restricted," submits the information printed on paper other than white or blue and marks each page at top and bottom, "Restricted Security System Information; Not for Public Inspection."

4305.5 In the event of disagreement between the applicant and the SHPDA staff person in charge of the Certificate of Need review concerning a request for classification of material as "restricted," the applicant may appeal by written request for a meeting to review the matter with the SHPDA Director, who shall make the final decision.

4305.6 Anyone desiring to inspect material classified as "restricted" shall make the request in writing to the SHPDA, and also shall inform the applicant in writing.

4305.7 Evidence of notification to the applicant as required in § 4305.6 also shall be provided to the SHPDA.

4305.8 After receiving a request to inspect information classified as "restricted," the SHPDA Director or a designee shall hold a hearing with the person making the request and the applicant to hear arguments for and against removing the restriction.

4305.9 The SHPDA Director or a designee shall issue a written decision within five (5) working days after the hearing held pursuant to the provisions of § 4305.8.

4305.10 The decision shall be subject to reconsideration and appeal just as if it were a decision to issue or not issue a Certificate of Need.

4305.11 Medical records that identify individual patients shall not be submitted to the SHPDA; Provided, that any medical records identifying individual patients that are submitted inadvertently to the SHPDA shall not be available for public inspection.

55 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

CDCR 22-4306 (2008)

## 22-4306. EX PARTE CONTACTS

4306.1 During certain periods of the review process, as specified in § 4306.2, there shall be no ex parte contacts between the following:

- (a) Any person acting on behalf of the applicant or holder of a Certificate of Need, or any person opposed to the issuance or modification of a Certificate of Need or in favor of withdrawal of a Certificate of Need; and
- (b) Any person in the SHPDA who exercises any responsibility regarding the application or withdrawal.

4306.2 Ex parte contacts as described in § 4306.1 are prohibited during the following periods:

- (a) In the case of an application for a Certificate of Need or of proposed modification or withdrawal of a Certificate of Need in which a public hearing is to be held, after commencement of the hearing and until a decision is made on the application or proposed modification or withdrawal;
- (b) In the case where no public hearing on an application has been requested, upon adjournment of the SHCC Project Review Committee meeting at which the applicant's proposal was considered and until a decision is made; and
- (c) In the case where an expedited review (see § 4301) is conducted, for the last fifteen (15) days of the thirty (30) day review period.

4306.3 Any person in the SHPDA (including SHCC members) who receives an ex parte contact prohibited under this section shall, within forty-eight (48) hours after first having reason to believe that the contact is prohibited, prepare and deliver to a designee of the SHPDA Director a written statement setting forth the substance of the contact if it is in oral form, or deliver to the SHPDA Director's designee the actual communication or a copy if it is in written form.

4306.4 The SHPDA Director or the Director's designee shall make the statements or contacts available for inspection by placing them in a file separate from the public record of the application or proposed withdrawal under review.

4306.5 In instances where a member of the SHCC occupies an employment, fiduciary, consulting, or other type of relationship (as described in the SHCC bylaws provision governing conflict of interest) with an applicant or holder of a Certificate of Need, the SHCC member with that relationship shall be deemed to be acting on behalf of the applicant or holder; and any contacts acting on behalf of the applicant or holder, and any contacts between the SHCC member and the SHPDA staff, SHPDA Director, or other SHCC members occurring in the period specified in § 4306.2 shall be subject to the provisions of this section if the contacts are related to the matter in question.

4306.6 For purposes of this section, an "ex parte contact" shall mean an oral or written communication not on the public record with respect to which reasonable prior notice has not been given to all interested persons.

4306.7 For purposes of this section, the phrase "any person in the SHPDA" shall mean the SHPDA Director, all members of the SHPDA staff, and all members of the Statewide Health Coordinating Council (SHCC), except as provided in § 4306.5.

4306.8 A request for information concerning the status of any review made in accordance with § 4201 shall not be considered an ex parte contact.

56 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

CDCR 22-4307

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4307 (2008)*

22-4307. CLOSING THE PROJECT RECORD

4307.1 The record on which a decision concerning issuance or modification of a Certificate of Need is based shall close at the close of the second (2nd) business day following the meeting of a Committee of the SCHH at which the Committee makes the initial recommendation on the application; Provided, that the record shall include those proceedings of the SHCC in which the application was considered, concluding with the final SHCC vote taken on the application.

4307.2 If an expedited review is being conducted by the SHPDA, the record shall have been closed at least five (5) business days before a decision is issued.

4307.3 The notice provided by the SHPDA concerning the beginning of the review process as required under § 4200 shall specify the date of the closing of the record.

4307.4 The SHPDA Director may order that the record remain open for a longer period of time if it is determined that an extension is necessary to ensure the adequacy of the record.

4307.5 No information received from any person after the date specified in the notice (or as later extended by the SHPDA Director) shall be considered by the full SHCC in making its recommendation or by the SHPDA Director in making the decision on the application.

57 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4308 (2008)*

22-4308. REVISION OF REVIEW PROCEDURES

4308.1 Revisions to the review procedures contained in chapters 40 through 45 of this title shall be adopted in accordance with the D.C. Administrative Procedure Act, approved October 21, 1969 (*82 Stat. 1204*; D.C. Code, § 1-1505 et seq.) and in accordance with 42 CFR § 123.409 to the extent that 42 CFR § 123.409 places any burden on the SHPDA that is not required by the D.C. Administrative Procedure Act.

4308.2 Specifically, in accordance with 42 CFR § 123.409, the SHPDA shall cooperate with the SHCC in the development of review procedures, shall distribute proposed review procedures to the following:

- (a) The Statewide Health Coordinating Council (SHCC);
- (b) Health agencies and organizations in the District; and
- (c) Any agency that establishes rates for health care facilities or HMOs in the District.

4308.3 The SHPDA shall give the persons and agencies listed in § 4308.2, and all interested persons, an opportunity to provide written comments on proposed review procedures, and shall publish a notice in a newspaper of general circulation in the District that review procedures have been proposed for adoption and are available at the SHPDA office for inspection and copying.

4308.4 The SHPDA shall further distribute copies of adopted review procedures to the SHCC, to any agency that establishes rates for health care facilities or HMOs in the District, to health agencies and organizations in the District, and to the Secretary of the Department of Health and Human Services, as well as to any other person upon request.

58 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4309 (2008)*

22-4309. CONSIDERATIONS AND CRITERIA FOR REVIEW

4309.1 The SHPDA in conjunction with the SHCC shall develop, adopt, and use criteria based on general considerations, as applicable, in conducting Certificate of Need reviews.

4309.2 In the case of an HMO or an ambulatory care facility or health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the criteria shall be based only on the considerations set forth in § 4309.17.

4309.3 Review considerations for projects qualifying for limited regular review under § 4301 are limited to those specified in § 4309.32.

4309.4 A review shall consider the relationship of the health services being reviewed to the applicable Annual Implementation Plan and State Health Plan. Each decision of the SHPDA, or the appropriate judicial or administrative review body, to issue a Certificate of Need shall be consistent with the State Health Plan, except in emergency circumstances that pose an imminent threat to public health.

4309.5 A review shall consider the relationship of services reviewed to the long-range development plan of the person providing or proposing the services.

4309.6 A review shall consider the availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

4309.7 A review shall consider the immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the service.

4309.8 A review shall consider the need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, other underserved groups, and the elderly are likely to have access to those services.

4309.9 A review of a proposed reduction or elimination of a service, including the relocation of a facility or a service, shall consider the following:

- (a) The need that the population presently served has for the service;
- (b) The extent to which that need will be met adequately by the proposed relocation or by alternative arrangements; and
- (c) The effect of the reduction, elimination, or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, other underserved groups, and the elderly to obtain needed health care.

4309.10 A review shall consider the contribution of the proposed service in meeting the health related needs of members of medically underserved groups that have traditionally experienced difficulties in obtaining equal access to health services (such as low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable Annual Implementation Plan and State Health Plan as deserving of priority.

4309.11 For the purpose of determining the extent to which the proposed service will be accessible, the SHPDA shall consider the following:

- (a) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services (if approved);
- (b) The performance of the applicant in meeting its obligation, if any, under any applicable federal and District regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);
- (c) The extent to which Medicare, Medicaid, and medically indigent patients are served by the applicant; and
- (d) The extent to which the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physicians).

4309.12 A review shall consider the relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

4309.13 A review shall consider the availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses for those resources as identified by the applicable Annual Implementation Plan and State Health Plan.

4309.14 A review shall consider the relationship, including the organization relationship, of the health services proposed to be provided to ancillary or support services.

4309.15 A review shall consider the effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

4309.16 A review shall consider the special needs and circumstances of those entities that provide a substantial portion of their services or resources, or both, to individuals not residing in the District or in adjacent health service areas. Those entities may include medical and other health professions schools, multidisciplinary clinics, and specialty centers.

4309.17 A review shall consider the special needs and circumstances of HMOs. Those needs and circumstances shall be limited to the following:

- (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health services proposed to be provided by the organization; and
- (b) The availability of the new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner that is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the SHPDA shall consider only whether the services from these providers would meet the following requirements:

- (1) The services shall be available under a contract of at least five (5) years' duration;

(2) The services shall be available and conveniently accessible through physicians and other health professionals associated with the HMO (such as, whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);

(3) The services shall cost no more than if the services were provided by the HMO; and

(4) The services shall be available in a manner that is administratively feasible to the HMO.

4309.18 A review shall consider the special needs and circumstances of biomedical and behavioral research projects that are designed to meet a national need and for which local conditions offer special advantages.

4309.19 In the case of a construction project, a review shall consider the following:

(a) The costs and methods of the proposed construction, including the costs and methods of providing energy; and

(b) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.

4309.20 If proposed health services are to be available in a limited number of facilities, a review shall consider the extent to which the health professions schools in the area will have access to the services for training purposes.

4309.21 A review shall consider the special circumstances of health care facilities with respect to the need for conserving energy.

4309.22 In accordance with § 1502(b) of the Public Health Service Act, a review shall consider the factors that affect the effect of competition on the supply of the health services being reviewed.

4309.23 A review shall consider improvements or innovations in the financing and delivery of health services that foster competition (in accordance with § 1502(b) of the Public Health Service Act) and serve to promote quality assurance and cost effectiveness.

4309.24 In the case of health services or facilities proposed to be provided, a review shall consider the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

4309.25 In the case of existing services or facilities, a review shall consider the quality of care provided by those facilities in the past.

4309.26 When an application is made by an osteopathic or allopathic facility for a Certificate of Need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The SHPDA shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

4309.27 Criteria used for reviews in accordance with this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

4309.28 The SHPDA may from time to time adopt or revise general and special purpose review criteria and standards for reviewing all applications or particular types of applications.

4309.29 The SHPDA may also establish or revise criteria and standards by their inclusion in a validly adopted State Health Plan or through the valid adoption of criteria and standards for the Appropriateness Review.

4309.30 The criteria and standards adopted by the SHPDA under §§ 4309.28 and 4309.29 shall be incorporated in this title by reference.

4309.31 Notwithstanding the general review considerations specified in §§ 4309.4 through 4309.16 and §§ 4309.18 through 4309.26 and their related criteria, if an HMO or a health care facility that is controlled (directly or indirectly) by an HMO applies for a Certificate of Need, the SHPDA shall approve the application if it finds (in accordance with § 4309.17) the following:

(a) Approval of the application is required to meet the needs of the members of the HMO and of the new members that the HMO can reasonably be expected to enroll; and

(b) The HMO is unable to provide, through services or facilities that can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner that is consistent with the basic method of operations of the HMO and that makes these services available on a long-term basis through physicians and other health professionals associated with it.

4309.32 Except as provided in § 4309.33, the SHPDA shall issue a Certificate of Need for a proposed capital expenditure qualifying for limited regular review under § 4301 if it finds and determines the following

(a) The capital expenditure is required for the following purposes:

(1) To eliminate or prevent imminent safety hazards as defined by federal or District fire, building, or life safety codes or regulations; or

(2) To comply with District licensure standards; or

(3) To comply with accreditation or certification standards that must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under the District plan for medical assistance approved under Title XIX of that Act;

(b) The SHPDA makes the findings required in § 4310.4 and 4310.5.

(c) The SHPDA has determined the following:

(1) The facility or service for which the capital expenditure is proposed is needed;  
and

(2) The obligation of the capital expenditure is consistent with the State Health Plan;  
and

(d) The other general review considerations specified in § 4309.1 and their related criteria shall not apply.

4309.33 Those portions of a proposed project that are not required to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards are subject to review using the general review considerations specified in § 127.1, their related criteria, and any other relevant criteria which may have been adopted.

59 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4310 (2008)*

#### 22-4310. REVIEW DECISIONS

4310.1 The decision of the SHPDA to issue, not issue, modify, or withdraw a Certificate of Need shall be in writing and shall be based solely on the following:

(a) The review conducted in accordance with D.C. Law 3-99 and regulations and criteria adopted pursuant to District law; and

(b) The record established in administrative proceedings held with respect to the application for that Certificate or the administrative proceedings held for any reconsideration or SHPDA proposal to withdraw or modify a Certificate, as the case may be.

4310.2 The written decision shall state the basis on which the decision was made, shall be provided to the applicant, and shall be available to any other person upon request.

4310.3 If the decision is for the issuance of a Certificate of Need, the Certificate of Need shall constitute the decision document. If the applicant is an HMO, the SHPDA shall send a copy of the decision to the Regional Office of the Department of Health and Human Services.

4310.4 For each project it approves, the SHPDA shall make written findings that state the basis for the decision, at least by reference to other documents and analyses, as follows:

(a) That the project is needed;

(b) The extent to which the project will meet the SHPDA's criteria developed and based on the considerations specified in §§ 4309.8 through 4309.11 (which, where appropriate, shall take into account the current accessibility of the facility as a whole), except in any of the following cases:

(1) Where the project is a project to eliminate or prevent certain imminent safety accreditation standards (as described in § 4301.9);

(2) Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or

(3) Where the project is proposed by or on behalf of an HMO or a health care facility that is controlled (directly or indirectly) by an HMO; and

(c) In the case of applications being reviewed under the special review procedures and criteria for HMOs, the written findings shall be those required for approval of HMO projects as specified in § 4309.17.

4310.5 For each project the SHPDA approves, it also shall make a written finding that the applicant is in compliance with the requirements of D.C. Code, § 23-305(a) and the provisions of § 4309 and chapter 44 of this title regarding uncompensated services.

4310.6 No Certificate of Need shall be issued unless the findings specified in §§ 4310.4 and 4310.5, as applicable, are made and adopted by the SHPDA Director.

4310.7 If the SHPDA disapproves a project for failure to meet the need and access criteria, it shall state this fact in its written findings.

4310.8 In any case where the SHPDA finds that a project does not satisfy its criteria based on the considerations in §§ 4309.8 through 4309.11 relating to need and access, it shall state this fact in a written notice to the applicant and the appropriate Regional Office of the Department of Health and Human Services.

60 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

CDCR 22-4311

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4311 (2008)*

## 22-4311. NOTIFICATION OF REVIEW DECISIONS

4311.1 The SHPDA Director shall notify the applicant of a review decision by the issuance of a Certificate of Need or through a letter of findings indicating that no Certificate of Need will be issued.

4311.2 The notification required in § 4311.1 shall be given no later than the end of the review period specified in § 4202.1.

4311.3 Notice of review decisions shall also be provided to all previously appearing parties and to contiguous HSAs and SHPDAs within thirty (30) days of the date of the end of the review period.

4311.4 The notice required under § 4311.3 may be made through publication in a newsletter.

61 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4312 (2008)*

## 22-4312. RECONSIDERATION OF REVIEW DECISIONS

4312.1 Any person may request reconsideration of the review decision within thirty (30) days of the date of publication or mailing (whichever is later) of the notice of that decision.

4312.2 The SHPDA shall grant a request for reconsideration made in accordance with § 4312.1, and shall hold a hearing without imposing any charge or fee if the person requesting reconsideration demonstrates "good cause," as defined in § 4312.3.

4312.3 For purposes of this section, "good cause" may be demonstrated in the following ways:

(a) The requester presents significant and relevant information not previously considered by the SHPDA. To ensure that interested persons exercise diligence in presenting all significant and relevant information during the course of a review, the SHPDA shall not find "good cause" on this basis in the case of presentation of information not previously presented which, with reasonable diligence, could have been presented during the course of the review;

(b) The requester demonstrates that there has been a significant change in a factor or circumstance relied upon by the SHPDA in reaching its review decision. Those factors might include the opening or closure of other facilities, changes in reimbursement policies of major third party payors, or changes in the SHPDA's criteria or standards or the State Health Plan after the date of the review decision (but before expiration of the period to request reconsideration);

(c) The requester demonstrates that the SHPDA materially failed to follow its review procedures as specified in law and this title. A "material failure" is one that may reasonably be believed to have affected the outcome of the SHPDA's review decision, that prevented any person from presenting relevant information in time to be considered by the SHPDA, or that involves an alleged violation of the prohibition of ex parte contacts specified in *D.C. Code, § 32-304(e)*; or

(d) The requester presents other information that leads the SHPDA to conclude that "good cause" is shown and a public hearing for reconsideration is in the public interest.

4312.4 If the SHPDA finds "good cause" and grants a reconsideration request, it shall hold the public hearing within thirty (30) days of the date of the request.

4312.5 The SHPDA shall notify the person requesting the hearing, the applicant for the Certificate of Need in question, the SHCC, HSAs and SHPDAs in contiguous areas, the general public, and any other person upon request.

4312.6 Notification of the general public shall be given through publication of a notice of the hearing in a newspaper of general circulation in the District.

4312.7 There shall be no ex parte contacts between any party and any member of the SHPDA staff concerned with the decision after the commencement of the reconsideration hearing, as required by *D.C. Code, § 32-304(e)*.

4312.8 A reconsideration public hearing is an informal "rulemaking" type hearing at which the Certificate of Need applicant and any other person may submit oral or written testimony. The hearing is not a "contested case" hearing.

4312.9 All persons proposing to testify orally at a reconsideration public hearing (except the person requesting the hearing and the applicant or holder of the Certificate of Need being reconsidered) shall schedule their testimony with the SHPDA at least one (1) business day prior to the hearing.

4312.10 Persons who do not schedule their testimony in advance shall be permitted to testify orally only after all scheduled testimony has been presented. All persons wishing to testify shall be permitted to do so.

4312.11 The person whose reconsideration request was granted, and the Certificate of Need holder (if different) shall each be given one (1) hour to make their presentation. During this hour, one (1) or more persons may present testimony on behalf of the applicant or the person whose reconsideration request was granted.

4312.12 Other persons or groups shall be permitted to present oral testimony up to ten (10) minutes in length.

4312.13 At the discretion of the hearing officer, members of the SHPDA staff or others may address questions to a person presenting oral testimony.

4312.14 The time spent asking and responding to questions shall not be counted against the time limit of the person testifying.

4312.15 Written testimony in any length may be submitted to the SHPDA in advance of the hearing, at the hearing, or at any time prior to the close of the hearing record.

4312.16 At his or her sole discretion, the hearing officer may close the record at the end of all oral testimony, or the hearing officer may hold the record open for a period of time not to exceed two (2) weeks.

4312.17 Under special circumstances, the SHPDA Director may, at his or her discretion, extend the time limits on presentations described in this section.

4312.18 The SHPDA may limit the scope of the hearing to items for which "good cause" was demonstrated in the reconsideration request, to issues of substantial progress or justification for lack of progress in the case of Certificates of Need proposed to be withdrawn because of lack of progress, or to evidence of subsequent occurrences or information not previously available.

4312.19 The SHPDA shall maintain a verbatim record of the hearing.

4312.20 The record of the hearing may be by either sound recording or by transcript.

4312.21 Persons wishing a copy of the record of the hearing may be required to pay the cost of reproducing it.

4312.22 The SHPDA Director shall issue a written decision, including findings of fact and conclusions of law, within fifteen (15) days following the close of the hearing record.

4312.23 The SHPDA Director's findings as required in § 4312.22 shall take the form of a document upholding the original SHPDA decision, issuing a new or modified Certificate of Need, or revoking a Certificate of Need.

4312.24 The SHPDA Director's decision may affirm, modify, or reverse the original SHPDA decision.

4312.25 The SHPDA Director's decision shall constitute the decision of the SHPDA for all purposes.

62 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4313 (2008)*

22-4313. APPEAL OF REVIEW DECISIONS

4313.1 Decisions of the SHPDA Director to grant or not grant reconsideration on the basis of "good cause" shown and decisions made upon the conclusion of a reconsideration review may be further appealed to the D.C. Board of Appeals and Review by any person directly affected, including the applicant, the person who requested reconsideration, previously appearing parties, and the SHCC, within thirty (30) days of the date of the final SHPDA reconsideration decision.

4313.2 Any person or agency adversely affected may appeal the final decision of the SHPDA, after exhaustion of all administrative remedies including review by the Board of Appeals and Review, to the D.C. Court of Appeals, in accordance with D.C. Code, § 32-310.

4313.3 Agencies adversely affected by the final decision of the SHPDA may be any of the following:

- (a) The SHPDA;
- (b) Health Systems Agencies serving contiguous health service areas; and
- (c) Any agency that establishes rates for health care facilities or HMOs located in the District.

4313.4 Persons adversely affected by the SHPDA's final decision may be any of the following:

- (a) The applicant;
- (b) Any person who participated in the proceedings before the SHPDA or the Board of Appeals and Review;
- (c) Any person residing within the geographic area serviced or to be served by the applicant;
- (d) Health care facilities and HMOs located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review;
- (e) Health care facilities and HMOs which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;
- (f) Third party payors who reimburse health care facilities for services in the health service area in which the project is proposed to be located; and
- (g) Any person who regularly uses health care facilities within that geographic area.

CDCR 22-4313

63 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4314 (2008)*

22-4314. RESERVED

64 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

*CDCR 22-4315 (2008)*

22-4315. APPLICATION FEES

4315.1 Notwithstanding any other provision of chapters 40 through 45 of this title, no application for a Certificate of Need shall be accepted for review by the SHPDA from any person other than an agency of the District or federal governments unless the application is accompanied by a check made payable to the order of the "D.C. Treasurer" in the required amount as specified in § 4315.2.

4315.2 No application fee shall be required for consideration of the issuance of renewal Certificates of Need, except in the case of a fifth (5th) renewal for which a full review is required under the provisions of § 4010 of this title.

4315.3 The required fee shall be calculated as follows:

(a) For projects involving no capital expenditures or capital expenditures of one hundred thousand dollars (\$ 100,000) or less, the fee shall be five hundred dollars (\$ 500);

(b) For projects involving capital expenditures of more than one hundred thousand dollars (\$ 100,000) and not more than two million dollars (\$ 2,000,000), the fee shall be five tenths of one percent (0.5%) of the proposed capital expenditure; and

CDCR 22-4315

(c) For projects involving a capital expenditure of more than two million dollars (\$ 2,000,000), the fee shall be ten thousand dollars (\$ 10,000).

4315.4 In the case of a fifth renewal for a Certificate of Need holder subject to fee requirements in § 4315.1, the application shall be accompanied by a check made payable to the order of the "D.C. Treasurer" in an amount equal to one-half (1/2) of that required in § 4315.2.

4315.5 No application fee shall be required for consideration of an application in an instance of withdrawal and re-submission of an application, whether voluntary or required, in accordance with § 4205 of this title, if the new application is submitted to the SHPDA and judged to be complete by the SHPDA within six (6) months of the date of withdrawal. However, if the new (resubmitted) application would have resulted in a fee higher than that charged for the initial (withdrawn) application, the applicant shall pay a fee equal to the difference between the fee that would have been due for the new application and the amount actually paid for the initial application.

4315.6 Requests for modification of a Certificate of Need or an application for a Certificate of Need shall be accompanied by a check made payable to the order of the "D.C. Treasurer" in an amount equal to five tenths of one percent (0.5%) of any requested increase in the proposed capital expenditure, but not less than five hundred dollars (\$ 500), if the Certificate of Need holder is subject to the fee requirements of § 4315.1.

4315.7 If any check received by the D.C. Treasurer, as required under this section, is returned as uncollectable, the SHPDA shall take no further action on the Certificate of Need application or other request until the required payment has been made and collected.

4315.8 Any Certificate of Need that may have been issued after the receipt of an uncollectable check shall be voided by the SHPDA without further administrative processing, unless the required payment is made and collected within twenty (20) days of notification to the Certificate of Need holder that payment has been returned as uncollectable.

65 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 43. CERTIFICATE OF NEED REVIEW PROCEDURES

CDCR 22-4399 (2008)

## 22-4399. DEFINITIONS

4399.1 The provisions of § 4099 of chapter 40 of this title, and the definitions set forth in that section, shall apply to this chapter.

66 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

CDCR 22-4400

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4400 (2008)*

22-4400. General Provisions.

4400.1 This chapter implements the requirements of the District of Columbia Health Services Planning Program Re-Establishment Act of 1996 (Act), effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-401 et seq.), for the provision by health care facilities of uncompensated care as a condition of holding a Certificate of Need (CON).

4400.2 As a condition for issuance of a CON to a health care facility or health service that operates on a payment for services rendered basis, the health care facility or health service shall provide uncompensated care in an amount not less than three percent (3%) of the health care facility's or health service's annual operating expenses, less the amount of reimbursements it receives from Titles XVIII and XIX of the Social Security Act (Medicaid and Medicare), without regard for contractual allowances. In addition, the health care facility or health service shall comply with any uncompensated care obligations required pursuant to the Act in a previous CON.

4400.3 The State Health Planning and Development Agency (SHPDA) may require each health care facility or health service subject to an uncompensated care obligation through a CON to submit data to verify compliance with the uncompensated care obligation.

4400.4 Each health care facility or health service subject to an uncompensated care obligation shall provide uncompensated care at the annual compliance level required by § 4400.2, for each fiscal year, or any part thereof, in which it is subject to the uncompensated care obligation.

4400.5 Each health care facility or health service that has an uncompensated care obligation shall make uncompensated care available to the extent of that obligation to all eligible persons, without discrimination on the grounds of race, color, creed, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or any other grounds unrelated to an individual's need for the service or the availability of the needed service.

STATUTORY AUTHORITY: D.C. Official Code § 44-121, -401 et seq.

History of Regulations since Last Compilation by Agency (August 1986):  
 June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
 August 11, 1989 36 DCR 5819 by the Department of Human Services

67 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

CDCR 22-4401

*CDCR 22-4401* (2008)

22-4401. Reserved.

68 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4402* (2008)

22-4402. Certificate of Need Holder Participation in Third Party Payer Programs.

4402.1 Each CON holder may make arrangements, if eligible to do so, for reimbursement for services from:

- (a) Those principal District and state third party payers that provide reimbursement for services; and
- (b) Federal governmental third-party programs, including Medicare and Medicaid.

4402.2 Each CON holder shall take all actions necessary to ensure that admission to and receipt of its services are available to beneficiaries of the governmental programs specified in § 4402.1, without discrimination or preference because they are beneficiaries of those programs.

History of Regulations since Last Compilation by Agency (August 1986):  
June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
August 11, 1989 36 DCR 5819 by the Department of Human Services

69 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4403* (2008)

22-4403. Prohibition of Exclusionary Admissions Policies.

4403.1 A CON holder shall be out of compliance with § 4400.4, if it uses an admissions practice that has the effect of excluding persons who are eligible for uncompensated care under § 4406.

4403.2 Prohibited admissions practices include the following:

(a) Limiting admission to patients who are referred by physicians with staff privileges at the CON holder's facility (or facilities);

(b) Maintaining an operational structure that includes few or no physicians with staff privileges who will treat persons who are eligible for uncompensated care; or

(c) Requiring advance deposits (preadmission or pre-service deposits) from persons who qualify or appear to qualify for uncompensated care before admitting or serving these persons.

4403.3 A CON holder may have in effect a policy or practice described in § 4403.2(a) and still comply with this chapter if the CON holder makes alternative arrangements to treat those persons who would otherwise be unable to gain admission to, or obtain services available from, the CON holder. Alternative arrangements may include the following:

(a) Authorizing the individual's physician, if licensed and otherwise qualified, to treat the patient at the facility even though the physician does not have staff privileges at the facility;

(b) Obtaining the voluntary agreement of physicians with staff privileges at the facility to accept referrals regularly of patients who do not have a physician (e.g. rotating referrals to the physicians with staff privileges);

(c) Requiring acceptance of referrals of patients who do not have a physician as a condition of obtaining or renewing staff privileges;

(d) Establishing a hospital-based primary care clinic through which patients needing hospitalization may be admitted; or

(e) Hiring or contracting with qualified physicians to treat patients who do not have private physicians.

4403.4 A CON holder need not require all its staff physicians to accept Medicaid or Medicare patients to remedy a violation of § 4403.2(b). If the Department of Health, Medical Assistance Administration, determines that a CON holder or CON applicant is out of compliance with Medicaid or Medicare obligations, the CON applicant or CON holder shall be deemed out of compliance with admissions and service requirements until the CON applicant or CON holder takes steps to ensure that Medicaid and Medicare program beneficiaries have full access to all of the CON applicant's or CON holder's available services.

4403.5 A CON holder that engages in a practice prohibited by § 4403.2(c) is not required to forego the use of a deposit policy in all situations. The CON holder can remedy this violation by making alternative arrangements to ensure that persons who probably can pay for services are not denied them simply because they do not have the available cash at the time services are requested. A CON holder shall not deny admission or a service to a person who probably can pay because of the person's inability to pay a deposit at the time the person requests admission or a service.

History of Regulations since Last Compilation by Agency (August 1986):  
June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
August 11, 1989 36 DCR 5819 by the Department of Human Services

70 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4404 (2008)*

22-4404. Uncompensated Care Compliance Requirements.

4404.1 Each CON holder shall provide uncompensated care pursuant to § 4400.2 to eligible persons. The uncompensated care to be provided shall be based upon these rules or contractual obligations between the health care provider and the District of Columbia Government, whichever standard provides the higher dollar value.

4404.2 If, during any fiscal year, a CON holder fails to meet its annual uncompensated care obligation, the CON holder shall, during a subsequent fiscal year, provide uncompensated care in a dollar value sufficient to remediate that deficit, pursuant to a compliance plan under § 4413 approved by the SHPDA. The compliance plan shall include the following:

- (a) The conditions or circumstances that caused or contributed to the deficit;
- (b) Specific actions the CON holder plans to take to remediate the deficit;
- (c) Specific actions the CON holder plans to take to prevent further deficits;
- (d) The name of a staff person who will be responsible for administering the compliance plan; and
- (e) The dates on which the compliance plan will begin and is expected to be completed.

4404.3 A deficit incurred during any fiscal year shall be made up within not more than three (3) fiscal years after the end of the fiscal year during which the deficit occurred.

4404.4 A CON holder shall begin to make up a deficit during the fiscal year immediately following the fiscal year during which it incurred the deficit.

4404.5 The SHPDA shall complete its review of the compliance plan within forty-five (45) days of receipt from the CON holder. The compliance plan shall expire after the CON holder remedies the deficit for which it submitted the compliance plan.

4404.6 The Director may extend the period of time within which a CON holder may make up a deficit.

4404.7 The amount of an uncompensated care deficit for any fiscal year shall be the difference between a CON holder's annual compliance level for that fiscal year and the amount of uncompensated care provided during that fiscal year.

4404.8 If a CON holder provides uncompensated care during a fiscal year in an amount exceeding its annual compliance level, the CON holder may request that the Director apply the excess amount as a credit towards an existing deficit or its annual compliance level for any subsequent fiscal year. To be eligible for a credit, the excess dollar value above the annual compliance level must have been provided pursuant to the requirements of this chapter.

History of Regulations since Last Compilation by Agency (August 1986):

June 16, 2006 replaced at 53 DCR 4808 by the Department of Health

August 11, 1989 36 DCR 5819 by the Department of Human Services

71 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*

\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4405 (2008)*

22-4405. Notice of Availability of Uncompensated Care.

4405.1 Each CON holder shall publish, in a newspaper of general circulation within the District of Columbia, and submit to the Director before the beginning of the CON holder's fiscal year, a notice of its uncompensated care obligation. The notice shall include:

(a) The dollar value of uncompensated care that the CON holder intends to make available during the fiscal year or a statement that the CON holder will provide uncompensated care to all persons unable to pay for treatment who request uncompensated care;

(b) An explanation of the difference between the amount of uncompensated care the CON holder proposes to make available and the annual compliance level for the CON holder, if any; and

(c) A statement whether the CON holder has satisfied all outstanding uncompensated care obligations from previous reporting periods, or a statement indicating that it will, during a specified period, satisfy any outstanding obligations.

4405.2 The CON holder shall post the following notice:

"Under District of Columbia law, this health care provider must make its services available to all people in the community. This health care provider is not allowed to discriminate against a person because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business, or because a person is covered by a program such as Medicare or Medicaid.

"This health care provider is also required to provide a reasonable volume of services without charge or at a reduced charge to persons unable to pay. Ask the staff if you are eligible to receive services either without charge or at a reduced charge. If you believe that you have been denied services or consideration for treatment without charge or at a reduced charge without a good reason, contact the Admissions or Business Office of this health care provider, and call the State Health Planning and Development Agency through the Citywide Call Center at 202-727-1000.

"If you want to file a complaint, forms are available from the State Health Planning and Development Agency."

4405.3 The notice required by § 4405.2 shall also include the CON holder's eligibility criteria for uncompensated care.

4405.4 The CON holder shall post the notice required by § 4405.2 in plain view in areas of the CON holder's facility or service that are easily accessible to the public. Those areas shall include the admissions areas, the business office, and the emergency room.

4405.5 The notice required by § 4405.2 shall be printed in the following languages:

(a) English;

(b) Spanish; and

(c) Any other language that is the usual language of households of ten percent (10%) or more of the population of the District of Columbia, according to the most recent figures published by the Bureau of Census.

4405.6 Each CON holder shall communicate the contents of the posted notice to any person who the CON holder has reason to believe cannot read the notice.

4405.7 During any period of a fiscal year when uncompensated care is available in the CON holder's facility or service, the CON holder shall provide written notice of the availability of the services to each person who seeks services

from the CON holder, whether on his or her own behalf or on behalf of another. The written notice of availability shall include the following:

- (a) The information set out in the notice in § 4405.2.
- (b) The location in the CON holder's facility or service where any person seeking uncompensated care may request it; and
- (c) A statement that the CON holder is required to make a written determination whether the person will receive uncompensated care; and
- (d) The date by, or period within which, the determination will be made.

4405.8 Each CON holder shall provide the written notice required by § 4405.7 before providing services, except where the emergency nature of the services makes prior notice impractical. In emergency situations, the CON holder shall provide the written notice to the patient as soon as practical, or to the next of kin. The CON holder shall give the notice not later than when presenting the first bill for services.

History of Regulations since Last Compilation by Agency (August 1986):  
 June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
 August 11, 1989 36 DCR 5819 by the Department of Human Services

72 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4406 (2008)*

22-4406. Uncompensated Care Eligibility Criteria.

4406.1 A person is eligible to receive uncompensated care if the person is unable to pay for health services and satisfies the following additional requirements:

- (a) Is not covered, or receives services that are not covered, under a third-party insurer or governmental program;
- (b) Has an annual individual or family income that is not greater than two hundred percent (200%) of the federal poverty level; and
- (c) Requests services.

4406.2 Financial eligibility for uncompensated care shall be calculated by either of the following methods:

- (a) Multiplying by four (4) the person's individual or family income, as applicable, for the three (3) months preceding the request for uncompensated care; or
- (b) Using the person's or family's actual income, as applicable, for the twelve (12) months preceding the request for uncompensated care.

CDCR 22-4406

4406.3 For purpose of determining income eligibility for uncompensated care pursuant to § 4406.1(b), revisions to the federal poverty level used to calculate eligibility shall be effective sixty (60) days after the date of publication in the Federal Register.

History of Regulations since Last Compilation by Agency (August 1986):  
 June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
 August 11, 1989 36 DCR 5819 by the Department of Human Services

73 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4407 (2008)*

22-4407. Reserved.

74 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4408 (2008)*

22-4408. Written Determination of Eligibility for Uncompensated Care.

4408.1 Each CON holder shall give written notice of its determination of eligibility for uncompensated care in response to each request for uncompensated care to the person requesting care. The CON holder shall give notice in person at the time uncompensated care is requested or by regular mail to the address the person requesting services provided. If the person requesting care has not provided an address and is not available to receive notice in person, the CON holder may post at the facility, in a conspicuous place such as the admissions office or the emergency services department, a notice that the person's eligibility status is available in the administrative office within that facility.

4408.2 Each CON holder shall communicate the contents of the written determination to any person requesting uncompensated care that the CON holder has reason to believe cannot read the determination.

4408.3 Each determination of eligibility for uncompensated care shall include the following statements:

- (a) That the CON holder will, will with conditions, or will not provide uncompensated care;
- (b) That there will be no charge for uncompensated care;
- (c) The date on which the person requested care;
- (d) The date on which the CON holder made the determination;
- (e) The annual individual or family income, as applicable, and family size of the person who requested uncompensated care;
- (f) The date on which services were, or will be, provided; and
- (g) The reason for denial, if applicable.

4408.4 As a condition of providing uncompensated care, a CON holder may:

- (a) Require the person requesting uncompensated care to furnish any information that is reasonably necessary to substantiate eligibility; and
- (b) Require each person requesting uncompensated care to apply for any benefits under third party insurer or governmental programs to which the person requesting uncompensated care is, or could be, entitled upon application.

4408.5 A conditional eligibility determination shall state the conditions that the person requesting uncompensated care must satisfy to be eligible.

4408.6 CON holders shall make eligibility determinations as follows:

- (a) Each hospital shall make an eligibility determination for uncompensated care within five (5) business days of a request for an outpatient service or before discharge for an inpatient service;
- (b) Each ambulatory surgical facility shall make an eligibility determination for uncompensated care within five (5) business days of a request for an outpatient service; and
- (c) Any other CON holder shall make a determination of eligibility for uncompensated care within ten (10) business days following the date of admission or delivery of services.

History of Regulations since Last Compilation by Agency (August 1986):  
 June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
 August 11, 1989 36 DCR 5819 by the Department of Human Services

75 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4409 (2008)*

76 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4410 (2008)*

22-4410. Uncompensated Care Reporting Requirements.

4410.1 Each CON holder shall submit an annual report to the SHPDA on uncompensated care. The report shall be on a schedule prescribed by the SHPDA. The report shall be submitted within one hundred and twenty (120) days after the close of the CON holder's fiscal year. The report shall include:

- (a) The dollar value of uncompensated care that the CON holder was required to provide;
- (b) The dollar value of uncompensated care the CON holder actually provided, with the dollar value of charity care and bad debt reported separately;
- (c) A copy of the CON holder's audited financial statement for that fiscal year;
- (d) Other documentation SHPDA may require to determine if a CON holder has met its annual compliance level for the period covered by the report;
- (e) The dollar value of services and care provided to District residents;
- (f) A copy of the notice required by § 4405.1, including the date the notice was published and the name of the newspaper that printed the notice;
- (g) If the CON holder failed to provide the required annual level of uncompensated care, the reason and any documentation that supports its reason for failing to meet the annual compliance level; and
- (h) Any other documentation the Director may request.

4410.2 The Director may require a CON holder to submit the report required by § 4410.1 more frequently when:

- (a) The Director determines that during the preceding fiscal year the CON holder did not provide uncompensated care at its required annual compliance level; or
- (b) The Director notifies the CON holder, in writing, that additional reports are needed for proper administration of the CON program.

4410.3 If the Director requests additional reports pursuant to § 4410.2, the CON holder shall submit the report within ninety (90) days after receiving the request or within ninety (90) days after the close of the fiscal year, whichever is later. The Director may, for good cause shown, extend the time within which the CON holder must submit the report.

4410.4 Not later than ten (10) days after being served with a summons or complaint regarding uncompensated care or any other activity relating to the CON, each CON holder shall notify the Director of any legal action brought against it that alleges that it has failed to comply with the requirements of this chapter.

History of Regulations since Last Compilation by Agency (August 1986):  
June 16, 2006 replaced at 53 DCR 4808 by the Department of Health

CDCR 22-4410

August 11, 1989 36 DCR 5819 by the Department of Human Services

77 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

CDCR 22-4411 (2008)

22-4411. Uncompensated Care Records Maintenance Requirements.

4411.1 Each CON holder shall maintain and provide to the Director, upon request, any records necessary to document the CON holder's compliance with the requirements of this chapter. Each CON holder shall make available for public inspection the records it maintains to document its compliance. Patient identifying information shall be removed from records provided for public inspection.

4411.2 The CON holder shall maintain uncompensated care records, including the following:

- (a) Any documents from which the information required to be reported under § 4410 was obtained;
- (b) Documents that clearly segregate uncompensated care from other accounts;
- (c) Copies of written determinations of eligibility under § 4408; and
- (d) Documentation that verifies compliance with the requirements of this chapter during any fiscal year, including documents from which information required to be reported under § 4410.1 was obtained.

4411.3 Each CON holder shall retain records to document its compliance with this chapter for five (5) years from the date of the last entry for a particular fiscal year. The Director may require a CON holder to maintain the records for a longer period.

History of Regulations since Last Compilation by Agency (August 1986):  
 June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
 August 11, 1989 36 DCR 5819 by the Department of Human Services

78 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE

## CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4412 (2008)*

## 22-4412. Investigation and Certification of Compliance.

4412.1 Any person may file a complaint with the Director that a CON holder is not complying with the requirements of this chapter.

4412.2 Each complaint shall include the following information:

- (a) The name and address of the complainant;
- (b) The name and address of the CON holder;
- (c) The date or approximate date on which the event or incident being complained of occurred; and
- (d) A statement describing the event or incident that the complainant believes violates the requirements of this chapter.

4412.3 The filing date of a complaint shall be the date of receipt by the SHPDA.

4412.4 The Director shall provide a copy of the complaint to the CON holder named in the complaint within ten (10) business days after receiving the complaint.

4412.5 The Director shall initiate an investigation of each complaint filed pursuant to the provisions of this section within thirty (30) business days of its receipt.

4412.6 The CON holder shall provide the Director with documents, records, or other requested information that may assist in investigating the complaint.

4412.7 A CON holder shall be out of compliance with its uncompensated care obligations if it fails to provide documentation the Director requests to determine the CON holder's compliance with this chapter.

4412.8 The Director shall determine the merit of a complaint based on:

- (a) Information contained in the complaint;
- (b) Documents the CON holder provides; and
- (c) Other credible information the Director receives.

4412.9 If the Director determines that a complaint is not substantiated, the Director shall dismiss the complaint.

4412.10 The Director shall make periodic reviews of the uncompensated care requirements and activities of each CON holder to determine whether a CON holder is complying with its obligations.

4412.11 The Director shall conduct audits to determine each CON holder's compliance with its uncompensated care obligation according to standard audit procedures.

4412.12 After completing the audit the Director may certify that a CON holder has substantially complied with its uncompensated care obligation for a specific fiscal year or years. The certification shall confirm that the CON holder has provided the uncompensated care stated for the period covered by the certification.

4412.13 The Director shall base each certification of substantial compliance on the amount of uncompensated care properly claimed by the CON holder, using procedures and reviewing individual account data the Director determines to be sufficient to establish that the CON holder has substantially complied with its uncompensated care obligation for the period covered by the certification.

4412.14 The Director may certify substantial compliance when he or she determines that, for the period covered by the certification, the CON holder provided uncompensated care to eligible persons who had equal opportunity to apply for uncompensated care.

4412.15 To determine whether a CON holder has substantially complied with its obligations, the SHPDA shall consider each of the following in descending order of importance:

## CDCR 22-4412

- (a) Whether the CON holder took corrective action prescribed pursuant to § 4413;
- (b) Whether the CON holder's noncompliance with its uncompensated care obligation may be remedied by corrective action under § 4413; and
- (c) Whether the CON holder had procedures in place that complied with the applicable notice, eligibility, and record keeping requirements of §§ 4405, 4406, 4408, 4410, and 4411, and systematically and correctly followed the procedures.

4412.16 The Director shall determine and certify the amount of creditable service required by each CON holder for the three (3) fiscal years ending prior to the effective date of these rules. The Director shall base the determination on information necessary to establish the CON holder's substantial compliance with its uncompensated care obligation during the period being reviewed.

4412.17 To determine creditable service during the three (3) fiscal years ending prior to the effective date of these rules, each CON holder shall submit to the Director for each fiscal year the following:

- (a) The number of persons to whom it provided care without charge or below its normal and customary charge;
- (b) The total dollar amount of uncompensated care it provided in each fiscal year and the method used to determine that dollar amount; and
- (c) A description of the eligibility criteria it used for providing uncompensated care.

History of Regulations since Last Compilation by Agency (August 1986):  
 June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
 August 11, 1989 36 DCR 5819 by the Department of Human Services

79 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4413 (2008)*

22-4413. Uncompensated Care Enforcement.

4413.1 If the Director finds, based on an investigation, review, or audit under § 4412, that a CON holder has not complied with the requirements of this chapter, the Director may take any action authorized by law to secure compliance, including:

- (a) Voluntary agreement;
- (b) Judicial enforcement of the obligations under this chapter; and
- (c) Denial or withdrawal of a CON.

4413.2 Each CON holder that has denied uncompensated care to any person because it failed to comply with its uncompensated care obligation shall be out of compliance until it takes the actions necessary to remedy fully the noncompliance, including;

## CDCR 22-4413

- (a) Providing uncompensated care to applicants improperly denied;
- (b) Repaying amounts improperly collected from persons eligible to receive uncompensated care; and
- (c) Other corrective action the Director may prescribe.

4413.3 The Director may disallow all of the uncompensated care claimed in a fiscal year if the Director finds that a CON holder was in substantial noncompliance with its uncompensated care obligation because it failed to do any of the following:

- (a) Have a system for providing notices to eligible persons as required by § 4405;
- (b) Comply with the applicable reporting requirements of § 4410;
- (c) Have a system for maintaining records of uncompensated care provided;
- (d) Take corrective action pursuant to § 4413.2;
- (e) Comply with the applicable eligibility standards in § 4406; or
- (f) Comply with the written determination procedures in § 4408.

4413.4 If the Director determines, based on investigation, audit, or review under § 4412, that a CON holder has limited its services in violation of its uncompensated care obligation, the Director may require the CON holder to establish a compliance plan to ensure that the CON holder's services are available according to the requirements of this chapter.

4413.5 In the absence of a finding of noncompliance in any fiscal year, the Director may disallow uncompensated care claimed by a CON holder in the fiscal year to the extent that the services are not documented as uncompensated care according to this chapter.

History of Regulations since Last Compilation by Agency (August 1986):  
 June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
 August 11, 1989 36 DCR 5819 by the Department of Human Services

80 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4414 (2008)*

22-4414. Reserved.

81 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.

CDCR 22-4499

a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 44. PROVISION OF UNCOMPENSATED CARE

*CDCR 22-4499 (2008)*

22-4499. Definitions.

4499.1 The provisions of § 4099 of Chapter 40 of this title and the definitions set forth in that section shall apply to this chapter.

4499.2 When used in this chapter, the following terms and phrases shall have the meaning ascribed below:

Act -- the Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-401 et seq.).

Certificate of Need or CON -- authorization for a health care facility or health service to develop a new institutional health service, purchase major medical equipment, or obligate a capital expenditure to obtain an asset worth more than two million five hundred thousand dollars (\$ 2,500,000).

Certificate of Need applicant or CON applicant -- a person who applies for a CON.

Certificate of Need holder or CON holder -- a person who has applied for and received a Certificate of Need pursuant to this chapter. For the purpose of this chapter, a person continues to be a CON holder after the completion of the project for which the CON was obtained.

Compliance plan -- the means by which a CON holder that violates this chapter or is out of compliance with its uncompensated care obligations proposes to remedy the violations or other noncompliance.

Director -- Director of the District of Columbia State Health Planning and Development Agency, Department of Health.

Health care facility -- a private general hospital, psychiatric hospital, other specialty hospital, rehabilitation facility, skilled nursing facility, intermediate care facility, ambulatory care center or clinic, ambulatory surgical facility, kidney disease treatment center, freestanding hemodialysis facility, diagnostic health care facility, home health agency, hospice, or other comparable health care facility that has an annual operating budget of at least \$ 500,000. This term shall not include Christian Science sanitariums operated, listed, and certified by the First Church of Christ Scientist, Boston, Massachusetts; the private office facilities of a health professional or group of health professionals, where the health professional or group of health professionals provides conventional office services limited to medical consultation, general non-invasive examination, and minor treatment, or a health care facility licensed or to be licensed as a community residence facility, or an Assisted Living Residence as defined by § 102.01(4) of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; 44-102.01(4)).

Health service -- any medical or clinical related service, including services that are diagnostic, curative, or rehabilitative, as well as those related to alcohol abuse, inpatient mental health services, home health care, hospice care, medically supervised day care, and renal dialysis. This term shall not include those services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice.

Request for uncompensated care -- any indication by or on behalf of an individual seeking health care from a CON holder of the individual's inability to pay for the services that is made at any time, including following institution of a collection action against the individual.

SHPDA -- State Health Planning and Development Agency, Department of Health.

History of Regulations since Last Compilation by Agency (August 1986):

June 16, 2006 replaced at 53 DCR 4808 by the Department of Health  
August 11, 1989 36 DCR 5819 by the Department of Human Services

82 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4500 (2008)*

22-4500. LONG-RANGE PLAN REPORTS

4500.1 The SHPDA requires submission of periodic reports by a provider of a health service and any other person subject to review of a proposal under the D.C. Certificate of Need Act of 1980 respecting the development of proposals subject to review.

4500.2 Persons subject to the requirement of § 4500.1 shall submit to the SHPDA Director reports in the form of long-range plans concerning at least the forthcoming five (5) years, as specified in this subsection, on the following schedule:

(a) Hospitals: Initial long-range plan due one (1) year after the effective date of these regulations; subsequent new or updated long-range plans shall be due annually on the anniversary date of these regulations;

(b) Skilled or intermediate care facilities: Initial long-range plan due one (1) year after the effective date of these regulations; subsequent new or updated long-range plans shall be due every second (2nd) year on the anniversary date of these regulations; or

(c) All other types of providers: Initial long-range plan due one (1) year after the effective date of these regulations; subsequent new or updated long-range plans shall be due every third (3rd) year on the anniversary date of these regulations.

4500.3 Each long-range plan shall be developed through a mechanism that provides for participation by at least the following groups:

- (a) The governing body of the facility or service;
- (b) The administrative staff of the facility or service;
- (c) The medical staff of the facility or service; and
- (d) The community served by the facility or service.

4500.4 The long-range plan shall include an evaluation of the relationship of the plan to the most current D.C. State Health Plan and Annual Implementation Plan.

4500.5 Persons preparing plans are encouraged to consult with the SHPDA regarding this activity.

CDCR 22-4501

83 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4501 (2008)*

22-4501. CONTENTS OF LONG-RANGE PLANS

4501.1 The long-range plan shall include at least the following elements:

- (a) Mission statement;
- (b) Goals, in order of priority;
- (c) Objectives and a brief description of how each objective will be attained and how the outcome impacts the State Health Plan;
- (d) Resources required to carry out the chosen course(s) of action; this section shall consist of operational and financial data reconcilable to the facility's or service's most recent annual financial report; and
- (e) Identification and brief description of projects requiring Certificate of Need approval for the five (5) year period following adoption of the plan by the facility or service, where applicable.

4501.2 The section of the long-range plan required by § 4501.1(d) shall project (including figures that would result from proposed projects requiring Certificates of Need), as applicable, the following for each facility or service:

- (a) Gross patient revenues;
- (b) Inpatient revenues;
- (c) Total revenues;
- (d) Inpatient days of care;
- (e) Inpatient admissions;
- (f) Inpatient discharges;
- (g) Outpatient visits, home health visits, number of licensed beds;
- (h) Number of beds operated;
- (i) Bed occupancy rate to both licensed and operated beds; and
- (j) Average length of stay (ALOS) for each year of the plan.

4501.3 The section required under § 4501.1(e) shall include the following:

- (a) An explanation of how each project is supportive of the most current State Health Plan;
- (b) A list of each project in the year to be initiated;
- (c) Estimated annual revenues that each project would add to total revenues (net of offsetting economies) considering the following:

CDCR 22-4501

- (1) Debt service;
- (2) Manpower costs entailed by the activity itself and by supporting activities;
- (3) Other costs of supporting services; and
- (4) Any other relevant costs that have to be covered by revenues.

84 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4502 (2008)*

22-4502. DEVELOPMENT AND SUBMISSION OF LONG-RANGE PLANS

4502.1 The owner or governing body of the facility or service shall be responsible for developing the initial long-range plan required under this chapter, and for its review and updating, as appropriate.

4502.2 A letter of transmittal shall accompany the plan when it is delivered to the SHPDA. This letter shall include the following:

- (a) A description of the planning mechanism used by the facility or service to develop its long-range plan; and
- (b) A statement signed by the owner or the chairperson of the governing board of the facility or service that the plan is an official document duly adopted according to the bylaws of the facility or service.

4502.3 Within ninety (90) days following receipt of the long-range plan, the SHPDA shall review the plan and report in writing to the facility or service submitting the plan, whether or not, based upon the requirements of this section, the plan is acceptable and complete.

4502.4 Each long-range plan submitted to the SHPDA shall be considered public information, and shall be available, upon request, from the SHPDA for the cost of reproduction

85 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

CDCR 22-4503

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4503 (2008)*

## 22-4503. SHPDA USE OF LONG-RANGE PLANS

4503.1 Long-range plans shall be used by the SHPDA as reference documents for Certificate of Need reviews.

4503.2 Any application for a Certificate of Need shall include the appropriate reference in the facility's or service's long-range plan that identifies or supports the project.

4503.3 For projects not identified in an applicant's long-range plan, the applicant shall include documentation of how the project supports and conforms to the long-range plan.

4503.4 The SHPDA shall consider the current long-range plans in the development of revisions to the State Health Plan.

4503.5 The SHPDA shall find that any Certificate of Need application submitted by a person subject to the requirements of this chapter that has not submitted an acceptable plan or data required by provisions of this chapter is not complete, and shall not begin a review of the application until the required plan or data has been submitted.

4503.6 Persons who would become health care providers in the District only by virtue of completion and operation of a facility or service for which a Certificate of Need is sought (persons who are not current providers in the District) are exempted from the requirements of § 4503.5 in relation to a long-range plan until the first (1st) anniversary date of the effective date of these regulations (December 17, 1982) that is at least one (1) year following their opening date. Providers in this category shall submit their first and subsequent plans at the same time other providers in their class submit plans.

86 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4504 (2008)*

## 22-4504. RESERVED

87 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*

## CDCR 22-4505

\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4505 (2008)*

22-4505. DATA REPORTING

4505.1 At the request of the SHPDA, persons subject to the requirements of § 4500.1 shall also submit to the SHPDA, or to a data processing agent specified by the SHPDA, the data specified in this chapter (or other similar data that the SHPDA may request in writing at least three (3) months prior to the beginning of the period for which the data is requested) according to the schedule specified in this section.

4505.2 Insofar as possible, data shall be reported on forms supplied by the SHPDA.

4505.3 Data due annually shall be provided no later than the first (1st) day of March for the previous calendar year, unless otherwise specified in this chapter.

4505.4 Data due less often than annually shall be supplied no later than sixty (60) days following the end of the period for which the data is to be supplied.

4505.5 Data shall be supplied either for calendar years, six (6) month periods beginning January 1st and July 1st, calendar quarters, or in two (2) month periods beginning January 1st, March 1st, May 1st, July 1st, September 1st, and November 1st, or for calendar months.

88 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4506 (2008)*

22-4506. REPORT CATEGORIES

4506.1 Reports made under §§ 4510 and 4511 of this chapter shall use the following age categories:

- (a) Under one (1) year;
- (b) One (1) to fourteen (14) years; and
- (c) Fifteen (15) years and older.

4506.2 Reporting of residence of patients required by §§ 4510, 4511, and 4515 of this chapter shall use the following categories:

- (a) District of Columbia;
- (b) Maryland - Calvert County;

- (c) Maryland - Charles County;
- (d) Maryland - Montgomery County;
- (e) Maryland - Prince George's County'
- (f) Maryland - St. Mary's County'
- (g) Maryland - other counties;
- (h) Virginia - Alexandria City;
- (i) Virginia - Arlington County;
- (j) Virginia - Fairfax County (including Fairfax City and Falls Church);
- (k) Virginia - Loudon County;
- (l) Virginia - Prince William County (including Manassas and Manassas Park);
- (m) Virginia - other counties;
- (n) Other states and foreign countries; and
- (o) Residence unknown.

89 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4507 (2008)*

22-4507. FINANCIAL REPORTS

4507.1 Persons subject to the requirements of § 4500.1 shall also submit to the SHPDA Director promptly after the end of each of their fiscal years a copy of their audited financial report.

4507.2 The audited financial report or supplemental data supplied with the report shall include the following information, as applicable:

- (a) Balance sheet;
- (b) Income statement;
- (c) Cash flow schedule;
- (d) Costs statement, including payroll costs, inpatient care costs, outpatient care costs, capital costs, and operating costs;
- (e) Per diem rates for inpatient room types;
- (f) Rate structure;

CDCR 22-4507

- (g) Average cost per patient day;
- (h) Average cost and average charge per outpatient visit;
- (i) Average cost and average charge per emergency room visit; and
- (j) Revenues, including specification of Medicaid revenue, Medicare revenue, other third-party revenue, and self-pay revenue.

90 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

CDCR 22-4508 (2008)

## 22-4508. MONTHLY REPORTS

4508.1 Hospitals of all types, unless specifically excepted by the SHPDA, shall provide on a monthly basis the data required in § 4508.3 for each of the following services:

- (a) Total medical-surgical services (including intensive care beds, and cardiac care services);
- (b) Intensive care service;
- (c) Coronary care service;
- (d) Obstetrics service;
- (e) Obstetrics-gynecology swing service;
- (f) Nursery service;
- (g) Intermediate neonatal and neonatal intensive care services;
- (h) Pediatric service;
- (i) Psychiatric service;
- (j) Rehabilitation service;
- (k) Alcoholism-chemical dependency service; and
- (l) For any other services that the SHPDA specifies after giving notice to the hospital at least thirty (30) days before the beginning of the period for which the data is required.

4508.2 Hospitals subject to the requirements of § 4508.1 shall submit the following report for each service specified in that subsection:

- (a) Admission - the number of patients admitted during the reporting period for the purpose of receiving inpatient nursing care; in the nursery service, the number of admissions refers to newborn infants admitted to the hospital following birth and infants admitted following transfer from home or another

hospital; in the intensive and coronary care units, the number of admissions include only those patients directly admitted to the units; patients initially admitted to the medical-surgical service and later transferred to intensive care are reported as intra-hospital transfers to those units;

(b) Deliveries - the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy (excludes induced abortions); the number of deliveries includes live births and fetal deaths; multiple births are counted as one (1) delivery;

(c) Emergency Room Registrations Resulting in Admissions - the sum of visits to the emergency room and psychiatric emergency services that result in the acceptance of the patient for the purpose of receiving inpatient nursing care within the hospital;

(d) Fetal Deaths - deaths prior to the complete expulsion or extraction from its mother of a product of conception; death is indicated by the fact that after separation from the mother, a fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles (excludes induced abortions);

(e) In-and-Out Surgery Registrations - the number of patients receiving surgical procedures that are performed exclusively on an outpatient basis (includes induced abortions performed on an outpatient basis);

(f) Live Births - the complete expulsion or extraction from its mother of a product of conception (irrespective of the duration of pregnancy) that, after separation from its mother, breathes or shows any other evidence of life (such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles) whether or not the umbilical cord has been cut or the placenta is attached;

(g) Operating Bassinets - the number of bassinets or cribs regularly maintained for use by infants as of the last day of the reporting period;

(h) Operating Beds - the number of beds regularly maintained for use by inpatients as of the last day of the reporting period;

(i) Outpatient Department Registrations - the number of patients who registered to receive care in an organized outpatient department; and

(j) Patient Census Days - the total number of patient days of care rendered during the reporting period (i.e., the cumulative sum of the number of occupied beds in a particular service on each day of the reporting period).

91 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4509 (2008)*

22-4509. ANNUAL DISCHARGE DATA REPORTS

4509.1 Hospitals of all types, unless specifically excepted by the SHPDA, shall provide annually, in a format and in a medium requested by the SHPDA, a hospital discharge data set consisting of at least the following information for each patient:

- (a) Age;
- (b) Sex;
- (c) Race;
- (d) Major hospital service;
- (e) Disposition;
- (f) Patient residence;
- (g) Admission date;
- (h) Discharge date;
- (i) Expected source of payment;
- (j) Principal diagnosis and other diagnoses;
- (k) Principal procedure and other procedures;
- (l) Hospital identification;
- (m) Patient sequence number (assigned in a way unrelated to the medical record number); and
- (n) Birthweight in grams (neonates only and only for 1983 and later years).

4509.2 Hospitals may supply data requested by the SHPDA in a format of their choice for 1983.

4509.3 The SHPDA shall specify by letter to each hospital the medium and format in which the data is to be provided no later than October 1, 1983, and each October 1st after that date.

4509.4 Requested data is to be supplied no later than May 1st of each year for the previous calendar year.

92 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4510 (2008)*

#### 22-4510. HEART SURGERY REPORTS

4510.1 Hospitals of all types, unless specifically excepted by the SHPDA, shall report quarterly the number of open heart surgery operations performed by age categories specified in § 136.12 and by residence categories specified in § 136.17 by each of the following categories:

- (a) Congenital heart disease;

- (b) Valvular heart disease;
- (c) Coronary heart disease; and
- (d) Other.

4510.2 Hospitals of all types, unless specifically excepted by the SHPDA, shall report quarterly the number of closed heart surgery operations and the number of all other cardiac operations not reported under § 4510.1, reported by the age categories and residence categories specified in § 4506, performed for the following:

- (a) Congenital heart disease;
- (b) Valvular heart disease; and
- (c) Other.

4510.3 Hospitals of all types, unless specifically excepted by the SHPDA, shall report quarterly their cardiac surgery operative mortality (the number of deaths within thirty (30) days) reported by the age categories specified in § 4506, for the following:

- (a) Open heart surgery - coronary bypass;
- (b) Open heart surgery - all others;
- (c) Closed heart surgery; and
- (d) Other cardiac surgery.

4510.4 For purposes of this section, the term "open heart surgery" shall mean operations that use a mechanical pump to temporarily perform the function of circulation during surgery.

4510.5 For purposes of this section, the term "closed heart surgery" shall mean operations that do not require the use of a mechanical pump during surgery. This category of operations shall include the following:

- (a) Valve commissurotomy;
- (b) Thoracic aneurysm repair or transection;
- (c) Systemic-pulmonary shunt;
- (d) Ligation/division of patent ductus arteriosus;
- (e) Resection of coarctation of aorta;
- (f) Pulmonary artery banding; and
- (g) Valvulotomy.

4510.6 For purposes of this section, pacemaker implantations and implants of pulsation balloons are excluded from the category of operations defined as "closed heart surgery" under § 4510.5.

93 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4511 (2008)*

## 22-4511. CARDIAC CATHETERIZATION REPORTS

4511.1 Hospitals of all types, unless specifically excepted by the SHPDA, shall report quarterly the number of procedures performed in the cardiac catheterization laboratory in the categories specified below by the age categories and residence categories specified in § 4506 (the procedure includes all diagnostic studies, angiographic and physiologic, performed on a patient during one (1) session in the laboratory):

- (a) Right heart catheterizations (with and without angiography);
- (b) Left heart catheterizations without coronary angiography;
- (c) Left heart catheterizations with coronary angiography;
- (d) Combined right and left heart catheterizations without angiography;
- (e) Combined right and left heart catheterizations with angiography (other than coronary angiography);
- (f) Combined right and left heart catheterizations with coronary angiography;
- (g) Permanent pacemaker implantation;
- (h) Other cardiac procedures (includes temporary pacemakers);
- (i) Electrophysiological studies (e.g., HIS Bundle);
- (j) Percutaneous transluminal coronary angioplasty (PTCA);
- (k) Streptokinase thrombolysis; and
- (l) Other non-cardiac angiographic procedures.

4511.2 Hospitals of all types, unless specifically excepted by the SHPDA, shall report quarterly the number of cardiac catheterization patients in the following categories by each age category and residence category specified in § 4506:

- (a) Number of cardiac patients studied;
- (b) Number of non-cardiac patients studied;
- (c) Number of patients studied with pre-catheterization diagnosis of the following:
  - (1) Coronary artery disease;
  - (2) Coronary artery and valvular or congenital disease;
  - (3) Valvular or congenital disease only; and
  - (4) Other diseases.

4511.3 Hospitals of all types, unless specifically excepted by the SHPDA, shall report quarterly cardiac catheterization mortality (the number of deaths when mortality occurs during or immediately following surgery), reported by the age categories and residence categories specified in § 4506.

CDCR 22-4512

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4512 (2008)*

22-4512. EMERGENCY ROOM REPORTS

4512.1 Hospitals of all types, unless specifically excepted by the SHPDA, shall report annually, on the basis of a one (1) week sample survey, the number of emergency room encounters that were judged not to require emergency service.

4512.2 The SHPDA shall notify hospitals at least three (3) months in advance of the selected week for the survey required in § 4512.1.

95 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4513 (2008)*

22-4513. RADIATION THERAPY REPORTS

4513.1 Hospitals of all types, unless specifically excepted by the SHPDA, and all other providers of radiation therapy, shall report annually radiation therapy utilization by equipment.

4513.2 Data reported shall include, by equipment, the following:

- (a) Normal hours of operation;
- (b) The actual utilization (number of treatments); and
- (c) The number of individual patients served.

96 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*

CDCR 22-4514

\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4514* (2008)

22-4514. RESERVED

97 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4515* (2008)

22-4515. REPORTS OF OTHER FACILITIES

4515.1 Skilled Nursing Facilities and Intermediate Care Facilities shall provide the following data every six (6) months:

- (a) The number of operating (staffed and otherwise held ready for occupancy) beds, by bed category (i.e., SNF and ICF);
- (b) The number of patient days by bed category;
- (c) The jurisdiction of residence of patients at the time of admission, by bed category (using the jurisdiction categories specified in § 4506);
- (d) The number of admissions by bed category;
- (e) The number of discharges by bed category;
- (f) The average length of stay by bed category; and
- (g) Payment source by days of care by bed category.

4515.2 Renal dialysis facilities shall provide monthly, by jurisdiction of patient residence (using the categories specified in § 4506), the number of patients regularly receiving each type of service offered by the facility, the number of treatments given by type, and the hour of operation of the facility.

4515.3 Home health services and home care hospices shall provide annually the number of patients serviced, and the number of visits provided, by type and major payment source (Medicaid, Medicare, other third party, and self-pay).

4515.4 Ambulatory surgical facilities, neighborhood health centers, drug treatment centers, outpatient mental health facilities, alcohol treatment centers, clinics, and other freestanding medical facilities subject to Certificate of Need requirements shall annually provide the number of patients serviced, the number of patient encounters and, if applicable, the number of enrollees by major payment source.

4515.5 HMOs shall annually report their number of enrollees by the following:

CDCR 22-4515

- (a) Jurisdiction of residence (as specified § 4506);
- (b) The number of ambulatory visits;
- (c) The number of hospital admissions (by hospital); and
- (d) The number of inpatient days of care (by hospital and service).

98 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4516 (2008)*

## 22-4516. CT SCANNER REPORTS

4516.1 Each operator of a CT scanner shall report the number of HECT units provided for each of the following categories each six (6) months:

- (a) Head, without contrast;
- (b) Head, with contrast;
- (c) Head, without and with contrast;
- (d) Body, without contrast;
- (e) Body, with contrast; and
- (f) Body, without and with contrast.

4516.2 Each operator of a CT scanner shall also report the following information each six (6) months:

- (a) The number of patients, specified by the six (6) categories of § 4516.1;
- (b) The number of HECT units provided to each of the following categories:
  - (1) Inpatients;
  - (2) Outpatients; and
  - (3) Patients transported from a hospital other than that of the reporting provider.
- (c) The number of transport patient requests rejected, and the reasons for the rejections;
- (d) The average time between request for service and provision of service for each of the following categories:
  - (1) Outpatients;
  - (2) Transport patients; and
  - (3) Emergency patients;

## CDCR 22-4516

- (e) The number of HECT units provided on an emergency basis;
- (f) Scheduled hours of operation of CT scanning equipment; and
- (g) The average number of hours per week of research use of scanning equipment.

4516.3 For purposes of reports required by this section, HECT values shall be calculated as specified in the following table:

| TYPE OF SCAN | WITHOUT CONTRAST | WITH CONTRAST | WITHOUT CONTRAST<br>AND WITH CONTRAST |
|--------------|------------------|---------------|---------------------------------------|
| Head Study   | 1.00 HECT        | 1.25 HECTs    | 1.75 HECTs                            |
| Body Study   | 1.50 HECTs       | 1.75 HECTs    | 2.75 HECTs                            |

99 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 45. LONG-RANGE PLANS AND DATA REPORTING

*CDCR 22-4599 (2008)*

22-4599. DEFINITIONS

4599.1 The provisions of § 4099 of chapter 40 of this title, and the definitions set forth in that section, shall apply to this chapter.

100 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

*CDCR 22-4600 (2008)*

22-4600. GENERAL PROVISIONS

CDCR 22-4600

4600.1 The Revised Special Certificate of Need Procedures, Considerations and Criteria for Review contained herein are intended to facilitate rational diffusion and effective utilization of Magnetic Resonance Imaging ("MRI") technology in the District of Columbia.

4600.2 The SHPDA may participate in the efforts of the Metropolitan Washington Area Council of Health Planning Agencies (MWACHPA) to develop a plan for the diffusion and effective utilization of MRI services.

History of Rules since Last Compilation by Agency (August 1986)  
Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

101 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

*CDCR 22-4601 (2008)*

## 22-4601. CERTIFICATE OF NEED APPLICATION AND REVIEW PROCEDURES

4601.1 Except where otherwise specified in these rules, all Certificate of Need (CON) applications and review procedures and criteria prescribed in the Certificate of Need Review and Health Planning regulations (22 DCMR 400 et seq.) shall apply to the review of the applications for MRI services and equipment.

History of Rules since Last Compilation by Agency (August 1986)  
Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

102 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

CDCR 22-4602

*CDCR 22-4602 (2008)*

## 22-4602. RESEARCH REQUIREMENTS AND DEMONSTRATION PERIOD

4602.1 MRI facilities and services which have been approved prior to the effective date of these rules shall continue to be subject to the following research requirements until further notice:

(a) Research proposed by applicants shall be designed to significantly contribute new information, to the extent possible, on the efficacy and range of appropriate clinical applications of MRI imaging, including comparison of MRI with other existing diagnostic imaging modalities;

(b) Preferential consideration shall be given to applicants whose research proposals are also designed to specifically relate, and have the broadest relevance to, the health status and characteristics of District of Columbia residents;

(c) No charges shall be sought from patients on investigative protocols; however, patient charges may be made or reimbursement sought for any MRI procedures which have been deemed efficacious by the U.S. Department of Health and Human Services' Health Care Financing Administration, Blue Cross/Blue Shield, a pertinent national medical professional society, or the U.S. Office of Technology Assessment; and

(d) All applicants shall agree that, as meaningful investigative information is obtained and analyzed, the principal investigator and research staff shall, as medically and scientifically appropriate, give wide dissemination of information and analyses.

4602.2 The demonstration period for each MRI facility or service subject to this section shall commence with the date on which such facility or service was fully operational and in regularly scheduled use and shall continue for a period of one (1) year from that date.

History of Rules since Last Compilation by Agency (August 1986)  
Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

103 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

*CDCR 22-4603 (2008)*

22-4603. ELIGIBILITY QUALIFICATIONS FOR MRI APPLICATIONS FOLLOWING DEMONSTRATION PERIOD

## CDCR 22-4603

4603.1 Certificate of Need applications for MRI services shall be considered by the SHPDA in batched reviews together with application for diagnostic radiology and ultrasound services in August of 1988 and February and August of each calendar year thereafter.

4603.2 To be eligible for approval for the period following the demonstration period, each applicant shall demonstrate at least the following:

(a) that the applicant has historically:

(1) Experienced a patient load which is of sufficient size and mix that the applicant can reasonably be expected to achieve a utilization level of twenty-five hundred (2500) MRI scans or more by the end of the second year of operation; and

(2) Required diagnostic modalities for which an MRI scanner would be expected to prove efficacious and appropriate, such as:

(A) Conventional radiography;

(B) Angiography;

(C) Nuclear medicine;

(D) CT scanning; and

(E) Ultrasound;

(b) That the MRI scanner selected for installation by the applicant is best suited to the applicant's anticipated utilization and case mix complexity; and

(c) That the applicant has made a formal written commitment to accept referrals of patients for medically necessary MRI scans, regardless of ability to pay, source of payment, or source of referral, consistent with reasonable constraints imposed by research protocols, if any.

4603.3 Preferential consideration shall be given to joint applications, such as CON applications submitted by two (2) or more applicants proposing a cooperative effort in the financing and utilization of MRI services for a period of not less than two (2) years from the commencement of operations. Joint applications may propose that one (1) of the co-applicants assume sole or primary responsibility for all or part of the operation of the MRI project.

4603.4 Preferential consideration will be given to applicants which have made a formal commitment to ensure reasonable access to its MRI imaging service by, at a minimum, District hospitals which do not have MRI services. The commitment may be demonstrated through the establishment of cooperative patient scheduling and referral systems with non-MRI facilities.

4603.5 In any batch of applications, preferential consideration may be given to the applicant or applications which, together with other applications or services previously approved, provide access to the largest number of District hospitals.

4603.6 Each application provided for by this Section shall include a copy of each contract or letter of agreement which:

(a) Establishes or states the terms of a joint application;

(b) Establishes or states the terms of a commitment by a non-applicant to utilize the MRI facilities or services of an applicant; or

(c) Establishes or states the terms of a cooperative patient scheduling and referral service to ensure reasonable access to the applicant's MRI services by other District health care providers which do not have MRI services.

4603.7 Each agreement required by Subsection 4603.6 shall contain a commitment by each contractor, facility or person who is a party to the agreement to comply, and each party shall comply, with Sections 4604, 4605, 4606, and 4607.

History of Rules since Last Compilation by Agency (August 1986)

Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

104 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

*CDCR 22-4604 (2008)*

22-4604. INFORMATION AND DATA COLLECTION AND REPORTING REQUIREMENTS

4604.1 Each holder of a CON for MRI facilities or services shall complete and submit, at least quarterly, on a data collection form provided by SHPDA, information including, but not limited to, the following:

(a) Characteristics of each patient examined by MRI, including age, sex, race, payor source, length of stay, postal zip code of residence, and diagnosis before and after MRI examination by ICD-9CM codes and DRG codes and by type of procedure;

(b) Volume of inpatient and outpatient MRI procedures per day, by day of week, and per week, and average scan time for each type of procedure;

(c) Accounting or operating expenses, divided into categories of:

- (1) Equipment and parts;
- (2) Maintenance, supplies, and utilities;
- (3) Physician personnel;
- (4) Non-physician personnel;
- (5) Depreciation; and
- (6) Overhead and miscellaneous expenses;

(d) Number and type of staff dedicated to the MRI unit;

(e) Facility-based physician charges per MRI procedure;

(f) Facility charges per MRI procedure;

(g) Regular operating day and hours;

(h) Problems of patient access and confidentiality;

(i) Times for referral to scan;

(j) Sources of referral and the number of referrals from each source;

(k) Down time experienced as percentage of total operating time; and

CDCR 22-4604

(l) Other data relating to the clinical effectiveness, cost, and substitution effect of utilization or MRI procedures.

4604.2 Each holder of a CON for MRI facilities or services shall collect and maintain all data for each patient procedure, both research and clinical.

History of Rules since Last Compilation by Agency (August 1986)  
Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

105 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

CDCR 22-4605 (2008)

## 22-4605. MRI STAFFING REQUIREMENTS

4605.1 Each holder of a CON for MRI facilities or services shall operate the facility or provide the services only with staff whose number, distribution by profession and subspecialty, qualifications, training, current competence, and availability are sufficient at all times to operate the equipment and conduct the procedures safely, to provide quality care and efficiently utilize the available resources.

4605.2 For the purpose of the CON application process, an applicant may establish an intent to comply with Subsection 4605.1 by demonstrating that its proposed staffing would comply with the staffing recommendations of the American College of Radiology or those of an equivalent professional association recognized at the time of application.

4605.3 If the recommendations referenced in 4605.2 are unavailable, an applicant may establish an intent to comply by demonstrating that the proposed staffing is in compliance with the recommendations for MRI operation which are contained in the State Health Plan.

History of Rules since Last Compilation by Agency (August 1986)  
Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

106 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

CDCR 22-4606

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

*CDCR 22-4606 (2008)*

22-4606. FACILITY REQUIREMENTS

4606.1 Each application for a stationary MRI facility shall include a site plan and documents which describe the physical site for the proposed facility. The arrangements shall be certified as adequate by the MRI vendor.

4606.2 Each applicant proposing to construct, acquire, or operate a mobile MRI facility shall submit documentation satisfactory to SHPDA which describes the physical arrangements for the mobile facility. The arrangements shall be certified as adequate by the MRI vendor.

4606.3 Each site plan required by Subsection 4606.1 and each mobile facility documentation required by Subsection 4606.2 shall include a description of the safety precautions which will be taken including, but not limited to, the following:

- (a) Screening of patients inappropriate for MRI procedures for physician or medical reasons;
- (b) Metal detection systems; and
- (c) Emergency procedures.

History of Rules since Last Compilation by Agency (August 1986)  
 Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

107 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
 Copyright (c) 2008 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group.  
 All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
 \*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
 CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

*CDCR 22-4607 (2008)*

22-4607. HOURS OF MRI OPERATION

4607.1 To ensure maximum access and efficient utilization, all MRI imaging services approved for operation shall be operated a minimum of two (2) shifts per day, six (6) day per week.

CDCR 22-4607

History of Rules since Last Compilation by Agency (August 1986)  
Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)

108 of 108 DOCUMENTS

CODE OF D.C. MUNICIPAL REGULATIONS  
Copyright (c) 2008 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE \*\*\*  
\*\*\* D.C. REGISTER, VOL. 55, ISSUE 34, AUGUST 22, 2008 \*\*\*

TITLE 22. PUBLIC HEALTH AND MEDICINE  
CHAPTER 46. REVISED SPECIAL CERTIFICATE OF NEED PROCEDURES, CONSIDERATIONS AND CRITERIA FOR REVIEW OF MAGNETIC RESONANCE IMAGING (MRI) SCANNERS

*CDCR 22-4699 (2008)*

## 22-4699. DEFINITIONS

4699.1 For the purpose of this chapter, the following term shall have the meaning ascribed:

Magnetic Resonance Imaging ("MRI") means the diagnostic modality which produces images based on the responses of atomic nuclei subjected to a magnetic field which, by depicting the concentration, chemical form, and spatial distribution of certain nuclei, can produce images of organs, bones, and tissues non-invasively and without utilizing potentially harmful ionizing radiation, such as x-rays. MRI is the same modality formerly designated as Nuclear Magnetic Resonance ("NMR").

History of Rules since Last Compilation by Agency (August 1986)  
Chapter 46, Sec. 4600-4607, 4699; (Repeals and replaces old rule) Revised Special Certificate of Need Procedures, Considerations and Criteria for Review of Magnetic Resonance Imaging (MRI) Scanners, 35 DCR 5803 (7-29-88) (DHS)