

ARKANSAS REGISTER



Proposed Rule Cover Sheet

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Name of Department Arkansas Department of Health

Agency or Division Name Health Services Permit Agency

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

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Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Health Services Permit Agency

Department Arkansas Department of Health

Contact Traci Harris E-mail traci.harris@arkansas.gov Phone 501-661-2197

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Traci Harris

traci.harris@arkansas.gov

June 20, 2024

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

(501) 661-2509

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Phone Number

E-mail Address

Director

Title

June 20, 2024

Date

**HSC Regulation 001. Health Services Permit Commission
Policies and Procedures (10/05)**

SECTION I. INTRODUCTION

A. Organization

Section 1. The Arkansas Health Services Permit Commission, hereinafter referred to as the Commission, and the Arkansas Health Services Permit Agency, hereinafter referred to as the Agency, are governed by Ark. Code Ann. § 20-8-101 et seq.

Section 2. The administrative offices for the Commission are located at Freeway Medical Tower, 5800 West 10th Street, Suite 805, Little Rock, Arkansas.

B. Officers

Section 1. Number. Officers of the Commission shall be a Chair and a Vice Chair.

Section 2. Terms of Office. The terms of the Commission Chair and Vice Chair shall be for one year. Officers may succeed themselves.

Section 3. Chair. The Chair shall have general supervision and management of the affairs of the Commission subject to the control of the members. He or she shall chair all meetings of the members; and perform all duties incident to the office of the Chair and all such other duties as from time to time may be assigned by the members.

Section 4. Vice Chair. The Vice Chair shall in the absence or disability of the Chair, perform the duties and exercise the powers of such office. The Vice Chair shall perform such other duties and have such other powers as the Chair or the members may from time to time prescribe.

C. Meetings

Section 1. Notice of Meetings. Formal notice of regular quarterly meetings should be communicated to members at least 10 working days prior to the meeting and additionally the news media and those who formally request notice from staff. The agenda for the meeting should be approved by the Chair and provided to the members, along with supporting materials, in sufficient time to permit review prior to a regular quarterly meeting.

Section 2. Special Meetings. Special meetings of the Commission may be required from time to time. Such meetings are subject to call of the Chair, the Vice Chair, or three or more members. The call to a special meeting should state the location and time, and the

subject matter to be covered at such meeting. The call to a special meeting should be provided to members at least 24 hours prior to the meeting.

Section 3. Quorum and Manner of Action. A quorum shall be not less than five of the duly appointed members of the Commission. All actions of the Commission shall be decided by a simple majority of the members present and voting but no action may be taken without four votes for or against a motion with no proxy voting permitted.

Section 4. Robert's Rules of Order. Unless otherwise covered by the Policies and Procedures of the Commission, the latest edition of Robert's Rules of Order shall govern the conduct of any meeting.

Section 5. Written Minutes. The minutes of meetings shall be prepared and kept by Agency staff and written copies mailed to members.

D. Committees of the Commission

Section 1. The Chairperson may establish and create from time to time such committees as shall be necessary to carry out the affairs and further the purposes of the Commission. The Commission may have standing committees, ad hoc committees, or any other committees determined by the Chairperson. The Chairperson shall appoint the membership to all committees.

E. Conflict of Interest

Section 1. Announcing a Conflict of Interest. No member of the Commission shall use such membership for purposes, which are motivated by private gain, including gain for organizations or institutions with which the individual is associated in any capacity. Annually a disclosure statement shall be filed with the Agency listing all professional interests in the health field; any financial interest in the health industry; and any fiduciary interest held in a health institution, organization, or agency. There shall be a conflict of interest when the member or his/her organization or institution is the applicant or is a party to the adjudication process. When a conflict arises for a member in the course of business of the Commission, the individual member should declare the conflict.

Section 2. Voting Abstention. Any member who declares a conflict of interest, or who is found to have a conflict should neither participate in debate nor vote on the issue in question.

SECTION II. DEFINITIONS

- A. "Affected person" - includes, at a minimum, the applicant, appropriate state agencies, any person residing within the proposed service area or any

person who regularly uses health care facilities within the proposed service area who has notified the Agency in writing requesting notification of the review, health care facilities located in the service area in which the project is proposed to be located, and legal representatives of such persons.

- B. "Agency" - the Health Services Permit Agency
- C. Assisted Living Facility means any building or buildings, section or distinct part of a building, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator. Assisted living facility includes those facilities, which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents.
- D. "Commission" - the Health Services Permit Commission
- E. "Commissioner" - a duly appointed member of the Health Services Permit Commission.
- F. "Conversion of Services" - an alteration of the category of services offered by a health facility.
- G. "Director" - the director of the Health Services Permit Agency.
- H. "Health Facility or Health Facilities" - "a long-term care facility" as defined by ACA Section 20-10-101(8), the Long Term Care Facilities and Services Act, or a "home health care services agency" as defined by ACA Section 20-10-801, the Home Services Act. The terms "health facility" or "health facilities" does not mean a "hospital", as defined by and licensed pursuant to ACA Section 20-9-201(3) the Hospital and Health Facilities Licensure Act. Nothing in the Act or these regulations shall be deemed to require a Permit of Approval for or otherwise regulate the licensure of in any manner of a hospital except when a hospital seeks to add long-term care beds or convert acute beds to long term care beds or add or expand home health services. The term "health facility" does not include offices of private physicians, outpatient surgery or imaging centers, or establishments operated by the federal government or any agency thereof, or free-standing radiation therapy centers, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination.

- I. "Home Health Agency" - any person, partnership, association, corporation or other organization whether public or private, proprietary or non-profit that provides home health care services. (See "Home Health Services")
- J. "Home Health Services" - the providing or coordinating of acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or by other therapeutic services such as physical therapy, occupational therapy, speech therapy, home health aide or personal services in a client's residence. In order to be subject to Permit of Approval review such services must meet the definitions contained in Act 956 of 1987.
- K. "Hospice" or "Hospice program" means an autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and home-like inpatient care for the terminally ill patient and family, and which employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement. The care shall be available twenty-four (24) hours a day, seven (7) days a week, and provided on the basis of need, regardless of ability to pay.
- L. "Intermediate Care Facility for the Mentally Retarded" (ICF-MR)
 - 1. ICF-MR 16 beds or more - a facility with sixteen (16) or more beds that provides in a protective residential setting, diagnosis, active treatment and rehabilitation of persons with mental retardation or persons with related conditions. This includes both public and privately operated ICF-MRs.
 - 2. ICF-MR 15 beds or less - a facility with from four (4) to fifteen (15) beds that provides in a protective residential setting, diagnosis, active treatment and rehabilitation of persons with mental retardation or persons with related conditions.
- M. "Life Care Facility" - "Life care" means continuing care as defined in Arkansas Code 23-93-103(2) except that no additional charges are made for nursing care or personal care beyond those charged all residents of the facility who are not receiving nursing care or personal care services.
- N. "Long term care" - means non-acute care provided over a 24-hour period for 25 or more consecutive days.
- O. "Long Term Care Facility" - means a nursing home, residential care facility, post-acute head injury retraining and residential care facility,

or any other facility which provides long-term medical or personal care. Permit of Approval review is not required of hospitals as defined by and licensed pursuant to ACA 20-9-201(3) except when a hospital seeks to add long term care beds or convert acute care beds to long term care beds or add or expand home health services.

- P. "Medical Care" - means the services that are performed at the direction of a physician in behalf of patients by physicians, nurses and other professional and technical personnel.
- Q. "Nursing Home" - institution, or other place for the reception, accommodation, board, care, or treatment of more than three (3) unrelated individuals, who, because of physical or mental infirmity are unable to sufficiently or properly care for themselves, and for which reception, accommodation, board, care, and treatment, a charge is made. The term "Nursing Home" shall not include the offices of private physicians and surgeons, boarding homes, or hospitals, or institutions operated by the Federal Government.
- R. "Permit of Approval" - a permit issued by the Commission, through the Agency, to an individual, organization or health care facility approving a health care project subject to review under Act 1800 of 2001, and the rules of the Commission.
- S. "Person" - an individual, a trust or estate, a partnership, corporation (including associations, joint stock companies, and insurance companies), the State, or a political subdivision or instrumentality (including a municipal corporation) of the State, or any legal entity recognized by the State.
- T. "Personal Care" - means services, which are, defined as medically prescribed tasks pertaining to a person's functional abilities, which enable the person to be treated on an outpatient basis rather than on an inpatient basis. Personal care is in no way to be considered medical care.
- U. "Physician" - a doctor of medicine or osteopathy legally authorized by the State to practice medicine and surgery.
- V. "Population of a county" - the population of a county will be based on the most recent Federal census unless circumstances are such, that the Commission feels it should look beyond the Census. A statewide planning agency should be utilized which will be the Bureau of Census designee.
- W. "Post-Acute Head Injury Retraining and Residential Care Facilities" - a building, or group of buildings if located contiguously and operated jointly, used or maintained to provide, for pay, Retraining and Rehabilitation for three (3) or more individuals who are disabled on

account of Head Injury and who are not in present need of in-patient diagnostic care in a hospital or related institution. (Rules and Regulations for Post-Acute Head Injury Retraining and Residential Care Facilities", OLTC, DHS)

- X. "Psychiatric Residential Treatment Facilities (PRTF) - 24-hour psychiatric residential treatment establishments with permanent facilities (other than a psychiatric inpatient hospital) which provides a structured, systematic therapeutic program of treatment, under the supervision of a psychiatrist, for emotionally disturbed children and/or adolescents, six to twenty-one years of age, grouped in an age appropriate manner.
- Y. "Residential Care Facilities" - a building or structure which is used or maintained to provide for pay on a 24-hour basis a place of residence and board for 3 or more individuals whose functional capabilities have been impaired but do not require hospital or nursing home care on a daily basis, but could require other assistance in activities of daily living.
- Z. Tangible assets – A tangible asset for the purpose of transferring a permit, legal title and right of ownership is property that may be felt or touched, and is necessarily corporeal, although it may be either real or personal.

SECTION III. SCOPE OF REVIEW

The Agency (under the direction of the Commission or appropriate Court) will issue, deny or withdraw Permits of Approval. Using the Commission's rules and procedures, the Agency may exempt appropriate projects from review. Each recommendation of the Agency must be based on the completed application and its relationship to adopted standards and criteria. Each review decision of the Commission must be consistent with adopted standards, criteria and the record of the review.

A. PROJECTS REQUIRING PERMIT OF APPROVAL REVIEW INCLUDE BUT ARE NOT LIMITED TO:

1. Nursing Home Construction

All proposals for conversion of services or alteration or renovation or construction having an associated capital expenditure of \$500,000 or more.

2. Additional Beds

Unless exempted by the Act or by the Commission, all health facilities seeking to add new Long Term Care (LTC) beds or otherwise expand LTC bed capacity shall apply for a Permit of Approval.

3. Home Health Services

Unless exempted by the Act or by the Commission, all health facilities seeking to add home health services or expands existing home health service areas shall apply for a Permit of Approval. This includes changes in license designation.

4. Hospice

Unless exempted by statute or by the Commission, all hospices or hospice programs shall apply for a Permit of Approval.

5. Cost Overrun

Any increase in cost in an approved project or cost of renovation or construction or alteration of a health facility is deemed a cost overrun and must be documented and filed with the agency. (During the course of review, the reasonableness of the proposed capital expenditure will be evaluated. A reasonable contingency cost in anticipation of a possible increase in cost due to inflation or other unforeseen factors will be allowed as part of the proposed capital expenditure).

B. PROJECTS REQUIRING APPROVAL BY THE COMMISSION:

1. Movement of Existing LTC beds –

(a) Any movement of LTC beds from one site to another site within the service area must be approved by the Commission. The applicant should submit the request in writing to the Agency. Any proposed movement of beds is subject to the time limitations in Section VI.A and the reporting requirements of Section VI.B of the Commission's Procedures. Failure to comply with these requirements will result in the withdrawal of permission to move the beds.

(b) Movement of Site Location of Permit of Approval Any movement of a site location for a project approved by the Commission for an existing Permit of Approval is subject to review. The applicant shall submit a request to the Agency in writing, detailing all information required in the original application regarding a site, the reasons for relocating the site from the original application approved, any additional costs associated with the relocation, and the time remaining for completion under

various rules and regulations of the Commission regarding implementation of a Permit of Approval. The Commission, at its next regularly scheduled meeting, must approve the relocation before site location change is made. The relocation shall not extend the deadline for implementation of a Permit of Approval.

(c) Transfer of Permit of Approval, legal title, or right of ownership – A permit of approval may only be transferred if the entity presently holding the permit, legal title, or right of ownership has tangible assets of at least two thousand five hundred dollars (\$2,500) that will be transferred with the permit, legal title or right of ownership, and then only with the approval of the Commission. The applicant must provide proof of tangible assets. Any person requesting approval to receive a Permit of Approval via transfer from an existing permit holder must submit an application for a permit of approval to the Agency in accordance with Section V – Procedures for Review. A permit of approval may not be transferred to a county other than the county where the current permit of approval is located unless authorized in the applicable methodology.

C. PROJECTS EXEMPT FROM PERMIT OF APPROVAL PROCESS:

1. Capital Expenditures less than adopted thresholds

Projects proposed for the construction, expansion, or alteration by or on the behalf of a nursing home, which have an associated capital expenditure of less than \$500,000 and do not add LTC beds or home health services.

2. Hospitals Licensed in Arkansas are not subject to review except when a hospital seeks to add long-term care beds or convert acute beds to long-term beds or add or expand home health services.

3. Conversion of Services or New Services

A conversion of services offered in an existing health facility or alteration or renovation of an existing health facility having an associated capital expenditure of less than \$500,000 for nursing homes and not resulting in additional bed capacity.

4. Acquisition of a Health Facility

The obligation of a capital expenditure to acquire an existing

health care facility shall not require a Permit of Approval. Such an exemption applies to an acquisition by purchase, lease, donation or transfer of ownership.

5. Religious Facilities

Any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination.

6. Outpatient Surgery Centers

7. Imaging Centers

8. Free Standing Radiation Therapy Centers

D. EXPEDITED REVIEWS

An expedited review is an exception to the normal procedures for Permit of Approval review. If a proposal meets the criteria for expedited review (See below) then that application may be submitted at anytime without regard to the published batching cycles. The Agency may take action on the proposal 30 days after notice of expedited review has been given to the public.

1. The expedited review process will be utilized if the capital expenditure is required:
 - (a) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or
 - (b) to comply with State 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, or
 - (d) to eliminate emergency circumstances that pose an imminent threat to public health, or
 - (e) to increase the cost of an approved project in order to

replace remodeling with new construction.

2. Those portions of a proposed project, which do not comply with D.1. above are subject to the full review using established criteria, if that portion would otherwise have been subject to review.
3. Under no circumstances will additional beds, additional services, or expanded service areas be approved by the Agency under the expedited review process.

SECTION IV. CRITERIA FOR REVIEW

- A. The Agency and the Commission will utilize the following criteria in the review process.
 1. Whether the proposed project is needed or projected as necessary to meet the needs of the locale or area;
 2. Whether the project can be adequately staffed and operated when completed;
 3. Whether the proposed project is economically feasible; and
 4. Whether the project will foster cost containment through improved efficiency and productivity.

SECTION V. PROCEDURES FOR REVIEW

Although review procedures and criteria may vary according to the purpose for which a particular review is being conducted, the normal procedures are as follows:

A. Review Schedule

The Review Schedule below provides for the review of applications to be considered in the same review cycle. Applications, which satisfy the requirements for expedited reviews, may be submitted at anytime without regard to the established Review Schedule.

PERMIT OF APPROVAL

Review Schedule

Application submitted by:*	Applications placed under review by:	Agency Decision by:
November 1	December 1	February 28
February 1	March 1	May 30
May 1	June 1	August 30
August 1	September 1	November 30

*Proposed applications should be submitted no later than 4:30 P.M. on this day. This will allow the Agency one month to determine if the proposed application is complete. If the proposed application is determined complete it will be considered received and will go under review. If the application is not determined to be complete it will not go under review. The review cycle will not start until the application is declared complete, and official notification has been made placing the application under review. Please note if deadlines fall on a weekend or holiday the deadline will be extended to the next working day.

B. The Application/Review Process

The following are the steps of the application process. Each step must be completed before a decision on the project can be rendered.

1. Application Form. The appropriate application forms must be obtained from the Agency.
2. Pre-application conference/technical assistance. If needed, a meeting will be scheduled at the request of the applicant between the applicant and an Agency representative. The meeting is to assist the applicant and to provide guidance in the preparation of the application.
3. Submission of the Application and Appropriate Review Fee. The applicant is responsible for the timely submission to the Agency of an original and (2) copies of a completed application and the review fee. The application must be signed in blue ink. The review fee is \$1,000 for all reviews. In the event that an application decision results in a hearing before the Commission, the requesting party will be charged the prevailing agency cost per page to cover

the cost for the additional copies required for the hearing.

4. Determination of completeness. The Agency will determine the completeness of the application within 30 calendar days of the scheduled submission date and, if appropriate, notify the applicant of any additional information required for the review of the proposal. The Agency may allow up to an additional fifteen days to obtain additional information.

Any proposed application that does not address substantially any one of the criteria will have the proposal returned and will not be considered for review for that cycle.

5. Information and Requirements. Applicants subject to a review must submit to the Agency any information necessary for the review. The information requirements may vary according to the type of review and/or projects being reviewed. Please note that the Agency determination of completeness merely indicates that the questions on the form have been answered. This does not indicate that the application is approvable or that the responses to the questions are adequate or appropriate. The only additional information, which may be submitted after the filing date, is information specifically requested in writing by the Agency. This request will be limited to information necessary to complete the proposed application. An applicant may correct a mistake in an application within the first 30 days after the application is under review:

- (a) if no other application in the review cycle is considered as competitive; and
- (b) if the change does not effect the scope of the proposal, i.e., the change does not result in an increase in service area, services to be offered or the number of beds requested.

6. Notification of the Beginning of a Review.

- (a) Timely written notification will be sent to affected persons at the beginning of a review, and to any person who has requested being on the Agency's mailing list. Notification will include the proposed schedule for the review.
- (b) The date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

- (c) Written notification to members of the public and third party payers will be provided through a newspaper of general circulation. Notification to all other affected persons will be by mail (which may be a copy of the notice or a newspaper).
- 7. Review Period. Arkansas Code Ann. § 20-8-104 provides that the Agency must approve or deny the application within 90 days from the date the application is deemed complete and submitted for review. An application is submitted for review when the Agency has received a completed application and has so notified the applicant and the public.
- 8. Availability of Reports; Methods for Obtaining Public Access. All applications under review and all other written materials essential to the review shall be accessible to the general public. The Agency will provide, upon request, notification of the status of reviews, findings, and other appropriate information. Depending on the amount of material requested there might be a charge for copying.
- 9. Opponents Written Comments. Opponents to applications have thirty (30) days from the Public Notice of the start of the review cycle to submit written comments to the Agency. These comments will be considered in, and will be attached to, the Agency's decision. An affected person or any other interested party must submit written notice of opposition to the Agency in order to receive notice of the Agency decision and preserve the right to appeal the Agency decision to the Commission. Applicants will be notified of these comments and will have until the fiftieth day of the review cycle to respond in writing to opponent's comments.
- 10. Informal Hearing During Review. The Director of the Agency may convene an informal hearing on any application under review.
- 11. Agency Decision. According to Arkansas Code Ann. § 20-8-104, the Agency must approve or deny the application within 90 days from the date the application is deemed complete and submitted for review. The criteria that the proposed project met or failed to meet shall be set forth in written findings to the applicant. Findings will be sent via certified mail to opponents who have written a letter of opposition and also to unsuccessful applicants.
- 12. Appeal for Hearing Before the Commission.
 - (a) Opponents of applications must submit a letter of opposition during the 30 day review period in order to be

eligible to request a hearing before the Commission. Any applicant or opponent seeking an appeal of the Agency's decision on a Permit of Approval shall file for a hearing within thirty (30) days of receipt of the Agency's decision. An appeal shall be written and documented on the Agency's Appeal Form for Permit of Approval Decisions. The grounds for the appeal must be indicated on the form and no additional grounds may be raised before the Commission. The form will be provided by the Agency.

- (b) When there is an application pending before the Agency or the Commission no additional applications will be placed under review for the same service or facility in the same service area until an appeal has been filed in circuit court or the time has expired for appeal to Circuit Court on the pending application.
- (c) Appeals to the Commission will be conducted in accordance with the State Administrative Procedure Act.
- (d) Appellant(s) will present their case first. The Appellee(s) will follow. The appellant(s) shall be given an opportunity to present rebuttal witnesses. Each side may cross-examine witnesses. (The time for cross-examination will not be counted as part of the suggested time frame). The following is the suggested time frame for appeals:

10 mins. for Opening Remarks for each side

40 mins. for presentation for each side

10 mins. for closing comments for each side
(the appellant(s) may reserve a portion of the time for rebuttal)

Each Commissioner will have a copy of the complete file. This is a part of the record; therefore, it is not necessary to introduce the application, findings, notices, etc. as exhibits in the administrative hearing.

- (e) The Commission will conduct a hearing within ninety (90) days of the agency decision and shall render its final decision within fifteen (15) days of the close of the hearing. Failure of the Commission to take final action within these time periods shall be considered a ratification of the Agency decision on the Permit of Approval and shall

constitute the final decision of the Commission.

- (f) A hearing may be delayed through a continuance by either the applicant or the opponent(s) if the request is made in writing to the Agency at least (10) days before the date of the hearing. Neither the applicant nor the opponent(s) may request more than one continuance, i.e. there will be no more than one continuance per side. This language should not be read to deny any rights guaranteed by the Arkansas Code.

13. Ex Parte Contacts

After an application for Permit of Approval is filed with the Agency there shall be no ex parte contacts between:

- (a) an applicant or any person acting on behalf of the applicant (or holder of a Permit of Approval in a decision to withdraw a Permit) or any person opposed to the issuance (or in favor of withdrawal) of a Permit of Approval and
- (b) any member of the Commission.

An ex parte contact by an applicant or a person representing an applicant may be grounds for the withdrawal of the application from review.

NOTE: An ex parte communication is defined as oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

SECTION VI. CONTINUING EFFECT OF A PERMIT OF APPROVAL

A. Implementing a Permit of Approval

- 1. Applicants approved to construct a new facility or expand an existing facility have nine (9) months from the date of the issuance of the Permit (or from the date of the final judicial decision on the Permit of Approval application) to sign a construction contract. The construction contract shall specify that the foundation for the facility will be completed within six (6) months of the signing of the contract and that the facility will be completed within eighteen (18) months from the date of the signing. A license must be obtained within fifteen (15) months from the due date of foundation. In the event that the construction contract is not signed within nine (9) months, the foundation is not completed within six

(6) months of signing the construction contract, or the project is not completed and a license is not obtained within fifteen (15) months of the due date of the foundation, the Permit must be terminated by the Agency. Appeals of the termination will be made to the Health Services Commission within thirty (30) days of notice of termination. Notice of the termination of a Permit will be through certified letter to the holder of the Permit. Notice of hearings on appeal of the termination will be by mail to the holder of the Permit and affected parties and legal notice in a newspaper of statewide coverage.

2. Applicants that have made a preliminary application for a HUD insured loan on or before the 90th day following the issuance of their POA and have not received an approval from HUD by the start of the eighteenth month following the issuance of the POA may request an extension of the POA for up to an additional six months. In order to receive the extension the applicant must provide the Agency with a letter from HUD documenting: 1) the date of preliminary application and 2) that the delay in approval was not due to inaction or delays by the applicant. This request for an extension on the POA must be made at least three weeks prior to the end of the eighteenth month.
3. Projects not requiring construction or renovation must be licensed within one year of the date of the Permit of Approval (or within one year of the date of the final judicial decision on the Permit of Approval application).
4. After project approval, if the applicant wishes to change the approved project, the proposed changes are subject to Permit of Approval if they are such that in themselves they would be subject to review. If an applicant proposes a change that was a significant reason for the approval of the project then that proposed change must go before the Commission to determine whether the change shall require review.
5. A Permit of Approval once issued to an approved applicant is not transferable to any other institution or party without approval of the Commission.
6. Extensions – The Commission may approve a request for extension of time if good cause is presented. Any request for an extension must be made in writing to the Agency prior to the expiration of the date on which the phase or project was to be completed. Under no circumstances will an extension be granted for more than six months at a time. An applicant may request

subsequent extensions.

7. The above stated timelines also apply to projects that were exempted from Permit of Approval review. The starting date for exempted projects will be the date of the exemption (e.g. exempted construction projects will have nine (9) months from the date of exemption to sign a construction contract).

B. REPORTING

1. It will be the sole responsibility of the applicant to keep the Agency informed of its progress during the approval period. Documentary evidence of the signed construction contract, the construction of the foundation and the application for licensure must be submitted to the Agency. A progress report to the Agency on the project is required at the time the construction contract is due, at the time the foundation is due to be completed and every six months after that until the project is licensed. Failure to submit these progress reports may result in the approved party having to appear before the Commission to show cause why the permit should not be terminated.

C. TERMINATION OR SURRENDER OF A PERMIT OF APPROVAL OR LICENSE:

Any increase or decrease in beds or services due to the expiration, termination, revocation, or surrendering of a permit or the expiration, termination, revocation, or surrendering of a license must be recorded with the Agency at least sixty days prior to the deadline for filing applications for a review cycle in order to be considered in the review cycle.

SECTION VII. EXCEPTIONS TO USE OF PROCEDURES

- A. The Commission may approve an exception to any of the required review procedures by a favorable 3/4 (75%) vote of the full Commission.
- B. In approving a general exception the Commission will establish substitute procedures where appropriate.
- C. Upon receiving a written request for an exception, the Agency will follow the notice and comment procedures and will submit copies of all comments received by the Commission with its request. Before approving

the request, the Commission will:

1. review copies of the comments submitted by the Agency, and
2. determine that the procedures to be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

- D. The Agency will distribute a notice of the approved exception and of any substitute procedures established under this Section.

SECTION VIII. ENFORCEMENT

The Commission may authorize the Agency to enjoin the construction or expansion of existing facilities or operation of any project commenced in violation of Act 593 as amended through action filed in the Chancery Court of the judicial district in which the project is located. In addition, the Commission will instruct the Agency to contact the appropriate licensure agency and request that the licensing agency make the facility cease operation.

SECTION XI. ELECTRONIC MAIL AND FACSIMILES

Fax copies will be accepted provided that a hard copy with an original signature is received at the Agency within 5 days of the fax copy. The Agency will not accept official correspondence via electronic mail for the purposes of applications, letters of opposition and appeals.

SECTION X. UTILIZATION REPORTS AND FINES

Act 1271 of 2005 authorizes the Health Services Permit Agency to collect utilization statistics annually from hospitals, nursing homes, outpatient surgery centers, home health agencies, assisted living facilities, residential care facilities and hospices. The Agency is also authorized to impose fines on nursing homes, home health agencies, assisted living facilities, residential care facilities, and hospices for the failure to timely submit reports of statistics as required by the Agency. The fines are:

- A. Up to one hundred dollars (\$100) for a report over thirty (30) days late;
- B. Two hundred fifty dollars (\$250) for a report over sixty days late;
- C. Five hundred dollars (\$500) for a report over ninety days late.