ARKANSAS REGISTER

Transmittal Sheet

Sharon Priest
Secretary of State
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For Office Use Only: Effective Date _____ Code Number 049.00.96-005

Name of Agency HEALTH SERVICES AGENCY

Department N/A

Contact Person Orson Berry or Nancy Richardson Phone 661-2509

Statutory Authority for Promulgating Rules Arkansas Act 593 of 1987, as amended

		Date
Intended Effective Date	Legal Notice Published	April 28-30, 1996
☐ Emergency	Final Date for Public Comment	May 29, 1996
☒ 10 Days After Filing	Filed With Legislative Council	April 26, 1996
☐ Other	Reviewed by Legislative Council	June 6, 1996 June 21, 1996
_____	Adopted by State Agency	May 29, 1996

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted In Compliance with Act 434 of 1967 As Amended.

_____
Signature

(501) 661-2509
Phone Number

Director
Title

June 21, 1996
Date

ARKANSAS HEALTH SERVICES COMMISSION

FINANCIAL IMPACT STATEMENT

HSC REGULATION 001. Health Services Commission Policies and Procedures

Contact Person: Nancy Richardson
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Little Rock, Arkansas 72204
Telephone: 661-2509

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?

   Yes _____ No X

   If parties who are, or may be, served out-of-state are served in-state the then the State should save money by utilizing the less expensive in-state facility.

2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

3. If the purpose of this rule or regulation is to implement a federal rule or regulation is to implement a federal rule or regulation, please give the incremental cost of implementing the regulation.

   N/A as this is not a federal regulation.

4. What is the total estimated cost by fiscal year to any party subject to proposed, amended, or repealed rule or regulation? N/A

HSC Regulation 001. Health Services Commission Policies and Procedures (06/96)

SECTION I.

INTRODUCTION

Arkansas Act 593 of 1987, as amended, (hereinafter referred to as the "Act") created a Health Services Commission and a Health Services Agency to implement a health facilities planning and review program. The Health Services Commission, hereinafter referred to as "the Commission" is composed of the following members:

(1) a practicing physician;

(2) a representative of the Department of Human Services;

(3) a member of the Arkansas Hospital Association;

(4) a member of the Arkansas Health Care Association;

(5) a member of the Arkansas Chapter of the American Association of Retired Persons;

(6) a member of the Arkansas Association of Home Health Agencies (Arkansas Home Care Association);

(7) a consumer knowledgeable in business health insurance; and

(8) a member of the Arkansas Association of Residential Care Facilities.

The Act assigns the following duties to the Commission:

A. Evaluate the availability and adequacy of health services in this State.

B. Designate those locales or areas of the State in which, due to the requirements of the population

or the geography of the area, the health service needs of the population are underserved.

C. May specify within locales or areas categories of health services which are underserved and overserved due to the composition or requirements of the population or the geography of the area.

D. Develop policy and adopt criteria including time limitations for every review of an application to be followed by the Agency in issuing a Permit of Approval.

E. May define certain underserved locales or areas or categories of services within underserved locales or areas to be exempt for specified periods of time from the Permit of Approval requirement.

F. Review the recommendations of the Agency concerning action on applications for Permits of Approval and endorse or reject same.

G. May set application fees for Permit of Approval applications to be charged and collected by the Agency.

H. Upon appeal conduct hearings on Permit of Approval by the Agency within thirty (30) days of receipt of the notice of appeal. The Commission shall render its final decision within forty-five (45) 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 from which an appeal to Circuit Court may be filed.

The Health Services Agency, hereinafter referred to as "the Agency" is an independent agency under the supervision and control of the Governor. The Act states that the Agency:

A. "shall possess and exercise such duties and powers as necessary to implement the policy and procedures adopted by the Commission."

B. "is hereby designated the Agency of this State to accept, receive, retain and administer State and Federal funds for construction of health facilities."

C. "shall review all applications for Permits of Approval and submit their recommendations for action to the Commission within ninety days of the receipt of the application..."

D. "shall assist the Commission in the performance of its duties..."

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 Agency (HSA) created by Arkansas Act 593 of 1987, as amended, to implement a health services program in the State. The Agency shall possess and exercise such duties and powers as necessary to implement the policies and procedures adopted by the Health Services Commission.

C. "Commission" - the Health Services Commission designated by Arkansas Act 593 of 1987, as amended, and appointed by the Governor to regulate the construction, expansion or alteration of health care facilities and evaluate the availability and adequacy of health services in the State.

D. "Commissioner" - a duly appointed member of the Health Services Commission.

E. "Conversion of Services" - an alteration of the category of services offered by a health facility.

F. "Director" - the director of the Health Services Agency.

G. "Health Facility or Health Facilities" - "a long-term care facility" as defined by ACA Section 20-10-101(7), 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.

H. "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.

I. "Long term care" - means non-acute care provided over a 24 hour period for 25 or more consecutive days.

J. "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.

K. "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.

L. "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.

M. "Nursing Home" - institution, or other place for the reception, accommodation, board, care, or treatment of two or more 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.

1. "Skilled Nursing Facility" (SNF) - is a nursing home, or a distinct part of a facility, licensed by the Office of Long Term Care as meeting Skilled Nursing Home requirements and certified by the Office

of Long Term Care as meeting federal requirements for participation as a Medicare Skilled Nursing Facility. A SNF provides skilled nursing care and related services on a continuous 24-hour basis for residents who require medical or nursing care, rehabilitation services for the rehabilitation of injured, disabled or sick persons or on a regular basis, health-related care and services to individuals who because of their mental or physical conditions require care and services (above the level of room and board) which can be made available to them only through institutional facilities.

2. "Nursing Facility" (NF) is a nursing home, or a distinct part of a facility, licensed by the Office of Long Term Care as meeting Skilled Nursing Home requirements and certified by the Office of Long Term Care as meeting federal requirements for participation as a Medicaid Nursing Facility. A NF provides skilled nursing care and related services on a continuous 24-hour basis for residents who require medical or nursing care, rehabilitation services for the rehabilitation of injured, disabled or sick persons or on a regular basis, health-related care and services to individuals who because of their mental or physical conditions require care and services (above the level of room and board) which can be made available to them only through

institutional facilities.

N. "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 fifteen (15) beds to four (4) that provides in a protective residential setting, diagnosis, active treatment and rehabilitation of persons with mental retardation or persons with related conditions.

O. "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)

P. "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.

Q. "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.

R. "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")

S. "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.

T. "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 593 of 1987, as amended, and the rules of the Commission. This Permit ceases to exist upon the licensing of the new or expanded health facility.

U. "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.

V. "Physician" - a doctor of medicine or osteopathy legally authorized by the State to practice medicine and surgery.

W. "Population of a municipality" - the population of a municipality will be based on the most recent Federal census unless circumstances are such, that the Commission feels it should look beyond the Census. Then the Commission would look to a local planning agency. On Statewide projections, a statewide planning agency should be utilized which will be the Bureau of Census designee.

X. "Subacute care" - is goal oriented, comprehensive, inpatient care designed for someone who has had an acute illness, injury, or exacerbation of a disease process. It is rendered immediately after, or instead of, acute hospitalization to treat one or more specific active complex medical conditions or to administer one or more technically complex treatments, in the context of a person's underlying long-term conditions and overall situation. Generally, the condition of an individual receiving subacute care is such that the care does not depend heavily on high-technology monitoring or complex diagnostic procedures. Subacute care requires the coordinated services of an interdisciplinary team including physicians, nurses, and other relevant professional disciplines, who are knowledgeable and trained to assess and manage these specific conditions and perform the necessary procedures. It is given as part of a specifically defined program, regardless of the site. Subacute care is generally more intensive than traditional nursing facility care and less intensive than acute inpatient care. It requires frequent (daily to weekly) patient assessment and review of the clinical course and treatment plan for a limited time period (several days to several months), until a condition is stabilized or a predetermined treatment course is completed.

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 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 expand existing home health service areas shall apply for a Permit of Approval. This includes changes in license designation.

4. 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. A maximum capital expenditure will be stated on the Permit of Approval).

5. (a) Movement of Existing LTC beds - any movement of LTC beds from one site to another site is subject to review. The applicant should submit the request in writing to the Agency. The Commission will then determine if the proposed movement will be reviewed.

(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, any additional costs associated with the relocation, the time remaining for completion under various rules and regulations of the Commission regarding implementation of a Permit of Approval, and 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.

B. NON-REVIEWABLE PROJECTS:

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 shall not require a Permit of Approval.

4. Acquisition of a Health Care 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

C. 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 Commission may take action on the proposal 30 days after notice of expedited review has been given to the public unless a request for an appeal is made to the Commission. Any request for an appeal must state and document why the proposed project is not eligible for expedited review.

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 C.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 be approved by the Commission under the expedited review process.

SECTION IV.

CRITERIA FOR REVIEW

A. The Agency and the Commission will utilize the following general 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: *		Application placed under review by:		HSA Recommendation to Commission by:
November	1	December	1	February 28
February	1	March	1	May 31
May	1	June	1	August 31
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 (9) copies of a completed application and the review fee. The review fee is $300 for expedited reviews and $500 for all other reviews.
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 State may allow up to an additional fifteen

days to obtain additional information. Such action will delay all competing applications. The review cycle will not begin until the application is declared complete.

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 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, ie. 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 newsletter).

7. Review Period. The Act provides that the Agency must make its recommendation to the Commission within 90 days of receipt of the application. Receipt of the application occurs 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 may 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 Findings and Recommendation. 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 reivew.

11. Recommendation to Commission. The Agency shall submit its written findings and recommendation to the Commission within ninety (90) days from the notification beginning the review.

12. Status Report on Delayed Reviews. On the 65th day after placing an application under review the Agency will report to each Commissioner on the status of that application.

13. Commission Endorsement. Applicants may publicly present their proposal to the Commission at the meeting on the application. It is suggested that presentations be limited to ten minutes per side (applicant/opposition) with a two minute rebuttal. (Note: Applications should have all pertinent information and each Commissioner will have a copy of the application. Therefore lengthy presentations should not be necessary). It is the intent of the Commission to act within 30 days of receipt of the recommendations from the Agency.

14. Issue of Permit of Approval. The Agency, after the final favorable decision of the Commission, shall issue a Permit of Approval. The criteria that the proposed project met or failed to meet shall be set forth in written findings to the applicant.

15. Appeal for Hearing Before the Commission.

(a) Any applicant and/or affected party seeking an appeal of the Commission's decision on a Permit of Approval shall file for a hearing within thirty (30) days of the date of the notice of the Commission's decision. An appeal shall be written and documented on the Commission's Appeal Form for Permit of Approval Decisions. The form will be provided by the Agency.

(b) When there is an application pending before the Commission no additional applications will be

accepted for the same service or facility in the same service area until 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, Act 434 of 1967, as amended.

(d) Good cause shall be shown for an appeal if the aggrieved:

(1) presents significant relevant information not previously considered by the Commission which with reasonable diligence, could not have been presented before the decision;

(2) demonstrates that there have been significant changes in factors or circumstances relied upon by the Commission in reaching its decision;

(3) demonstrates that the Commission has materially failed to follow appropriate statutes, adopted procedures, or criteria and standards in reaching its decision; or

(4) provides any other basis which the Commission determines constitutes good cause.

(e) Appellants will present their case first. The Appellees will follow. Each side may cross examine witnesses. 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

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.

(f) The Commission, upon appeal by the applicant and/or affected party, will conduct a hearing within thirty (30) days of receipt of the notice to appeal and shall render its final decision within forty-five (45) 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 from which an appeal to Circuit Court may be filed.

(g) A hearing may be delayed through a continuance by either the applicant or an opponent if the request is made in writing to the Agency at least ten (10) days before the date of the hearing. Neither an applicant nor an opponent may request more than one delay or continuance.

16. 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.

17. Judicial Review

Any person adversely affected by a final decision of the Commission may seek judicial review in an appropriate Court.

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 18 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 18 months from the date of the signing. An application for licensure of the beds contained in the new construction must be made within 18 months from the date of the signing of construction contract. In the event that the foundation is not completed within six months of signing the construction contract or the project is not completed and an application for licensure not filed within 18 months of the date of signing of the construction contract the Permit must be terminated by the Agency. Appeals of the termination will be made to the Health Services Commission within 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.

N.B. 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 eg. exempted construction projects will have 18 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 every six months after approval 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.

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 exceptions 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.