PART V. TEXAS HEALTH FACILITIES COMMISSION

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Authority: The provisions of this Part V issued under Acts 1975, 64th Leg., p. 832, ch. 323, effective May 28, 1975, as amended (Texas Civ. St. art. 4418h).

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CHAPTER 501. DESCRIPTION OF THE COMMISSION

Section No.	Section Name
501.1.	Origin of the Commission.
501.2.	[RESERVED]
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501.6.	[RESERVED]
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§501.1. Origin of the Commission.

The Texas Health Facilities Commission (the commission) was established by the passage of the Texas Health Planning and Development Act, Texas Civil Statutes, Article 4418h, enacted by the 64th Legislature of the State of Texas, approved May 28, 1975.

Source: The provisions of this §501.1 adopted to be effective October 1, 1984, 9 TexReg 4560.

§501.2. [RESERVED]

§501.3. Purpose of the Commission.

The Texas Health Planning and Development Act (the Act) was enacted to meet the requirements of the National Health Planning and Resources Development Act (Pub. L. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96-79), and to insure that health services and facilities are made available to all citizens of the State of Texas in an orderly and economical manner.

Source: The provisions of this §501.3 adopted to be effective October 1, 1984, 9 TexReg 4560.

§501.4. [RESERVED]

§501.5. Chief Executive and Administrative Officer.

The chairman is the chief executive and administrative officer of the commission. The chairman has all the powers and duties prescribed by the Texas Health Planning and Development Act, as amended, and by these rules to the extent consistent with the Act, as amended. In the absence of the chairman for any cause, the vice-chairman has the powers and duties assigned to the chairman. In the absence of both the chairman and the vice-chairman for any cause, the commission member has the powers and duties assigned to the chairman.

Source: The provisions of this §501.5 adopted to be effective October 1, 1984, 9 TexReg 4560.

§501.6. [RESERVED]

§501.7. General Powers and Duties of the Commission.

The general powers and duties of the commission are those prescribed by the Act §2.06, as amended.

Source: The provisions of this §501.7 adopted to be effective Octobber 1, 1984, 9 TexReg 4560.

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CHAPTER 503. RULE-MAKING PROCEDURES

Section No.	Section Name
503.1.	Rule-Making Authority.
503.3.	Use and Effect of Rules.
503.5.	Severability.
503.7.	Amendment of Rules.
503.9.	Petition for Rule Adoption.
503.11.	Violations of Rules and Act.
503.13.	Dissemination of Proposed Rules.
503.15.	Dissemination of Adopted Rules.
503.17.	Emergency Rules.

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§503.1. Rule-Making Authority.

The commission is empowered by the Act. as amended, to promulgate and adopt rules and regulations to effect the purpose of the Act and carry out the duties of the commission. The commission shall review applications for certificates of need and other matters according to criteria for review established by the Act, as amended, and commission rules and shall issue orders pursuant thereto, as appropriate.

Source: The provisions of this §503.1 adopted to be effective September 1, 1981, 6 TexReg 3257.

§503.3. Use and Effect of Rules.

The rules set forth herein are prescribed for the performance of statutory functions by the commission.

Source: The provisions of this §503.3 adopted to be effective September 1, 1981, 6 TexReg 3257.

§503.5. Severability.

Where any terms or sections of these rules are found by judicial determination to be inconsistent with the Act, as amended, the Act shall apply and the remaining terms and sections of these rules shall continue in effect.

Source: The provisions of this §503.5 adopted to be effective October 1, 1984, 9 TexReg 4561.

§503.7. Amendment of Rules.

These rules may be amended by the commission. In proposing the adoption of additional rules or amendments to these rules, the commission shall comply with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes article 6252-13a.

Source: The provisions of this §503.7 adopted to be effective October 1, 1984, 9 TexReg 4561.

§503.9. Petition for Rule Adoption.

(a) Any person may petition the commission to adopt a rule or amend an existing rule. To be considered by the commission, a petition must be in writing and must contain at least the following information:
  (1) the identity of the person making the request;
  (2) the text of the rule or rule amendment proposed for adoption; and
  (3) the reasons for adoption of the proposed rule or rule amendment.

(b) The commission shall consider the petition for rule adoption in open meeting within 60 days after submission of the petition. After consideration of the petition, the commission shall either deny the petition in writing, stating the reasons for denial, or initiate rule-making proceedings in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes §5.

Source: The provisions of this §503.9 adopted to be effective October 1, 1984, 9 TexReg 4561.

§503.11. Violations of Rules and Act.

The commission may enforce its rules by rejecting, dismissing, or suspending processing of a motion, application, or petition of a person the commission determines to be in violation of the commission rules of the Act.

Source: The provisions of this §503.11 adopted to be effective October 1, 1984, 9 TexReg 4561.

§503.13. Dissemination of Proposed Rules.

(a) Prior to the adoption of a rule or rule amendment, the commission shall provide written notice of its intended action to statewide health agencies, the Health and Human Services Coordinating Council, the Statewide Health Coordinating Council, the secretary of the United State Department of Health and Human Services, and health-care related associations representing health-care facilities and services in the state. Prior to the adoption of a rule or rule amendment the commission shall provide notice of its intended action to all health-care facilities in the state that have been identified by the commission. The commission shall provide written notice of its intended action, pursuant to this section, without charge. The notice must include:
  (1) a brief explanation of the proposed rule;
  (2) the text of the proposed rule;
  (3) a statement of the statutory or other authority under which the rule is proposed to be promulgated; and
  (4) a request for comments on the proposed rule.

(b) The commission shall publish written notice of a proposed rule or rule amendment in the *Texas Register* at least 30 days prior to adoption, except when a proposed rule is adopted as an emergency rule.

Source: *The provisions of this §503.13 adopted to be effective October 1, 1984, 9 TexReg 4561.*

Cross References: This section cited in 25 TAC §503.17 (relating to Emergency Rules).

§503.15. Dissemination of Adopted Rules.

The commission shall distribute copies of its adopted rules to statewide health agencies, the Health and Human Services Coordinating Council, the State Health Coordinating Council, the secretary of the United States Department of Health and Human Services, and health-care related associations representing health-care facilities and services in the state. The commission shall also distribute a copy of its adopted rules to all health-care facilities in the state that have been identified by the commission. The commission shall distribute copies of its adopted rules, pursuant to this section, without charge.

Source: The provisions of this §503.15 adopted to be effective October 1, 1984, 9 TexReg 4561.

§503.17. Emergency Rules.

When the commission finds that imminent peril to the public health, safety, or welfare exists, it may adopt an emergency rule pursuant to the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, §5(d). When an emergency rule is adopted, the provisions of commission Rule 503.13 (§503.13 of this title (relating to Dissemination of Proposed Rules)) shall not apply. The commission may make the emergency rule effective for a period of 120 days, renewable once for a period not exceeding 60 days.

Source: The provisions of this §503.17 adopted to be effective October 1, 1984, 9 TexReg 4561.

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CHAPTER 505. TERMS AND PHRASES

Section No.	Section Name
505.1.	Definitions.

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§505.1. Definitions.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:

APA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Abandoned health-care facility—A health-care facility which has not offered health-care services for a period of 12 consecutive months or more. An abandoned health-care facility ceases to be a health-care facility for purposes of these rules and the Act.

Abandoned health-care service—A health-care service which has not been offered by a health-care facility for a period of 12 consecutive months or more. An abandoned health-care service ceases to be an offered health-care service for purposes of these rule and the Act, subject to the provisions of Texas Civil Statutes article 4442c, §7(k).

Acquire—To obtain by purchase, lease, donation, gift, transfer, or other comparable arrangement.

Act—The Texas Health Planning and Development Act, Texas Civil Statutes, Article 4418h.

Ambulatory surgical facility—A facility which provides surgical treatment to patients not requiring overnight care, including, but not limited to, those facilities which are defined as and are proposed to be certified as ambulatory surgical centers pursuant to Pub. L. 96-499, §934, the Omnibus Reconciliation Act of 1980, and 42 C. F. R. Part 416.

Applicant—A person who makes application to the commission pursuant to the Act.

Application—A written request for consideration by the commission pursuant to the Act.

Bed capacity—The number of beds a health-care facility is constructed and designed for and is capable of operating without physical change to the facility.

Bed license—The number of licensed beds in a health-care facility.

Capital expenditure—A financial obligation which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance.

Category of beds—Inpatient beds in an existing health-care facility within which health-care services are provided to a defined and limited class of patients. The term "category of beds" includes, but is not limited to, the following: medical/surgical, obstetrical, gynecological care, extended care, coronary care, nursing care, intermediate nursing care, skilled nursing care, intermediate care mentally retarded-V (ICF-MR-V), intermediate care mentally retarded-VI (ICF-MR-VI), alcohol abuse treatment, drug abuse treatment, rehabilitation, and hospice.

Certificate holder—The person(s) named in the certificate of need.

Certificate of need—A written order of the commission setting forth the commission's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by the Act and by commission rules.

Commission—The Texas Health Facilities Commission.

Completion of a project—The date when all activities authorized in a commission order, including capital expenditures, construction, renovation, equipment acquisition, the offering of service(s), licensure, and certification, have been accomplished.

Declaratory ruling—A written order of the commission stating whether or not a proposed project requires a certificate of need or other action by the commission.

Department—The Texas Department of Health.

Development—

(A) Commencement of those activities or expenditures, other than planning or predevelopment, which upon their completion result in the consummation of a project or a significant financial commitment toward the consummation of a project. Development of a project may commence only after appropriate authorization by the commission. Commencement of development includes, but is not limited to:

(i) adoption of ordinances, order, or resolutions authorizing the issuance of bonds to finance the project;

(ii) adoption of ordinances, orders, or resolutions authorizing zoning or rezoning of land upon which the project site is to be located;

(iii) expenditures in excess of 20% of the total project cost authorized in the commission order;

(iv) execution of binding written contracts for construction or site preparation, or the actual commencement of construction or site preparation;

(v) executive of binding written contracts for the acquisition of equipment for the project which constitutes at least 50% of the project equipment cost authorized in the commission order;

(vi) receipt of donated funds or grant funds which are designated for the project and which constitutes at least 20% of the total project cost authorized in the commission order;

(vii) execution of binding written contracts for interim or permanent financing for the project and which constitutes at least 20% of the total project cost authorized in the commission order;

(viii) in the case of new facility projects, the actual extension of gas, water, or electric utilities to the project site; or

(ix) in the case of no-cost projects, the offering of the service authorized in the commission order.

(B) For purposes of this rule, expenses incurred for studies, reports, and professional services in pursuit of obtaining a certificate of need shall not be included in the expenditures utilized in a determination of whether development has commenced. The execution of binding written contracts or the receipt of donated or grant funds for the project, which are made contingent upon obtaining a declaratory ruling, certificate of need, or other appropriate ruling authorizing development of the project, shall not be considered development as defined herein or a violation of the Act or commission rules.

Dialysis stations—The number of dialysis units or chairs in a health-care facility.

Existing health-care facility—A facility which is approved for operation, is currently operating, or which has not been out of operation for a period of 12 consecutive months or more.

Existing service—A service which is presently being offered by a health-care facility, or a service that a health-care facility has not ceased offering for a period of 12 consecutive months or more, subject to the provisions of Texas Civil Statutes, Article 4442c, §7(k).

Expenditure minimum—$600,000 for capital expenditures other than major medical equipment. (See definition for major medical equipment.)

Federal law—Includes the National Health Planning and Resources Development Act of 1974 (Pub. L. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96-79), the federal rules and regulations promulgated under those Acts, and other pertinent federal authority.

Health—Physical or mental health.

Health-care facility—Referred to as facility, means, regardless of ownership, a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic which performs ambulatory surgical procedures, rural health initiative clinic, urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, inpatient hospice, and other facilities as defined by federal law, but does not include the office of physicians or practitioners of the healing arts singly or in groups in the conduct of their profession.

Health maintenance organization—Referred to as HMO, means any person who undertakes to provide or arrange for one or more health-care plans, pursuant to the provisions of the Texas Health Maintenance Organization Act, Texas Civil Statutes article 20A.01-20A.35. For purposes of commission rules relating to HMOs, the term "health-care plan" means any arrangement whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health-care services, and at least part of such arrangement consists of arranging for or the provision of health-care services, as distinguished from mere indemnification against cost of such service on a prepaid basis through insurance or otherwise. For purposes of commission rules relating to HMOs, the term "health-care services" means furnishing to any individual medical care, dental care, or hospitalization, as well as the furnishing to any person of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

Health service area—A geographical region in which a designated regional planning agency has health planning responsibilities as provided pursuant to federal and state law.

Hearing—A public proceeding for examination of an application or other matter properly before the commission where the applicant, the commission, other parties, and interested persons may present evidence.

Hospital—An institution which has as its primary function inpatient 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, by or under the supervision of physicians. The term "hospital" includes psychiatric hospitals and specialty hospitals designed for the treatment of patients suffering from alcohol or drug abuse.

Inpatient—A person who has been admitted for overnight care by a health-care facility and who has not been discharged from the facility.

Inpatient hospice—A medically oriented program of palliative and supportive services which provides inpatient care for terminally ill patients. The term "inpatient hospice" includes both freestanding hospices and hospices which are a distinct, dedicated part of a hospital or nursing home, as provided in 42 Code of Federal Regulations Part 418.

Inpatient rehabilitation facility—A facility which is operated for the primary purpose of assisting in the inpatient rehabilitation of sick or disabled persons through a program of medical and medically related services which are provided under professional supervision. The term "inpatient rehabilitation facility" inlcudes inpatient facilities designed for the rehabilitation of patients suffering from alcohol or drug abuse.

Interested person—A person who presents evidence at a hearing on an application, but who was not admitted by the commission as a party.

Intermediate care facility—An institution or part of an institution which regularly provides health-care services to inpatients who, because of their mental or physical condition, require health-care services above the level of room and board, but who do not require the degree of care and treatment which a hospital or skilled nursing facility provides.

Kidney disease (ESRD) treatment facility—A hospital unit or freestanding unit which offers at least one of the following kidney disease (ESRD) services:

(A) dialysis service (chronic maintenance or inpatient acute dialysis);

(B) self-care hemodialysis or peritoneal dialysis service; or

(C) kidney transplantation.

Major medical equipment—A single unit of medical equipment or a single system of components with related functions which is used to provide medical and other health-care services and which costs more than $400,000.

Medical service area—

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(A) For an existing facility, a definable geographic area from which at least two-thirds of the facility's patients have originated in the most recent 12-month period.

(B) For a new facility or a new service at an existing facility, a definable geographic area from which at least two-thirds of the patients could reasonably be anticipated to originate. In establishing the medical service area, the factors set forth in Commission Rule 513.5 (§513.5 of this title (relating to Medical Service Area)) shall be considered.

Offer—When used in connection with health services, means that a health-care facility holds itself out as capable of providing, and in fact has the means for the provision of, specific health-care services.

Open meeting—An open public meeting conducted by the commission for the purpose of rendering decisions on applications and other matters brought before the commission.

Party—A person who by formal intervention and action as determined by rule of the commission participates in the consideration of a specific application by the commission.

Person—An individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or a political subdivision or instrumentality of the state, any receiver, trustee, assignee, or other similar representative, or any other legal entity.

Project—Expenditures, services, acquisitions, construction, or other action requiring a certificate of need or other review pursuant to the Act and commission rules.

Project cost-

(A) The total expenditures required for a proposed project from initation to completion, including at least the following:

(i) expenditures for physical assets such as:

(I) site acquisition;

(II) soil tests and site preparation;

(III) construction and improvements required as a result of the project;

(IV) building, structure, or office space acquisition;

(V) renovation;

(VI) fixed equipment;

(VII) movable equipment;

(VIII) energy provisions and alternatives;

(ii) expenditures for professional services, including:

(I) planning consultants (unless there are no expenditures for physical assets);

(II) architectural fees;

(III) fees for cost estimation;

(IV) legal fees (unless there are no expendutires for physical assets);

(V) managerial fees;

(VI) feasibility study (unless there are no expenditures for physical assets);

(iii) expenditures or costs associated with financing, excluding long-term interest, but including:

(I) financial advisory;

(II) fund-raising expenses;

(III) lender's or investment banker's fee;

(IV) bond attorney's fee;

(V) interest on interim financing;

(VI) debt service reserve fund; and

(iv) expenditure allowances for contingencies, including:

(I) inflation;

(II) inaccurate estimates;

(III) unforeseen fluctuations in the money market; or

(IV) other unforeseen expenditures.

(B) The term of any lease arrangement and the rentals to accrue during that term shall not be controlling in determining the project cost. Rather, the project cost shall be determined by the greater of either the lease payments to accrue during the term of the lease or the fair market value of the item to be acquired by lease. Regarding purchases, donations, gifts, transfers, and other comparable arrangement.

Rule—A commission rule.

Rural health initiative clinic—A public or private nonprofit, outpatient, primary-care clinic located in a nonurbal (rural) area which has been designated as medically underserved, and which is funded by the Federal Community Health Centers Program, the National Health Service Corps Program, the Migrant Health Program, the Health Underserved Rural Areas Program, or other programs operated pursuant to Pub. L. 95-210 and Pub. L. 95-626.

Service—Also referred to as health service or health-care service, includes, but is not limited to, the following: emergency medicine, radiology, coputerized tomographic scanning, nuclear magnetic resonance scanning, psychiatric care, surgery, intensive care, coronary care, pediatrics, neonatal speical care, gynecology, obstetrics, laboratory, dialysis, medical/surgical care, inpatient nursing care, inpatient intermediate nursing care, inpatient skilled nursing care, intermediate care-mentally retarded-V (ICF-MR-V), intermediate care-mentally retarded-IV (ICF-MR-IV), inpatient alcohol or drug abuse treatment, extended care, cardiac catheterization, open-heart surgery, inpatient rehabilitation, and inpatient hospice care.

Skilled nursing facility—An institution or a distinct part of an institution which is primarily engaged in providing skilled nursing care and related services to inpatients.

Urban health initiative clinic—A public or private nonprofit, outpatient, primary-care clinic located in an urban area which as been designated as medically underserved, and which is funded by the Federal Community HealthCenters Program, the National Health Service Corps Program, or other programs operated pursuant to Pub. L. 95-626.

Source: The provisions of this §505.1 adopted to be effective October 1, 1984, 9 TexReg 4562.

Notes of Decisions: The State of Texas is without authority to require the Veteran's Administration to obtain a certificate of need or an exemption certificate from the Texas Health Facilities Commission before it may construct a hospital. Op. Atty. Gen. No. H-835 (1976). A state medical school is required to obtain a certificate of need or an exemption certificate from the Health Facilities Commission before commencing any project included within subdivision (1)-(5) of subsection (a) section 3.01, article 4418h, V.T.C.S. Whether any particular project is included within those provisions is a fact question to be determined in the first instance by the Health Facilities Commission. Op. Atty. Gen. No. MW-231 (1980).

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CHAPTER 507. CERTIFICATE OF NEED REQUIREMENTS

Section No.	Section Name
507.1.	Capital Expenditures.
507.3.	Services.
507.5.	Acquisition of Major Medical Equipment.
507.7.	Acquisition of Existing Health-Care Facility.
507.9.	Bed License.
507.11.	Bed Capacity.
507.13.	Health Maintenance Organizations (HMO's).
507.15.	Research Projects.
507.17.	Subsequent Review—Previously Approved Projects.

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§507.1. Capital Expenditures.

A person must obtain a certificate of need for a proposed project to obligate, by or on behalf of a health-care facility, a capital expenditures that exceeds the expenditure minimum.

Source: The provisions of this §507.1 adopted to be effective October 1, 1984, 9 TexReg 4565.

§507.3. Services.

(a) A person must obtain a certificate of need:

(1) to offer a service which is not an existing service of a health care facility, unless:

(A) the service is offered by a contract or other comparable arrangement with another health care facility which has the authority to offer the service:

(B) the service is offered off the facility's premises by a contract or other comparable arrangement with an entity other than a health care facility, provided that such contract is executed prior to the effective date of this rule: or

(C) the service(s) are to be provided in a replacement health care facility where the capital expenditures provided in §507.1 of this title (relating to Capital Expenditures) is not exceeded in establishing the replacement facility and the facility's medical service area is not changed by the location of the *replacement facility*;

(2) to create or establish a category of beds:

(3) to redistribute more than 10 existing beds or more than 10%, whichever is less, among various categories of beds in a two-year period;

(4) to add more than five dialysis stations in a two-year period to a facility with existing dialysis services; or

(5) to terminate offering an existing service in a health-care facility, if the termination is associated with the obligation of a capital expenditure in any amount, by or on behalf of a health-care facility.

(b) For instructions on redistributing beds or adding dialysis stations without certificate of need rview and computing the two-year periods referenced in paragraph (3) and paragraph (4) of this section, see commission Rule 527.1 (c) and (d) (§527.1 of this title (relating to Time Periods)).

Source: The provisions of this §507.3 adopted to be effective October 1, 1984, 9 TexReg 4565.

Cross References: This section cited in 25 TAC §509.41 (relating to Notice of Intent to Acquire an Existing Health Care Facility); and 25 TAC §509.151 (relating to Notice of Intent Regarding a Research Project).

§507.5. Acquisition of Major Medical Equipment.

(a) Any person must obtain a certificate of need for a proposed project to acquire major medical equipment that will be owned by or located in a health-care facility.

(b) Any person must obtain a certificate of need for a proposed project to acquire major medical equipment that will not be owned by or located in a health-care facility, if:

(1) the person fails to comply with the notice of intent procedures prescribed in commission Rules 509.131 and .133 (§509.131 and §509.133 of this title (relating to Notices of Intent to Acquire Major Medical Equipment)), or

(2) the commission finds, within 30 days after it accepts a notice of intent to acquire major medical equipment, that the equipment would be used to provide services for inpatients of a health-care facility on other than a temporary basis. For purposes of this rule, "temporary basis" means the short-term provisiosn of services in order to address natural disasters, major accidents, or facility equipment failure.

(c) It is not necessary for a person to obtain a certificate of need or a notice of intent to acquire major medical equipment if:

(1) the acquisition of major medical equipment is being made by a person other than a health-care facility; and

(2) the major medical equipment being acquired has previously been approved in a certificate of need.

(d) Regarding the exception provided in subsection (c) of this section, the acquiring entity must, at least 30 days prior to acquiring the major medical equipment, file a letter notifying the commission of its intent. The letter shall contain at least the following information:

(1) the name, address, and business of the acquiring entity;

(2) a description of the major medical equipment to be acquired, including its current location; and

(3) an identification, by commission file number, of the certificate of need order previously issued regarding the equipment.

(e) If a person who has previously acquired major medical equipment without a certificate of need or a notice of intent, except as provided in subsection (c) and subsection (d) of this section, proposes, at any time, to use that equipment to serve inpatients of a health-care facilty on other than a temporary basis, a certificate of need must be obtained prior to implementation of the service. In this instance, the certificate of need must be obtained by the owner of the equipment

and by the facility whose inpatients would be served, unless the facility has previously received authorization to offer the service or the service is otherwise an existing service of the facility, in which case, the certificate of need must be obtained only by the owner of the equipment.

Source: The provisions of this §507.5 adopted to be effective October 1, 1984, 9 TexReg 4565; amended to be effective February 28, 1985, 10 TexReg 1261.

§507.7. Acquisition of Existing Health-Care Facility.

(a) A person must obtain a certificate of need for proposed project to purchase or lease, for any amount, an existing health-care facility, if:

(1) the person fails to comply with the notice of intent procedures prescribed in commission Rules 509.141 and 509.143 (§509.141 of this title (relating to Notices of Intent to Acquire an Existing Health-Care Facility)), or

(2) the commission finds, within 30 days after it accepts a notice of intent to acquire an existing health-care facility, that the bed capacity, bed license, or services of the existing facility would be changed in being acquired. For purposes of this rule, a change in bed capacity, bed license, or services means:

(A) for bed capacity or bed license, the provisions of commission Rules 507.11 and 509.9 (§507.11 of this title (relating to Bed Capacity) and §507.9 of this title (relating to Bed License)) shall govern.

(B) for services, the provisions of commission Rule 507.3 (§507.3 of this title (relating to Services)) shall govern.

(b) If a person who has previously acquired an existing facility without a certificate of need pursuant to the provisions of commission Rules 509.141, 509.143, and 509.145 (§§509.141, 509.143, and 509.145 of this title (relating to Notices of Intent to Acquire an Existing Health-Care Facility; Forms for Notice of Intent to Acquire an Existing Health-Care Facility; and Commission Review Procedures)) proposes, within one year after the acquisition, to change the bed capacity, bed license, or services at the facility (as those terms are defined in commission Rules 507.11, 507.9, or 507.3 (§§507.11, 507.9, or 507.3 of this title (relating to Bed Capacity; Bed License; or Services))), the proposed change must be subjected to certificate of need review even in the absence of the obligation of an additional capital expenditure.

(c) For purposes of this rule, the phrase "acquire an existing health-care facility" means the acquisition of a 50% or more ownership or leasehold interest.

Source: The provisions of this §507.7 adopted to be effective October 1, 1984, 9 TexReg 4565.

§507.9. Bed License.

(a) A person must obtain a certificate of need to obligate a capital expenditure in any amount which would:

(1) increase or decrease the total number of licensed beds in a facility by more than 10 beds or more than 10% of the licensed beds, whichever is less, from one physical facility or site to another in a two-year period; or

(2) relocate more than 10 licensed beds or more than 10% of the licensed beds, whichever is less, from one physical facility or site to another in a two-year period.

(b) For instructions on adding or relocating beds without certificate of need review and computing the two-year periods referenced in paragraph (1) and (2) of this section, see commission Rule 527.1(b) (§527.1 of this title (relating to Time Periods)).

Source: The provisions of this §507.9 adopted to be effective October 1, 1984, 9 TexReg 4565.

Notes of Decisions: The relocation of a proposed service or facility requires that applicant obtain a new certificate of need and procedures for the transfer of a certificate of need are not applicable. Texas Health Facilities Commission v. El Paso Medical Surgical Associates 573 S.W. 2d 291 (Tex. Civ. App. - Tyler 1978) ref. n.r.e.

Cross References: This section cited in 25 TAC §509.41 (relating to Notice of Intent to Acquire an Existing Health Care Facility); and 25 TAC §509.151 (relating to Notice of Intent Regarding a Research Project).

§507.11. Bed Capacity.

A person must obtain a certificate of need to obligate a capital expenditure in any amount which would increase the bed capacity in the facility by more than 10 beds or more than 10% of the beds, whichever is less, in a two-year period. For instructions on adding bed capacity without certificate of need review and computing the two-year period referenced in this rule, see commission Rule 527.1 (b) (§527.1 of this title (relating to Time Periods)).

Source: The provisions of this §507.11 adopted to be effective October 1, 1984, 9 TexReg 4565.

Cross References: This section cited in 25 TAC §509.41 (relating to Notice of Intent to Acquire an Existing Health Care Facility).

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§507.13. Health Maintenance Organizations (HMO's).

(a) With respect to an inpatient health-care facility which is controlled, directly or indirectly, by an HMO or combination of HMOs, a certificate of need must be obtained for a proposed project involving any of the activities specified in commission Rules 507.1, 507.3, 507.5, 507.7, 507.9, and 507.11 (§507.1, 507.3, 507.5, 507.7, 507.9, and 507.11 of this title (relating to Capital Expenditures; Services; Acquisitions of Major Medical Equipment; Acquisition of Existing Health-Care Facility; Bed License; and Bed Capacity)) unless exempt pursuant to Commission Rule 507.13(c) (subsection (c) of this section). For purposes of this rule, "inpatient health care facility" means hospitals, skilled nursing facilities, intermediate care facilities, inpatient rehabilitation facilities, and inpatient hospices.

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(b) With respect to an ambulatory health-care facility which is controlled, directly or indirectly, by an HMO or combination of HMOs, a certificate of need must be obtained for a proposed project to acquire major medical equipment of the acquisitiion would otherwise require a certificate of need pursuant to Commission Rule 507.5 (§507.5 of this title (relating to Acquisition of Major Medical Equipment)), unless the exempt pursuant to Commission Rule 507.13 (c) (subsection (c) of this section). For purposes of this rule, "ambulatory health-care facility" means kidney disease treatment facilities, ambulatory surgical facilities, and family planning clinics which perform ambulatory surgical procedures.

(c) A certificate of need pursuant to the provisions of Commission Rules 507.13(a) and (b) (subsection (a) and subsection (b) of this section) does not have to be obtained if:

(1) the applicant complies with the application for exemption procedures prescribed with the application for exemption procedures prescribed in Commission Rules 509.161 and 509.163 (§509.161 of this title (relating to Application for Exemption-HMO-Related project) and 509.163 fo this title (relating to Application Forms for an Exemption for an HMO-Related Project)). and

(2) the commission finds that the activity is proposed to be undertaken by:

(A) an HMO or combination of HMOs where:

(i) 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

(ii) at least 75% of the patients who can reasonably be expected to receive the service will be individuals enrolled with the HMO or combination of HMOs; or

(B) a health-care facility where:

(i) the facility primarily provides or will provide inpatient health-care services;

(ii) the facility is or will be controlled, directly or indirectly, by an HMO or combination of HMOs;

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

(iv) at least 75% of the patients who can reasonably be expected to receive the service will be individuals enrolled with the HMO or combination of HMOs; or

(C) a health-care facility (or portion thereof) where:

(i) the facility is or will be leased by an HMO or combination of HMOs;

(ii) there is at least 15 years remaining in the term of the lease at the time the application for exemption is submitted to the commission;

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

(iv) at least 75% of the patients who can reasonably be expected to receive the service will be individuals enrolled with the HMO or combination of HMOs.

(d) A health-care facility (or portion thereof) or major medical equipment for which an exemption was granted pursuant to Commission Rules 507.13 (c) (subsection (c) of this section) and 509.161, 509.163, and 509.165 (§§509.161,509.163, and 509.165 of this title (relating to Application for Exemption-HMO-Related Project; Application Forms for an Exemption for an HMO-Related Project; and Commission Review)) may not be sold or leased, a controlling interest in the facility or equipment may not be acquired, and a leased health-care facility (as that term is defined in Commission Rule 507.13 (c)(2)(C) (subsection (c)(2)(C) of this section)), may not be operated by an person other than the lessee, unless:

(1) the commission, upon application therefor, issues a certificate of need for the sale, lease, acquisition, or use; or

(2) the commisssion, upon application therefor, finds that the person which proposes to buy or lease the facility or equipment, or acquire the controlling interest in it, or to use it, is an HMO or combination of HMOs which meets the requirements of Commisssion Rule 507.13(c)(2)(A)(i) (subsection (c)(2)(A)(i) of this section) and, with respect to the facility or equipment, the person meets the requirements of Commission Rules 507.13(c)(2)(A)(i) and (ii) (subsection (c)(2)(A)(i) and (ii) of this section) and 507.13(c)(2)(B)(i) and (ii) (subsection (c)(2)(B)(i) and (ii) of this section).

(e) A health-care facility (or portion thereof) or major medical equipment for which a certificate of need was issued pursuant to Commission Rule 507.13(a) and (b) (subsection (a) and subsection (b) of this section) may not be sold or leased, and a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, unless the commission, upon application therefor, issues a certificate of need for the sale, lease, or acquisition.

(f) For purposes of this rule, the phrase "controlled, directly or indirectly," means, respectively:

(1) that the ownership interest, or a majority of the ownership interest, in the facility is held by the HMO or combination of HMOs; or

(2) that:

(A) the majority of the board members of the facility are employees or officers of the HMO, or

(B) there is any overlapping membership between the board of the facility and the board of the HMO.

(g) For purposes of this rule, the term "controlling interest" means an ownership or leasehold interest of more than 50%.

Source: The provisions of this §507.13 adopted to be effective October 1, 1984, 9 TexReg 4565.

§507.15. Research Projects.

(a) A certificate of need shall not be required for capital expenditures exceeding the expenditure minimum, acquisitions of major medical equipment, or offering of new services which are obligated, utilized, or provided, respectively, soley for research, if:

(1) the notice of intent procedures prescribed in commission Rules 509.151 and 509.153 (§509.151 of this title (relating to Notice of Intent Regarding a research Project) and §509.153 of this title (relating to Forms for Notices of Intent Regarding Research Projects)) are complied with, and

(2) the commission finds, within 30 days after it accepts a notice of intent regarding a research project, that the obligation, acquisition, or offering will not:

(A) affect the charges of the facility for the provision of medical services which are included in the research project,

(B) change the bed capacity or bed license of the facility as is described in commission Rules 507.11 and 507.9 (§507.11 of this title (relating to Bed Capacity) and §507.9 of this title (relating to Bed License)), and

(C) change the service (other than the service to be offered for research purposes) offered at the facility as is described in commission Rule 507.3 (§507.3 of this title (relating to Services)).

(b) For purposes of this section, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

Source: The provisions of this §507.15 adopted to be effective October 1, 1984, 9 TexReg 4565.

§507.17. Subsequent Review—Previously Approved Projects.

A person must obtain a certificate of need to change a previously approved project for which a certificate of need was issued pursuant to commission Rules 507.1, 507.3. 507.9, or 507.11 (§§507.1, 507.3, 507.9, or 507.11 of this title (relating to Capital Expenditures; Services; Bed Capacity)), if the change is proposed at any time within one year after completion of the project. This section applies to proposed changes whether or not a capital expenditures is associated with the proposed change. For purposes of this section, a "change to a previously approved project" means:

(1) any change in the bed capacity or bed license of a facility as is described in commission Rules 507.11 and 507.9 (§507.11 of this title (relating to Bed Capacity) and §507.11 of this title (relating to Bed Capacity) and §507.9 of this title (relating to Bed License)), or

(2) the addition or termination of a service as is described in commission Rule 507.3 (§507.3 of this title (relating to Services)).

Source: The provisions of this §507.17 adopted to be effective October 1, 1984, 9 TexReg 4565.

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CHAPTER 509. APPLICATION AND PETITION PROCEDURES

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SUBCHAPTER A. CERTIFICATE OF NEED APPLICATION PROCEDURES

§509.1. A Request for Certificate of Need.

A person requesting a certificate of need must submit a written application to the commission pursuant to the rules in this subchapter. The application must be prepared in the correct form and contain the information required by commission rules. Before submitting a certificate of need application involving a construction or renovation project, a person must comply with the sections governing preapplication reporting in this subchapter.

Source: The provisions of this §509.1 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.2. [RESERVED]

§509.3. Preapplication Reporting.

Potential applicants for a certificate of need involving a construction or renovation project shall submit a quarterly preapplication report (THFC Form 20) to the commission for each application to be presented for certificate of need review.

Source: The provisions of this §509.3 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.4. [RESERVED]

§509.5. Contents of Preapplication Reports.

A potential applicant in presenting quarterly preapplication reports shall identify and describe the construction or renovation projects that will be presented to the commission for certificate of need review during the upcoming three-month period. The quarterly preapplication report must contain the information required by the commission.

Source: The provisions of this §509.5 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.6. [RESERVED]

§509.7. Preapplication Reporting Schedule; Extension Request.

(a) The quarterly preapplication reports shall be submitted to the commission according to the following schedule:

Deadline for Preapplication Report	*Certificate of Need Application Submission*
December 1	January 1 - March 31
March 1	April 1 - June 30
June 1	July 1 - September 30
September 1	October 1 - December 31

(b) Once filed, a quarterly preapplication report shall be automatically extended to the three subsequent and consecutive preapplication reporting periods. The chairman shall, upon written request by the applicant, apply a previously filed quarterly preapplication report to the next four subsequent and consecutive reporting periods. A quarterly preapplication report is not required to be resubmitted subsequent to the filing of ther certificate of need application.

Source: The provisions of this §509.7 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.8. [RESERVED]

§509.9. Failure To Submit Preapplication Report.

The chairman shall reject a certificate of need application involving a construction or renovation project if a quarterly preapplication report has not been submitted or if the project differs materially from the project description in the quarterly preapplication report. The chairman may, upon a showing of good cause by the applicant, waive the quarterly preapplication

reporting requirements in this subchapter. A waiver may be granted upon the filing of a written request to do so, and in cases where the application materially differs from an earlier submitted quarterly preapplication report, a detailed explanation of the differences and the reasons therefor must be submitted.

Source: The provisions of this §509.9 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.10. [RESERVED]

§509.11. Submission of Certificate of Need Application.

The original and one copy of the certificate of need application must be submitted to the commission. Written material and pleadings relating to the certificate of need application subsequently filed with the commission must be submitted in duplicate. An application submitted to the commission shall be typwritten or printed. The impression shall be on one side of the paper only, and lines shall be doublespaced on all attachments. Exhibits attached to the application shall be of a size that, when folded and presented in final form, will not exceed a legal-sized document (8½ inches by 14 inches).

Source: The provisions of this §509.11 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.12. [RESERVED]

§509.13. Form of Certificate of Need Application.

(a) An application for a certificate of need shall consist of an executed THFC Form 21. The application shall identify the scope of the project for which authorization is sought. For purposes of this section, the scope included the following, as applicable to the project: existing and proposed bed capacity and licensed beds; categories of beds and numbers of beds in a category; moveable and fixed equipment; services; gross area to be constructed and/or renovated; gross area to be purchased, leased, or donated; legal ownership; medical service area; project site; and project cost. Additionally, *information shall be provided, as specified in Form 21, regarding the need for the proposed project. The commission* shall treat a certificate of need application as a pleading and not as evidence unless stipulated to by the commission and all parties.

(b) A person submitting an application may designate another person to serve as the agent. In this event, the commission shall direct all application matters to the designated agent only. Should an applicant desire to change the agent, the applicant or the new agent of the applicant must notify the commission and any parties or interested persons, in writing.

(c) The commission may not require information of an applicant which is not prescribed in the Act, these rules, or the commission forms.

Source: The provisions of this §509.13 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.14. [RESERVED]

§509.15. Certificate of Need Application Fees.

When submitted to the commission, an application for a certificate of need must be accompanied by the correct application fee, as set forth in commission §511.3 of this title (relating to Certificate of Need Application Fee).

Source: The provisions of this §509.15 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.16. [RESERVED]

§509.17. Initial Review of the Application.

The commission shall review and acknowledge an application for a certificate of need within 10 working days after the date of its receipt. The commission will determine whether the application complies with the rules governing the preparation and submission of an application.

Source: The provisions of this §509.17 adopted to be effective October 1, 1984, 9 TexReg 4568.

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§509.18. [RESERVED]

§509.19. Failure to Comply with Certificate of Need Application Rules.

Failure to comply with the rules of preparation and submission of a certificate of need application in this subchapter shall constitute deficiencies and will result in a determination that the application is incomplete.

Source: The provisions of this §509.19 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.20. [RESERVED]

§509.21. Incomplete Certificate of Need Application.

When it is determined that a certificate of need application is incomplete, the chairman may reject the application, notify the applicant in writing of the rejection of the application, and provide the applicant with a written list of deficiencies for correction. Failure of the applicant to submit corrections to the stated deficiencies within 60 days from the date of the letter of notification may result in the chairman's administrative withdrawal of the application and forfeiture of the application filing fee.

Source: The provisions of this §509.21 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.22. [RESERVED]

§509.23. Conditional Acceptance of Certificate of Need Application.

The chairman may conditionally accept and date a certificate of need application with minor deficiencies and prescribe the conditions of the acceptance. Should deficiencies not be corrected as prescribed in the conditions of acceptance, the chairman may withdraw conditional acceptance and subject the application to a subsequent 10-workday review.

Source: The provisions of this §509.23 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.24. [RESERVED]

§509.25. Acceptance and Dating of Certificate of Need Application.

When it is determined by the chairman that a certificate of need application is complete, the chairman shall accept and date the application and shall notify the applicant in writing of the acceptance of the application, the chairman shall schedule a hearing on the application.

Source: The provisions of this §509.25 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.26. [RESERVED]

§509.27. Hearing Scheduling Provisions.

When an application for a certificate of need is accepted and dated, the chairman shall, unless otherwise provided in commission rules, schedule a hearing for a date not less than 65 days and no more than 95 days subsequent to the dating of the application. The chairman, on a showing of good cause by the applicant or party, may postpone the hearing on an accepted and dated certificate of need application for a reasonable period not to exceed 45 days from the original hearing date. The chairman may also, upon proper motion, reschedule a hearing on a certificate of need application by redating and reaccepting the original application. A hearing, in this event, shall be scheduled for a date not less than 65 days nor more than 95 days following the redating and reacceptance. When an application is redated and reaccepted, the commission shall not require an additional application filing fee.

Source: The provisions of this §509.27 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.28. [RESERVED]

§509.29. Notification and Acceptance.

The chairman shall provide written notice of acceptance of a certificate of need application to the applicant by certified mail, return receipt requested. The chairman shall mail written notice of acceptance of a certificate of need application to health-care facilities in the health service area where the proposed project is to be developed, provided the health-care facilities make written requests to the commission for such information.

Source: The provisions of this §509.29 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.30. [RESERVED]

§509.31. Form of Notice of Acceptance.

The notice of acceptance of a certificate of need application shall include the following:

(1) the date on which the applicatoin was accepted and dated;
(2) the date, time, and place of the scheduled hearing on the application;
(3) a written notice of the hearing for publication in the newspaper;
(4) the dates by which the notice of hearing must be published in the newspaper;
(5) the location of the newspaper in which the notice of hearing is to be published; and
(6) the date by which proof of publication of the notice of hearing must submitted to the commission.

Source: The provisions of this §509.31 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.32. [RESERVED]

§509.33. Public Notice of the Hearing.

The applicant shall cause the public notice of hearing to be published once in each designated place of publication and shall be responsible for the cost of publication.

Source: The provisions of this §509.33 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.34. [RESERVED]

§509.35. Notice of Hearing—Project Description.

(a) The commission shall compose the project description in a notice of hearing from information contained in the application. The applicant shall have the ultimate responsibility of insuring that the notice of hearing is published in the manner prescribed by the commission, and that the project description in the notice of hearing completely and accurately describes the project.

(b) When an application involves new construction, new services, change in bed capacity, change in bed license, or relocation of beds affecting a public or private hospital, ambulatory surgical facility, kidney disease (ESRD) treatment facility, RHI clinic, UHI clinic, or family planning clinic which performs ambulatory surgical procedures, the commission shall require publication of notice in both English and Spanish under the following circumstances:

(1) when 20% or more of the public in the health service area in which the project is to be located are members of a Spanish-speaking minority group, or
(2) where the project is located within the boundaries of a city having a population of greater than 50,000 persons.

Source: The provisions of this §509.35 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.36. [RESERVED]

§509.37. Time of Publication of Notice of Hearing.

When an application is accepted and dated, the chairman shall forward the public notice of hearing to the applicant. The applicant shall cause the notice of hearing to be published on a date not less than 10 days nor more than 20 days after said application has been dated.

Source: The provisions of this §509.37 adopted to be effective October 1, 1984, 9 TexReg 4568.

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§509.38. [RESERVED]

§509.39. Place of Publication of Notice of Hearing.

The applicant shall publish the public notice of hearing as specified by the commission in at least one newspaper of general circulation in the locality within which the proposed service for facility would be developed. The chairman shall determine which newspapers are newspapers of general circulation.

Source: The provisions of this §509.39 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.40. [RESERVED]

§509.41. Submission of Proof of Published Notice.

The applicant must, by 5 p.m. on the 30th day after the certificate of need application is accepted and dated, furnish to the commission by certified mail, express mail, or hand-delivery two copies of the entire newspaper page(s) upon which the public notice of hearing is published or republished.

Source: The provisions of this §509.41 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.42. [RESERVED]

§509.43. Failure to Publish Notice of Hearing.

The chairman may cancel a hearing on an accepted certificate of need application and withdraw acceptance thereof for failure of the applicant to publish the notice of hearing within the time and in the manner specified in the notice of acceptance.

Source: The provisions of this §509.43 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.44. [RESERVED]

§509.45. Failure to Submit Evidence of Publication to the Commission.

The chairman may cancel a hearing on an accepted certificate of need application and withdraw acceptance thereof for failure of the applicant to submit two copies of the entire newspaper page(s) upon which the notice of hearing is published by 5 p.m. on the 30th day after a certificate of need application is accepted and dated.

Source: The provisions of this §509.45 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.46. [RESERVED]

§509.47. Republican—Postponed Hearing.

When a hearing is postponed, the chairman may require the applicant to publish notice of the postponement at the time and in the manner prescribed by the chairman.

Source: The provisions of this §509.47 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.48. [RESERVED]

§509.49. Failure To Submit Evidence of Publication to the Commission.

The chairman may cancel a hearing on an accepted certificate of need application and withdraw acceptance thereof for failure of the applicant to submit two copies of the newspaper page(s) upon which the notice of hearing is published, or two copies of the publisher's affidavit regarding newspaper publication of the notice of hearing by 5 p.m. on the 45th day after a certificate of need application is accepted and dated.

Source: The provisions of this §509.49 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.50. [RESERVED]

§509.51. Amendment of Application.

An applicant may amend an accepted and dated certificate of need application to alter or change the scope of the project as proposed in the original application. For purposes of this rule, an alteration or change in the scope of the project includes, but is not limited to, an increase, decrease, or change in one or more of the following:

(1) bed capacity or licensed beds;
(2) categories of beds;
(3) number of beds in a category;
(4) project cost;
(5) moveable or fixed equipment;
(6) services;
(7) medical service area;
(8) gross area to be constructed or renovated;
(9) gross area to be purchased, leased, or donated;
(10) the location of a project, except that minor location changes shall not be considered to be an alteration or change in the scope of the project; or
(11) legal ownership.

Source: The provisions of this §509.51 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.52. [RESERVED]

§509.53. Motion to Amend Application.

An applicant may request amendment of an accepted and dated certificate of need application to alter or change the scope of the project proposed in the original application by filing a motion to amend the application. The motion to amend must be written or dictated into the record. Upon submitting a prehearing motion to amend the application to the commission, the applicant must submit a copy of the motion to amend to the parties and interested persons.

Source: The provisions of this §509.53 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.54. [RESERVED]

§509.55. Contents of Motion to Amend Application.

The motion to amend must include:

(1) a request to amend the application;
(2) a description of the changes to be made in the project;
(3) a statement of the reasons for the changes in the project and, as applicable, reasons for requesting continued processing of the amended application with no postponement or redating;
(4) a waiver of the application scheduling requirements of the Act and the rules;
(5) an affirmation that a copy of the motion has been submitted to the parties and interested persons, reflecting the date of service;
(6) revised THFC Form 21 and appropriate supplements which present information relevant to the proposed amendment; and
(7) any additional filing fee resulting from an increase in the project cost.

Source: The provisions of this §509.55 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.56. [RESERVED]

§509.57. Action on Motion to Amend Application.

(a) Upon receipt of the motion to amend, the commission shall conduct a review of the motion and related documents. When the motion to amend is determined to be complete, the chairman, or hearing officer if the motion is presented during the course of the hearing, shall consider the motion to amend.
(b) In reviewing a motion to amend, the following shall be considered:
(1) the nature and magnitude of the proposed amendments to the application;

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(2) the reasons for amendment of the application;
(3) the status of the original application in the certificate of need review process;
(4) responses of other parties to the proposed amendments to the application, if any; and
(5) the effect, if any, on all other parties and the commission.

(c) On granting a motion to amend a certificate of need application,
(1) the chairman may:
(A) redate and reaccept the application, reschedule the hearing on the application as amended, and if applicable, sever the application from any other joined applications; or
(B) postpone the hearing on the application; or
(C) order the hearing to proceed as scheduled; or
(D) shcedule a reopened hearing on the application as amended; or
(E) order the submission of additional information; or
(F) schedule the application as amended for hearing or for consideration at a commission open meeting.
(2) the hearing officer may:
(A) continue the hearing on the application; or
(B) recess the hearing on the application; or
(C) order the submission of additional information; or
(D) submit the motion to the chairman for action pursuant to paragraph (c)(1) of this section, with a recommendation whether the amended application should be redated, rescheduled, and, if applicable, severed.

Source: The provisions of this §509.57 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.58. [RESERVED]

§509.59. Notice of Hearing on Amended Application.

When the chairman acts on a motion to amend an application and establishes a new hearing date, the applicant shall publish a public notice of hearing as prescribed by the chariman.

Source: The provisions of this §509.59 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.60. [RESERVED]

§509.61. Change or Alteration in Application Not Affecting Project Scope.

An applicant may alter or change information or date contained in the application provided that the scope of the project is not altered. The chairman, or hearing officer during the course of the hearing, shall determine whether such change or alteration of information and data results in a change or alteration in the scope of the project.

Source: The provisions of this §509.61 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.62. [RESERVED]

§509.63. Withdrawal of Certificate of Need Application.

An application may be withdrawn by filing a written request with the commission. Withdrawal of the application shall be acknowledged by the chairman.

Source: The provisions of this §509.63 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.64. [RESERVED]

§509.65. Suspension of Receipt of Certificate of Need Application.

The chairman may suspend the receipt of certificate of need applications for a specified period for the orderly processing of application. Applications submitted during a suspension period will be held without action. After the suspension period ends, applications will be processed in order of receipt beginning with the next available 10-workday period.

Source: The provisions of this §509.65 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.66. [RESERVED]

§509.67. Reclassification of Application for Certificate of Need.

When it is determined by the chairman or his designee that an application is eligible for either a declaratory ruling or some other appropriate action, the chairman or his designee may reclassify the certificate of need application as a request for a declaratory ruling or other appropriate action.

Source: The provisions of this §509.67 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.68. [RESERVED]

§509.69. Joinder of Certificate of Need Applications.

(a) The chairman shall order the joinder of an accepted and dated (or conditionally accepted and dated) certificate of need application (hereinafter referred to as subsequent applications) when:
  (1) the first and subsequent applications involve similar project descriptions in the same medical service are or overlapping medical service areas; and
  (2) the subsequent applications are accepted and dated within 30 days of the acceptance and dating of the first application.

(b) The 30-day joinder period begins with the dating and acceptance of the first application. Only during the period of 30 days may subsequent applications be joined with the first application. Following joinder of the first application and subsequent applications under this rule, the chairman shall not consider any of the subsequent applications as a first application of purposes of additional joinder.

(c) The chairman, in ordering the joinder, shall redate and reaccept the prior application(s) and reschedule the hearing in order that one hearing may be scheduled on all joined application. In joined applications, each applicant is admitted automatically as a party to all other joined applications.

(d) The chairman shall require the subsequent applicant(s) to publish a notice of hearing on the joined applications. The subsequent applicant(s) shall publish the notice of hearing in the manner and in the location specified by the chairman.

(e) When the chairman determines that certificate of need applications will be joined, he shall provide written notice of the joinder to the applicants, parties, and interested persons.

Source: The provisions of this §509.69 adopted to be effective October 1, 1984, 9 TexReg 4568.

§509.70. [RESERVED]

§509.71. HMO Certificate of Need Applications.

(a) When an application involving an HMO is dated and accepted by the commission, the commission shall immediately forward a copy of the application to the commissioner of insurance.

(b) The commissioner of insurance may review a certificate of need application involving an HMO and provide written comments on the application to the commission.

(c) The commission will give consideration to the comments prior to ruling on the application, provided that the written comments, if any, from the commissioner of insurance are received by the commission not later than the 30th day after the dating and acceptance of the application.

(d) The filing of timely written comments by the commissioner of insurance shall be considered to confer, automatically, formal party status on the commissioner of insurance.

Source: The provisions of this §509.71 adopted to be effective October 1, 1984, 9 TexReg 4568.

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SUBCHAPTER B. PETITION PROCEDURES FOR REISSUANCE OF CERTIFICATE OF NEED

§509.81. Petition for Reissuance of Certificate of Need.

A former certificate holder may petition the commission for reissuance of a certificate of need which has been automatically forfeited pursuant to rules of the commission and the Act, §3.13(b)(1), not later than 30 days after forfeiture. A petition for reissuance received prior to automatic forfeiture will not be accepted or acted on until after automatic forfeiture occurs. If the petition for reissuance of the certificate of need is received by the commission prior to the date of automatic forfeiture, the petition will be considered to be received on the date of automatic forfeiture.

Source: The provisions of this §509.81 adopted to be effective October 1, 1984, 9 TexReg 4570.

§509.82. [RESERVED]

§509.83. Form of Petition.

A petition for reissuance of a certificate of need shall consist of THFC Form 26, the correct fee as set forth in commission rule 511.7 (§511.7 of this title (relating to Other Application or Petition Fees)), and a petition addressing each of the criteria for reissuance of a certificate of need set forth in commission rule 513.53 (§513.53 of this title (relating to Criteria for Reissuance)).

Source: The provisions of this §509.83 adopted to be effective October 1, 1984, 9 TexReg 4570.

§509.84. [RESERVED]

§509.85. Commission Review of Petition.

Upon receipt and acceptance of a petition for reissuance of a certificate of need, the commission shall cause notice of the petition to be published in the *Texas Register*. Any person may become a party to the petition by filing a proper request no later than 10 days after publication of notice. The commission shall conduct a hearing on a petition for reissuance unless the hearing is waived pursuant to commission rules. The commission shall provide the applicant and any parties with written notice of the hearing at least 10 days prior to the hearing. A petition for reissuance will be reviewed by a hearing officer of the commission. The hearing officer shall make a recommendation to the commission concerning approval or disapproval of the petition. The commission shall approve or disapprove the petition in writing not later than 60 days after the date of receipt of the petition, unless a later date is agreed upon by the applicant, parties, and the commission.

Source: The provisions of this §509.85 adopted to be effective October 1, 1984, 9 TexReg 4570.

SUBCHAPTER C. DECLARATORY RULING APPLICATION PROCEDURES

Cross References: This subchapter cited in 25 TAC §509.125 (relating to Review Procedures).

§509.91. Requirement for Certificate of Need.

The commission may, on the application of a person sufficiently describing a proposed project, issue a declaratory ruling stating whether the Act requires a person to obtain a certificate of need to develop the project described. A declaratory ruling issued under the provisions of this subchapter is limited in scope and purpose to the persons and project described in the declaratory ruling.

Source: The provisions of this §509.91 adopted to be effective October 1, 1984, 9 TexReg 4571.

§509.92. [RESERVED]

§509.93. Request for Declaratory Ruling.

A person requesting a declaratory ruling must submit a written application to the commission which shall be treated as a pleading. The application must be prepared in the correct form and contain the information required by the commission. A person requesting a declaratory ruling must submit executed THFC Form 23, appropriate supporting documentation, and the correct application fee to the commission, as set forth in commission rule 511.7 (§511.7 of this title (relating to Other Application or Petition Fees)).

Source: The provisions of this §509.93 adopted to be effective October 1, 1984, 9 TexReg 4571.

§509.94. [RESERVED]

§509.95. Review of Declaratory Ruling Applications.

Upon receipt of an application for a declaratory ruling, the chairman shall determine whether said application is complete and in compliance with the commission rules. When the chairman determines that the declaratory ruling application is complete and in compliance with commission rules, the chairman shall accept the application. The acceptance shall be considered to be the date of publication of notice in the *Texas Register* (see §509.99 of this title (relating to Notice of Accepted Application)). When the chairman determines that an application for declaratory ruling is incomplete or not in compliance with the commission rules, the chairman shall find the application deficient. The commission shall notify the applicant in writing of the acceptance or deficient status of the application.

Source: The provisions of this §509.95 adopted to be effective October 1, 1984, 9 TexReg 4571.

§509.96. [RESERVED]

§509.97. Administrative Withdrawal of Declaratory Ruling Applications.

The applicant must submit corrections of deficiencies within 60 days from the date of written notice of deficiency. The chairman may administratively withdraw an application for declaratory ruling for failure of an applicant to submit corrections of deficiencies within 60 days of the date of written notice of deficiency.

Source: The provisions of this §509.97 adopted to be effective October 1, 1984, 9 TexReg 4571.

§509.98. [RESERVED]

§509.99. Notice of Accepted Application.

(a) The commission shall publish in the *Texas Register* a notice of accepted declaratory ruling applications. The notice shall state the name of the facility, city or county in which the project is to be located, the relief sought by the applicant, a general description of the proposed project, and a statement that any person may become a party to the application by filing a proper request no later than 10 days after the publication of notice.

(b) The commission shall provide written notice of acceptance of a declaratory ruling application to the applicant, the HSA for the health service area in which the proposed project is to be developed, contiguous HSAs, and health care facilities in the healthservice area in which the proposed project is to be developed, provided the health care facilities make written requests to the commission for such information.

Source: The provisions of this §509.99 adopted to be effective October 1, 1984, 9 TexReg 4571.

Cross References: This section cited in 25 TAC §509.95 (relating to Review of Declaratory Ruling Applications).

§509.100. [RESERVED]

§509.101. Amendment of Declaratory Ruling Application.

An applicant may amend a declaratory ruling application before a final decision has been rendered by the commission. The chairman shall require publication of notice in the *Texas Register* of amended applications for a declaratory ruling.

Source: The provisions of this §509.101 adopted to be effective October 1, 1984, 9 TexReg 4571.

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§509.102. [RESERVED]

§509.103. Withdrawal of Declaratory Ruling Application.

An application for a declaratory ruling may be withdrawn by the filing of a written request with the chairman. Withdrawal of the application shall be acknowledged by the chairman.

Source: The provisions of this §509.103 adopted to be effective October 1, 1984, 9 TexReg 4571.

§509.104. [RESERVED]

§509.105. Suspension of Receipt of Declaratory Ruling Applications.

The chairman may suspend receipt of declaratory ruling applications for a specified period for the orderly processing of applications. Applications submitted during a period when application processing is suspended will be held without action. After the suspension period ends, applications will be processed in order of receipt.

Source: The provisions of this §509.105 adopted to be effective October 1, 1984, 9 TexReg 4571.

§509.106. [RESERVED]

§509.107. Declaratory Ruling Hearing.

The commission shall conduct a hearing on a declaratory ruling application unless the hearing is waived pursuant to commission rules. The commission shall provide the applicant and parties with written notice of the hearing at least 10 days prior to the hearing.

Source: The provisions of this §509.107 adopted to be effective October 1, 1984, 9 TexReg 4571.

SUBCHAPTER D. APPLICATION PROCEDURES FOR AMENDMENT OF PREVIOUSLY ISSUED COMMISSION ORDER

§509.121. Amendment of Previously Issued Commission Order.

A certificate holder may request the commission to amend a finding of fact or condition contained in a previously issued commission order that is administratively final. The commission may grant such a request upon a showing of good cause by the certificate holder, provided the requested amendment does not include:

(1) an increase in bed capacity or licensed beds;
(2) an addition of a category or categories of beds;
(3) an increase in the number of beds in a category;
(4) an increase in the quantity of fixed or movable equipment that is not necessitated by licensing, certification, accreditation, or safety requirements imposed by law;
(5) the addition of a service;
(6) a substantial change in the location of the approved project;
(7) an increase in the gross area of the approved project in excess of 20,000 square feet or 20% of the gross area originally authorized, whichever is less; or
(8) an increase in the total project cost which exceeds $5 million or 20% of the total project cost originally authorized, whichever is less.

Source: The provisions of this §509.121 adopted to be effective October 1, 1984, 9 TexReg 4572.

§509.122. [RESERVED]

§509.123. Application Forms for Amendment of a Previously Issued Commission Order.

The certificate holder may request an amendment of a previously issued commission order by filing THFC Form 25 and the correct application fee(s) as set forth in commission rule 511.5 (§511.5 of this title (relating to Fee for Amendment of Certificate of Need Order)). The application should include appropriate documentation explaining the amendment and reasons for amendment of the order.

Source: The provisions of this §509.123 adopted to be effective October 1, 1984, 9 TexReg 4572.

§509.124. [RESERVED]

§509.125. Review Procedures.

The commission, in reviewing an application for an amendment of a previously issued commission order, shall follow the procedures set forth in commission rules for public notice, hearings, and review prescribed for applications for declaratory rulings in Subchapter C of Chapter 509 of this title (relating to Declaratory Ruling Application Procedures). In reviewing the application, the commission shall determine whether or not good cause exists to amend the order in question.

Source: The provisions of this §509.125 adopted to be effective October 1, 1984, 9 TexReg 4572.

SUBCHAPTER E. APPLICATION PROCEDURES—NOTICE OF INTENT TO ACQUIRE MAJOR MEDICAL EQUIPMENT

§509.131. Notices of Intent to Acquire Major Medical Equipment.

A person must file with the commissioner, at least 60 days prior to acquiring major medical equipment that will not be owned by or located in a health-care facility, a notice of intent to acquire major medical equipment. The notice of intent to acquire major medical equipment shall be treated as an application. The commission shall, within 30 days after the acceptance of a notice of intent to acquire major medical equipment, issue an order stating whether the proposed acquisition requires certificate of need review. Certificate of need review is required only in those instances where:

(1) the person fails to comply with the notice of intent procedures prescribed in this subchapter; or

(2) the commissioner finds that the equipment would be used to provide service for inpatients of a health-care facility on other than a temporary basis. For purposes of this section, temporary basis means the short-term provision of services in order to address natural disasters, major accidents, and facility equipment failure.

Source: The provisions of this §509.131 adopted to be effective October 1, 1984, 9 TexReg 4572.

§509.133. Forms for Notice of Intent to Acquire Major Medical Equipment.

A person, in order to secure a ruling from the commission as to whether the acquisition of major medical equipment not to be owned by or located in a health-care facility requires certificate of need review, must file (THFC) Form 28 and the correct application fee as set forth in commission Rule 511.7 (§511.7 of this title (relating to Other Application or Petition Fees)).

Source: The provisions of this §509.133 adopted to be effective October 1, 1984, 9 TexReg 4572.

§509.135. Commission Review Procedures.

The commission, in reviewing a notice of intent to acquire major medical equipment, shall follow the procedures set forth in commission rules for public notice, hearings, and review prescribed for applications for declaratory rulings.

Source: The provisions of this §509.135 adopted to be effective October 1, 1984, 9 TexReg 4572.

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SUBCHAPTER F. APPLICATION PROCEDURES—NOTICES OF INTENT TO ACQUIRE AN EXISTING HEALTH-CARE FACILITY

§509.141. Notices of Intent to Acquire an Existing Health-Care Facility.

(a) A person must file with the commissioner, at least 60 days prior to obligating a capital expenditure (in any amount) to acqurie an existing health-care faciltiy, a notice of intent to acquire an existing health-care facility. The notice of intent to acquire an existing health-care facility shall be treated as an application. The commission shall, within 30 days after the acceptance of a notice of intent to acquire an existing health-care facility, issue an order stating whether the proposed acquisition requires certificate of need review or is exempt from certificate of need review. Certificate of need review is required only in those instances where:

(1) the person fails to comply with the notice of intent procedures prescribed in this subchapter; or

(2) the commission finds that the bed capacity, bed license, or services (as those terms are defined in commission Rules 507.11, 507.9, 507.3 (§§507.11, 507.9, 507.3 of this title (relating to Bed Capacity; Bed License; and Services))) of the existing facility would be changed in being acquired.

(b) For purposes of this rule, the phrase "acquire an existing health-care facilty" means the acquisition of a 50% or more ownership or leasehold interest.

Source: The provisions of this §509.141 adopted to be effective October 1, 1984, 9 TexReg 4572.

§509.143 Forms for Notice of Intent to Acquire an Existing Health-Care Facility.

A person, in orderto secure a ruling from the commissoin as to whether the acquisition of an existing health-care facility requires certificate of need review, must file THFC Form 29 and the correct application fee as set forth in commission Rule 511.7 (§511.7 of this title (relating to Other Application or Petition Fees)).

Source: The provisions of this §590.143 adopted to be effective October 1, 1984, 9 TexReg 4572.

§509.145. Commission Review Procedures.

The commission, in reviewing a notice of intent to acquire an existing health-care facility, shall follow the procedures set forth in commissoin rules for public notice, hearings, and review prescribed for applications for declaratory rulings.

Source: The provisions of this §509.145 adopted to be effective October 1, 1984, 9 TexReg 4572.

SUBCHAPTER G. APPLICATION PROCEDURES—NOTICES OF INTENT REGARDING RESEARCH PROJECTS

§509.151. Notice of Intent Regarding a Research Project.

A person must file with the commission a notice of intent regarding a research project at least 60 days prior to obligating (solely for research purposes) a capital expenditure which exceeds the expenditure minimum, acquiring major medical equipment which is to be utilized solely for research, or offering a new service which is provided solely for research. The notice of intent regarding a research project shall be treated as an application. The commission shall, within 30 days after the acceptance of a notice of intent regarding a research project, issue an order stating whether the proposed obligation, acquisition, or offering requires certificate of need review or is exempt from certificate of need review. Certificate of need review is required only in those instances where:

(1) the person fails to comply with the notice of intent procedures prescribed in this subchapter; or

(2) the commission finds that the obligation, acquisition, or offering will:

(A) affect the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research project;

(B) change the bed capacity or bed license of the facility (as defined in commission Rules 507.11 and 507.9 (§507.11 and §507.9 of this title (relating to Bed Capacity; and Bed License)); or

(C) change the services, other than the service to be offered for research purposes, offered at the facility (as defined in commission Rule 507.3 (§507.3 of this title (relating to Services)).

Source: The provisions of this §509.151 adopted to be effective October 1, 1984, 9 TexReg 4572.

§509.153. Forms for Notices of Intent Regarding Research Projects.

A person, in order to secure a ruling from the commission as to whether an obligation, acquisition, or offering for research purposes requires certificate of need review, must file THFC Form 30 and the correct application fee as set forth in commission Rule 511.7 (§511.7 of this title (relating to Other Application or Petition Fees)).

Source: The provisions of this §509.153 adopted to be effective October 1, 1984, 9 TexReg 4572.

§509.155. Commission Review Procedures.

The commission, in reviewing a notice of intent regarding a research project, shall follow the procedures set forth in commission rules for public notice, hearings, and review prescribed for applications for declaratory rulings.

Source: The provisions of this §509.155 adopted to be effective October 1, 1984, 9 TexReg 4572.

SUBCHAPTER H. APPLICATION PROCEDURES—EXEMPTIONS FOR HMO-RELATED PROJECTS

Cross References: This subchapter cited in 25 TAC §507.13 (relating to Health Maintenance Organizations (HMOs)).

§509.161. Application for Exemption-HMO Related Project.

A person must file with the commission, at least 60 days prior to commencing development of an HMO-related project which would require a certificate of need pursuant to the provisions of commission Rule 507.13(a) and (b) (§507.13 of this title (relating to Health Maintenance Organizations (HMO's))) (but for the possibility of obtaining an exemption), file with the commission an application for exemption for an HMO-related project. The commission shall, within 30 days after the acceptance of an application for exemption for an HMO-related project, issue an order stating whether the proposed project requires certificate of need review or is exempt from certificate of need review. Certificate of need review is not required if:

(1) the person complies with the application for exemption procedures prescribed in this subchapter, and

(2) the commission finds that the activitiy is proposed to be undertaken by:

(A) an HMO or combination of HMOs where:

(i) 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

(ii) at least 75% of the patients who can reasonably be expected to receive the service will be individuals enrolled with the HMO or combination of HMOs; or

(B) a health-care facility where:

(i) the facility primarily provides or will provide inpatient health-care services;

(ii) the facility is or will be controlled, directly or indirectly, by an HMO or combination of HMOs;

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

(iv) at least 75% of the patients who can reasonably be expected to receive the service will be individuals enrolled with the HMO or combination of HMOs; or

(C) a health-care facility (or portion thereof) where:

(i) the facility is or will be leased by an HMO or combination of HMOs;

(ii) there are at least 15 years remaining in the term of the lease at the time the application for exemption is submitted to the commission;

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

(iv) at least 75% of the patients who can reasonably be expected to receive the service will be individuals enrolled with the HMO or combination of HMOs.

Source: The provisions of this §509.161 is adopted to be effective October 1, 1984; 9 TexReg 4574.

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§509.162. [RESERVED]

§509.163. Application Forms for an Exemption for an HMO-Related Project.

A person, in order to secure a ruling from the commission as to whether an HMO-related project requires certificate of need review, must file THFC Form 31 and the correct application fee as set forth in commission Rule 511.7 (§511.7 fo this title (relating to Other Application and Petition Fees)).

Source: The provisions of the §509.163 is adopted to be effective October 1, 1984, 9 TexReg 4574.

§509.164. [RESERVED]

§509.165. Commission Review Procedures.

The commission, in reviewing an application for exemption for an HMO-related project, shall follow the procedures set forth in commission rules for public notice, hearings, and review prescribed for applications for declatory rulings.

Source: The provisions of this §509.165 adopted to be effective October 1, 1984, 9 TexReg 4574.

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CHAPTER 511. APPLICATION AND PETITION FEES

Section No.	Section Name
511.1.	Requirement for Application Fees.
511.2.	[RESERVED]
511.3.	Certificate of Need Application Fee.
511.4.	[RESERVED]
511.5.	Fee for Amendment of Certificate of Need Order.
511.6.	[RESERVED]
511.7.	Other Application or Petition Fees.

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§511.1. Requirement for Application Fees.

Each application or petition submitted to the commission must be accompanied by the required application fee. All application fees shall be deposited in the state treasury and shall be expended by the commission for administration and enforcement of the Act. The chairman shall reject an application or petition that is not accompanied with the correct application fee.

Source: The provisions of this §511.1 adopted to be effective September 1, 1981, 6 TexReg 3328.

§511.2. [RESERVED]

§511.3. Certificate of Need Application Fee.

The schedule of fees established for certificate of need applications is the greater of:

(1) $250 minimum; or

(2) 0.35 of 1.0% (.0035) of total project cost, not to exceed $7,500.

Source: The provisions of this §511.3 adopted to be effective September 1, 1981, 6 TexReg 3328.

Cross References: *This section cited in 25 TAC §509.19 (relating to Certificate of Need Application Fees).*

§511.4. [RESERVED]

§511.5. Fee for Amendment of Certificate of Need Order.

The fee for an application to amend a certificate of need order is $100. When an application to amend a certificate of need order includes a request to increase the project cost, the applicant shall pay as part of the application fee the difference between the fee presented with the original certificate of need application and 0.35 of 1.0% (.0035) of the total new or increased project cost, not to exceed a total of $7,500.

Source: The provisions of this §511.5 adopted to be effective September 1, 1981, 6 TexReg 3328.

Cross References: This section cited in 25 TAC §509.123 (relating to Application Forms for Amendment of a Previously Issued Commission Order).

§511.6. [RESERVED]

§511.7. Other Application or Petition Fees.

The fee for other types of applications or petitions (notices of intent, petitions for reissuance, exemptions for HMO-related projects, declaratory rulings, amendments of previously issued orders other than certificate of need orders) is $100.

Source: The provisions of this §511.7 adopted to be effective September 1, 1981, 6 TexReg 3328.

Cross References: This section cited in 25 TAC §509.83 (relating to Form of Petition); 25 TAC §509.85 (relating to Form of Petition); 25 TAC §509.93 (relating to Request for Declaratory Ruling); 25 TAC §509.95 (relating to Review for Declaratory Ruling); 25 TAC §509.133 (relating to Forms for Notice of Intent To Acquire Major Medical Equipment); 25 TAC §509.143 (relating to Forms for Notice of Intent To Acquire an Existing Health Care Facility); 25 TAC §509.151 (relating to Notice of Intent Regarding a Research Project); 25 TAC §509.153 (relating to Forms for Notices of Intent Regarding Research Projects); and 25 TAC §509.163 (relating to Application Forms for an Exemption for an HMO-Related Project).

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CHAPTER 513. CRITERIA

SUBCHAPTER A. GENERAL CRITERIA FOR USE IN CERTIFICATE OF NEED REVIEWS

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513.6. [RESERVED]
513.7. Relationship to Existing or Approved Services and Facilities.
513.8. [RESERVED]
513.9. Less Costly or More Effective Alternatives.
513.10. [RESERVED]
513.11. Personnel.
513.12. [RESERVED]
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513.15. Relationship to Plans.
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513.53. Criteria for Reissuance.

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SUBCHAPTER A. GENERAL CRITERIA FOR USE IN CERTIFICATE OF NEED REVIEWS

§513.1. Commission Use of Criteria.

(a) The commission shall apply, as appropriate, the following general criteria in conducting a review for a certificate of need application. These general criteria will be used, as appropirate, in reviewing all projects, with the exception of certificate of need applications involving an HMO, or certificate of need applications solely proposing to correct safety, licensing, accreditation, or certification deficiencies.

(b) Criteria form the basis of review by providing measures against which various aspects of the proposed project are compared. Not all criteria may be relevant in a particular case. When a project compares favorably with all of the established criteria against which it is properly measured, the applicant shall receive a certificate of need. When a project compares unfavorably with one or more of the criteria against which it is properly measured, the application for a certificate of need may be denied. The applicant shall present information in the application as requested and evidence of facts at the hearing which addresses each relevant criterion and each subpart of the criterion so as to prove that the criterion is satisfied. Failure of the applicant to address all relevant criteria may result in the denial of a certificate of need application. The burden of producing evidence is on the applicant.

Source: The provisions of this §513.1 adopted to be effective October 1, 1984, 9 TexReg 4576.

Notes of Decisions: Tex. Rev. Civ. Stat. art. 4418h, Section 10 requires the Health Facilities Commission to establish certain criteria for the review of certificate of need application. These criteria must be affirmatively satisified by evidence. Texas Health Facilities Commission v. Babtist General Convention 573 S.W. 2d 575 (Tex. Civ. App. - Tyler 1978) ref. n.r.e.

§513.2. through 513.4. [RESERVED]

§513.5. Health Care Requirements of the Medical Service Area.

The project shall be necessary to meet the health care requirements of the medical service area and shall be accessible to patients in the medical service area. The applicant shall address at least the following:

(1) the population trends and vital rates for the city, county, health service area, and the medical service area;

(2) the accessibility of the proposed project to all patients in the medical service area and the methods utilized by the applicant to promote accessibility;

(3) the contribution of the proposed project in meeting the health care requirements of all medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services, particularly those health care requirements identified in the applicable healthsystems plan, annual implementation plan, and state health plan as deserving of priority;

(4) the inadequacies of existing health care delivery systems serving the population of the medical service area, as they relate to the proposed project;

(5) how the project will meet all or part of the perceived inadequacies in the existing health care delivery system;

(6) why the applicant facility is an appropriate facility to provide the proposed project;

(7) the estimated numerical demand for the proposed project;

(8) the quality of care provided by applicant or the facility as represented by the most recent licensure, accreditation, or certification status report(s); and

(9) how the proposed project will correct any specific deficiencies identified in the reports in paragraph (8) of this section.

Source: The provisions of this §513.5 adopted to be effective October 1, 1984, 9 TexReg 4576.

§513.6. [RESERVED]

§513.7. Relationship to Existing or Approved Services and Facilities.

(a) The proposed project shall not significantly adversely affect existing facilities or services of the health care system serving or approved to serve the medical service area. The project shall not create an uneconomical or unnecessary duplication of services and facilities serving or approved to serve the medical service area. The proposed project shall integrate with the existing facilities and services serving or approved to serve the medical service area. The applicant shall address at least the following:

(1) the existing facilities and services serving or approved to serve the medical service area that are similar or comparable to the proposed project, and their locations;

(2) the utilization of comparable services and facilities serving the medical service area;

(3) the relationship of the proposed project to necessary ancillary or support services;
(4) the coordination agreements for shared services with other facilities as they relate to the project; and
(5) how the project will accomplish appropriate and effective integration with other services and facilities of the health care system serving or approved to serve the medical service area, while fostering competition among those services and facilities.

(b) In addressing subsection (a)(1)-(5), the applicant shall specify the site location of the proposed project within the identified medical service area.

Source: The provisions of this §513.7 adopted to be effective October 1, 1984, 9 TexReg 4576.

§513.8. [RESERVED]

§513.9. Less Costly or More Effective Alternatives.

The project's approach to providing health care services shall be less costly or more effective than other methods which are available or which have been approved to be developed. The applicant shall address at least the following:

(1) why alternative methods of providing the service which are available to the applicant are not less costly or more effective;
(2) why existing or proposed methods of providing the service are not less costly or more effective;
(3) the availability of resources (including funds for capital and operating need) for the provision of the services proposed to be provided, and the availability of alternative uses of such resources for the provision of other health services; and
(4) the impact of project costs on operational costs and charges of the facility or service.

Source: The provisions of this §513.9 adopted to be effective October 1, 1984, 9 TexReg 4576.

§513.10. [RESERVED]

§513.11. Personnel.

The applicant shall have the capability of adequately staffing and operating the project. The project shall not have a material adverse effect on the staffing of existing facilities and services serving or approved to serve the medical service area. In areas of personnel scarcity, documentation shall be provided of recruitment outside the shortage area and the results of that recruitment. The applicant shall address at least the following:

(1) the nursing personnel, allied health personnel, and management personnel required to insure compliance with licensing, accreditation, or certification requirements;
(2) the physicians and physician specialties required to meet the physician staffing requirements of the project;
(3) the physicians available who have agreed to utilize the project;
(4) the availability of the physicians, nurses, allied health professionals, and management personnel necessary to staff the project, and the availability of alternative uses of such health personnel and management personnel for the provision of other health services;
(5) the methods to be used to obtain the physicians and other personnel necessary to staff the project; and
(6) the extent to which the applicant will participate, directly or indirectly, with educational institutions to enhance the quality of education or training of health personnel in the area or contribute substantially to the overall health personnel supply, including institutional programs for the training of doctors of medicine and osteopathy.

Source: The provisions of this §513.11 adopted to be effective October 1, 1984, 9 TexReg 4576.

§513.12. [RESERVED]

§513.13. Economic Feasibility.

The proposed project shall be economically feasible to finance and to operate. the applicant shall address at least the following:

(1) the reasonableness of the project cost, as defined in §505.1 of this title (relating to Definitions);
(2) the start-up costs, including at least the following:
  (A) staff recruitment, and
  (B) deficit operation until expected revenue is realized;
(3) the source and method of revenue to finance the project. In addition, if applicable, the applicant shall address the following:
  (A) when revenue bonds are one source of funds, the adequacy of past revenues for operations and debt repayment and the total amount of the bond issuance to be utilized to fund the project; or

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(B) when general obligation are one source of funds, the sufficiency of the tax base to sustain repayment and the total amount of the bond issuance to be utilized to fund the project;

(4) the terms of the financing to include at least the following:
- (A) interest;
- (B) principal;
- (C) restrictions on additional debt;
- (D) period of indebtedness;
- (E) total annual debt service requirements;
- (F) total long-term debt service requirements; and
- (G) other relevant terms of the financing as applicable;

(5) financial information to include audited ore notarized financial statements for the most recent three years and a one year *pro forma* operating budget. The financial information shall include operating revenues, deductions from operating revenues (including contractual adjustments, bad debt, and charity service), operating expenses, nonoperating revenue and expenses, net income, assets, liabilities, net worth or fund balance, and other pertinent financial information, all as determined by generally accepted accounting principles, sufficient for the commission to determine at least the following:
- (A) the availability of funds for capital and operating requirements;
- (B) the projected break-even operation of the project;
- (C) projected date of break-even; and
- (D) method of projecting break-even (the break-even methodology should incorporate, at a minimum, the fixed costs, variable costs, and projected revenue associated with the proposed project).

Source: The provisions of this §513.13 adopted to be effective October 1, 1984, 9 TexReg 4576.

§513.14. [RESERVED]

§513.15. Relationship to Plans.

The commission shall consider the consistency of the project with the applicable existing plans, including:

(1) the state health plan;

(2) the appropriate health systems plan and annual implementation plan; and

(3) the short-range development plan (three years) and the long-range development plan of the applicant.

Source: The provisions of this §513.15 adopted to be effective October 1, 1984, 9 TexReg 4576.

§513.16. [RESERVED]

§513.17. Special Requirements.

(a) The commission shall consider the special requirements and circumstances of facilities that:
- (1) provide substantial services to indigents;
- (2) provide a substantial portion of services to persons residing outside the immediate medical service area in which the facility is located;
- (3) provide services to rural or sparsely populated areas; and
- (4) provide biomedical and behavioral research programs designed to meet national requirements.

(b) The special requirements or circumstances of the project must be identified. In addressing paragraphs (1)-(3) of subsection (a) of this section, the applicant shall identify the numbers of persons presently served and to be served in the medical service area, the health service area, the contiguous health service areas, the state, and areas outside the state.

Source: The provisions of this §513.17 adopted to be effective October 1, 1984, 9 TexReg 4576.

§513.18. [RESERVED]

§513.19. Special Requirements for Conserving Energy.

The commission shall consider the special requirements and circumstances of facilities that propose projects involving energy conservation.

Source: The provisions of this §513.19 adopted to be effective October 1, 1984, 9 TexReg 4576.

§513.20. [RESERVED]

§513.21. Space Not Utilized After Construction.

(a) When a proposed construction and/or renovation project requiring a certificate of need will result in an area which will not be utilized within one year after completion of the project, the applicant shall address the following:
  (1) the specific planned use for the area;
  (2) when the facility anticipates a requirement for the use of the area and whether that projection is consistent with the facility's development plans; and
  (3) whether the construction or renovation that results in the unutilized area is consistent with the appropriate health systems plan, annual implementation plan, and state health plan.

(b) The commission shall consider all other relevant criteria in addition to the foregoing when reviewing an application for certificate of need which will result in an area which will not be utilized within one year after completion of the construction and/or renovation project.

Source: The provisions of this §513.21 adopted to be effective October 1, 1984, 9 TexReg 4576.

SUBCHAPTER B. CRITERIA FOR USE IN CERTIFICATE OF NEED REVIEW OF HMO-RELATED APPLICATIONS

§513.31. Special Needs and Circumstances of Health Maintenance Organizations.

Commission consideration of HMO-related applications shall be limited to the special needs and circumstances of an HMO as established in this section. Such needs and circumstances include the following:

(1) The needs of enrolled members and reasonably anticipated new members of the HMO for the health care services proposed to be provided by the organization.

(2) The availability of the health care services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health care services from these providers, the commission shall consider only whether the services from these providers would:
  (A) be available under a contract of at least five years duration;
  (B) be available and conveniently accessible through physicians and other health professionals associated with the HMO;
  (C) cost no more than if the services were provided by the HMO; and
  (D) be available in a manner which is administratively feasible to the HMO.

(3) The commission shall approve the HMO-related application for a certificate of need if it finds, in accordance with paragraphs (1) and (2) of this section, that:
  (A) approval of the application is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll; and
  (B) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health care services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO, and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

Source: The provisions of this §513.31 adopted to be effective September 1, 1981, 6 TexReg 3329.

SUBCHAPTER C. LIMITED CRITERIA FOR USE IN REVIEWS OF PROJECTS TO CORRECT SAFETY, LICENSING, ACCREDITATION, OR CERTIFICATION DEFICIENCIES

§513.41. Criteria for Section 3.01(b) Projects.

(a) For projects which are solely designed to eliminate or prevent imminent safety hazards at an existing facility, or to comply with licensing, accreditation, or certification standards, the commission's certificate of need review shall be limited to consideration of the following criteria:
  (1) factors which result in the facility, or a portion thereof, being a safety hazard or being out of compliance with licensing, accreditation, or certification standards, as documented by the appropriate agency;

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(2) how the proposed project will correct the deficiencies referenced in paragraph (1) of this subsection;
(3) the availability and/or practicality of less costly or more effective alternative methods of correcting the deficiencies; and
(4) the relationship of the proposed project to the applicable existing plans, including those plans referenced in §513.15 of this title (relating to Relationship to Plans).

(b) For purposes of this section, a project will not be considered solely designed to correct safety, licensing, accreditation, or certification deficiencies if the proposed project would result in:
(1) any increase in licensed beds or bed capacity;
(2) the addition of any new services; or
(3) an increase of gross square footage beyond that required to meet licensing, accreditation, or certification standards, or to correct imminent safety hazards.

(c) If the chairman determines that a project is not "solely designed," the commission shall consider all other applicable criteria in the review of the project.

Source: The provisions of this §513.41 adopted to be effective September 1, 1981, 6 TexReg 3329.

SUBCHAPTER D. CRITERIA FOR USE IN REISSUANCE OF CERTIFICATE OF NEED REVIEWS

§513.51. Need Not Adjudicated.

In considering a petition for reissuance, the commission will not readjudicate the question of whether need exists for the project.

Source: The provisions of this §513.51 adopted to be effective October 1, 1984, 9 TexReg 4579.

§513.52. [RESERVED]

§513.53. Criteria for Reissuance.

The commission shall consider the following criteria in determining whether or not the certificate of need should be reissued:
(1) a demonstration that good cause existed for failure to commence development during the 180 days after the order became administratively final;
(2) a reasonable assurance that development will commence on the project within 180 days after the reissuance order becomes administratively final; and
(3) a completion schedule for the project together with evidence that the schedule can reasonably be met.

Source: The provisions of this §513.53 adopted to be effective October 1, 1984, 9 TexReg 4579.

Cross References: This section cited in 25 TAC §509.83 (relating to Form of Petition).

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CHAPTER 515. COMMISSION REVIEW OF APPLICATIONS

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SUBCHAPTER A. PARTIES TO COMMISSION REVIEW OF APPLICATIONS

§515.1. Request To Become a Party.

A person may request admission as a party to the commission review of an accepted application by filing a request to become a party. When applications are joined, a separate request to become a party must be filed on each application in which party status is desired. In the event that an application(s) is redated and reaccepted by the commission, all parties shall be automatically accorded continuing party status. When the request is in the proper form and has been timely filed pursuant to this subchapter, the hearing officer shall admit the person filing the request as a party.

Source: The provisions of this §515.1 adopted to be effective October 1, 1984, 9 TexReg 4577.

§515.2. [RESERVED]

§515.3. Request to Become an Interested Person.

A person who has not been admitted as a party may attend a hearing on an application and present evidence as an interested person by filing a request to become an interested person. When applications are joined, a separate request to become an interested person must be filed on each application in which interested person status is desired. In the event that an application(s) is redated and reaccepted by the commission, all interested persons shall be automatically accorded continuing interested person status. When the request is in the proper form and has been timely filed pursuant to this subchapter, the hearing officer shall admit the person filing the request as an interested person.

Source: The provisions of this §515.3 adopted to be effective October 1, 1984, 9 TexReg 4577.

§515.4. [RESERVED]

§515.5. Rights and Responsibilities of a Party.

A party to an application has the right to participate in prehearing conferences, present evidence, raise objections, cross-examine witnesses at a hearing, and appeal a ruling of the commission as provided by law. Transcription costs shall be apportioned among the parties to an application with the exception of the commission.

Source: The provisions of this §515.5 adopted to be effective October 1, 1984, 9 TexReg 4577.

Notes of Decisions: Where appellants did not appear in the agency proceeding which resulted in the issuance of an exemption certificate they had no standing to challenge the Health Facilities Commission's decision. Roskey Texas Health Facilities Commission 630 S.W. 2d 844 (Tex. Civ. Aff. - Austin 1982).

§515.6. [RESERVED]

§515.7. Rights and Responsibilities of an Interested Person.

An interested person may present evidence regarding the application. The applicant and parties may cross-examine witnesses presented by an interested person. An interested person may not cross-examine the witnesses of the applicant and parties, object to evidence presented by the applicant or parties, or appeal a decision rendered by the commission. An interested person may be represented by counsel. An interested person is not responsible for sharing in the costs of the transcription of the hearing.

Source: The provisions of this §515.7 adopted to be effective October 1, 1984, 9 TexReg 4577.

Notes of Decisions: Where appellants did not appear in the agency proceeding which resulted in the issuance of an exemption certificate they had no standing to challenge the Health Facilities Commission's decision. Roskey Texas Health Facilities Commission's decision. Roskey Texas Health Facilities Commission 630 S.W. 2d 844 (Tex. Civ. Aff. - Austin 1982).

§515.8. [RESERVED]

§515.9. Form of Request To Become a Party.

The form of the request to become a party or interested person to an application must substantially meet the following criteria:

(1) identify the status (party or interested person) sought;

(2) identify the subject application;

(3) contain the name of the person intending to become a party or interested person to the application and his representative;
(4) contain the name of the facility, if any, the person represents or has some interest in;
(5) identify the legal owner of the facility listed in paragraph (4) of this section;
(6) specify the reasons why the applicant should or should not be granted the relief sought;
(7) contain an affirmation that a copy of the request has been mailed by certified mail, return receipt requested, or hand-delivered to the applicant, other parties, and interested persons; and
(8) contain an affirmation of truth and acknowledgment as it appears in the following:

I do solemnly swear or affirm that the information, dates, and representations submitted and included in this request to become a party (or interested person) are, in each and every respect, true, accurate, and correct to the best of my knowledge, and no misrepresentations of any nature are contained herein.

Movant's Signature

Facility Name (If Any)

The State of
County of
Subscribed and sworn to before me, the undersigned

authority, by to _____
certify which witness my hand and seal of office, this the

_____day of 19_____

Notary Public in and for the

State of

(or other official duly authorized to take acknowledgments)

Source: The provisions of this §515.9 adopted to be effective October 1, 1984, 9 TexReg 4577.

§515.10. [RESERVED]

§515.11. Copies of Request Forwarded to Other Persons.

A copy of the request to become a party or interested person must be forwarded to the applicant and other parties or interested persons by certified mail, return receipt requested, or hand-delivered.

Source: The provisions of this §515.11 adopted to be effective October 1, 1984, 9 TexReg 4577.

§515.12. [RESERVED]

§515.13. Timely Party or Interested Person Request—Certificate of Need Applications.

The commission shall consider a request to become a party or interested person to a certificate of need application as timely filed when the request is received at the commission's office on or before 5 p.m. on the 35th calendar day after the dating and acceptance of the certificate of need application.

Source: The provisions of this §515.13 adopted to be effective October 1, 1984, 9 TexReg 4577.

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§515.14. [RESERVED]

§515.15. Timely Party or Interested Person Request—Other Types of Applications and Petitions.

The commission shall consider a request to become a party or interested person to all other types of applications or petitions to be timely filed when the request is received at the commission's office by 5 p.m. on the 10th day after notice of the application or petition is published in the *Texas Register.*

Source: The provisions of this §515.15 adopted to be effective October 1, 1984, 9 TexReg 4577.

§515.16. [RESERVED]

§515.17. Admission of Party or Interested Person.

The hearing officer shall give written notification of the admission of a person as a party or interested person to the person admitted, the applicant, other parties or interested persons.

Source: The provisions of this §515.17 adopted to be effective October 1, 1984, 9 TexReg 4577.

§515.18. [RESERVED]

§515.19. HSA as a Party—Certificate of Need Applications.

When an HSA timely files a written recommendation on a certificate of need application, the HSA shall be admitted automatically as a party. The commission shall consider the HSA recommendation to be timely filed when the recommendation is received at the commission's office on or before 5 p.m. on the 60th calendar day after the dating and acceptance of the certificate of need application that is the subject of the recommendation. In the event the HSA recommendation is not timely filed, but the applicant and all parties agree, pursuant to §517.5 of this title (relating to Consideration of Recommendations and Comments) to permit consideration of the late-filed recommendation, then the HSA shall automatically be accorded party status.

Source: The provisions of this §515.19 adopted to be effective October 1, 1984, 9 TexReg 4577.

§515.20. [RESERVED]

§515.21. Commission as a Party.

The chairman may admit the commission as a party to an application on or before 5 p.m. on the 55th calendar day after the dating and acceptance of a certificate of need application. In the case of any other type of application or petition, the chairman may admit the commission as a party to the application on or before the 15th day after notice of the application or petition is published in the *Texas Register.* The chairman shall provide written notice to all parties of the admission of the commission as a party.

Source: The provisions of this §515.21 adopted to be effective October 1, 1984, 9 TexReg 4577.

§515.22. [RESERVED]

§515.23. Applicant as a Party.

The commission shall consider the applicant a party.

Source: The provisions of this §515.23 adopted to be effective October 1, 1984, 9 TexReg 4577.

SUBCHAPTER B. HEARING REQUIREMENTS

Cross References: This section cited in 25 TAC §515.41 (relating to Hearing on a Certificate of Need Application), and 25 TAC §515.43 (relating to Hearings on Other Applications or Petitions).

§515.31. Contested Application or Petition.

The commission shall consider an application or petition contested when a person has been admitted by the hearing officer as a party or interested person to the application or petition, or when there are joined applications.

Source: The provisions of this §515.31 adopted to be effective October 1, 1984, 9 TexReg 4578.

§515.33. Uncontested Application or Petition.

The commission shall consider an application or petition uncontested when no person has been admitted as a party or interested person, and when the application is not joined with another application.

Source: The provisions of this §515.33 adopted to be effective October 1, 1984, 9 TexReg 4578.

§515.35. Hearing on an Application or Petition.

The commission shall conduct a hearing on an application or petition when the hearing on the application or petition has not been waived pursuant to commission Rule 515.37 (§515.37 of this title (relating to Hearing Waiver on Applications or Petitions)). When a hearing is conducted, the applicant(s), parties, and interested persons shall attend the hearing and present evidence on the application (see §§515.119, 515.121, 515.123, 515.125, 515.127, 515.129, and 515.131 of this title (relating to Evidence)).

Source: The provisions of this §515.35 adopted to be effective October 1, 1984, 9 TexReg 4578.

§515.37. Hearing Waiver on Applications or Petitions.

The commission may review an application or petition without a hearing when a written agreement to waive hearing and a stipulation of fact have been executed by the chairman, the applicant, parties, and interested persons. Waivers shall be considered by the chairman only upon the expiration of the period for timely filing of party and interested person requests. In considering a request to waive a hearing, the commission may require that the applicant provide additional information regarding the relationship fo the proposed project to commission criteria. Such information shall be requested no later than the 10th day following the deadline for party and interested person requests, and must be submitted under oath by the applicant no later than 12 days prior to the scheduled hearing date. Rulings on hearing waivers will be made following the commission's receipt and review of any requested additional information. In considering a request to waive hearing, the chairman shall consider the recommendation of the hearing officer.

Source: The provisions of this §515.37 adopted to be effective October 1, 1984, 9 TexReg 4578.

§515.41. Application Dismissal.

The chairman may dismiss an application or petition for want of prosecution.

Source: The provisions of this §515.41 adopted to be effective October 1, 1984, 9 TexReg 4578.

SUBCHAPTER C. HEARING PROCEDURES

§515.61. Duties of the Hearing Officer.

The hearing officer assigned to an application shall conduct the hearing, shall keep a complete record of each hearing, and shall transmit the record, including a recommendation on the application, to the commission when completed. The hearing officer shall have the authority to administer oaths, to examine witnesses, to receive evidence, to rule upon the admissibility of evidence, to recess a hearing, and to take other actions consistent with the Act, commission rules, and the Administrative Procedure and Texas RegisterAct, to provide a fair, just, and proper hearing.

Source: The provisions of this §515.61 adopted to be effective October 1, 1984, 9 TexReg 4579.

§515.62. [RESERVED]

§515.63. Rules of Procedure.

The hearing officer, in conducting hearings, shall utilize procedures set out in the Act, commission rules, and the Administrative Procedure Act. When the Act, commission rules, and the Administrative Procedure Act fail to address specific procedural issues, the hearing officer shall utilize the Texas Rules of Civil Procedure as a procedural guide.

Source: The provisions of this §515.63 adopted to be effective October 22, 1984, 9 TexReg 4579.

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§515.64. [RESERVED]

§515.65. Transcription of Hearing.

A written transcript is required of all hearings. The commission shall be furnished the original copy of the transcript without charge. Parties, excluding the commission, shall share the costs of the original copy of the transcript equally. If any party or any interested person desires a copy of the transcript, one may be obtained from the court reporter at the established rate agreed upon by the commission and the court reporter. The commission will designate the court reporter to prepare the transcript.

Source: The provisions of this §515.65 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.66. [RESERVED]

§515.67. Waiver of Transcription.

In contested applications, the chairman, the applicant, and parties may, by written agreement, waive the requirement of a written transcription of the hearing on an application. In uncontested applications, the agreement to waive transcription shall be dictated into the record by the hearing officer. The commission shall electronically record the proceedings when the transcription requirements have been waived.

Source: The provisions of this §515.67 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.68. [RESERVED]

§515.69. Prehearing Conference.

The assigned hearing officer may direct the applicant, parties, and interested persons to appear at a specified time and place for a conference prior to the hearing for the purpose of considering:

(1) the simplification of issues;
(2) the making of stipulations;
(3) the procedures to be followed at the hearing;
(4) the identification and limitation of the number of witnesses;
(5) the exchange of prepared testimony and exhibits;
(6) matters to be officially noticed; and
(7) other matters which may expedite the hearing.

Source: The provisions of this §515.69 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.70. [RESERVED]

§515.71. Prehearing Motions.

Prior to a hearing, a party or interested person may present motions to the commission. A motion shall be in writing, shall be made under oath, shall set forth the relief sought, and shall state the grounds upon which it is made. The movant shall submit the motion to the commission and provide a copy of the motion to the parties and the interested persons.

Source: The provisions of this §515.71 adopted to be effective October 1, 1984, 9 TexReg 4579.

§515.72. [RESERVED]

§515.73. Motion To Postpone Certification of Need Hearing.

An applicant or party, by written motion prior to hearing, may request postponement of a hearing on a certificate of need application for a reasonable period not to exceed 45 days from the original hearing date. The chairman or his designee may postpone a hearing on a certificate of need application on a showing of good cause.

Source: The provisions of this §515.73 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.74. [RESERVED]

§515.75. Motions To Postpone Hearing on Other Applications and Petitions.

An applicant or party, by written motion prior to hearing, may request that the chairman postpone a hearing on any other type of application or petition pending before the commission. The chairman or his designee may postpone a hearing on such an application or petition on a showing of good cause.

Source: The provisions of this §515.75 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.76. [RESERVED]

§515.77. Motion To Reschedule a Certificate of Need Hearing.

An applicant or party, by written motion, may request rescheduling of a hearing on a certificate of need application to a date 46 or more days after the original date of hearing. In granting a motion to reschedule a hearing on a certificate of need application, the chairman shall redate and reaccept the application and schedule a hearing for a date not less than 65 days and no more than 95 days after the redating and reacceptance of the application.

Source: The provisions of this §515.77 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.78. [RESERVED]

§515.79. Motions During Hearing.

An applicant, party, or interested person, during the course of a hearing, may present motions to the hearing officer. A motion shall be in writing or dictated into the record, shall set forth the relief sought, and shall state the grounds upon which it is made.

Source: The provisions of this §515.79 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.80. [RESERVED]

§515.81. Rulings on Motions.

The chairman or his designee shall rule on all prehearing motions. The commission shall rule on motions for rehearing. The hearing officer shall rule on motions for rehearing. When a motion is presented during a hearing, the hearing officer shall either rule on it or present it and a recommendation to the chairman for a ruling.

Source: The provisions of this §515.81 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.82. [RESERVED]

§515.83. Conduct and Decorum.

A person attending a proceeding before the commission shall exhibit proper decorum, courtesy, and respect for the commission and its staff.

Source: The provisions of this §515.83 adopted to be effective October 22, 1984, 9 TexReg 4579.

§515.84. [RESERVED]

§515.85. Agreements To Be in Writing.

Agreements among the applicant, the parties, and the commission must be in writing and filed with the commission or dictated into the record at a hearing.

Source: The provisions of this §515.85 adopted to be effective October 22, 1984, 9 TexReg 4579.

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§515.86. [RESERVED]

§515.87. Reopened Hearings.

(a) An applicant, party, or interested person may request that a hearing on an application be reopened after adjournment by filing with the commission a sworn written motion which states the reasons why the hearing should be reopened. The motion must be filed with the commission and delivered to the parties and interested persons at least 48 hours prior to the open meeting at which the commission is scheduled to consider the application.

(b) The chairman may, on his motion or on the motion of a party or interested person, and after consideration of the assigned hearing officer's recommendation on the motion, require that the hearing on an application be reopened. The party or interested person seeking to reopen the hearing must establish that good cause exists to reopen the hearing.

(c) The chairman shall have the authority to limit evidence at the reopened hearing to particular matters and issues considered relevant. The chairman may require publication of notice of the reopened hearing by the party or interested person requesting the opened hearing. Notice of the reopened hearing shall be published at the time and in the manner prescribed by the chairman. The party or interested person shall furnish the commission two copies of the newspaper page immediately after publication.

Source: The provisions of this §515.87 adopted to be effective October 1, 1984, 9 TexReg 4579.

SUBCHAPTER D. EVIDENCE

§515.101. Burden of Proof.

The burden of proving entitlement, by a preponderance of the evidence, to the relief requested in an application or other matter properly before the commission shall be on the applicant or moving party.

Source: The provisions of this §515.101 adopted to be effective October 1, 1984, 9 TexReg 4580.

Notes of Decisions: Texas Civil Statutes article 4418h, §10 requires the Health Facilities Commission to establish certain criteria for the review of certificate of need application. These criteria must be affirmatively satisfied by evidence. Texas Health Facilities Commission v. Babtist General Convention 573 S.W. 2d 575 (Tex. Civ. App. - Tyler 1978) ref n.r.e.; An appeal from an order of the Health Facilities Commission is governed by the substantial evidence rule and the record on appeal supported the relief granted. Nueces County Hospital District v. Texas Health Facilities Commission 576 S.W. 2d 908 (Tex. Civ. App. - Austin 1979); The Discretion conferred on the Health Facilities Commission to grant or refuse applpication is not unbridled. Its findings may not be arbitrary or capricious, but must have support in substantial evidence. Texas Health Facilities Commission v. Nueces County Hospital Districts 581 S.W. 2d 768 (Tex. Civ. Aff. - Austin 1979).

§515.102. [RESERVED]

§515.103. Rules of Evidence.

Hearings before the commission shall be conducted in accordance with the provisions outlined in the APA, except where such provisions are inconsistent with the Texas Health Planning and Development Act, Texas Civil Statutes article 4418(h).

Source: The provisions of this §515.103 adopted to be effective October 1, 1984, 9 TexReg 4580.

§515.104. [RESERVED]

§515.105. Sworn Testimony.

A witness shall be orally sworn prior to presenting testimony. A witness shall also execute a written oath.

Source: The provisions of this §515.105 adopted to be effective October 1, 1984, 9 TexReg 4580.

§515.106. [RESERVED]

§515.107. Limiting the Number of Witnesses.

The hearing officer may limit the number of witnesses testifying at a hearing when it appears necessary to avoid cumulative and unduly repetitious testimony.

Source: The provisions of this §515.107 adopted to be effective October 1, 1984, 9 TexReg 4580.

§515.108. [RESERVED]

§515.109. Official Notice.

Official notice may be taken at a hearing of judicially cognizable facts and generally recognized facts within the area of the commission's specialized knowledge. Before or during the hearing, the hearing officer shall notify the parties of the material to be officially noticed, including staff memoranda or data. The hearing officer shall afford the parties an opportunity to contest the material noticed.

Source: The provisions of this §515.109 adopted to be effective October 1, 1984, 9 TexReg 4580.

§515.110. [RESERVED]

§515.111. Discovery.

(a) Upon proper motion by any party and the submission of two copies of a proposed discovery order prepared in substantial compliance with the commission's authorized form, the chairman may issue an order to compel any or all of the various discovery available pursuant to the Administrative Procedure Act (APA), §14a. The procedures for seeking, objecting to, ordering, and making discovery pursuant to this section will be governed by the APA, §14a, and by this section. A motion to compel discovery pursuant to this section must be filed with the commission and received by all other parties to the proceeding no later than the 45th day following the dating and acceptance of the application(s). The party from whom discovery is requested shall, no later than the 52nd day following the dating and acceptance of the application(s), file with the commissionand all other partiues to the proceeding a written response to the motion. The response shall state, with respect to each item or category of items:

(1) that inspection or other requested action will be permitted as requested; or

(2) an objection giving specific reasons why discovery should not be permitted.

(b) If objections are filed, the chairman or his designee may conduct, upon request of any party to the proceeding or on his own motion, a hearing on the motion. In ruling on the motion, the chairman shall determine whether good cause exists to order discovery and may make any of the kind of orders permitted by the *Texas Rules of Civil Procedure*, §186b. In the case of failure of a party to comply with an order issued pursuant to this section, the chairman may seek enforcement by suspending processing of the application until the applicant complies or by striking status as a formal party until the party complies.

Source: The provisions of this §515.111 adopted to be effective October 1, 1984, 9 TexReg 4580.

§515.112. [RESERVED]

§515.113. Depositions.

Upon proper motion by any party and the submission of two copies of a proposed commission to take a deposition prepared in substantial compliance with the commission's authorized form, the chairman may issue a commission to require that the deposition of a witness be taken. The procedures for seeking, ordering, and enforcing commissions to take depositions will be governed by the Administrative Procedure Act (APA), §14, adn by this section. A motion to issue a commission must be filed with the commission and received by all other parties to the proceeding no later than the 45th day following the dating and acceptance of the application(s). The other parties to the application may file with the commission a response to the motion no later than the 52nd day following the dating and acceptance of the application(s). In ruling on the motion, the chairman shall determine whether good cause exists to issue the commission requiring the deposition. The commission issued may authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, any books, records, papers, accounts, or documents as may be necessary and proper for the purposes of the proceeding. In the case of failure to comply with a commission issued pursuant to this section, the chairman may seek enforcement pursuant to the APA, §14(n), may suspend processing of the application until the applicant complies, or may strike status as a formal party until the party complies.

Source: The provisions of this §515.113 adopted to be effective October 1, 1984, 9 TexReg 4581.

§515.114. [RESERVED]

§515.115. Subpoenas.

(a) Upon proper prehearing motion by any party and the submission of two copies of a proposed subpoena prepared in substantial compliance with the commission's authorized form, the chairman may issue a subpoena to require the attendance of a witness and the production of any books, records, papers, accounts, or documents at a commission hearing as may be necessary and proper for the purposes of the proceeding. The procedures for seeking, ordering, and

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enforcing subpoenas will be governed by the Administrative Procedure Act (APA) §14, and by this section. A motion to issue a subpoena must be filed with the commission and received by all other parties to the proceeding no later than the 45th day following the dating and acceptance of the application(s). The other parties to the application may file with the commission a response to the motion no later than the 52nd day following the dating and acceptance of the application(s). In ruling on the motion, the chairman shall determine whether good cause exists to issue the subpoena(s).

(b) Upon proper motion and the submission of two copies of a proposed subpoena prepared in substantial compliance with the commission's authorized form presented during the course of a hearing, the chairman may issue a subpoena to require the attendance of a witness and the production of any books, records, accounts, papers, or documents as may be necessary and proper for the purposes of the proceeding. The procedures for seeking, ordering, and enforcing subpoenas will be governed by the APA §14, and by this section. In ruling on a motion to issue a subpoena, the chairman shall first determine whether good cause exists for failure to request the subpoena(s) pursuant to subsection (a) of this section and, if so, whether good cause exists to issue the subpoena(s). The chairman shall consider the recommendation of the hearing officer in ruling on the motion.

(c) In the case of failure to comply with a subpoena issued pursuant to subsection (a) or subsection (b) of this section, the chairman may seek enforcement pursuant to the APA §14(n), may suspend processing of the application until the applicant complies, or may strike status as a formal party until the party complies.

Source: The provisions of this §515.115 adopted to be effective October 1, 1984, 9 TexReg 4581.

§515.116. [RESERVED]

§515.117. Non-Party Witness and Mileage Fees.

(a) A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend a commission hearing, to attend a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects that may be necessary and proper for the purposes of the hearing or proceeding is entitled to receive:

(1) Transportation costs as follows:

(A) mileage of $.20 per mile for going to and returning from the place of the hearing or the place where the deposition is taken if the place is more than 25 miles one-way from the person's city of residence; or

(B) the actual cost of air (lowest available fare, but not to exceed coach fare) and ground transportation for going to and returning from the place of the hearing or the place where the deposition is taken; and

(2) Other costs as follows:

(A) a fee of $10 per day, plus

(B) any actual out-of-pocket expenses incurred in attending the hearing or the proceeding (*e.g.*, lodging, meals, parking fees, or taxi fares), but not to exceed $75 per day.

(b) To secure payment of the fees identified in subsection (a) of this section, the person requesting the attendance of the witness or deponent must, when filing a motion for the issuance of a subpoena or a commission to take a deposition, deposit with the commission the funds estimated to accrue pursuant to subsection (a) of this section.

Source: The provisions of this §515.117 adopted to be effective October 1, 1984, 9 TexReg 4579.

§515.118. [RESERVED]

§515.119. Prepared Testimony.

(a) The testimony of a witness may be reduced to writing and offered into evidence at the hearing as an exhibit, provided that:

(1) the witness is present and has been sworn;

(2) the witness identifies and adopts the written testimony as his own; and

(3) all parties, interested persons, and the commission have received a copy of the written testimony at least 10 days prior to its submission at the hearing.

(b) The written testimony shall be subject to objection and may be stricken by the hearing officer. The witness shall be subject to cross-examination.

Source: The provisions of this §515.119 adopted to be effective October 1, 1984, 9 TexReg 4581.

§515.120. [RESERVED]

§515.121. Exhibits Containing Narrative Material.

Any exhibit containing narrative of three or more pages in length must be filed with the commission and received by all other parties and interested persons at least 10 days prior to its submission at the hearing.

Source: The provisions of this §515.121 adopted to be effective October 1, 1984, 9 TexReg 4581.

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CHAPTER 517. COMMISSION ACTION ON APPLICATIONS AND OTHER MATTERS

Section No.	Section Name
517.1.	Record of Proceedings.
517.3.	Ex Parte Communications.
517.5.	Consideration of Recommendations and Comments.
517.7.	Commission Open Meetings.
517.9.	Ruling Postponement-Prior to Open Meeting.
517.11.	Quorum.
517.13.	Oral Argument.
517.15.	Commission Vote.
517.17.	Certificate of Need Order.
517.19.	Amendment of Previously Issued Commission Orders.
517.21.	Declatory Ruling Order.
517.23.	Reissuance of Certificate of Need Orders.
517.25.	Rulings on Notices of Intent and Applications for Exemption.
517.27.	Contents of Orders.
517.29.	Persons Entitled to Copies of Orders.
517.31.	Petitions for Reconsideration.
517.33.	Reconsideration of Commission Orders.
517.35.	Motions for Rehearing.
517.37.	Commission Action on Motions for Rehearing.
517.39.	Good Cause for Reconsideration or Rehearing.
517.41.	Written Notice of Rehearing.
517.43.	Order Final and Not Appealable.
517.45.	Order Final and Appealable.
517.47.	Dated Order.

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§517.1. Record of Proceedings.

(a) The hearing officer shall maintain a complete record of the proceedings on an application. The record shall include at least the following:
  (1) pleadings, motions, and intermediate rulings;
  (2) the written or recorded transcript of the hearing;
  (3) evidence received or considered;
  (4) a statement of matters officially noticed;
  (5) objections and rulings thereon;
  (6) proposed findings of fact;
  (7) staff memoranda or data submitted to or considered by the hearing officer or the commission in connection with the hearing; and
  (8) the recommendation of the hearing officer.

(b) When the reocrd is complete, the hearing officer shall forward the record to the commissioners for review.

Source: The provisions of this §517.1 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.3. Ex Parte Communications.

Unless required for the disposition of *ex parte* matters authorized by law, a commissioner or hearing officer may not communicate, directly or indirectly, in connection with an issue of fact or law on a pending applicatoin with any agency, person, party, or their representatives, or commission employees who will participate or have participated directly in a hearing on a pending application, except on notice and opportunity for all parties to participate. For purposes of this rule, a pending applicatoin is an application or petition on which an adminstratively final decision as not been rendered by the commissioners. A commissioner or a hearing officer may communicate with commission employees who will not particpate or have not participated directly in a hearing on a pending application for the purposes of utilizing the special skills or knowledge of the agency and its staff in evaluating evidence on a pending application.

Source: The provisions of this §517.3 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.5. Consideration of Recommendations and Comments.

The commissioners shall consider the recommendation of the hearing officer prior to ruling on an application.

Source: The provisions of this §517.5 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.7. Commission Open Meetings.

The commission shall rule by the vote of the commissioners on applications or other matters in open meeting. The commission shall rule on applcations after the hearing on the application or after waiver of the hearing pursuant to these rules, and after service of the hearing officer's recommendation.

Source: The provisions of this §517.7 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.9. Ruling Postponement-Prior to Open Meeting.

A person may request that the chairman postpone ruling on an applicatoin or other matter scheduled for open meeting by filing a written motion with the commission. The motion must be filed at least 48 hours prior to the open meeting at which the commission is scheduled to consider the applicatoin or other matter. The chairman may postpone a ruling on an application upon the proper filing of a motion to postpone a ruling and a showing of good cause for the requested postponement.

Source: The provisions of this §517.9 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.11. Quorum.

The commission shall not transact business in an open meeting with fewer than two commissioners present.

Source: The provisions of this §517.11 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.13. Oral Argument.

Any person may submit a written request for oral argument before the commission in open meeting prior to the final determination of any matter properly before the commission. Oral argument shall be allowed only at the discretion of the chairman. A person shall limit argument before the commission to evidence of record in the matter under consideration. No visual display or handouts may be utilized or distributed during oral argument.

Source: The provisions of this §517.13 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.15. Commission Vote.

Votes of the commission shall be based upon a motion made by any one of the commissioners. Following a motion, an opportunity shall be afforded for discussion on the motion prior to calling for a vote on the motion. A motion of a commissioner regarding an application or other matter before the commission in an open meeting must receive the affirmative vote of one other commissioner to be ordered. Failure of a commissioner to obtain a second affirmative vote on the motion shall result in a denial of the motion only. In the event of the failure to obtain a second affirmative vote, a new motion must be made with an affirmative second required for approval of the motion and, thus, decision on the matter.

Source: The provisions of this §517.15 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.17. Certificate of Need Order.

(a) The commission shall either grant or deny an application for a certificate of need by written order not later than 60 days following the date of publication of notice of hearing when the hearing has been waived, or not later than 90 days following the date of publication of notice of hearing on the application when the hearing has not been waived, unless:
  (1) a later date is agreed upon by the applicant, parties, and the commission; or
  (2) the hearing date has been delayed pursuant to commission rules or the Act.

(b) In the event the commission fails to take action within the time frame specified in subsection (a) of this section, the applicant may seek the appropriate remedies afforded by state law.

(c) When granting a certificate of need, the commission shall issue a certificate of need setting forth an affirmative finding that the proposed project satisfies the criteria established by the commission. When denying a certificate of need application, the commission shall issue an admistrative order.

Source: The provisions of this §517.17 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.19. Amendment of Previously Issued Commission Orders.

The commission shall either grant or deny an application for an amendment of a previously issued commission order by issuing a written amendment order or an administrative order, respectively, not later than 60 days following the hearing on the application or 60 days following waiver of the hearing on the application pursuant to commission rules, unless a later date is agreed upon by the applicant, parties, and commission.

Source: The provisions of this §517.19 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.21. Declatory Ruling Order.

The commission shall issue a declatory ruling by written order not later than 60 days following the hearing on an application or 60 days following waiver of hearing on an application pursuant to commission rules, unless a later date is agreed upon by the applicant, parties, and the commission.

Source: The provisions of this §517.21 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.23. Reissuance of Certificate of Need Orders.

The commission shall either grant or deny a petition for reissuance by issuing a written reissuance of certificate of need order or an administrative order, respectively, not later than 60 days following receipt of the petition, unless a later date is agreed upon by the applicant, parties, and commission.

Source: The provisions of this §517.23 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.25. Rulings on Notices of Intent and Applications for Exemption.

The commission shall rule on notices of intent to acquire major medical equipment, notices of intent to acquire an existing health care facility, notices of intent regarding research projects, and applications for exemptions for HMO-related projects by issuing a declatory ruling within 30 days after acceptance of the notice or application for exemption, unless a later date is agreed upon by the applicant, parties, and commission.

Source: The provisions of this §517.25 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.27. Contents of Orders.

A written order of the commission on an application or other matter must include findings of fact and conclusions of law separately stated. Findings of fact, when set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The commission may prescribe, as conditions to a certificate of need

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order, limits on project cost, time periods for development and completion of the project, limits on the scope of the project, project status reports, and other conditions necessary for administering the Act and commission rules. A written order of the commission is issued when the order is signed by the commissioners.

Source: The provisions of this §517.27 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.29. Persons Entitled to Copies of Orders.

The commission shall forward copies of its orders to the applicant, parties, and interested persons. The commission shall, upon proper written request, forward a copy of an order to any other person.

Source: The provisions of this §517.29 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.31. Petitions for Reconsideration.

(a) Any person not a party may petition the commission to reconsider a decision by filing a proper petition for reconsideration. The petition must be in writing and filed by 5 p.m. on the 15th day after the order that is the subject of the petition was issued. The petition must contain at least the following information:
  (1) the name and address of the person submitting the petition;
  (2) the identity of the order for which reconsideration is requested;
  (3) the reasons that the order should be reconsidered; and
  (4) an affirmation that a copy of the petition has been mailed by certified mail, return receipt requested, or hand-delivered to the applicant, other parties, and interested persons.

(b) The petition may include a request that a rehearing on the application that was the subject of the order be conducted. When a petition includes a request for a rehearing, the reasons for the rehearing must be stated in the petition.

(c) Replies to a petition for reconsiideration must be filed with the commission within 25 days after the issuance of the order that is the subject of the petition.

Source: The provisions of this §517.31 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.33. Reconsideration of Commission Orders.

The commission, upon a showing of good cause, may reconsider an order within 45 days after it is issued on the petition of any person not a party. Upon reconsideration, the commission may modify, affirm, or reverse the order that is the subject of the reconsideration. The commission, on reconsideration of an order, upon a finding of good cause, may require a rehearing on the application that is the subject of the order being reconsidered. The failure of the commission to reconsider an order for which a petition was filed pursuant to this subchapter by the 45th day after order was issued shall result in a denial of the petition. The commission may, however, extend the time period for ruling on the petition(s) by following the same procedures as are specified in the APA, §16(e), for motions for rehearing.

Source: The provisions of this §517.33 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.35. Motions for Rehearing.

An applicant or party to an application that was the subject of a commission order may file a motion for rehearing with the commission within 15 days after the issuance of the written order by the commission. The motion must be filed by 5 p.m. on the 15th day after the order that is the subject of the motion was issued. Replies to a motion for rehearing must be filed with the commission within 25 days after the issuance of the order that is the subject of the motion. The commission shall consider a motion for rehearing to include a petition for reconsideration of an order.

Source: The provisions of this §517.35 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.37. Commission Action on Motions for Rehearing.

The commission must take action on a motion for rehearing within 45 days after the order that is the subject of the motion was issued. When the commission fails to act on a motion for rehearing within 45 days after the order is issued, the motion is considered to be denied by operation of law. The commission may grant a motion for rehearing on an application that is the subject of an order on a showing of good cause. The commission may extend the period of time for ruling on motions for rehearing as provided in the APA, §16(e).

Source: The provisions of this §517.37 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.39. Good Cause for Reconsideration or Rehearing.

The commission shall consider a petition for reconsideration or motion for rehearing to have shown good cause when the petition or motion:

(1) demonstrates that there have been changes in factors or circumstances which have occurred since closure of the record in the case which represent significant relevant information not rpeviously considered by the commission in its review and decision on the application;
(2) demonstrates that the commission has materially failed to follow its adopted procedures in reaching its decision on the application that is the subject of the order; or
(3) provides such other grounds for a reconsideration or rehearing as the commission determines constitutes good cause.

Source: The provisions of this §517.39 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.41. Written Notice of Rehearing.

When the commission determines that a rehearing should be conducted on an application that is the subject of an order, the commission shall provide the parties, interested persons, and petitioners ofr reconsideration at least 10 days written notice of the rehearing. The commission may, in ordering a rehearing, limit evidence at the rehearing to particular matters and issued considered relevant. In such instances, the commission will provide notice of any limitations to all parties, interested persons, and petitioners for reconsideration in the written notice of rehearing.

Source: The provisions of this §517.41 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.43. Order Final and Not Appealable.

An order of the commission is final and not appealable on the 16th day after it is issued when:
(1) the applicant or parties fail to file a motion for rehearing within 15 days after the order is issued; and
(2) persons who are not parties fail to file a petition for reconsideration within 15 days after the order is issued.

Source: The provisions of this §517.43 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.45. Order Final and Appealable.

An order of the commission is final and appealable to state district court when:
(1) the commission issues an order overruling any motions for rehearing and/or petitions for reconsideration; or
(2) any motions for rehearing and/or petitions for reconsideration are overruled by operation of law.

Source: The provisions of this §517.45 adopted to be effective October 1, 1984, 9 TexReg 4582.

§517.47. Dated Order.

A written order of the commission is dated as of the date the order is final and not appealable, or is final and appealable. This date shall be controlling for purposes of meeting any time deadlines established in a commission order, *e.g.*, development, completion, and the filing of project status reports. Time deadlines established in a commission order shall be tolled upon the filing of an appeal in state district court. The time deadlines will automatically begin to run after the entry of an order in either state district or appellate court from which no further appeal can be taken.

Source: The provisions of this §517.47 adopted to be effective October 1, 1984, 9 TexReg 4582.

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CHAPTER 519. [RESERVED]

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CHAPTER 521. JUDICIAL REVIEW OF COMMISSION DECISIONS

Section No.	Section Name
521.1.	Commission Orders.

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§521.1. Commission Orders.

(a) As provided by the Administrative Procedure and Texas Register Act, §19, an applicant or party who has exhausted all administrative remedies and who is aggrieved by a final decision rendered by the commission is entitled to judicial review. A petition for judicial review shall be filed as provided in the Administrative Procedure and Texas Register Act, §19.

(b) As provided in the Act, §3.03, when the commission rules that a certificate of need is required, the applicant may apply for a certificate of need and may seek judicial review of the declaratory ruling only in proceedings to review a denial of a certificate of need, as provided by the Act. A petition for judicial review shall be filed as provided in the Administrative Procedure and Texas Register Act, §19.

Source: The provisions of this §521.1 adopted to be effective September 1, 1981, 6 TexReg 3336.

Notes of Decisions: Where there were no further discretionary proceedings necessary the trial court's order instructing the Health Facilities Commissionto grant a Certificate of Need was proper. Texas Health Facilities Commission*v.* Babtist General Convention 573 S.W. 2d 575 (Tex. Civ. Aff. - Tyler 1978); Although Texas Civil Statutes article 4418h, §3.03 provides that an adverse "Declatory Ruling" on application of a person for a proposed project may not be appealed to the courts until after denial of a certificate of need, judicial review may be had if the Health Facilities Commission issues a "cease and desist" order. Texas Health Facilities Commission *v.* West Texas Home HealthAgency 588 S.W. 2d 655 (Tex. Civ. Aff. - Waco 1979); The state is charged with enforcement of the certificate of need program mandated by the National HealthPlanning and Resources Development Act of 1974, and as such has an important interst in carrying out its enforcement function. The doctrine of Younger*v.*Harris, *401 U.S. 37, 91 S. Ct. 746. 2L. Ed. 2d 669 (1971) precludes plaintiffs from obtaiing injunctive relief* prohibiting the state from enforcing the certificate of need requriements. Women's Community Health Center of Beaumont, Inc. *v.* Texas Health Facilities Commission 685 F 2d 974 (STL CA 1982).

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CHAPTER 523. FORFEITURE

Section No.	Section Name
523.1.	Automatic Forfeiture.
523.2.	[RESERVED]
523.3.	Forfeiture.
523.4.	[RESERVED]
523.5.	Initiation of Forfeiture Proceedings.
523.6.	[RESERVED]
523.7.	Review of Evidence Received at Forfeiture Hearing.
523.9.	Written Order on Forfeiture.

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§523.1. Automatic Forfeiture.

A certificate of need is automatically forfeited for failure of the certificate holder to commence development within 180 days after the certificate of need order is dated.

Source: The provisions of this §523.1 adopted to be effective October 1, 1984, 9 TexReg 4584.

§523.2. [RESERVED]

§523.3. Forfeiture.

A certificate, order, or ruling may be forfeited for failure to comply with any conditions established in the certificate, order, or ruling.

Source: The provisions of this §523.3 adopted to be effective October 1, 1984, 9 TexReg 4584.

§523.4. [RESERVED]

§523.5. Initiation of Forfeiture Proceedings.

The chairman, upon his own motion or at the request of any person, may initiate forfeiture proceedings for a certificate, order, or ruling. When it is determined that forfeiture proceedings should be initiated, the chairman shall schedule a forfeiture hearing and issue a written order directing the named party to appear at the hearing and show cause why the certificate, order, or ruling should not be forfeited. The commission shall cause a notice of the forfeiture hearing to be published in the *Texas Register*. When a person has requested the initiation of forfeiture proceedings and the chairman schedules a forfeiture hearing, that person shall be treated as a party to the proceeding.

Source: The provisions of this §523.5 adopted to be effective October 1, 1984, 9 TexReg 4584.

§523.6. [RESERVED]

§523.7. Review of Evidence Received at Forfeiture Hearing.

After review of the record developed at the forfeiture hearing and receiving a recommendation from the assigned hearing officer, the commission may find that the certificate, order, or ruling should be forfeited when the commission determines that:

(1) the certificate holder or holder of the declaratory ruling has failed to proceed with reasonable diligence toward completion of a project; or

(2) the certificate holder or holder of the declaratory ruling has failed to comply with any other conditions in the certificate, order, or ruling.

Source: The provisions of this §523.7 adopted to be effective October 1, 1984, 9 TexReg 4584.

§523.9. Written Order on Forfeiture.

Upon finding that the certificate, order, or ruling should be forfeited, the commission shall issue a written order setting forth its decision and the findings of fact and conclusions of law supporting the decision.

Source: The provisions of this §523.9 adopted to be effective October 1, 1984, 9 TexReg 4584.

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CHAPTER 525. ENFORCEMENT

SUBCHAPTER A. VIOLATION OF THE ACT

525.1. Violation Defined.
525.2. [RESERVED]
525.3. Violation Reporting.
525.4. [RESERVED]
525.5. Violation Complaint.
525.6. [RESERVED]
525.7. Commission Action on Complaint.
525.8. [RESERVED]
525.9. Show Cause Hearing.
525.10. [RESERVED]
525.11. Parties to Show Cause Hearings.
525.12. [RESERVED]
525.13. Public Notice of Show Cause Hearing.
525.14. [RESERVED]
525.15. Commission Action.

SUBCHAPTER B. PROVINCE OF ENFORCEMENT

525.21. Action by Attorney General.
525.22. [RESERVED]
525.23. Agency Assistance to Violators Prohibited.
525.24. [RESERVED]
525.25. Licensure of Violators Prohibited.
525.26. [RESERVED]
525.27. Civil Penalties.

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SUBCHAPTER A. VIOLATION OF THE ACT

§525.1. Violation Defined.

A person who commences development of a project without having appropriate authorization from the commission is in violation of the Act.

Source: The provisions of this §525.1 adopted to be effective October 1, 1984, 9 TexReg 4585.

§525.2. [RESERVED]

§525.3. Violation Reporting.

Any person may report an alleged violation of the Act and/or the rules of the commission by filing a written complaint with the commission.

Source: The provisions of this §525.3 adopted to be effective October 1, 1984, 9 TexReg 4585.

§525.4. [RESERVED]

§525.5. Violation Complaint.

The written complaint of an alleged violation shall set forth the name and address of the person alleged to be violating the Act and/or commission rules, as well as facts and circumstances sufficient to acquaint the commission with the alleged violation. A person is not required to submit a fee with a written complaint.

Source: The provisions of this §525.5 adopted to be effective October 1, 1984, 9 TexReg 4585.

§525.6. [RESERVED]

§525.7. Commission Action on Complaint.

The chairman shall, within a reasonable period of time, notify the alleged violator of the complaint. The chairman or his designee may request a sworn written response to the complaint from the alleged violator.

Source: The provisions of this §525.7 adopted to be effective October 1, 1984, 9 TexReg 4585.

§525.8. [RESERVED]

§525.9. Show Cause Hearing.

The chairman may, on his own motion or upon review of a written complaint and sworn response to the complaint, if any, order a show cause hearing to receive evidence relevant to the existence or nonexistence of a violation of the Act and/or commission rules. The chairman shall issue a written order directing the alleged violator to appear at a specific time, date, and place, and show cause why the alleged violator should not be found in violation of the Act and/or commission rules. The written order shall identify the alleged violation.

Source: The provisions of this §525.9 adopted to be effective October 1, 1984, 9 TexReg 4585.

§525.10. [RESERVED]

§525.11. Parties to Show Cause Hearings.

A person filing a complaint that is the subject of a show cause hearing shall be treated as a party to the proceeding.

Source: The provisions of this §525.11 adopted to be effective October 1, 1984, 9 TexReg 4585.

§525.12. [RESERVED]

§525.13. Public Notice of Show Cause Hearing.

The commission shall publish a notice of the show cause hearing in the *Texas Register*.

Source: The provisions of this §525.13 adopted to be effective October 1, 1984, 9 TexReg 4585.

§525.14. [RESERVED]

§525.15. Commission Action.

The commission may find, after review of the recommendation submitted by the assigned hearing officer, that a violation of the Act and/or the commission rules has occurred. Upon finding that a violation has occurred, the commission shall issue a written order setting forth its decision and the findings of fact and conclusions of law supporting the decision. Upon finding that a violation has occurred, the commission may issue a cease and desist order and, in addition, may request the attorney general to institute legal action to enjoin the violation or to recover civil penalties.

Source: The provisions of this §525.15 adopted to be effective October 1, 1984, 9 TexReg 4585.

Notes of Decisions: A "cease and desist" order issued by the Health Facilities Commission after hearing on a "show cause" order was a final decision in a contested case, and the trial court had jurisdiction to hear the case. Texas Health Facilities Commission v. West Texas Home Health Agency 588 S.W. 2d 635 (Tex. Civ. Aff. - Waco 1979).

SUBCHAPTER B. PROVINCE OF ENFORCEMENT

§525.21. Action by Attorney General.

The Attorney General may, upon request of the commission, institute a legal action to enjoin an alleged violation of the act or to recover civil penalties from a person who violates the act.

Source: The provisions of this §525.21 adopted to be effective September 1, 1981, 6 TexReg 3269.

§525.22. [RESERVED]

§525.23. Agency Assistance to Violators Prohibited.

No agency of the state or any of its political subdivisions may appropriate or grant funds or assist in any way a person, applicant, facility, or certificate holder who is or whose project is in violation of the Act.

Source: The provisions of this §525.23 adopted to be effective September 1, 1981, 6 TexReg 3337.

§525.24. [RESERVED]

§525.25. Licensure of Violators Prohibited.

No permit to build or license to operate a facility or license to provide a service may be issued for a project or to a person in violation of the Act, by the state or a political subdivision or instrumentality of the state.

Source: The provisions of this §525.25 adopted to be effective September 1, 1981, 6 TexReg 3337.

§525.26. [RESERVED]

§525.27. Civil Penalties.

(a) A person who violates the Act is subject to a civil penalty of no greater than $100 for each violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this subchapter. Such civil penalties assessed for violations of the Act shall be deposited in the state treasury and shall be expended by the commission for the administration and enforcement of the Act.

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(b) A person who has been judicially determined to be in violation of the Act and who has paid all civil penalties and has made application to the commission for a certificate of need or other appropriate authorization shall not be deemed to be in violation of the Act.

Source: The provisions of this §525.27 adopted to be effective September 1, 1981, 6 TexReg 3337.

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CHAPTER 527. MISCELLANEOUS PROVISIONS

SUBCHAPTER A. COMPUTING TIME PERIODS

527.1. Time Periods.

SUBCHAPTER B. RECORDS OF THE COMMISSION

527.11. Open Records.
527.12. [RESERVED]
527.13. Requests for Inspection of Records.

SUBCHAPTER C. COMMISSION PUBLICATIONS

527.21. Weekly Newsletter.
527.22. [RESERVED]
527.23. Report of Applications Review.
527.24. [RESERVED]
527.25. Fee for Report of Applications Review.

SUBCHAPTER D. TRANSITION PROVISIONS

527.31. Effective Date.
527.32. [RESERVED]
527.33. Exception to Effective Date.

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SUBCHAPTER A. COMPUTING TIME PERIODS

§527.1. Time Periods.

(a) If a time period established by commission rule or order begins to run upon or after an act, event, or default, the day of the act, event, or default, the day of the act, event, or default is not included. The last day of the period is included unless it is a Saturday, Sunday, or state holiday, in which event the period shall be extended to the end of the next day which is not a Saturday, Sunday, or state holiday.

(b) If a time period established by commission ruyle or order ends upon or before an act, event, or default, the day of the act, event, or default is not included. The first day of the period is included unless it is a Saturday, Sunday, or state holiday, in which event the period begins to run at the beginning of the next previous day which is not a Saturday, Sunday, or state holiday.

(c) In computing the two-year periods applicable to commission sections 507.3, 507.9, and 507.11 (§§507.3, 507.9, and 507.11 of this title (relating to Services, Bed License, and Bed Capacity)), the first two-year period began on September 1, 1981, and expired on August 31, 1983. Subsequent two-year periods shall be computed in like manner beginning on September 1, 1983.

(d) Where activities are to ensue under provisions of the sections cited in subsection (c) to add beds, redistribute beds, or add dialysis stations, without certificate of need review, the person shall file a letter notifying the commission of his intent prior to undertaking the activity. The letter shall contain at least the following information:

(1) the type of activity (*e.g.*, construction, renovation) being undertaken;

(2) the gross area, if any, to be constructed and/or renovated;

(3) the number of beds and patient rooms, if any, to be added, or the number of dialysis stations to be added;

(4) the esisting and proposed licensed beds, bed capacity, and numbers of beds by category for the facility;

(5) the total cost and categories of equipment required for the activity;

(6) the total cost of the activity; and

(7) schematic drawing (floorplans) illustrating the activity and its location in relation to the existing facility.

Source: The provisions of this §527.1 adopted to be effective October 1, 1984, 9 TexReg 4585.

SUBCHAPTER B. RECORDS OF THE COMMISSION

§527.11. Open Records.

All information collected, assembled, or maintained by the commission in connection with its transaction of official business is public information under the provisions of the Open Records Act, Texas Civil Statutes article 6252-17a, and available for public inspection and disclosure during normal business hours.

Source: The provisions of this §527.11 adopted to be effective October 1, 1984, 9 TexReg 4586.

§527.12. [RESERVED]

§527.13. Requests for Inspection of Records.

(a) A request to inspect commission records must be made with reasonable prior notice in writing. A person requesting to inspect commission records must establish proper identification. The custodian of the records, the chairman of the commission, or his designee, will upon written request, produce information for inspection or duplication. If a record requested is in storage, the custodian shall notify the requesting party in writing and shall set an hour and date when the record will be available. No person shall remove an original record from the offices of the commission.

(b) Any expense incurred in the reproduction, preparation, or retrieval of records shall be paid by the person requesting the record. The charge for such reproduction, preparation, and retrieval shall be in accord with the maximum charge established by the State Purchasing and General Services Commission. The maximum charge under one request for the first letter-size or legal-size page of a document is $ .55. The maximum charge for subsequent copies of the same document or of succeeding pages of said document is $ .15 per page. The commission may charge a lesser amount when the cost of reproducing said document or documents is less than the maximum charge established by the State Purchasing and General Services Commission. The commission may, upon request, mail reproduced records to any person who so requests. If the commission mails said records, a charge for postage may be included in the charge for

reproduction. The charge for reproduction of a document must include state and local sales taxes of 5.0%. Postage is not subject to state and local sales tax. (Sales Tax Bulletin 5—Revisied, Comptroller of Public Accounts). Requests for computerized documents or records will be billed at the actual cost of retrieval of such documents or records.

Source: The provisions of this §527.13 adopted to be effective October 1, 1984, 9 TexReg 4586.

Notes of Decisions: A governmental body may not ordinarily charge for employee time in editing records or in making records available under the Open Records Act. Op. Atty. Gen. Op. No. JM-114 (1983).

SUBCHAPTER C. COMMISSION PUBLICATIONS

§527.21. Weekly Newsletter.

The commission shall prepare a weekly mailout detailing commission activity for mail circulation to subscribers. The annual subscription fee for the weekly mailout will be set by the chairman according to prevailing duplication and postage rates. Subscription charges shall be accrued as of the first day of the month during which the fee is received and thereafter for a period of 12 months. All payment of fees and charges are to be made by check or money order. Subscription copies will be mailed beginning with the next regular mailing.

Source: The provisions of this §527.21 adopted to be effective October 1, 1984, 9 TexReg 4586.

§527.22. [RESERVED]

§527.23. Report of Applications Review.

The commission, at least once annually, shall prepare a report of the reviews of all applications being conducted, and a report of the reviews of all applications completed by the commission.

Source: The provisions of this §527.23 adopted to be effective October 1, 1984, 9 TexReg 4586.

§527.24. [RESERVED]

§527.25. Fee for Report of Applications Review.

Any person may request a copy of the report of application reviews from the commission. The fee for a copy of the report of application reviews will be set by the chairman according to prevailing duplication and postage rates. Payment of fees and charges are to be made by check or money order.

Source: The provisions of this §527.25 adopted to be effective October 1, 1984, 9 TexReg 4586.

SUBCHAPTER D. TRANSITION PROVISIONS

§527.31. Effective Date.

The rules in Chapter 501 of this title (relating to Description of the Commission), Chapter 503 of this title (relating to Rule-Making Procedures), Chapter 505 of this title (relating to Terms and Phrases), Chapter 507 of this title (relating to Certificate of Need Requirements), Chapter 509 of this title (relating to Application and Petition Procedures), Chapter 513 (Subchapter A and Subchapter D) of this title (relating to Criteria), Chapter 515 of this title (relating to Commission Review of Applications), Chapter 517 of this title (relating to Commission Action on Applications and Other Matters), Chapter 523 of this title (relating to Forfeiture), and Chapter 525 (Subchapter A) of this title (relating to Enforcement) shall not apply to applications pending as of the effective date of those rules, but shall only apply to applications filed on or after the effective date of those rules, which is October 1, 1984.

Source: The provisions of this §527.31 adopted to be effective October 1, 1984, 9 TexReg 4587.

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§527.32. [RESERVED]

§527.33. Exception to Effective Date.

As an exception to the general effective date provided in §527.31 of this title (relating to Effective Date), the sections in Chapters 501 of this title (relating to Description of the Commission), 503 of this title (relating to Rule-Making Procedures), 505 of this title (relating to Terms and Phrases), 507 of this title (relating to Certificate of Need Requirements), 509 of this title (relating to Certificate of Need Application Procedures), 513, Subchapter A and Subchapter D, of this title (relating to Criteria), 515 of this title (relating to Commission Review of Applications), 517 of this title (relating to Miscellaneous Provisions), 523 of this title (relating to Forfeiture), and 525, Subchapter A, of this title (relating to Enforcement), shall apply to applications filed prior to October 1, 1984, when such applications are subsequently joined with applications filed on or after October 1, 1984. For purposes of considering joinder of applications filed on or after October 1, 1984, with applications filed prior to October 1, 1984, a 30-day joinder period will be applied.

Source: The provisions of this §527.33 adopted to be effective May 2, 1985, 10 TexReg 1263.

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CHAPTERS 529. through 539. [RESERVED]

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CHAPTER 541. APPROPRIATENESS REVIEW

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541.2.	HSA Review of Health Services.
541.3.	Scope of Review of Health Services.
541.4.	Level of Review.
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541.95. Reconsideration of Commission Findings.
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541.97. Review of a Finding of Inappropriateness.
541.98. HSA Appeals Mechanism.

Authority: The provisions of this Chapter 541 issued under Acts 1975, 64th Leg., p. 832, ch. 823, effective May 28, 1975 (Texas Civ. St. art. 4418h, §2.10).

Editor's Note: Because of the repeal and readoption of new Chapters 501–527 in this Part, this chapter (formerly 521) has been renumbered as Chapter 541.

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EXPLANATION OF APPROPRIATENESS REVIEW

§541.1. Review of Health Services.

Under the authority of the National Health Planning and Resource Development Act (Pub. L. 93-641, as amended by Pub. L. 96-79), and section 2.10 of the Texas Health Planning and Development Act (Texas Civil Statutes article 4418h), the Texas Health Facilities Commissionmust periodically review at least those institutional health services being offered within the state with respect to which goals have been established in the state health plan, and make written findings concerning the appropriateness of such services.

Source: The provisions of this §541.1 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.2. HSA Review of Health Services.

The 12 health systems agencies within the State of Texas under the authority of the National Health Planning and Resources Development Act must periodically review at least these institutional healthservices being offered in their respective health service area and with respect to which goals have been established in the state healthplan. The health systems agencies shall make recommendations concerning the appropriateness of those institutional health services to the commission prior to the publication of the commission findings.

Source: The provisions of this §541.2 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.3. Scope of Review of Health Services.

(a) The commission and health systems agencies shall review the appropriateness of existing institutional health services in healthcare facilities (licensed or unlicensed) offering the healthservices.

(b) The commission and the health systems agencies shall notify each health care facility offering the service being reviewed in accordance with procedures included in this chapter at the beginning of the appropriateness review of each service.

Source: The provisions of this §541.3 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.4. Level of Review.

In the State of Texas, during each health service review, health systems agencies shall examine and review the appropriateness of a health service at the health service area level, and the commission shall examine and review the appropriateness of a health service at the state level, but in no instance will either level of review be institution-specific.

Source: The provisions of this §541.4 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Affected persons—The person offering the service under review, the health systems agency for the health service area in which the service under review is offered or to be offered, health systems agencies serving contiguous health service areas, health care facilities located in the health service area where the service under review is offered or to be offered, and members of the public.

Capital expenditure—An expenditure by or on behalf of a health care facility as defined under generally accepted accounting principles, consistently applied.

Existing institutional health services—Those services being offered in the health service area at the time for review of appropriateness of the service or are offered at any time in the 12 months prior to the review and also are planned to be offered at any time in the 12 months subsequent to the review.

Health care facility—As used in these sections, and referred to as facility, includes, regardless of ownership, but is not limited to a public or private hospital, extended care facility, skilled nursing facility, intermediate care facility, home healthagency, outpatient care facility, outpatient surgical and single procedure facility, ambulatory health care facility, healthcenter, kidney disease treatment facility, radiation therapy facility, alcoholism and drug treatment facility, health maintenance organization, institution, and other specialized facilities where inpatient or outpatient health care services for observation, diagnosis, active treatment, or overnight care for patients with obstetrical, medical, mental or psychiatric, surgical, tubercular, alcoholic, chronic, or rehabilitative conditions are provided requiring daily direct supervision by a physician or a practitioner of the healing arts, but does not include the office of those physicians or practitioners singly or in groups in the conduct of their profession.

Health service area—A geographical region in which a health systems agency has health planning, project review, and appropriateness review responsibilities as provided pursuant to the National Health Planning and Resources Development Act of 1974, 42 U.S.C. 300K, and the Texas Health Planning and Development Act, Texas Civil Statutes article 4418h.

Health systems agency—A nonprofit private corporation or public regional planning body acting as an instrumentality of the federal government and designated in accordance with federal law by the secretary, Department of Health, Education, and Welfare, following the advice and consultation of the governor of the state.

Hearing—A public proceeding before the health systems agency or the Texas Health Facilities Commission at which evidence may be presented on the review for appropriateness of an existing institutional health service.

Hospital—An institution primarily engaged in providing diagnostic services and therapeutic services to patients for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, by or under the supervision of physicians.

Institutional health service—Referred to as "services," means the health services provided in health care facilities and includes but is not limited to inpatient or outpatient services for observation, diagnosis, treatment, rehabilitation, and all care for patients with obstetrical, medical, surgical, tubercular, mental, alcoholic, chronic, rehabilitative, or other conditions.

Person—An individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or political subdivision or instrumentality of the federal government, any receiver, trustee, assignee, or other similar representative or any other legal entity.

Review—The area-wide review of a specific health service as delivered by all the health care facilities providing the service in the health service area and the state which culminates in recommendations regarding the appropriateness of that service in the entire health service area and state.

Service—As used in these sections, includes but is not limited to the following: nuclear medicine, emergency medicine, radiology (diagnosis), radiation therapy, pharmacy, surgery, psychiatry, physical medicine, outpatient services, intensive care, coronary care, respiratory therapy, pediatrics, neonatology, gynecology, obstetrics, anesthesiology, laboratory, renal dialysis, general medical care, dietary services, pathology, custodial care, nursing care, intermediate nursing care, skilled nursing care, home health care, intermediate care facility-mentally retarded-I (ICF-MR-I) care, intermediate care facility-mentally retarded-V (ICF-MR-V) care, and intermediate care facility-mentally retarded-VI (ICF-MR-VI) care, alcohol rehabilitation, drug rehabilitation, neurology, orthopedics, extended care, and home care.

To offer—When used in connection with health care services, means that a health care facility or agency holds itself out as capable of providing, and in fact has the means for the provision of, specified health care services.

Source: *The provisions of this §541.5 adopted to be effective May 2, 5 TexReg 1526; amended to be effective October 24, 1980, 5 TexReg 4090.*

HEALTH SERVICES

§541.11. Health Services Reviewed.

The appropriateness review program in the State of Texas includes the review of the following institutional health services, hereinafter referred to as "services:"

(1) end-stage renal disease;
(2) radiation therapy;
(3) cardiac catheterization;
(4) open heart surgery;
(5) emergency services;
(6) drug abuse;
(7) alcoholism;
(8) psychiatric;
(9) developmental disabilities;
(10) long-term care;
(11) home health care;
(12) rehabilitation;
(13) pediatric;
(14) obstetric; and
(15) medical/surgical.

Source: The provisions of this §541.11 adopted to be effective May 2, 1980. 5 TexReg 1526.

§541.12. End-Stage Renal Disease.

The stage of renal impairment which is almost always irreversible and permanent, and requires dialysis or kidney transplantation to maintain life. ESRD services include but are not limited to the following, which are provided in health care facilities:

(1) *Renal dialysis.* A process by which waste products and excess fluid are removed from an ESRD patient's body by osmosis from one fluid compartment to another (hemodialysis and peritoneal dialysis).

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(2) *Renal transplant.* A process by which a kidney is removed from a live or cadaveric donor and such kidney is implanted in an ESRD patient and supportive care is furnished to the living donor and to the recipient following implantation.

Source: The provisions of this §541.12 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.13. Radiation Therapy.

A field within medicine which employs the use of high energy ionizing radiation for the treatment of disease.

Source: The provisions of this §541.13 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.14. Cardiac Catheterization.

A procedure for diagnosing disorders of the heart, lung, and the great vessels with the resource capability to insert catheters into the heart and adjacent great vessels, to reliably measure multiple parameters of cardiac physiological activity, and to obtain visualization of the appropriate heart chambers and adjacent vessels.

Source: The provisions of this §541.14 adopted to be effective May 2, 1980; 5 TexReg 1526.

§541.15. Open Heart Surgery.

A class of highly technical operations on the heart and intrathoracic great vessels which requires temporary use of cardiopulmonary bypass equipment to perform the functions of circulation during surgery.

Source: The provisions of this §541.15 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.16. Emergency Services.

Emergency units provided by general hospitals or by other healthcare facilities in the following levels:

(1) *Level I.* A Level I emergency service offers comprehensive emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area. There shall be in-hospital physician coverage for at least medical, surgical, orthopedic, obstetrical/gynecological, pediatric, and anesthesiology services by members of the medical staff or by senior-level residents, with other specialty consultation available within 30 minutes, as needed. The hospital's scope of services shall include in-house capabilities for managing physical and related emotional problems on a definitive basis. The hospital's scope of services may also include availability of coronary bypass equipment for use in trauma surgery. The requirements of this paragraph shall also apply to a comprehensive-level emergency service provided by a hospital offering care only to a limited group of patients, such as pediatric, obstetrical, ophthalmological, and orthopedic.

(2) *Level II.* A Level II emergency service offers emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area, and specialty consultation available within 30 minutes by members of the medical staff or by senior-level residents. The hospital's scope of service shall include in-house capabilities for managing physical and emotional problems, with provision for patient transfer to another facility when needed.

(3) *Level III.* A Level III emergency service offers emergency care 24 hours a day, with at least one physician available to the emergency care area within 30 minutes through a medical staff call roster. Specialty consultation shall be available by request of the attending medical staff member or by transfer to a designated hospital where definitive care can be provided.

(4) *Level IV.* A Level IV emergency service offers reasonable care in determining whether an emergency exists, renders lifesaving first aid, and makes appropriate referral to the nearest facilities that have the capability of providing needed services. The mechanism for providing physician coverage at all times shall be defined by the medical staff.

Source: The provisions of this §541.16 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.17. Drug Abuse.

The nonmedical use of any drug in such a way that it adversely affects some aspects of the user's life, and drug abuse treatment focuses on reducing existing cases of drug-related disorders in a given population.

(1) *Environment (National Institute on Drug Abuse definitions).*

(A) *Prison.* The client is incarcerated in a federal, state, or other prison or jail and participates in a treatment program within the correctional institution.

(B) *Hospital (inpatient).* The client resides in a hospital setting and is being treated primarily for a drug abuse problem. The client may, in addition, be receiving services for medical or psychiatric-psychological problems.

(C) *Residential.* The client resides in a drug abuse treatment clinic other than a prison or hospital. Halfway houses and therapeutic communities are included in this category.

(D) *Day care.* The client resides outside the clinic. The client participates in a drug abuse treatment program, with or without medication, according to a minimum schedule as defined by the funding source (usually five or more hours, five or more days per week). Services provided may include individual, group, and family counseling; job development; and/or educational or legal services. The client has regularly assigned and supervised salaried or nonsalaried work functions at the clinic.

(E) *Outpatient.* The client resides outside the clinic. The client participates in a drug abuse treatment program with or without medication. The client attends the clinic according to a predetermined schedule for services that includes counseling and supportive services. Outpatient differs from day care in that usually the client attends the clinic less frequently and does not have regularly assigned and supervised functions at the clinic.

(2) *Modality.* Within any environment, the National Institution on Drug Abuse defines the primary treatment approach or regimen (modality) experienced by the client.

(A) *Detoxification (with or without counseling).* Detoxification is the period of planned withdrawal from drug dependency supported by use of a prescribed medication. If methadone detoxification exceeds 21 days, the treatment modality becomes maintenance; however, there are other types of detoxification which may last six weeks or longer.

(B) *Maintenance.* The modality assigned to the client during which only methadone, LAAM (l-alpha acetymethadol), or Darvon/N (Propoxyphene-N) is prescribed to achieve stabilization. Detoxification from maintenance, slow methadone withdrawal, and the abstinence phase of maintenance are included in this category.

(C) *Drug free.* The treatment regiment that does not include any chemical agent or medication as the primary part of drug treatment. The treatment modality withdrawal without medication is drug free. Temporary medication may be prescribed in a drug-free modality, *e.g.*: short-term use of tranquilizers, but the primary treatment method is traditional counseling (individual, group, family, *etc.*).

(D) *Other.* The primary treatment modality assigned the client is other than those specified in subparagraphs (A)-(C) of this paragraph.

(i) *With medication.* The primary treatment modality assigned the client includes chemotherapy using a primary medication (other than methadone, LAAM, or Darvon-N), such as the antagonists. This includes the sustained use of medications for conditions such as anxiety, depression, manic depression, and schizophrenia.

(ii) *Without medication.* This includes modalities using other primary treatment methods, *e.g.*: acupuncture, transcendental meditation, yoga, *etc.*

Source: The provisions of this §541.17 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.18. Alcoholism.

A disease of unknown cause, without recognizable anatomical signs, manifested by addiction to or dependence on alcohol. Universal alcoholism treatment and rehabilitation services include:

(1) *Extended services.* A specialized unit or facility that provides through an organized medical or professional team, permanent facilities that include inpatient beds, medical services, and continuous nursing services, emergency care diagnosis, and treatment of patients.

(2) *Medical care detoxification services.* A specialized unit or facility which provides 24-hour supervised care under the direction of a physician in a hospital or other suitably equipped medical setting.

(3) *Nonmedical care detoxification services.* A specialized unit or facility that provides treatment by utilization of rest, fluids, medications, counseling, and nursing care to restore physiological functions.

(4) *Intermediate care services.* A specialized unit or facility designed to rehabilitate the alcoholic person by placing the client in an organized therapeutic environment in which he may receive diagnostic services, counseling, vocational rehabilitation, and/or work therapy.

(5) *Outpatient care services.* A specialized unit or facility designed to provide a variety of diagnostic and primary alcoholismtreatment services on both a scheduled basis and nonscheduled basis in a nonresidential setting to alcoholic persons and their families.

(6) *Outreach care services.* A specialized unit or facility that provides care and facilitates identification (within a target population) of persons and their families who have problems related to the use of alcohol.

(7) *Aftercare services.* A specialized unit or facility that provides care to patients who have progressed sufficiently through emergency, inpatient, intermediate, and/or outpatient services to a point in their recovery where they will benefit from a level of continued contact which will support and increase the gains made to date in the treatment process.

Source: The provisions of this §541.18 adopted to be effective May 2, 1980, 5 TexReg 1526.

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§541.19. Psychiatric.

A service provided by hospitals or other health care facilities which deals with the study, treatment, and prevention of mental illness.

(1) *Adult psychiatric service.* A specialized unit or facility offering as its primary function the diagnosis, treatment, and rehabilitation of the psychiatrically ill, and in which there are psychiatrists or other physicians who assume clinical responsibility for all patients with a primary diagnosis or psychiatric disorder.

(2) *Psychiatric outpatient service.* A specialized unit or facility which enables individuals to obtain psychiatric treatment for emotional, mental, or behavioral problems without disrupting the pattern of their daily lives. The usual procedure involves periodic visits of a relatively short duration.

(3) *Child and adolescent psychiatric services.* A specialized unit or facility having as its primary function the assessment, treatment, and rehabilitation of children and adolescents with emotional and/or behavioral disorders and/or deviations or disturbances in their development, and in which there are psychiatrists or other physicians who assume medical responsibilities for all children and adolescents under the care of a facility.

Source: The provisions of this §541.19 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.20. Developmental Disabilities.

(a) Services provided by hospitals or other health care facilities to individuals with a severe, chronic disability which:

(1) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) is manifested before the person attains age 22;

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity:

(A) self-care;

(B) receptive and expressive language;

(C) learning;

(D) mobility;

(E) self-direction;

(F) capacity for independent living; and

(G) economic sufficiency; and

(5) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(b) Services for persons with developmental disabilities means priority services and any other specialized services or special adaptations of generic services for persons with developmental disabilities, including in these services the diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referred services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

(c) Mental retardation: Mental retardation services provided by hospitals or other health care facilities to individuals with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period. Mental retardation services are generally provided in the following areas:

(1) *ICF-MR-I.* A service provided to ambulatory residents able to take appropriate action in emergencies, with IQs between 40 and 69, who do not need professional nursing care but are receiving and can benefit from actual developmental treatment. Self-administration of medication is allowed with physician approval. Note: Nonambulatory residents can be admitted to an ICF-MR-I facility only when the facility is surveyed under the institutional section of the Life Safety Code and is found to meet the code.

(2) *ICF-MR-V.* A service provided to ambulatory or mobile nonambulatory residents with IQ range severe through mild (25-69), with adaptive behavior levels 1-3, who can benefit from actual developmental treatment.

(3) *ICF-MR-VI.* A service provided to ambulatory, mobile nonambulatory, and/or nonmobile residents where IQ is severe to profound (39-0), with adaptive behavior levels 3-4, who can benefit from actual developmental treatment.

Source: The provisions of this §541.20 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.21. Long-Term Care.

Health care services provided by hospitals, nursing homes, or other health care facilities to individuals who require health care services above the level of room and board on a long-term basis due to chronic illness, age, or disability (mental or physical).

(1) *Skilled nursing care.* A service necessitating skilled nursing techniques and/or medical therapy of a complex and/or intensive degree on a long-term basis. The care would meet the current health needs and promote the maximum physical and psychosocial well-being of patients receiving such care on a 24-hour basis. Licensed nursing care and supervision is required.

(2) *Intermediate care.* A service providing medically and socially oriented nursing care necessitating licensed nursing supervision and/or services and/or medical therapy of a moderately complex yet specific nature on a long-term basis. This care would meet the current health needs and promote the maximum physical and psychosocial well-being of patients receiving such care.

(3) *Custodial care.* Socially oriented institutional care necessitating personal and social supervision and/or services of a simple but nonmedical nature on a long-term basis.

(4) *Extended care.* A health care service provided by a skilled nursing facility or other health care facility to individuals recovering from an acute illness or operation for an extended period of time and do not require hospitalization or long-term care.

Source: The provisions of this §541.21 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.22. Home Health Care.

A health care service provided by an agency in a patient's residence for pay or other consideration according to a written and signed plan of treatment prescribed by a physician. The health care services provided in a patient's residence include nursing care, physical therapy, occupational therapy, speech therapy, medical social service, home health aide, furnishing medical supplies, and nutritional counseling.

Source: The provisions of this §541.22 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.23. Rehabilitation.

A service that provides care for coordinated multidisciplinary physical restoration of normal form and function to a person after injury or illness, or the development and/or restoration of a disabled (congenital or otherwise), ill, or injured person to self-sufficiency and/or gainful employment at his or her highest attainable skill in the shortest possible time, but excludes any services offered in the office(s) and/or treatment area(s) of a physician, or group of physicians, in private practice.

Source: The provisions of this §541.23 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.24. Pediatrics.

A specialized nursing unit or hospital devoted primarily to the care of medical and/or surgical patients less than 14 years old, not including special care for infants.

Source: The provisions of this §541.24 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.25. Obstetrics.

(a) A specialized nursing unit or hospital devoted primarily to providing services for maternity and newborn patients. Obstetrical and neonatal services have three levels of care.

(b) Neonatal intensive care unit: A specialized nursing unit which concentrates seriously ill neonates (newborns less than four weeks old) needing constant observation and specialized support equipment and care. Neonatal intensive care units usually take on a regionalized configuration with three specific levels of care:

(1) *Level I.* A Level I unit primarily provides services for uncomplicated maternity and newborn patients with critical consideration given to the earliest possible detection of the high-risk maternity and newborn patient and the capability to provide emergency obstetric and newborn care.

(2) *Level II.* A Level II unit provides a full range of maternal and neonatal services for uncomplicated patients and for the majority of complicated obstetrical problems and certain neonatal illnesses.

(3) *Level III.* A Level III unit provides care for normal patients but especially for all the serious types of maternal-fetal and neonatal illnesses and abnormalities. Level III units provide continuing education to improve the overall quality of care and generate, develop, and evaluate new concepts and techniques in prenatal and perinatal care. A Level III unit may be actively engaged in clinical and basic research related to prenatal health.

Source: The provisions of this §541.25 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.26. Medical/Surgical.

Inpatient and outpatient services providing care in health care facilities for medical and/or surgical purposes that are not designated in other specialized units of service listed.

Source: The provisions of this §541.26 adopted to be effective May 2, 1980, 5 TexReg 1526.

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REVIEW CRITERIA INDICATORS AND STANDARDS

§541.41. Appropriateness Review Characteristics.

The health systems agencies and the commission, in conducting appropriateness review of services, shall consider certain characteristics to determine the degree to which the services meet the health care needs of the population served. The review characteristics include the following:

(1) the availability of the service;
(2) the accessibility of the service;
(3) the quality of the service;
(4) the continuity of the service;
(5) the cost of the service; and
(6) the acceptability of the service.

Source: The provisions of this §541.41 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.42. Review Criteria.

The characteristics form the basis of review criteria by providing parameters by which a service's performance is assessed. When a service compares favorably with the characteristics of appropriateness against which it is properly measured, the service shall be considered appropriate by the health systems agency and the commission. When a service compares unfavorably with one or more of the characteristics of appropriateness against which it is properly measured, the health systems agency and the commission may consider the service inappropriate.

Source: The provisions of this §541.42 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.43. Criteria for Availability Characteristic.

(a) A health service under review should be available to the population in the health service area and the state.
(b) In reviewing health care services for appropriateness, the commission and the health systems agencies shall determine the extent to which the health services are available to patients in a specified area.
(c) In conducting a review to determine availability, the following criteria may be considered:
(1) The geographic areas and population groups that will be served by the service under review.
(2) The adequacies or inadequacies of existing health care delivery systems in the health service area as they relate to the service under review.
(3) The current and projected utilization for the service under review.
(4) The population trends and vital rates for the health service area.
(5) The availability of resources (including health manpower, management personnel, and funds for capital and operating need) for the provision of the service under review.
(6) The percentage of out- and in-migration for utilization of the service under review.

Source: The provisions of this §541.43 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.44. Criteria for Accessibility Characteristic.

(a) A health service under review should be accessible to the population in the health service area and the state.
(b) In reviewing health services for appropriateness, the commission and the health systems agencies shall determine the extent to which the health care system inhibits or facilitates provision of appropriate services.
(c) In conducting a review to determine accessibility, the following criteria may be considered:
(1) The geographical areas and population groups that will be served by the service under review.
(2) The barriers (*i.e.*: cultural, physical, transportation, financial, *etc.*) that could affect the service within the area.
(3) The current and projected utilization of the service under review.

Source: The provisions of this §541.44 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.45. Criteria for Quality Characteristic.

(a) A health service under review should be provided in a quality manner.
(b) In reviewing health services for appropriateness, the commission and the health systems agencies shall determine the extent to which the health services delivered meet established standards of quality.
(c) In conducting a review, the following criteria may be considered:
(1) The adequacies or inadequacies of existing health care delivery systems in the health service area as they relate to the service under review.

(2) The utilization of appropriate resources, including health manpower, facilities, and equipment for the provision of the service under review.

(3) The accreditation, certification, licensure, or other established standards or mechanisms for evaluating the provision of the service under review.

Source: The provisions of this §541.45 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.46. Criteria for Continuity Characteristic.

(a) A health service under review should be provided so that continuity of care is available.

(b) In reviewing health services for appropriateness, the commission and the health systems agency shall determine the extent of effective linkages and coordination in providing a succession of appropriate services over time.

(c) In conducting a review to determine continuity, the following criteria may be considered:

(1) The coordination agreements for shared services as they relate to the service under review.

(2) How the service under review accomplishes effective integration with other services and elements of the health care system.

(3) The availability and proximity of appropriate health manpower, facilities, and equipment required to support the service under review.

Source: The provisions of this §541.46 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.47. Criteria for Cost Characteristic.

(a) A health service under review should be provided in a cost effective manner.

(b) In reviewing health services for appropriateness, the commission and the health systems agencies shall determine the cost to the patient for procedures encountered in the service category and the extent to which health services are delivered in a cost effective manner.

(c) In conducting a review to determine cost effectiveness, the following criteria may be considered:

(1) The availability of less costly or more effective alternative methods of providing such service.

(2) The total economic value of resources required to provide services, including all financial expenditures.

Source: The provisions of this §541.47 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.48. Criteria for Acceptability Characteristic.

(a) A health service under review should be acceptable to the population in the health service area and the state.

(b) In reviewing health services for appropriateness, the commission and the health systems agency shall determine the measure of consumers' satisfaction with the services they receive, the manner in which the services are delivered, the ease with which services are obtained, and their confidence in the providers of the services.

(c) In conducting a review to determine acceptability, the following criteria may be considered:

(1) The barriers (*i.e.*: cultural, physical, transportation, *etc.*) that could affect the service within an area.

(2) The availability of less costly or more effective alternative methods of providing such service.

(3) The existence of mechanisms for soliciting patient comment and recognition of patient's rights.

(4) Percentage of out- and in-migration for utilization of the service under review.

Source: The provisions of this §541.48 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.49. Other Considerations for Review.

(a) In considering various review criteria during review, the health systems agency and the commission may review and examine other information relating to the service under review. This information may assist the health systems agency and the commission in determining whether a service compares favorably or unfavorably with the review criteria.

(b) In the review of a service, the commission and the health systems agency may consider the following information:

(1) The relationship of the service under review to the applicable health systems plan(s), and annual implementation plan(s), and the state health plan.

(2) The relationship of the service under review to the long-range development plans (if any) of existing facilities providing the service.

(3) The need that the population served has for the service under review, and the extent to which all medically underserved groups have equal access to the service.

(4) The special circumstances of providing the service under review with respect to the need for conserving energy.

(5) The effect of competition on the supply of the health service under review.

(6) Improvements or innovations in the financing and delivery of the service under review which foster competition and serve to promote quality assurance and cost effectiveness.

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(7) The special needs and circumstances of those entities which provide a substantial portion of their services or resources to individuals not residing in the health service area or in adjacent health service areas (these entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers).

(8) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(9) The contribution of the existing institutional health service in meeting the health-related needs of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the applicable health systems plan(s) and annual implementation plan(s) as deserving of priority.

Source: The provisions of this §541.49 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.50. Special Considerations for Health Maintenance Organizations.

In the case of areawide reviews which result in institution-specific findings regarding services provided by or through an HMO, the only criteria to be considered shall be limited to:

(1) the needs of enrolled members and reasonably anticipated new members of the HMO for the existing institutional health services provided by the organization; and

(2) whether the services could be obtained from non-HMO or other HMO providers in a reasonable and cost effective manner which is consistent with the basic method of operation of the HMO.

Source: The provisions of this §541.50 adopted to be effective October 24, 1980, 5 TexReg 4090.

§541.51. Specific Service Indicators.

In order for the commission and the health systems agencies to determine whether a service under review compares favorably with the review criteria for each characteristic, specific health care service indicators may be considered by the commission and health systems agency as applicable to the service under review.

Source: The provisions of this §541.51 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.52. Availability.

(a) Capacity: resources necessary to deliver service.

(b) Geographical distribution of service.

(c) Demand (including rates of utilization).

(d) Personal services (lodging, food, *etc.*).

(e) For long-term care:

(1) Number of beds available at each level of care:

(A) present occupancy for each level; and

(B) present population and future population trends.

(2) Services offered.

(3) Services not available in the area.

(4) Professional staffing patterns.

(5) Nonprofessional (nonlicensed personnel) staffing patterns.

(6) Support facilities and services.

Source: The provisions of this §541.52 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.53. Accessibility.

(a) Size of service area.

(b) Density of population within service area.

(c) Travel time.

(d) Hours of operation.

(e) Available transportation systems.

(f) Financial: are there any financial policies that would prohibit patient services because of inability to pay?

(g) Language/cultural barriers: the ability of personnel to communicate to patients in the prevailing area languages.

(h) Physical barriers: consideration for the handicapped.

(i) For long-term care:

(1) patient mix characteristics of area (ethnicity, age, diagnosis, handicap); and

(2) percentage of patient revenues by service (private pay, Title XIX, Title XVIII, *etc.*).

Source: The provisions of this §541.53 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.54. Quality.

(a) Percentage of services delivered in accredited or certified facilities, or percentage of facilities accredited or certified.
(b) Availability of qualified health manpower (including physician and physician specialists) to provide the service.
(c) For long-term care:
  (1) availability of in-service training and continuing education for staff and volunteers, and education and training of residents; and
  (2) existence of treatment plans and plan of care designed to meet the individual patient's needs.

Source: The provisions of this §541.54 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.55. Continuity.

(a) Levels or range of service available, including regionalized system of maternal and prenatal health.
(b) Established protocol for transfer and referral of patients and the communication of appropriate patient information as indicated.
(c) Proximity of support services.
(d) For long-term care:
  (1) alternate care available (home care, outpatient clinics, hospitals, *etc.*);
  (2) transfer agreements and their utilization; and
  (3) existence of treatment plans and a plan of care designed to meet the individual patient's needs.

Source: The provisions of this §541.55 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.56. Cost.

The availability of less costly or more appropriate methods of providing such services.

Source: The provisions of this §541.56 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.57. Acceptability.

(a) Language/cultural barriers: the ability of personnel to communicate to patients in the prevailing area languages.
(b) Physical barriers: consideration for the handicapped.
(c) Percentage of out- and in-migration for utilization of the service.
(d) Existence of mechanism for obtaining patient's comments and recognition of patient's rights.
(e) Orientation and education of the patient and family concerning services provided.

Source: The provisions of this §541.57 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.58. HSA Review, Criteria, Indicators, and Standards.

The health systems agencies may adopt specific criteria, indicators, and standards to be used in determining whether a service under review compares favorably with a given characteristic or general consideration.

Source: The provisions of this §541.58 adopted to be effective May 2, 1980, 5 TexReg 1526.

REVIEW SCHEDULE

§541.71. Scheduling of Review.

The commission and the health systems agencies shall review institutional health care services according to the schedule within this chapter. When a person requests a reconsideration hearing, or appeals a commission finding concerning appropriateness of a specified service, such hearing will proceed concurrently with the scheduled review or reviews of other elements of the health care system.

Source: The provisions of this §541.71 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.72. Time Schedule for Appropriateness Review.

Review schedule is as follows:

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Service	HSA Review Start	HSA Review Complete	THFC Review Start	THFC Review Complete
ESRD	6/11/80	11/30/80	12/1/80	11/30/81
Radiation therapy	6/11/80	11/30/80	12/1/80	11/30/81
Cardiac catheterization	12/1/80	5/31/81	6/1/81	5/31/82
Open heart surgery	12/1/80	5/31/81	6/1/81	5/31/82
Emergency services	12/1/80	5/31/81	6/1/81	5/31/82
Drug abuse	6/1/81	5/31/82	6/1/82	5/31/83
Alcoholism	6/1/81	5/31/82	6/1/82	5/31/83
Psychiatric	6/1/81	5/31/82	6/1/82	5/31/83
Developmental disabilities	6/1/82	11/30/82	12/1/82	11/30/83
Long-term care	6/1/82	11/30/82	12/1/82	11/30/83
Home health care	6/1/82	11/30/82	12/1/82	11/30/83
Rehabilitation	6/1/82	11/30/82	12/1/82	11/30/83
Pediatrics	12/1/82	5/31/83	6/1/83	5/31/84
Obstetrics	12/1/82	5/31/83	6/1/83	5/31/84
Medical/surgical	12/1/82	5/31/83	6/1/83	5/31/84

In accordance with THFC rules, the completion date is considered the date of receipt by THFC of the HSA's recommendations.

Authority: The provisions of this §541.72 issued under Acts 1975, 64th Leg., p. 832, ch. 823, effective May 28, 1975, as amended (Texas Civ. St. art. 4418h).

Source: The provisions of this §541.72 adopted to be effective May 2, 1980, 5 TexReg 1526; amended to be effective September 16, 1981, 6 TexReg 3427.

Cross References: This section cited in 25 TAC §541.81 (relating to HSA Notice of Review); 25 TAC §541.82 (relating to Length of HSA Review); 25 TAC §541.83 (relating to Commission Notice of Review); and 25 TAC §541.85 (relating to Length of Appropriateness Review).

REVIEW PROCEDURES

§541.81. HSA Notice of Review.

The health systems agency shall notify all affected persons within its health service area of the beginning of review of a specific health service. The health systems agency may provide notification through publication of the notice in the health systems agency's newsletter. The health systems agency must notify health care facilities which offer the specific service under review by mail. In addition, the health systems agency must publish a notice of the beginning of the specific service review in at least one newspaper of general circulation in the health service area. Affected persons to whom written notification must be sent by the health systems agency include the facilities and institutions providing the service under review, the commission, and all interested persons requesting written notification. Notice to the general public within the health service area, other health care facilities, and health care professionals shall be through the notice published in newspapers of general circulation in the health service area. Notification, as required by this section, shall be given no later than the scheduled start date for the health systems agency's review of the particular services to be reviewed, as reflected in §541.72 of this title (relating to Time Schedule for Appropriateness Review).

Source: The provisions of this §541.81 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.82. Length of HSA Review.

The health systems agencies shall complete the review of a healthservice by the date scheduled for the completion of the healthsystems agency's review, as reflected in §541.72 of this title (relating to Time Schedule for Appropriateness Review).

Source: The provisions of this §541.82 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.83, Commission Notice of Review.

During the 180-day schedule of health systems agency's review, the commission must provide a written public notification that a statewide review of the service under review will begin on the date scheduled for the start of commission review of the particular service to be reviewed, as reflected in §541.72 of this title (relating to Time Schedule for Appropriateness Review). The notice will be provided to all health care facilities in the state which provide the service under review, all health systems agencies in the state, and other affected persons. The notice shall include a statement that the commission review of health services is based on the HSA's reviews.

Source: The provisions of this §541.83 adopted to be effective May 2, 1980, 5 TexReg 1526.

Cross References: This section cited in 25 TAC §541.84 (relating to Length of Commission Review).

§541.84. Length of Commission Review.

The commission shall begin a statewide review of the specific service in accord with the schedule of review. This statewide review shall be completed and the commission shall make written public findings within one year of the commencement of review as provided in the notification required pursuant to §541.83 of this title (relating to Commission Notice of Review).

Source: The provisions of this §541.84 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.85. Length of Appropriateness Review.

The appropriateness review of all health services, as reflected in §541.72 of this title (relating to Time Schedule for Appropriateness Review), by the health systems agencies and the commission, shall not exceed a period of 42 months from June 1980, exclusive of the time required for reconsideration hearings, and or appeal hearings at the state level.

Source: The provisions of this §541.85 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.86. Information Required for Review.

Reviews of the appropriateness of existing institutional healthservices in the State of Texas will be based on the following types of information:

(1) Data utilized by the health systems agency in its planning process, as well as data collected by other state agencies and organizations as a part of ongoing data collection and analysis responsibilities.

(2) Survey forms submitted by the HSAs by certified mail/return receipt to facilities offering services under review to be completed and returned to the health systems agency conducting the review within 45 days of the receipt of the survey form. The survey will prescribe additional information required of the facility in regard to the service under review, which is not available through surveys conducted annually by the Texas Department of Health and other state agencies and health-related organizations.

Source: The provisions of this §541.86 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.87. Notification of Health Systems Agency Recommendation.

The health systems agency must provide the commission with the recommendations, and primary data relied upon in the recommendation, and the results of the review of health services in writing on or before the date that the review is scheduled to be completed by these sections. The health systems agency shall forward a copy of the results of the review and written recommendations to all health care facilities providing the reviewed service. The results of the review and recommendations shall be made available to all persons upon request.

Source: The provisions of this §541.87 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.88. Contents of Inappropriateness Recommendation by HSA.

(a) A health systems agency recommendation of inappropriateness concerning a health service shall be supported by the following written statements:

(1) the service compares unfavorably with one or more of the characteristics of appropriateness;

(2) a specific citation of the criteria under the characteristic(s) the service failed to meet; and

(3) the reasons that the service failed to meet the criteria under the characteristic(s), including those that are beyond the control of the facilities providing that service.

(b) When the health systems agency recommends to the commission that a service is inappropriate, the health systems agency shall submit with such recommendation, to the extent practicable, a written plan for correcting the inappropriateness of the service.

Source: The provisions of this §541.88 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.89. Commission Findings.

On or before the date that the commission is scheduled to complete its review, as established by these sections, the commission shall provide written findings as to the appropriateness of existing institutional health service under review, and to the extent practicable, make recommendations for remedial action. The commission shall transmit the findings to the secretary of state, all healthcare facilities providing the service under review, and all health systems agencies in the state. The commission shall publish the findings in the *Texas Register*. Copies of the findings shall be available to persons upon request.

Source: The provisions of this §541.89 adopted to be effective May 2, 1980, 5 TexReg 1526.

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§541.90. Appropriateness Review Status Reports.

Each health systems agency and the commission shall prepare a semiannual report of the status of reviews of appropriateness. The commission and the health systems agencies shall send the semiannual report to all health care facilities subject to appropriateness review.

Source: The provisions of this §541.90 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.91. Hearing Mechanism.

The appropriateness review program is a public process with opportunities for public input through public hearings during the review. The health systems agency and the commission shall permit the health care facilities providing the service under review, and other affected persons, to participate in the review and hearing process.

Source: The provisions of this §541.91 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.92. Health Systems Agency Hearing.

Each health systems agency, when requested by an affected person, shall provide for a public hearing in the course of the review of appropriateness of an institutional health service in the healthservice area, and at the same time shall provide written notice by certified mail to the person requesting the hearing. A request for a hearing must be submitted to the health systems agency within 45 days after the health systems agency area-wide review has commenced. When the board of the health systems agency considers it appropriate, the agency may conduct more than one hearing in different geographic locations of the health service area. The health systems agency shall publish a notice of the hearing in a newspaper of general circulation in the health service area at least 30 days prior to the scheduled date of the hearing. Any person who wishes to speak to the issues surrounding the appropriateness of the service under review may appear, register, and be heard, or offer written comments. The healthsystems agency shall consider the record of the hearing or hearings in developing recommendations to the commission concerning the service under review.

Source: The provisions of this §541.92 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.93. *Reconsideration of Health Systems Agency Recommendation.*

(a) After the health systems agency has made public its recommendation concerning the service under review on an area-wide basis, any person may submit a written request for a reconsideration of the recommendation. A person must submit a written request for reconsideration to the health systems agency within 15 days from the date of the issuance of the written recommendation. In the written request, the person requesting the reconsideration must demonstrate good cause for reconsideration or that the health systems agency has materially failed to follow the procedures set forth in this chapter in reaching its findings for recommendation. The appropriate body of the health systems agency shall review each request for reconsideration and determine whether the person making the request has demonstrated good cause that such a reconsideration should be granted. The health systems agency shall determine whether good cause has been shown for a reconsideration within 30 days of the date of submission of the request for reconsideration. When good cause has been shown, the health systems agency shall grant the request and publish a notice of reconsideration hearing in a newspaper of general circulation. The reconsideration hearing shall begin no sooner than 10 days and no later than 30 days from the date of published notice and the health systems agency shall make written recommendations based on the reconsideration hearing within 45 days of completion of the hearing.

(b) The granting of a reconsideration hearing does not relieve the health systems agency of the responsibility of providing recommendations to the commission within the schedule of review. State-level review shall proceed on the basis of the original recommendation until such time as the commission is notified that the health systems agency has altered its recommendation as a result of the reconsideration hearing. When a reconsideration is granted, the health systems agency shall provide written notification to the commission.

Source: The provisions of this §541.93 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.94. Commission Hearing.

(a) The commission shall conduct a public hearing in the course of a statewide review of an institutional health service when a hearing is requested by one or more affected persons. A request for a hearing must be submitted to the commission within 90 days after the date of notification that statewide review has commenced. When a hearing is requested, the commission shall schedule a hearing and shall provide public notice of the hearing to affected persons. The commission shall consider the record of the hearing in developing findings on the service under review.

(b) The commission shall conduct all appropriateness review hearings in accordance with the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes article 6252-13a.

Source: The provisions of this §541.94 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.95. Reconsideration of Commission Findings.

(a) After the commission has published its written findings on the appropriateness of a service under review, any person may, for good cause shown, request a public hearing for reconsideration of the state finding. The commission shall review a request for reconsideration on its merits and shall decide whether good cause has been shown for a reconsideration hearing.

(b) A person requesting reconsideration must submit a written request for reconsideration to the commission within 45 days of the publication of the commission's findings on the appropriateness of a health care service. When the commission determines that the person requesting reconsideration has shown good cause, the commission shall schedule a reconsideration hearing within 45 days of the receipt of the request for reconsideration. Upon scheduling of a reconsideration, the commission shall provide notice of the hearing to the person requesting the reconsideration, all health care facilities providing the service under review, and the health systems agencies within the state. The commission shall publish the notice of reconsideration hearing in the *Texas Register*. The commission shall conduct a reconsideration hearing in accord with the administrative rules governing hearings before the commission. Written findings of the reconsideration hearing shall be published within 60 days of the conclusion of the reconsideration hearing.

Source: The provisions of this §541.95 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.96. Good Cause for Reconsideration.

The criteria for good cause consists of the following:

(1) Presentation of significant relevant information not previously considered by the commission.

(2) Demonstration that there have been significant changes in the factors or circumstances relied upon by the commission in reaching its findings.

(3) Demonstration that the commission has materially failed to follow the procedures set forth in this chapter in reaching its findings.

(4) Demonstration that other circumstances exist which the commission considers to be good cause for reconsideration.

Source: The provisions of this §541.96 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.97. Review of a Finding of Inappropriateness.

(a) When a health service has been found inappropriate by the commission, health care facilities offering the service may request a reconsideration of the commission findings upon demonstration of substantial progress in correcting the factors which led to the finding of inappropriateness. Such a request must be endorsed by at least 1/2 the health systems agencies in the state. In addition to the endorsements, the request must contain the following information:

(1) Justification for reconsidering the service prior to the time it would normally be scheduled for a subsequent review.

(2) Documentation of specific actions taken by the institutions offering the service to remedy the deficiencies which led to the finding of inappropriateness.

(3) Revised survey forms reflecting the effect of the actions taken.

(4) Endorsement of the health systems agencies serving areas where the service is available for the reconsideration.

(b) This information will be used by the commission in deciding whether or not the service should be reconsidered. If the commission decides that a reconsideration is indicated, all institutional providers of the inappropriate service will be asked to resubmit survey forms to the HSA serving their area and the state agency. The THFC will obtain the recommendations of the HSAs on the request for reconsideration within 45 days of submittal of the revised forms. The commission shall conduct a public hearing on the matter at a time and place announced in a notice to be provided at least 15 days in advance of the hearing. Written findings of the reconsideration hearing shall be published within 60 days of the conclusion of the reconsideration hearing.

(c) The evidence produced during the hearing, along with the recommendation of the HSAs and the material submitted by the facilities providing the service, will become a factor in the commission's decision as to whether the service is now appropriately offered. A finding that the deficiencies have been remedied and the services now appropriately structured shall not change the schedule for the next full scale review of that service in the state.

Source: The provisions of this §541.97 adopted to be effective May 2, 1980, 5 TexReg 1526.

§541.98. HSA Appeals Mechanism.

A health systems agency as a party to appropriateness review is entitled to judicial review (by the district courts) of a finding made by the commission regarding appropriateness of an existing institutional health service which is inconsistent with the recommendation by the health systems agency on the service. The health systems agency must first request a reconsideration

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hearing of the finding and the contested finding must remain basically unchanged before judicial review will be available. This appeals mechanism will be consistent with the provisions of the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes article 6252-13a.

Source: The provisions of this §541.98 adopted to be effective May 2, 1980, 5 TexReg 1526.

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