

ILLINOIS REGISTER

HEALTH FACILITIES AND SERVICES REVIEW BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Health Facilities and Services Operational Rules
- 2) Code Citation: 77 Ill. Adm. Code 1130
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
1130.120	Amendment
1130.130	Amendment
1130.140	Amendment
1130.150	Amendment
1130.215	Amendment
1130.230	Amendment
1130.240	Amendment
1130.250	Amendment
1130.310	Amendment
1130.410	Amendment
1130.500	Amendment
1130.520	Amendment
1130.525	New Section
1130.550	Amendment
1130.560	Amendment
1130.570	Amendment
1130.580	Amendment
1130.590	Amendment
1130.610	Amendment
1130.620	Amendment
1130.635	Amendment
1130.640	Amendment
1130.650	Amendment
1130.655	Amendment
1130.660	Amendment
1130.670	Amendment
1130.680	Amendment
1130.710	Amendment
1130.720	Amendment
1130.730	Amendment
1130.740	Amendment
1130.750	Amendment
1130.760	Amendment
1130.770	Amendment
1130.775	Amendment

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1130.780	Amendment
1130.790	Amendment
1130.810	Amendment
1130.910	Amendment
1130.920	Amendment
1130.930	Amendment
1130.940	Amendment
1130.950	Amendment
1130.980	Amendment
1130.990	Amendment
1130.995	Amendment
1130.1020	Amendment
1130.1030	Amendment
1130.1040	Amendment
1130.1080	Amendment
1130.1130	Amendment
1130.APPENDIX A	Amendment

- 4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960/12]
- 5) Effective Date of Rulemaking:
- 6) Do these amendments contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposed Amendments Published in Illinois Register: 39 Ill. Reg. 16277; December 28, 2015
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Difference(s) between proposal and final version: In Section 1130.140, add “When a project requires an applicant to obtain a license, the project is not considered complete until the facility is licensed.” to the end of the definition of “Completion Date”.

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Delete the added text in Section 1130.230(h) relating to exemption and permit application-processing fees and reinstate the stricken text. This maintains the current application-processing fees for exemptions and permits.

Add “at or” before “above \$1,250,000” in Section 1130.230(h)(2)(C)(ii).

Delete “1,000” and reinstate “500” in Section 1130.230(h)(5). This maintains the current application-processing fees for permit renewals.

In Section 1130.230(h)(5) delete “If” in the beginning of the second to last sentence.

Reinstate the stricken text in Section 1130.410(d) and change the subsection label from “(d)” to “(c)”. This maintains the current eligibility for applicants proposing neonatal intensive care projects to receive an exemption.

In Section 1130.520(b)(1)(B), remove italics from “*has the qualifications, background and character to adequately provide a proper standard or health service for the community*”.

In Section 1130.520(b)(1)(B), delete “[20 ILCS 3960/6]”.

In Section 1130.520(b)(1)(D), remove italics from “*name of*”.

In Section 1130.520(b)(1)(E), remove italics from “*list of*” and add a comma after “*transaction*”.

In Section 1130.520(c) delete “*form*” after “*standard notice*”.

In Section 1130.525(b), change “77 Ill. Adm. Code 1110.130, the application shall” to “77 Ill. Adm. Code 1110.130. The application shall”.

In Section 1130.560(a)(1), remove italics from the phrases “*The Chairman shall act*”, “*of a health care facility*”, “*deems the application*” and “*that the Board consider the application*”.

In Section 1130.570(b)(2), delete the second period at the end of the last sentence.

In Section 1130.570(c)(2), add “in which the applicant submitted key terms of the transaction” after “change of ownerships”, which is located at the beginning of the sentence.

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In Section 1130.570(c)(2), change “The Board must receive” to “The exemption holder must submit”.

In Section 1130.570(e), change “An” at the beginning of the sentence to “When an applicant has submitted key terms of the transaction rather than final transaction documents, an”.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will these amendments replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
1130.140	Amendment	40 Ill. Reg. 13795; October 7, 2016
1130.531	New Section	40 Ill. Reg. 13795; October 7, 2016

- 15) Summary and Purpose of Amendments: Changes as a result of Public Act 99-0154: Expanding projects eligible for an exemption to include those to discontinue a category of service or to close a health care facility that is not maintained by the State, a State agency or State department; removing the requirement that applicants seeking a change of ownership have to submit a final transaction document when submitting their application for review. Instead, allowing these applicants the option to submit the key terms of the transaction. Also, for these applicants, making the exemption invalid if the change of ownership is not completed according to the key terms submitted in the application; reducing the notice-publication period for change of ownership applications from three days to one and requiring applicants to pay for the cost of the publication; granting the HFSRB Chair authority to grant an exemption for a change of ownership among related persons within 45 days, as well as the discretion to refer these applications to the entire Board if there is a conflict of interest or for other good cause; adding the definition of State Board Staff Reports; adding specialized mental health rehabilitation facilities to the type of facilities that are subject to the Certificate of Need process; and adding skilled and intermediate-care facilities licensed under the ID/DD Community Care Act or the MC/DD Act to the type of facilities that are subject to the Certificate of Need process.

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Remove the language related to permit acceptance agreements. The Board will continue using permit letters to notify applicants that their applications were approved and of applicants' obligations for maintaining valid permits.

Remove the requirement that HFSRB staff notify applicants in writing if the applicants have not paid the full application-processing fee. HFSRB staff will continue to notify applicants of an outstanding balance, but staff will not be required to do so in writing.

In cases where HFSRB extends the financial commitment period, requiring permit holders to submit financial commitment reports no later than the due date of the next annual report immediately following the new financial commitment date.

Repeat language from the Health Facilities Planning Act regarding the fine amount for permit holders who fail to comply with post-permit reporting requirements.

Update the capital expenditure minimum to reflect the current threshold.

Clarify existing language.

- 16) Information and questions regarding these adopted amendments shall be directed to:

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Health Facilities and Services Review Board
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The full text of the Adopted Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH

CHAPTER II: HEALTH FACILITIES AND SERVICES REVIEW BOARD

SUBCHAPTER b: OTHER BOARD RULES

PART 1130

HEALTH FACILITIES AND SERVICES REVIEW OPERATIONAL RULES

SUBPART A: AUTHORITY

Section

1130.110	Statutory Authority/Applicability
1130.120	Introduction
1130.130	Purpose
1130.140	Definitions
1130.150	Referenced and Incorporated Materials

SUBPART B: GENERAL REQUIREMENTS

Section

1130.210	Persons and Facilities Subject to the Act
1130.215	Health Care Facilities Subject to the Act
1130.220	Necessary Parties to the Application for Permit or Exemption
1130.230	Fees
1130.240	Reporting and Notification Requirements
1130.250	HFSRB Meetings

SUBPART C: PROJECTS OR TRANSACTIONS SUBJECT TO THE ACT

Section

1130.310	Projects or Transactions Subject to the Act
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SUBPART D: PROJECTS OR TRANSACTIONS ELIGIBLE FOR
EXEMPTION FROM PERMIT REQUIREMENTS

Section

1130.410	Projects or Transactions Exempt from Permit Requirement
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SUBPART E: OPERATIONAL REQUIREMENTS FOR EXEMPTIONS

Section

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1130.500	General Requirements for Exemptions
1130.510	Requirements for Exemptions Involving the Acquisition of Major Medical Equipment (Repealed)
1130.520	Requirements for Exemptions Involving the Change of Ownership of a Health Care Facility
<u>1130.525</u>	<u>Requirements for Exemptions Involving the Discontinuation of a Health Care Facility or Category of Service</u>
1130.530	Requirements for Exemptions Involving Health Maintenance Organizations (Repealed)
1130.531	Requirements for Exemptions for the Establishment or Expansion of Neonatal Intensive Care Service and Beds (Repealed)
1130.539	Requirements for Exemptions Involving the Establishment of Positron Emission Tomography (P.E.T.) Service (Repealed)
1130.540	Requirements for Exemptions Involving Discontinuation (Repealed)
1130.541	Requirements for Exemptions for Combined Facility Licensure (Repealed)
1130.542	Requirements for Exemptions for Temporary Use of Beds for Demonstration Programs (Repealed)
1130.543	Requirements for Exemption for Equipment to be Acquired By or on Behalf of a Health Care Facility (Repealed)
1130.544	Requirements for Exemption for the Addition of Dialysis Stations (Repealed)
1130.550	Agency Processing of an Application for Exemption
1130.560	State Board Action
1130.570	Validity of an Exemption and Reporting Requirements
1130.580	Relinquishment of an Exemption
1130.590	Revocation of an Exemption

SUBPART F: OPERATIONAL REQUIREMENTS FOR THE REVIEW AND PROCESSING OF APPLICATIONS FOR PERMIT

Section	
1130.610	Duration of the Review Period and Time Frames
1130.620	Technical Assistance, Classification, Completeness Review, and Review Procedures
1130.630	HFSRB Staff Actions During the Review Period
1130.635	Additional Information Provided During the Review Period
1130.640	Extension of the Review Period
1130.650	Modification of an Application
1130.655	HFSRB Consideration and Action
1130.660	Approval of an Application
1130.670	Intent to Deny an Application

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1130.680 Denial of an Application

SUBPART G: PERMIT VALIDITY, REPORTING REQUIREMENTS AND REVOCATION

Section

1130.710 Validity of Permits
1130.720 Financial ~~Commitment~~
1130.730 Extension of the Financial ~~Commitment~~ Period
1130.740 Permit Renewal
1130.750 Alteration of Post-Permit Projects
1130.760 Annual Progress Reports
1130.770 Project Completion, Final Realized Costs and Cost Overruns
1130.775 Relinquishment of a Permit
1130.780 Revocation of a Permit
1130.790 Penalties, Fines and Sanctions ~~Mandated in the Illinois Health Facilities Planning Act~~ for Non-compliance with the Act and HFSRB Rules

SUBPART H: DECLARATORY RULINGS

Section

1130.810 Declaratory Rulings

SUBPART I: PUBLIC HEARING AND COMMENT PROCEDURES

Section

1130.910 Applicability
1130.920 Notice of Review and Opportunity for Public Hearing and Comment on Applications for Permit
1130.930 Notice of Public Hearing on Applications for Permit
1130.940 Procedures for Public Hearing on Applications for Permit
1130.950 Written Comments on Applications for Permit
1130.960 Notice Procedures for Public Hearing on Applications for Certificate of Recognition (or Revocation of Recognition) (Repealed)
1130.970 Procedures for Public Hearing on Applications for Certificate of Recognition (or Revocation of Recognition) (Repealed)
1130.980 Procedures Concerning Public Hearing for Certificate of Exemption ~~for Change of Ownership~~
1130.990 Procedures for Public Hearing and Comment on Proposed Rules
1130.995 Procedures for Written Public Comment on All Other Matters

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SUBPART J: PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS

Section

1130.1010	The Right to an Administrative Hearing and Applicable Rules
1130.1020	Initiation of a Contested Case (Pleadings)
1130.1030	Waiver of Hearing
1130.1040	Parties to Hearings
1130.1050	Appearance – Right to Counsel
1130.1060	Prehearing Conferences
1130.1070	Intervention
1130.1080	Disqualification of Administrative Law Judge
1130.1090	Form of Papers
1130.1100	Service
1130.1110	Conduct of Hearings
1130.1120	Discovery
1130.1130	Motions
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1130.1150	Administrative Law Judge's Report and Recommendation
1130.1160	Proposal for Decision (Repealed)
1130.1170	Final Decision
1130.1180	Records of Proceedings
1130.1190	Miscellaneous
1130.1200	Copies of Pleadings to be Filed
1130.1210	Applicability

1130.APPENDIX A Capital Expenditure Minimums/Review Thresholds

AUTHORITY: Authorized by Section 12 of and implementing the Illinois Health Facilities Planning Act [20 ILCS 3960].

SOURCE: Adopted at 14 Ill. Reg. 7183, effective May 1, 1990; emergency amendment at 15 Ill. Reg. 4787, effective March 18, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 9731, effective June 17, 1991; emergency amendments at 16 Ill. Reg. 13153, effective August 4, 1992, for a maximum of 150 days; emergency expired January 1, 1993; amended at 17 Ill. Reg. 4448, effective March 24, 1993; amended at 17 Ill. Reg. 5882, effective March 26, 1993; amended at 19 Ill. Reg. 2972, effective March 1, 1995; expedited correction at 21 Ill. Reg. 3753, effective March 1, 1995; recodified at 20 Ill. Reg. 2597; emergency amendment at 21 Ill. Reg. 12671, effective September 2, 1997, for a maximum of 150 days; emergency expired January 30, 1998; amended at 23 Ill. Reg. 2911, effective March 15, 1999; emergency amendment at 23 Ill. Reg. 3835, effective March 15, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 7752,

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effective July 9, 1999; amended at 24 Ill. Reg. 6013, effective April 7, 2000; amended at 25 Ill. Reg. 10786, effective August 24, 2001; amended at 27 Ill. Reg. 2976, effective February 21, 2003; amended at 30 Ill. Reg. 14852, effective September 1, 2006; amended at 31 Ill. Reg. 15270, effective November 1, 2007; amended at 32 Ill. Reg. 12355, effective July 18, 2008; amended at 37 Ill. Reg. 6227, effective June 1, 2013; amended at 38 Ill. Reg. 2869, effective February 1, 2014; amended at 39 Ill. Reg. 6347, effective June 1, 2015; amended at 40 Ill. Reg. _____, effective _____.

SUBPART A: AUTHORITY

Section 1130.120 Introduction

Part 1130 establishes the procedures and requirements for processing and ~~reviewing~~review of applications for permit, applications for exemptions, and other matters that are subject to the Act and to determinations by the Illinois Health Facilities and Services Review Board (HFSRB). This Part pertains to, but is not limited to: persons and transactions subject to the Act; the requirements for ~~submitting~~submission of applications for permit or exemption; the HFSRB review process, public hearing procedures for applications and proposed rules; requirements for maintaining valid permits; declaratory rulings; and administrative hearings.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.130 Purpose

- a) *The purpose of the Health Facilities Planning Act is to establish a procedure designed to reverse the trends of increasing costs of health care resulting from unnecessary construction of health care facilities. This program is established to:*
- 1) *improve the financial ability of the public to obtain necessary health services;*
 - 2) *establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public;*
 - 3) *maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent;*
 - 4) *assure that the reduction and closure of health care services or facilities is performed in an orderly and timely manner, and that these actions are*

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deemed to be in the best interests of the public; and

- 5) *assess the financial burden to patients caused by unnecessary health care construction and modification. [20 ILCS 3960/2].*
- b) Decisions regarding proposed new health services and facilities shall be made for reasons having to do with the community health needs in the various parts of the State. The burden of proof on all issues pertaining to an application shall be on the applicant.
- c) The health facilities and services review program shall be administered with the goal of maximizing the efficiency of capital investment and the objectives of:
 - 1) Promoting development of more effective methods of delivering health care;
 - 2) Improving distribution of health care facilities and services and ensuring access to needed health care services for the general public, the medically indigent and similar underserved populations;
 - 3) Controlling the increase of health care costs;
 - 4) Promoting planning for health care services at the facility, regional and ~~state~~State levels;
 - 5) Maximizing the use of existing health care facilities and services that represent the least costly and most appropriate levels of care; and
 - 6) Minimizing the unnecessary duplication of health care facilities and services.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.140 Definitions

"Act" means the Illinois Health Facilities Planning Act [20 ILCS 3960].

"Administrative Law Judge" means the person appointed to preside at administrative hearings under Subpart J ~~of this Part~~ and pursuant to the Act.

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"Administrator" means the chief executive officer of HFSRB, responsible to the HFSRB Chairman and, through the Chairman, responsible to HFSRB for the execution of its policies and procedures.

"Adverse Action" means a disciplinary action taken by IDPH, CMMS, or any other State or federal agency against a person or entity that owns or operates or owns and operates a licensed or Medicare or Medicaid certified healthcare facility in the State of Illinois. These actions include, but are not limited to, all Type "A" and Type "AA" violations. As defined in Section 1-129 of the Nursing Home Care Act [210 ILCS 45], *"Type 'A' violation" means a violation of the Nursing Home Care Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility presenting a substantial probability that risk of death or serious mental or physical harm to a resident will result therefrom or has resulted in actual physical or mental harm to a resident.* As defined in Section 1-128.5 of the Nursing Home Care Act, *a "Type AA violation" means a violation of the Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death.* [210 ILCS 45/1-129]

"Affirmation" means a statement, declaration, proclamation, pronouncement or notice made by an applicant regarding the information requirements for an application for exemption, with the understanding that there are still consequences to any matters that are non-compliant with the terms of the exemption issued.

"Agency" or "IDPH" means the Illinois Department of Public Health.

"Alteration" means any revision or change to a project as detailed in the application that occurs after HFSRB ~~issued~~issuance of the permit. A completed project cannot be altered. The site of the proposed project or the persons who are the permit holder cannot be altered.

"Applicant" means a person, as defined in the Act, who applies for a permit or exemption. See Section 1130.220 to determine what parties are necessary for an application.

"Audit" means the most recent formal examination, correction and official endorsement of financial reports by an independent certified public accountant.

"Authorized Representative" means a person who has authority to act on behalf of

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the legal entity or person that is the applicant or permit holder. Authorized representatives are: in the case of a corporation, any of its officers or members of its board of directors; in the case of a limited liability company, any of its managers or members (or the sole manager or member when two or more managers or members do not exist); in the case of a partnership, any of its general partners (or the sole general partner when two or more general partners do not exist); in the case of estates and trusts, any of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and in the case of a sole proprietor, the individual who is the proprietor.

"Capital Expenditure" means an expenditure made by or on behalf of a health care facility (as such a facility is defined in the Act), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, or is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part and which exceeds the capital expenditure minimum. For purposes of this definition, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if such expenditure exceeds the capital expenditure minimum. Unless otherwise interdependent or submitted as one project by the applicant, components of construction or modification undertaken by means of a single construction contract or financed through the issuance of a single debt instrument shall not be grouped together as one project. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under the Act shall be considered capital expenditures, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review. [20 ILCS 3960/3]

"Capital Expenditure Minimum" means the dollar amount or value which would require a permit for capital projects and major medical equipment. Capital expenditure minimums are adjusted annually to reflect the increase in construction costs due to inflation per Section 1130.310. Current capital expenditure minimums are posted on the HFSRB website (www.hfsrb.illinois.gov) and Appendix A.

"Censure" means a formal and public reprimand issued by HFSRB.

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"CMMS" means the federal Centers for Medicare and Medicaid Services.

"Chairman" or "Board Chair" means the presiding officer of HFSRB.

"Change in the Bed Count of a Health Care Facility" means a change in a health care facility's authorized bed capacity, including reductions, increases with permit or allowable increases without permit. *A permit or exemption shall be obtained prior to the construction or modification of a health care facility that: changes the bed capacity of a health care facility by increasing the total number of beds or by distributing beds among various categories of service or by relocating beds from one physical facility to another by more than 20 beds or 10% of total bed capacity as defined by the State Board in its Inventory of Health Care Facilities and Services and Need Determinations found on the Board's website at www.hfsrb.illinois.gov, whichever is less, over a 2-year period.* [20 ILCS 3960/5] The two-year period begins on the date the additional beds or stations become operational. (See Section 1130.240(f) for more detail.)

"Change of Ownership" means a change in the person who has operational control of an existing health care facility or *a change in the person who has ownership or control of a health care facility's physical plant and capital assets. A change of ownership is indicated by, but not limited to, the following transactions: sale, transfer, acquisition, leases, change of sponsorship or other means of transferring control.* [20 ILCS 3960/3] Examples of change of ownership include:

a transfer of stock or assets resulting in a person obtaining majority interest (i.e., over 50%) in the person who is licensed or certified (if the facility is not subject to licensure), or in the person who owns or controls the health care facility's physical plant and capital assets; or

the issuance of a license by IDPH to a person different from the current licensee; or

for facilities not subject to licensing, the issuance of a provider number to a different person by certification agencies that administer Titles XVIII and XIX of the Social Security Act; or

a change in the membership or sponsorship of a not-for-profit corporation; or

a change of 50% or more of the voting members of a not-for-profit

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corporation's board of directors, during any consecutive 12-month period, that controls a health care facility's operations, license, certification (when the facility is not subject to licensing) or physical plant and capital assets; or

a change in the sponsorship or control of the person who is licensed or certified (when the facility is not subject to licensing) to operate, or who owns the physical plant and capital assets of a governmental health care facility; or

any other transaction that results in a person obtaining control of a health care facility's operations or physical plant and capital assets, including leases.

"Change of Ownership Among Related Persons" means a transaction in which the parties to the transaction are under common control or ownership before and after the transaction is completed. [20 ILCS 3960/8.5(a)]

"Charity Care" means care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third party payer. [20 ILCS 3960/3]

"Clinical Service Area" means a department or service that is directly related to the diagnosis, treatment, or rehabilitation of persons receiving services from the health care facility [20 ILCS 3960/3]. A clinical service area's physical space shall include those components required under the facility's licensure or Medicare or Medicaid Certification, and as outlined by documentation from the facility as to the physical space required for appropriate clinical practice.

~~"Co-applicant" means a person, as defined in the Act, who, together with other persons, applies for a permit or exemption. (See Section 1130.220 to determine what parties are necessary for an application.)~~

"Combined Service Area Project" means a project that consists of both clinical service areas and non-clinical service areas.

"Completion Date" or "Project Completion Date" means the date the applicant established by the applicant for the completion of the project, when the permit was approved or renewed in the approval of the permit or subsequent renewal.

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When a project requires an applicant to obtain a license, the project is not considered complete until the facility is licensed.

"Construction" or "Modification" means the establishment, erection, building, alteration, reconstruction, modernization, improvement, extension, discontinuation, change of ownership of or by a health care facility, or the purchase or acquisition by or through a health care facility of equipment or service for diagnostic or therapeutic purposes or for facility administration or operation or any capital expenditure made by or on behalf of a health care facility which exceeds the capital expenditure minimum; however, any capital expenditures made by or on behalf of a health care facility for the construction or modification of a facility licensed under the Assisted Living and Shared Housing Act or a conversion project undertaken in accordance with Section 30 of the Older Adult Services Act shall be excluded from any obligations under the Act. [20 ILCS 3960/3]

"Contested Case" is defined in Section 1-30 of the IAPA [5 ILCS 100/1-30].

"Control" means that a person possesses any of the following discretionary and non-ministerial rights or powers:

In the case of an entity, the ability to direct the management and policies of the entity, whether through the voting of securities, corporate membership, contract, or otherwise. Examples of such control include, without limitation:

holding 50% or more of the outstanding voting securities of an issue;

in the case of an entity that has no outstanding voting securities, having the right to 50% or more of the profits or, in the event of dissolution, the right to 50% or more of the assets of the entity;

having the power to appoint or remove 50% or more of the governing board members of an entity;

having the power to require or approve the use of funds or assets of the entity; or

having the power to approve, amend or modify the entity's bylaws

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or other governance documents.

In the case of capital assets or real property, the power to direct or cause the direction of the personal property, real property or capital assets that are components of the project (i.e., fixed equipment, mobile equipment, buildings and portions of buildings). Examples of such control include, without limitation:

ownership of 50% or more in the property or asset;

serving as lessee or sublessee.

"Conversion" means a change in the control of an existing health care facility's physical plant, assets, or operations by such methods as, but not limited to, a change in ownership, acquisition, merger, consolidation, lease, stock transfer, or change in sponsorship. Types of conversion include:

change of ownership;

consolidation by combining two or more existing health care facilities into a new health care facility, terminating the existence of the existing or original facilities ($A + B = C$). Consolidation results in the establishment of a health care facility within the meaning of the Act and in the discontinuation of the existing facilities, resulting in termination of license for facilities subject to licensing or the loss of certification for facilities not subject to licensing;

merger by the absorption of one or more existing health care facilities into another existing health care facility. The result of the absorption is that only one facility survives ($A + B = B$). Merger results in the modification (e.g., expansion of beds or services) of the survivor facility and the discontinuation of the facility being absorbed.

"Date" means, for purposes of 77 Ill. Adm. Code 1130, a time-period starting at 12:00:01 a.m. of a specified day and ending at 12:00:01 a.m. the following day.

"Director" means *the Director of the Department of Public Health*. [20 ILCS 3960/3]

"Discontinuation" means to cease operation of an entire health care facility or

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category of service on a voluntary or involuntary basis. A permit or exemption is required prior to a discontinuation. A facility or category of service that has ceased operation or has interrupted service on a temporary basis due to unanticipated or unforeseen circumstances (such as the lack of appropriate staff, or a natural or unnatural disaster) may be determined to not have discontinued, provided that the facility has exercised appropriate efforts to maintain operation, and has provided documentation of the circumstances and anticipated date of restoration to HFSRB within 30 days after the temporary interruption of the service. Discontinuation also includes a determination by HFSRB that:

a category of service approved after January 1, 1992 is not operating at utilization standards/target occupancy rates specified in 77 Ill. Adm. Code 1100 (Narrative and Planning Policies), for that category of service, by the end of the second year of operation after project completion and on average for any two-year period thereafter (based upon data reported by the facility to HFSRB staff pursuant to Section 13 of the Act), and that need no longer exists in the planning area based upon the existence of such factors as, but not limited to, access to other services in the planning area, excess service capacity in the planning area, and the facility's ability to adequately staff the existing service; or

an existing category of service is not operating at utilization standards/target occupancy rates specified in 77 Ill. Adm. Code 1100, for that category of service, on average for any two-year period commencing on January 1, 1995 and thereafter (based upon data reported by the facility to HFSRB staff pursuant to Section 13 of the Act), and that need no longer exists in the planning area based upon the existence of such factors as, but not limited to, access to other services in the planning area, excess service capacity in the planning area, and the facility's ability to adequately staff the existing service.

HFSRB NOTE: HFSRB may determine that a discontinuation has not occurred when a facility has complied with the requirements of this definition. Failure to obtain a permit or exemption prior to discontinuation may result in the imposition of sanctions or penalties as provided by the Act.

"Due Diligence" means to take such actions toward the completion of a project for which a permit has been issued with that diligence and foresight that persons of ordinary prudence and care commonly exercise under like circumstances. An accidental or unavoidable cause that cannot be avoided by the exercise of due

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diligence is a cause that reasonable prudent and careful persons, under like circumstances, do not and would not ordinarily anticipate, and whose effects under similar circumstances they do not and would not ordinarily avoid.

"Emergency Projects" means projects that are *emergent in nature and must be undertaken immediately to prevent or correct structural deficiencies or hazardous conditions that may harm or injure persons using the facility, as defined at 77 Ill. Adm. Code 1110.40(a)*. [20 ILCS 3960/12(9)]

"Entity" means any corporation, company, partnership, joint venture, association, trust, foundation, fund or other legally recognized organization, public body or municipality.

"Establish" or "Establishment" means the construction of a new health care facility, the licensing of unlicensed buildings or structures as a health care facility, the replacement of an existing health care facility on another site, or *the initiation of a category of service as defined by the Board*. [20 ILCS 3960/3]

"Estimated Project Cost" or "Project Costs" means the sum of all costs, including the fair market value of any equipment or other real property (whether acquired by lease, donation, or gift) necessary to complete a project, including:

- preplanning costs;
- site survey and soil investigation fees;
- site preparation costs;
- off-site work;
- construction contracts and contingencies (including demolition);
- capital equipment included in construction contracts;
- architectural and engineering fees;
- consultants and other professional fees that are related to the project;
- capital equipment not in construction contracts;

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bond issuance expenses;

net interest expense during construction; and

all other costs that are to be capitalized.

"Exemption" means the classification of projects that are exempt from the Certificate of Need permit review process, but are reviewed under *the procedures and requirements* of HFSRB *regarding issuance of exemptions*. (See Subpart E.) *An exemption shall be approved when all information required by the Board, in accordance with Subpart E, is submitted.* [20 ILCS 3960/6(b)]

"Existing Health Care Facility" means any health care facility subject to the Act that:

has a license issued by IDPH and has provided services within the past 12 months, unless the failure to provide such service is the result of pending license revocation procedures, and has not surrendered or abandoned its license or had its license revoked or voided or otherwise deemed invalid by IDPH; or

is certified under Titles XVIII or XIX of the Social Security Act (42 USC 1395); or

is a facility operated by the State of Illinois.

HFSRB NOTE: Projects approved by HFSRB for establishment of a health care facility that have not been deemed complete in accordance with the provisions of this Part shall not be considered existing facilities, but the approved number of beds or services shall be recorded in the Inventory of Health Care Facilities and shall be counted against any applicable need estimate.

"Ex Parte Communication" *means a communication between a person who is not a State Board member or employee that reflects on the substance of a formally filed State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of a pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. Technical Assistance with respect to an application, not intended to influence any decision*

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on the application, may be provided by employees to the applicant. Once an application is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed, standardized format, and shall be included in the application file. [20 ILCS 3960/4.2]

"Fair Market Value" means the dollar value of a project or any component of a project that is accomplished by lease, donation, gifts or any other means that would have been required for purchase, construction, or acquisition.

"Final Decision" or "Final Administrative Decision" or "Final Determination" means:

the decision by HFSRB to approve or deny an application for permit.
Action taken by HFSRB to deny an application for permit is subsequent to an administrative hearing or to the waiver of such hearing; or

the decision by HFSRB on all matters other than the issuance of a permit.

HFSRB NOTE: The decision is final at the close of business of the HFSRB meeting at which the action is taken.

"Final Realized Costs" means all costs that are normally capitalized under generally accepted accounting principles that have been incurred to complete a project for which a permit or exemption was issued. These costs include all expenditures and the dollar or fair market value of any component of the project, whether acquired through lease, donation or gift.

"Financial Commitment" means the commitment of at least 33% of total funds assigned to cover total project cost, that occurs by:

The actual expenditure of 33% or more of the total project cost; or

The commitment to expend 33% or more of the total project cost by signed contracts or other legal means. (See Section 1130.760 (Annual Progress Reports).)

"Hearing Officer" means the person with authority to conduct public hearings and to take all necessary steps to assure the proper completion of public hearings and to assure compliance with requirements of the Act. Responsibilities include:

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determining the order and time allotment for public testimony; maintaining order; setting and announcing new hearing dates, times and places, as necessary; determining the conclusion of the hearing and assuring that all documents, exhibits and other written materials presented or requested at the hearing are in the hearing officer's custody; and preparing a report for submittal to HFSRB.

"HFSRB" or "State Board" or "Board" means the Illinois Health Facilities and Services Review Board.

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Intent to Deny" means the negative decision of HFSRB, following its initial consideration of an application for permit that failed to receive the number of affirmative votes required by the Act. (See Section 1130.670.)

"Interdependent Components" means components of construction or modification that are architecturally or programmatically interrelated to the extent that undertaking one or more of the components compels the other components to be undertaken. *Unless otherwise interdependent, or submitted as one project by the applicant, components of construction or modification undertaken by means of a single construction contract or financed through the issuance of a single debt instrument shall not be grouped together as one project.* [20 ILCS 3960/3]

"Inventory" means the HFSRB Inventory of Health Care Facilities and Need Determination created pursuant to Section 12(4) of the Act and found on the Board's website at www.hfsrb.illinois.gov.

"Major Construction Project" means:

Projects for the construction of new buildings;

Additions to existing facilities;

Modernization projects whose cost is in excess of \$1,000,000 or 10% of the facility's operating revenue, whichever is less; and

Such projects as the State Board shall define and prescribe (see Section 1130.310) pursuant to the Act. [20 ILCS 3960/5]

"Major Medical Equipment" means medical equipment that is used for the

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provision of medical and other health services and that costs in excess of the capital expenditure minimum, except that this term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act (42 USCA 1395x) to meet the requirements of paragraphs (10) and (11) of section 1861(S) of the Social Security Act. In determining whether medical equipment has a value in excess of the capital expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included. [20 ILCS 3906/3]

"Medicaid Certified" or "Medicare Certified" or "Medicaid Certification" or "Medicare Certification" means approval for a facility to receive reimbursement under Title XVIII (Medicare) and/or XIX (Medicaid) of the Social Security Act (42 USC 1395).

"Modification of an Application" or "Modification" means any change to an application during the review period (i.e., prior to a final HFSRB action). These changes include, but are not limited to: changing the proposed project's physical size or gross square feet, the site within a planning area, the operating entity when the operating entity is not the applicant, the number of proposed beds, the categories of service to be provided, the cost, the method of financing, proposed project completion date, the configuration of space within the building, or any change in the person who is the applicant, including the addition or deletion of one or more persons as co-applicants.

HFSRB NOTE: A change of site to a site outside the planning area originally identified in the application is not considered a modification and invalidates the application.

"Moral Turpitude" means conduct that has an inherent quality of baseness, vileness or depravity with respect to another person or society in general, contrary to the accepted and customary rule of right and duty. Examples include rape, forgery, robbery, arson, counterfeiting and wrongful solicitation.

"Newspaper of General Circulation" means newspapers other than those intended to serve a particular, defined population, such as the publications of professional and trade associations.

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"Newspaper of Limited Circulation" is defined in Section 8.5(c) of the Act.

"Non-clinical Service Area" means an area for the benefit of the patients, visitors, staff or employees of a health care facility and not directly related to the diagnosis, treatment, or rehabilitation of persons receiving services from the health care facility. "Non-clinical service areas" include, but are not limited to, chapels; gift shops; ~~newsstands~~~~news-stands~~; computer systems; tunnels, walkways, and elevators; telephone systems; projects to comply with life safety codes; educational facilities; student housing; patient, employee, staff, and visitor dining areas; administration and volunteer offices; modernization of structural components (such as roof replacement and masonry work); boiler repair or replacement; vehicle maintenance and storage facilities; parking facilities; mechanical systems for heating, ventilation, and air conditioning; loading docks; and repair or replacement of carpeting, tile, wall coverings, window coverings or treatments, or furniture. Solely for the purpose of this definition, "non-clinical service area" does not include health and fitness centers. [20 ILCS 3960/3]

"Non-substantive Projects" means certain projects that have been defined in 77 Ill. Adm. Code 1110.40, with a review period of 60 days.

"Notification of HFSRB Action" means the transmittal of HFSRB decisions to the applicant or permit or exemption holder. Notification shall be given to the applicant's or permit holder's designated contact person, legal representative or chief executive officer.

"Operational" means that a permit holder is providing the services approved by HFSRB and, for a new health care facility or a new category of service, licensure or Medicare and/or Medicaid certification has been obtained, and residents/patients are utilizing the facility or equipment or are receiving service.

"Out-of-state Facility" means a person that is both licensed as a hospital or as an ambulatory surgery center under the laws of another state or that qualifies as a hospital or an ambulatory surgery center under regulations adopted pursuant to the Social Security Act and not licensed under the Ambulatory Surgical Treatment Center Act, the Hospital Licensing Act, or the Nursing Home Care Act. Affiliates of out-of-state facilities shall be considered out-of-state facilities. Affiliates of Illinois licensed health care facilities 100% owned by an Illinois licensed health care facility or its parent, or Illinois physicians licensed to practice medicine in all its branches, shall not be considered out-of-state facilities. Nothing in this definition shall be construed to include an office or any part of an office of a

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physician licensed to practice medicine in all its branches in Illinois that is not required to be licensed under the Ambulatory Surgical Treatment Center Act. [20 ILCS 3960/3]

"Permit" means authorization to execute and complete a project related to a health care facility, as reviewed and approved by HFSRB and as specified in the Act.

~~"Permit Acceptance Agreement" means a written HFSRB communication to the permit holder, specifying and consolidating all post-permit requirements necessary to maintain the permit.~~

"Person" means any one or more natural persons, legal entities, governmental bodies other than federal, or any combination thereof. [20 ILCS 3960/3]

"Project Financial Commitment Date" means the date by which the permit holder is to expend or commit to expend by contract or other legal means at least 33% of the total project cost. (See Section 1130.760 (Annual Progress Reports).)

"Proposal" or "Project" means any proposed construction or modification of a health care facility or any proposed acquisition of equipment to be undertaken by an applicant.

"Related Person" means any person that:

is at least 50% owned, directly or indirectly, by either the health care facility or a person owning, directly or indirectly, at least 50% of the health care facility; or

owns, directly or indirectly, at least 50% of the health care facility; or [20 ILCS 3960/3]

is otherwise controlled or managed by one or more health care facilities or controls or manages the health care facility; or

otherwise controls or manages the health care facility; or

is otherwise, directly or indirectly, under common management or control with one or more health care facilities.

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"Relinquishment of a Permit" means a voluntary and knowing abandonment of a permit or exemption, forsaking all rights associated with that permit or exemption. Once relinquishment is granted by HFSRB, a relinquished permit or exemption is considered null and void. The inventory will be modified, if affected by the permit relinquishment, to the same status as prior to the permit issuance.

"Review Period" means the time from the date an application for permit or exemption is deemed complete by HFSRB staff until HFSRB renders its final decision.

"Site" means the physical location of a proposed project and is identified by address or legal property description.

"Square Feet" or "SF" or "Square Footage" means a unit of measure of physical service areas or buildings considered by HFSRB. Departmental Gross Square Feet (DGSF) means the designation of physical areas for departments and services. It consists of the entire space dedicated to the use of that department or service, including walls, shafts and circulation. Building Gross Square Feet (BGSF) means the designation of physical area of an entire building. It includes all exterior walls and space within those walls.

"State Board Staff Report" means the document that sets forth the review and findings of State Board staff as prescribed by the State Board, regarding applications subject to the Board's jurisdiction. [20 ILCS 3960/3]

"Substantially Changes the Scope or Changes the Functional Operation of the Facility" means:

the addition or discontinuation of a category of service as defined in 77 Ill. Adm. Code 1110.40(c) and Section 1130.140;

discontinuation as defined in this Part;

a change of a material representation made by the applicant in an application for permit or exemption subsequent to receipt of a permit that is relied upon by HFSRB in making its decision. Material representations are those that provide a factual basis for issuance of a permit or exemption and include:

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withdrawal or non-participation in the Medicare and/or Medicaid programs;

charge information;

requirements of variances pursuant to 77 Ill. Adm. Code 1110;

other representations made to HFSRB as stipulated or agreed upon in the public record and specified in the application or the permit or exemption approval letter;

the addition of a specialty not previously approved by HFSRB for an ambulatory surgical treatment center (ASTC) that has not been classified as a multi-specialty ASTC by HFSRB in accordance with the provisions of 77 Ill. Adm. Code 1110.1540;

an increase of more than three dialysis stations or more than 10% of the facility's total number of dialysis stations, whichever is less, over a two-year period. The two-year period begins on the date the facility's additional stations are certified. When a permit is issued for additional stations or for the establishment of an additional facility/service, the facility may not add any more dialysis stations for two years from the date that such stations approved in the permit are certified without obtaining an additional permit; or

the acquisition, construction, or leasing of space, buildings, or structures for the purpose of providing outpatient surgical services on a site or location that is not within the licensed premises of the health care facility. Outpatient surgical services are those surgical procedures that are routinely performed in such settings as a hospital or ambulatory surgical treatment center, or in any room or area that is designed, equipped, and used for surgery, such as, but not limited to, a surgical suite or special procedures room. Outpatient surgical services do not include those procedures performed as part of a physician's private practice in examination or non-surgical treatment rooms.

"Substantially Complete" means that the application for permit has been determined ready for review, with the understanding that additional information may be needed for clarification during the course of the review period.

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"Substantive Projects" means types of projects that are defined in the Act and classified as substantive. *Substantive projects shall include no more than the following:*

Projects to construct a new or replacement facility located on a new site; or a replacement facility located on the same site as the original facility and the costs of the replacement facility exceed the capital expenditure minimum.

Projects proposing a new service or discontinuation of a service, which shall be reviewed by the Board within 60 days.

Projects proposing a change in the bed capacity of a health care facility by an increase in the total number of beds or by a redistribution of beds among various categories of service or by a relocation of beds from one facility to another by more than 20 beds or more than 10% of total bed capacity, as defined by the State Board in the Inventory, whichever is less, over a 2-year period. [20 ILCS 3960/12]

"Technical Assistance" means help provided by an employee of HFSRB to a person, a health care facility or the HFSRB, and is not considered ex parte communication as defined in Section 4.2 of the Act. Technical Assistance may be provided to any person regarding pre-application conferences, the filing of an application, or other request to HFSRB provided that the communication is *not intended to influence any decision on the application*. Technical Assistance may be provided for the benefit of HFSRB to clarify issues relevant to an application or other business of HFSRB. The assistance may be in the form of written correspondences, conversations, site visits, meetings, and/or consultations with independent experts. *Once an application or exemption is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed, standardized format, and shall be included in the application file, within 10 business days after the assistance is provided. [20 ILCS 3960/4.2]*

"Temporary Suspension of Facility or Category of Service" means a facility that has ceased operation or that has ceased to provide a category of service (see 77 Ill. Adm. Code 1100.220 for category of service definition) for a period not to exceed one year, due to unanticipated or unforeseen circumstances (such as the loss of appropriate staff or a natural or unnatural disaster). The time period may be extended upon finding that the resumption of facility operation or category of

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service has proceeded with due diligence and HFSRB approval of the requested extension. The facility administrator shall file notice to HFSRB of a temporary suspension of service, in compliance with the requirements described in Section 1130.240(d).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.150 Referenced and Incorporated Materials

- a) The following rules, standards and statutes are referenced in this Part:
 - 1) Federal Statutes:
 - Public Health and Welfare (42 USC).
 - 2) State of Illinois Statutes:
 - A) Illinois Health Facilities Planning Act [20 ILCS 3960];
 - B) Hospital Licensing Act [210 ILCS 85];
 - C) Ambulatory Surgical Treatment Center Act [210 ILCS 5];
 - D) Nursing Home Care Act [210 ILCS 45];
 - E) Illinois Administrative Procedure Act [5 ILCS 100];
 - F) Alternative Health Care Delivery Act [210 ILCS 3];
 - G) End Stage Renal Disease Facility Act [210 ILCS 62];
 - H) Administrative Review Law [735 ILCS 5/Art. III];
 - I) Illinois State Agency Historic Resources Preservation Act [20 ILCS 3420];
 - J) Code of Civil Procedure [735 ILCS 5];
 - K) Assisted Living and Shared Housing Act [210 ILCS 9];

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- L) Older Adult Services Act [320 ILCS 42];
 - M) Open Meetings Act [5 ILCS 120];
 - N) ID/DD Community Care Act [210 ILCS 47];
 - O) MC/DD Act [210 ILCS 46];
 - P) Specialized Mental Health Rehabilitation Act of 2013 [210 ILCS 49].
- 3) State of Illinois Rules:
- A) Narrative and Planning Policies (77 Ill. Adm. Code 1100) (See Section 1100.220);
 - B) Financial and Economic Feasibility Review (77 Ill. Adm. Code 1120);
 - C) Processing, Classification Policies and Review Criteria (77 Ill. Adm. Code 1110);
 - D) Illinois Health and Hazardous Substances Registry (77 Ill. Adm. Code 840).
- 4) Other referenced materials:
- A) Illinois Executive Order #2006-5;
 - B) Rules of the Illinois Supreme Court.
- b) Incorporations by Reference
- The following materials are incorporated by reference in this Part. All incorporations are as of the date specified and no later editions or amendments are included.

American Institute of Architects
1735 New York Avenue, N.W.
Washington D.C. 20006

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AIA Document G702, Application and Certificate for Payment
(1992)

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART B: GENERAL REQUIREMENTS

Section 1130.215 Health Care Facilities Subject to the Act

Health care facilities and organizations that are subject to the Act and HFSRB rules include:

- a) *An ambulatory surgical treatment center required to be licensed pursuant to the Ambulatory Surgical Treatment Center Act;*
- b) *An institution, place, building, or agency required to be licensed pursuant to the Hospital Licensing Act;*
- c) *Skilled and intermediate long term care facilities licensed under the Nursing Home Care Act;*
- d) *Skilled and intermediate-care facilities licensed under the ID/DD Community Care Act or the MC/DD Act;*
- e) *Facilities licensed under the Specialized Mental Health Rehabilitation Act of 2013;*
- f) *Hospitals, nursing homes, ambulatory surgical treatment centers, or kidney disease treatment centers maintained by the State or any department or agency thereof of this State;*
- g) *Kidney disease treatment centers, including a free-standing hemodialysis unit required to be licensed under the End Stage Renal Disease Facility Act;*
- h) *An institution, place, building, or room used for performance of outpatient surgical procedures that is leased, owned, or operated by or on behalf of an out-of-state facility;*
- i) *An institution, place, building, or room used for provision of a health care category of service as defined by the Board at 77 Ill. Adm. Code 1100.220, including, but not limited to, cardiac catheterization and open heart surgery; and*

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- j~~h~~) *An institution, place, building, or room used for provision of major medical equipment used in the direct clinical diagnosis or treatment of patients, and whose project cost is in excess of the capital expenditure minimum. [20 ILCS 3960/32]*

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.230 Fees

- a) HFSRB staff shall *charge and collect an amount determined by HFSRB and its staff to be reasonable fees for processing of the applications by HFSRB. HFSRB shall set amounts by rule (see subsection (h)). Application fees for continuing care retirement communities and other health care models that include regulated and unregulated components shall apply only to those components subject to regulation under the Act. All fees and fines collected under the Act shall be deposited into the Illinois Health Facilities Planning Fund to be used for the expenses of administering the Act.* [20 ILCS 3960/12.2]
- b) A fee shall be assessed on all matters requiring an application-processing fee (as detailed in other Sections of this Part), except for the following:
- 1) projects classified as emergency; or
 - 2) projects that are not subject to a fee in accordance with the provisions of Subpart E.
- c) Fee payment shall be by check or money order made payable to the Illinois Department of Public Health.
- d) Any matter requiring an application processing fee shall be declared null and void if payment of the total fee has not been received by HFSRB staff within 30 days after notice of the amount due has been received by an applicant or person requesting action from HFSRB.
- e) No action shall be taken by HFSRB on any matter requiring an application processing fee for which the total required fee has not been received.
- f) Fee payments are not refundable and may be recovered in full or in part only by petitioning the Illinois Court of Claims for recovery.

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- g) Appeal of any required fee amount is to be made to HFSRB, pursuant to Section 1130.810.
- h) Types of Fees
 - 1) Exemption Application Processing Fee
The exemption application processing fee shall be \$2,500.
 - 2) CON Permit Application Processing Fee
 - A) All applicants, except those with projects that are not subject to a fee, are required to submit an application processing fee. An initial fee deposit of \$2,500 shall accompany each application for permit submitted to HFSRB. When an application is deemed complete, the full amount of the fee shall be determined.
 - B) HFSRB staff *shall charge and collect an amount determined by the State Board and the staff to be reasonable fees for the processing of applications by the State Board. Application fees for continuing care retirement communities and other health care models that include regulated and unregulated components shall apply only to those components subject to regulation under the Act.* [20 ILCS 3960/12.2]
 - C) Following the determination of estimated total project costs, the CON application processing fees are calculated as follows. For each project having a total estimated project cost of:
 - i) less than \$1,250,000, the application fee shall be \$2,500;
 - ii) at or above \$1,250,000, the application fee shall be 0.22% of the project costs.
 - D) The maximum application fee shall not exceed \$100,000.
 - E) Once an application is deemed complete, written notice for any additional fee balance due will be sent to the applicant. Applications shall be declared null and void if the total application fee has not been paid within 30 days after receipt of notice.

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- 3) Modification of an Application for Permit
 - A) If a modification of an application for permit results in an increase in the total estimated project cost, the application processing fee shall be recalculated on the basis of the revised estimated project cost. This Section is applicable with respect to any additional fees required for a modified application.
 - B) If a modification results in the need for an additional notification of opportunity for public hearing, then an additional fee of \$2,000 will be assessed.
- 4) Request for Extension of Financial Commitment
 - A) A request for extension shall be assessed a \$500 application-processing fee and is subject to the requirements of this subsection (h).
 - B) A request for extension that HFSRB receives~~is received~~ less than 45 days prior to the permit financial commitment date shall be subject to an additional \$500 late application~~application~~ processing fee.
 - C) HFSRB will not process an extension request until it receives the application-processing fee.~~If payment has not been received within 30 days after receipt of written notice for payment, the request for extension shall not be processed.~~
- 5) Permit Renewal

A permit renewal request shall be assessed a \$500 application-processing fee and is subject to the requirements of this subsection (h). Permit renewal requests that are not received at least 45 days prior to the expiration date of the permit shall be subject to an additional \$500 late application-processing fee. HFSRB will not process a permit renewal request until it receives the application-processing fee.~~If payment has not been received within 30 days after receipt of written notice from HFSRB, the request for renewal shall not be processed.~~ Any renewal request HFSRB receives~~received~~ after the completion date is subject to the fines provided in the Act.

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- 6) Post-Permit Alterations
- A) An alteration request shall be assessed an application processing fee of \$1,000 and is subject to the requirements of this Section.
 - B) If HFSRB does not receive the alteration request at least 45 days before the permit expires, the application will be assessed.~~Alteration requests that are not received at least 45 days prior to the expiration date of the permit shall be subject to an additional \$500 late application-processing fee.~~
 - C) An alteration request will not be processed until HFSRB receives the application-processing fee.~~If payment has not been received within 30 days after receipt of written notice from HFSRB, the request for alteration shall not be processed.~~ Any alteration request received after the completion date is subject to the fines provided in the Section 14.1 of the Act and Section 1130.790.
- 7) Relinquishment of a Permit or Exemption
- A) Any relinquishment undertaken without prior HFSRB approval shall be considered a violation of the Act and shall be subject to the sanctions and penalties in the Act and in Section 1130.790.
 - B) A request for relinquishment shall be assessed an application processing fee of \$1,000.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.240 Reporting and Notification Requirements

HFSRB *shall require health care facilities to provide periodic reports, data, and information as needed to carry out the purposes and provisions of the Act* [20 ILCS 3960/13]. Information required to be submitted to HFSRB includes, but is not limited to, reports on capital expenditures, facility and service utilization data, facility bed-capacity information, notices of hospital reductions in services, and any temporary ~~suspension~~suspension of service.

- a) Annual Report of Capital Expenditures

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Each health care facility shall submit an annual report of capital expenditures as part of the annual health care facility questionnaires issued by HFSRB. (See Section 5.3 of the Act.)

- b) **Health Planning Information**
HFSRB shall require all health care facilities operating in the State to provide information for the purpose of fulfilling the purposes, provisions and responsibilities specified in the Act. (See Section 13 of the Act.) These reports may be on an annual or other basis.
- c) **Notice of Hospital Reduction of 50% or More in Health Care Services**
Each hospital is required to notify *the State Board, the Illinois Department of Public Health, and the State Senator and 2 State Representatives representing the legislative district in which the hospital is located*, of a reduction in services of 50% or more, within 30 days after that reduction [20 ILCS 3960/12.4]. Reporting shall include the identification of the service, reasons for reduction and anticipated duration (permanent or temporary). Reduction of 50% or more is determined by the following:
 - 1) If the reduction is in a bed category of service, reduction is determined by the number of physically available beds as compared to the authorized number of beds stated in the Inventory of Health Care Facilities as updated, or the number of staffed beds reported in the Annual Hospital Questionnaire;
 - 2) If the reduction is in a non-bed category of service (i.e., cardiac surgery, cardiac catheterization, organ transplantation, etc.), reduction is determined when the physical number of procedure rooms, stations or equipment necessary to provide that service is reduced by 50% or more, or the number of clinical staff and/or hours of operation is reduced by 50% or more.
 - A) If reduction does not reduce the number of procedures by 50% or more, the notification is required only to HFSRB, certifying that the reduction will not reduce the number of procedures performed by 50% or more.
 - B) If the reduction is temporary for the purpose of maintenance or equipment repair, notification is required to HFSRB only, with a timetable to restore the service.

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- d) **Temporary Suspension of Facility or Category of Service**
A facility that has ceased operation or that has ceased to provide a category of service due to unanticipated or unforeseen circumstances (such as the loss of appropriate staff or a natural or unnatural disaster) shall file notice to HFSRB of a temporary suspension of service that is anticipated to exceed 30 days. The notice shall be filed no later than within 30 days after the suspension of the service, and shall include a detailed explanation of the reasons for the suspension, as well as the efforts being made to correct the circumstance and a timetable to reopen the service. Reports documenting the progress of corrections must be filed every 30 days thereafter until services resume are reopened. Temporary suspensions shall not exceed one year unless otherwise approved by HFSRB.
- e) **Failure to Provide Required or Requested Information**
A health care facility or person violates the Act if he or she fails ~~Health-care facilities and persons that fail to~~ timely or completely comply with the notice and information requirements in the Act and this Section of HFSRB, including post-permit requirements, shall be considered in violation of the Act (see 20 ILCS 3960/13 and 14.1). This person is subject to the sanctions provided in the Act and Section 1130.790 ~~This shall subject the permit or exemption holder to fines, permit revocation, and the penalties and sanctions mandated in the Act and this Part.~~
- f) **Changes in a Health Care Facility's Bed Capacity**
- 1) "Change in the Bed Count of a Health Care Facility" means a change in a health care facility's authorized bed capacity, including reductions, increases with permit or allowable increases without permit. *A permit or exemption shall be obtained prior to the construction or modification of a health care facility which changes the bed capacity of a health care facility by:*
- A) *increasing the total number of beds; or*
- B) *distributing beds among various categories of service; or*
- C) *relocating beds from one physical facility to another by more than 20 beds or 10% of total bed capacity as defined by the State Board Inventory, whichever is less, over a 2-year period. [20 ILCS 3960/5]*

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- 2) Projects proposing the establishment or discontinuation of a bed category of service are classified as substantive projects, with a 60-day review period. (See Section 1110.40(c).)
- 3) A health care facility that reduces bed capacity, or adds bed capacity without a permit, as specified by the Act, shall notify HFSRB and IDPH of that change. Such a change is limited to once every two years beginning on the date when the additional beds become operational. If the facility has already changed its bed capacity through a permit process, then the facility may not add any more beds in those services affected by the permit for two years from the date that those beds established by permit become operational without obtaining an additional permit from HFSRB.
- 4) Emergency Preparedness Response Report
 - A) A health care facility that temporarily increases bed capacity to accommodate extraordinary needs in the service population due to pandemic events and other disasters shall submit written notification of the increase to HFSRB within 30 days after the bed increase decision. The notification shall include:
 - i) the number of beds increased;
 - ii) a detailed description of conditions necessitating the bed capacity increase;
 - iii) the impact on normal admission activity;
 - iv) the anticipated length of time the increase is needed, indicating the prospective date when beds will be taken out of circulation; and
 - v) the signature of a senior representative of the health care facility, verifying the information in the report.
 - B) The facility shall submit written notification to HFSRB, indicating the date that the temporary bed capacity has been taken out of circulation. This notification shall be received by HFSRB within

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30 days after the date that the facility's normal bed capacity was resumed.

- g) **Change in Name or Change in Legal Status**
A change in a facility's legal name or a facility's legal status (i.e., a corporate reorganization) that does not constitute a change of ownership, as defined in Section 1130.140, is to be reported to HFSRB within 90 days after occurrence.
- h) **Notice of New Services Added to Multi-Specialty ~~Multi-specialty~~ ASTCs**
 - 1) Multi-specialty ASTCs adding new services shall notify HFSRB of ~~the~~what services are being added and the effective date of those services. The notification of each new service added shall be submitted to HFSRB no later than~~within~~ 30 days after the service addition. Beginning January 1, 2018, multi-specialty ASTCs seeking to add additional ASTC services shall apply for a CON permit pursuant to the provisions of Section 1110.1540.
 - 2) Multi-specialty ASTCs that, as a condition of CON permit issuance, agreed to apply for CON permits when adding services, shall continue to apply for CON permits when adding new services.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.250 HFSRB Meetings

- a) **General Guidelines**
 - 1) This Section pertains to formal HFSRB meetings and does not apply to other HFSRB-sponsored meetings, including public hearings or rules development meetings.
 - 2) HFSRB meetings can be held anywhere throughout Illinois, as determined by the HFSRB Chair or a majority of HFSRB members.
 - 3) Special HFSRB meetings that are not previously scheduled and are publically known can be held only if the HFSRB Chair or a majority of HFSRB members determines that a special HFSRB meeting should be scheduled.

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- 4) All HFSRB meetings shall comply with the Open Meetings Act and be conducted using Roberts Rules of Order.
 - 5) Only permit or exemption applicants and their staff, attorneys or consultants can testify at an HFSRB meeting during the time that their application is being considered by the Board. Other individuals attempting to be heard at an HFSRB meeting outside the public participation period will be declared out of order.
 - 6) All HFSRB meetings will be conducted as efficiently as possible. Extraneous or irrelevant discussions occurring during an HFSRB meeting will be avoided. The HFSRB Chair or a majority of Board members can designate time limits on any or all of HFSRB meeting agenda items.
 - 7) Applicants and their representatives are able to respond to all questions and statements made by Board members at the time of Board consideration of the applicant's project. The entire proceedings of every HFSRB meeting are transcribed by a court reporter and this transcript will serve as the administrative record of the HFSRB meeting.
- b) Validity of Comments
- 1) Written comments filed with HFSRB or oral statements made under oath to HFSRB under any HFSRB matter that are subsequently found to be false or inaccurate will serve as a basis for an HFSRB investigation of the matter.
 - 2) HFSRB may require the person who made the false or inaccurate comments or statements to appear before the Board. HFSRB may censure that person. Further, HFSRB may determine that person to be ineligible to provide written comments or oral statements concerning any future Board considerations.
- c) Presentation of New Information
- 1) HFSRB will not accept any new information presented by applicants or any of their representatives concerning an application during the HFSRB meeting at which the application is being considered by the Board.

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- 2) Submission of new information is acceptable under the following conditions:
 - A) An application is deferred by the applicant or HFSRB (see Section 1130.650).
 - B) An application receives an Intent to Deny following HFSRB consideration and action (see Section 1130.670).
 - C) An applicant is responding to statements made during the public participation period of the HFSRB meeting at which the applicant's project is being considered.
- 3) Any new information that is pertinent to an application and allowable shall be submitted in writing to HFSRB staff within the allowable time frames established in this Part~~provided for additional information~~ (see Sections 1130.650 and 1130.670).
- 4) Applicants shall submit~~All~~ allowable new information shall be submitted to HFSRB in writing, on 8½" by 11" paper.
- 5) Applicants shall only submit~~All new information shall be submitted within the allowable time frames established in the rules, and shall be sent only by any~~ recognized overnight carrier or personal delivery service.
- 6) New information submitted by email or fax will not be accepted.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART C: PROJECTS OR TRANSACTIONS SUBJECT TO THE ACT

Section 1130.310 Projects or Transactions Subject to the Act

- a) Projects or Transactions that Require a Permit

A person must obtain a permit~~shall be obtained prior to establishing the establishment, constructing construction or modifying modification~~ of a health care facility, and prior to acquiring~~the acquisition of~~ major medical equipment, unless an exemption from the requirement to obtain a permit has been issued in accordance with the provisions of Subpart D and Subpart E. A project or transaction that is not exempt is subject to review and requires a permit if the

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project or transaction:

- 1) requires a total capital expenditure in excess of the capital expenditure minimum. In determining the total capital expenditure, all costs (including the fair market value of assets acquired by lease or other means) that under generally accepted accounting principles are not properly chargeable as expenses of operation and maintenance, must be included even if any of such costs are not capitalized for reimbursement or other purposes. All capital expenditure minimums shall be annually adjusted upon the date established by the Act to reflect the increase in construction costs due to inflation. The basis for ~~thesueh~~ adjustment ~~for major medical equipment~~ shall be the latest annual inflation rate as reflected in the Means Cost Data (RSMeans Company, Inc., 700 Longwater Drive, Norwell MA 02061). ~~The basis for the adjustment to capital expenditures other than major medical equipment shall be the latest annual inflation rate as reflected in the medical construction component of the Means Cost Data.~~ The revised minimums shall be published on HFSRB's internet site (www.hfsrb.illinois.gov);
 - 2) substantially changes the scope or changes the functional operation of the facility as defined in Section 1130.140;
 - 3) results in the establishment of a health care facility as defined in Section 1130.140;
 - 4) changes the bed capacity of a health care facility as specified in the Act and Section 1130.240(f);
 - 5) involves a change of ownership, unless an exemption has been issued in accordance with the provisions of Subpart D and Subpart E;
 - 6) results in the discontinuation of an entire health care facility or category of service (see Section 1130.140). unless an exemption has been issued in accordance with the provisions of Subpart D and Subpart E; or
 - 7) involves the acquisition of major medical equipment.
- b) Components of a Project or Transaction
In determining the elements of a transaction or a project subject to the Act, the following factors apply:

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- 1) Components of construction or modification that are interdependent must be grouped together. Interdependence occurs when components of construction or modification are architecturally and/or programmatically interrelated to the extent that undertaking one or more of the components compels the other components to be undertaken.
 - 2) *Unless otherwise interdependent, or submitted as one project by the applicant, components of construction or modification undertaken by means of a single construction contract or financed through the issuance of a single debt instrument shall not be grouped together as one project.*
[20 ILCS 3960/3]
 - 3) Projects involving acquisition of equipment that are linked with construction for the provision of a service cannot be segmented. A health service linkage exists when all components must be present for a service to be operational, or when financing is obtained at one time for a series of related components.
 - 4) Components under an application for permit shall be for a single health care facility unless the components are interdependent among multiple facilities.
- c) Prohibition on Splitting or Separating Components of a Project or Transaction
- 1) No health care facility or other person proposing a project or transaction that is subject to the Act shall split what should properly be considered a single capital expenditure into discrete components undertaken during a fiscal year to evade the capital expenditure review threshold.
 - 2) No health care facility or other person proposing a project or transaction that is subject to the Act shall separate portions of a single project into components, including, but not limited to, site, facility, and equipment, to evade the capital expenditure review threshold or other requirements of the Act or HFSRB rules.
- d) Examples of Projects or Transactions Subject to the Act
Examples of projects that constitute construction or modification of a health care facility subject to the Act include:

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- 1) Projects located within a licensed or certified health care facility;
- 2) Projects that result in a health care facility:
 - A) Billing for services provided by the proposed project;
 - B) Capitalizing any portion of the proposed project;
 - C) Receiving reimbursement for services provided by the proposed project; or
 - D) Receiving recognition as the provider of the proposed service by third party payors;
- 3) Projects that are staffed or operated by the health care facility;
- 4) Projects that are otherwise of, by, through or on behalf of a health care facility;
- 5) Projects that provide a category of service as defined in 77 Ill. Adm. Code 1100 that are offered or made available on a regular basis to inpatients or outpatients of a health care facility.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART D: PROJECTS OR TRANSACTIONS ELIGIBLE FOR
EXEMPTION FROM PERMIT REQUIREMENTS

Section 1130.410 Projects or Transactions Exempt from Permit Requirement

The following proposed projects and transactions are not subject to the requirement to obtain a permit, provided that an application for exemption is submitted that meets the requirements of this Subpart D and Subpart E and an exemption is issued by HFSRB:

- a) the change of ownership of an existing health care facility. *This is not applicable to a healthcare facility that is licensed under the Nursing Home Care Act (with the exceptions of facilities operated by a county or Illinois Veterans Home) [20 ILCS 3960/3].*
- b) the discontinuation of an existing health care facility or of a category of service,

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other than a health care facility maintained by the State or any agency or department thereof or a nursing home maintained by a county [20 ILCS 3960/6].
~~when that discontinuation is the result of:~~

- ~~1-) revocation of or denial of license renewal by a State or local regulatory agency;~~
- ~~2) for facilities not subject to licensure, the loss of Medicare and/or Medicaid certification;~~
- ~~3) discontinuation action taken by HFSRB;~~
- ~~4) the voluntary surrender of a suspended license.~~
- e) ~~the combination of two or more existing health care facilities into a single licensed health care facility, when:~~
 - ~~1-) the existing facilities are located on the same site or on sites adjacent to one another;~~
 - ~~2) the licensed person for the existing facilities is the same;~~
 - ~~3) the combination is for the sole purpose of operating the existing facilities under a single license; and~~
 - ~~4) the combination does not involve any cost, any change in scope of services provided, or any change in bed capacity.~~
- cd) a proposed project limited to the establishment or expansion of a neonatal intensive care service or beds as specified in Subpart E.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART E: OPERATIONAL REQUIREMENTS FOR EXEMPTIONS

Section 1130.500 General Requirements for Exemptions

Only those projects specified in Section 1130.410 are eligible for exemption from permit requirements. Persons that have initiated or completed such projects without obtaining an

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exemption are in violation of the provisions of the Act and are subject to the penalties and sanctions of the Act and Section 1130.790.

- a) **Application for Exemption**
Any persons proposing a project for an exemption to permit requirements shall submit to HFSRB an application for exemption containing the information required by this Subpart, submit an application fee (if a fee is required), and receive approval from HFSRB.
- b) **General Information Requirements**
The application for exemption shall include the following information and any additional information specified in this Subpart:
 - 1) the name and address of the applicant or applicants~~applicant and co-applicant~~ (see Section 1130.220);
 - 2) the name and address of the health care facility;
 - 3) a description of the project, e.g., change of ownership, discontinuation, increase in dialysis stations;
 - 4) documentation from the Illinois Secretary of State that the applicant is registered to conduct business in Illinois and is in good standing or, if the applicant is not required to be registered to conduct business in Illinois, evidence of authorization to conduct business in other states;
 - 5) a description of the applicant's organization structure, including a listing of controlling or subsidiary persons;
 - 6) the estimated project cost, including the fair market value of any component and the sources and uses of funds;
 - 7) the anticipated project completion date;
 - 8) verification that the applicant has fulfilled all compliance requirements with all existing permits that have been approved by HFSRB; and
 - 9) the application-processing~~application processing~~ fee.
- e) **Completion Requirements**

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~~A project that has received an exemption shall be completed in accordance with all applicable requirements no later than 24 months from the date of exemption approval. Failure to complete the project within this time period invalidates the exemption.~~

HFSRB NOTE: ~~Projects are eligible for exemptions to a full permit process providing that they can meet all of the requirements delineated in this Subpart. If a person or project cannot meet the requirements of exemption, then an application for permit may be filed.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.520 Requirements for Exemptions Involving the Change of Ownership of a Health Care Facility

- a) Submission of Application for Exemption
Prior to ~~any person acquiring~~ or entering into a contract to acquire an existing health care facility, ~~at the~~ person shall submit an application for exemption to HFSRB, submit the required application-processing fee (see Section 1130.230) and receive approval from HFSRB.
- b) Application for Exemption
The application for exemption is subject to approval under Section 1130.560 and shall include the information required by Section 1130.500 and the following information:
 - 1) Key terms of the transaction, including the:
 - A) names of the parties;
 - B) background of the parties, which shall include proof that the applicant is fit, willing, able, and has the qualifications, background and character to adequately provide a proper standard of health service for the community by certifying that no adverse action has been taken against the applicant by the federal government, licensing or certifying bodies, or any other agency of the State of Illinois against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application;

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- C) structure of the transaction;
- D) name of the person who will be the licensed or certified entity after the transaction;
- E) list of the ownership or membership interests in such licensed or certified entity both prior to and after the transaction, including a description of the applicant's organizational structure with a listing of controlling or subsidiary persons;
- F) fair market value of assets to be transferred; and
- G) the purchase price or other forms of consideration to be provided for those assets. [20 ILCS 3960/8.5(a)]

HFSRB NOTE: If the transaction is not completed according to the key terms submitted in the exemption application, a new application is required.

- ~~1) affirmation that the categories of service and number of beds as reflected in the Inventory of Health Care Facilities will not substantially change for at least 12 months following the project's completion date;~~
- ~~2) complete transaction documents that have been signed by both the applicant and the existing owner that contain a provision that execution is subject to HFSRB issuance of an exemption and that contain the conditions and terms of the change of ownership;~~
- ~~3) proof that the applicant is fit, willing, and able and *has the qualifications, background and character to adequately provide a proper standard of health service for the community* [20 ILCS 3960/6] by certifying that no adverse action has been taken against the applicant by the federal government, licensing or certifying bodies, or any other agency of the State of Illinois against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application;~~
- 4) affirmation that the applicant intends to maintain ownership and control of the facility for a minimum of two years;

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- ~~25~~) affirmation that any projects for which permits have been issued have been completed or will be completed or altered in accordance with the provisions of this Section;
- ~~36~~) if the ownership change is for a hospital, affirmation that the facility will not adopt a more restrictive charity care policy than the policy that was in effect one year prior to the transaction. The hospital must provide affirmation that the compliant charity care policy will remain in effect for a two-year period; following the change of ownership transaction; and
- ~~7~~) ~~affirmation that failure to complete the project in accordance with the applicable provisions of Section 1130.500(d) no later than 24 months from the date of exemption approval (or by a later date established by HFSRB upon a finding that the project has proceeded with due diligence) and failure to comply with the material change requirements of this Section will invalidate the exemption;~~
- ~~48~~) a statement as to the anticipated benefits of the proposed changes in ownership to the community;
- ~~59~~) the anticipated or potential cost savings, if any, that will result for the community and the facility ~~because~~ as a result of the change in ownership;
- ~~610~~) a description of the facility's quality improvement program mechanism that will be utilized to assure quality control;
- ~~11~~) ~~a description of the applicant's organizational structure, including a listing of controlling or subsidiary persons;~~
- ~~712~~) a description of the selection process that the acquiring entity will use to select the facility's governing body;
- ~~813~~) a statement that the applicant has prepared a written response addressing the review criteria contained in 77 Ill. Adm. Code 1110.240 and that the response is available for public review on the premises of the health care facility; and
- ~~914~~) a description or summary of any proposed changes to the scope of services or levels of care currently provided at the facility that are anticipated to occur within 24 months after acquisition.

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- c) Application for Exemption Among Related Persons
When a change of ownership is among related persons, and there are no other changes being proposed at the health care facility that would otherwise require a permit or exemption under the Act, the applicant shall submit an application consisting of a standard notice in a form set forth by the Board briefly explaining the reasons for the proposed change of ownership. [20 ILCS 3960/8.5(a)]
- d) Opportunity for Public Hearing
Upon a finding by HFSRB staff that an application for a change of ownership is complete, the State Board-HFSRB staff shall publish a legal notice on ~~one~~three consecutive ~~day~~days in a newspaper of general circulation in the area or community to be affected and afford the public an opportunity to request a hearing. If the application is for a facility located in a Metropolitan Statistical Area, an additional legal notice shall be published in a newspaper of limited circulation, if one exists, in the area in which the facility is located. If the newspaper of limited circulation is published on a daily basis, the additional legal notice shall be published on ~~one day~~three consecutive days. The applicant shall pay the cost incurred by the Board in publishing the change of ownership notice in the newspaper as required under this subsection. The legal notice shall also be posted on Health Facilities and Services Review BoardHFSRB's web site and sent to the State Representative and State Senator of the district in which the health care facility is located. [20 ILCS 3960/8.5(a)] This legal notice shall provide the following:
- 1) Name of applicants and addresses;
 - 2) Name of facility and address;
 - 3) Description of the proposed project and estimated total cost;
 - 4) Notice of request for public hearing;
 - 5) Notice of tentative HFSRB meeting and location; and
 - 6) Notice of tentative release of the State Board Staff Report and the time to comment on the State Board Staff Report. See HFSRB website (www.hfsrb.illinois.gov).
- e) Completion of Projects with Outstanding Permits

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- 1) A permit or exemption cannot be transferred.
- 2) *In connection with a change of ownership, the State Board may approve the transfer of an existing permit without regard to whether the permit to be transferred has yet been obligated, except for permits establishing a new facility or a new category of service. (see 20 ILCS 3960/6(b).)*
- 3) If the requirements of this subsection (e) are not met, any outstanding permit will be considered a transfer of the permit and results in the permit being null and void.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.525 Requirements for Exemptions Involving the Discontinuation of a Health Care Facility or Category of Service

- a) **Submission of Application for Exemption**
Prior to any person discontinuing a health care facility or category of service, the person shall submit an application for exemption to the HFSRB, submit the required application-processing fee (see Section 1130.230), and receive approval from HFSRB.
- b) **Application for Exemption**
The application for exemption is subject to approval under Section 1130.560, and shall include a written response addressing the review criteria contained in 77 Ill. Adm. Code 1110.130. The application shall be available for review on the premises of the health care facility.
- c) **Opportunity for Public Hearing**
Upon a finding that an application to close a health care facility is complete, the State Board shall publish a legal notice on 3 consecutive days in a newspaper of general circulation in the area or community to be affected and afford the public an opportunity to request a hearing. If the application is for a facility located in a Metropolitan Statistical Area, an additional legal notice shall be published in a newspaper of limited circulation, if one exists, in the area in which the facility is located. If the newspaper of limited circulation is published on a daily basis, the additional legal notice shall be published on 3 consecutive days. The legal notice shall also be posted on the Health Facilities and Services Review Board's web site and sent to the State Representative and State Senator of the district in which the

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health care facility is located. [20 ILCS 3960/8.5(a-3)]

(Source: Added at 40 Ill. Reg. _____, effective _____)

Section 1130.550 Agency Processing of an Application for Exemption

- a) **Application for Exemption Form**
Applicants for an exemption are required to submit a completed exemption application form, which is available from the HFSRB website (www.hfsrb.illinois.gov). Once completed, the form shall be submitted to the HFSRB principal office, located at 525 W. Jefferson Street, 2nd Floor, Springfield IL 62761.
- b) **Completeness**
HFSRB staff shall review an application for exemption to determine whether all required information and ~~the required application-processing fees~~ have been submitted. Applications that do not contain the required information, documentation, or fee shall be deemed incomplete. If HFSRB staff ~~deems~~ deem the application incomplete, they shall notify the applicant of the reasons within 30 days after receipt. ~~The applicant shall submit the information or fee within 30 days after receiving the notice~~ required information or fee must be received by HFSRB within 30 days after receipt of notification. Failure to submit the requested ~~additional information or fee~~ shall result in the application for exemption being voided with the loss of all fees paid.

HFSRB NOTE: Persons who have initiated or completed projects eligible for exemption without obtaining an exemption are in violation of the Act and are subject to the penalties and sanctions provided in ~~of~~ the Act and Section 1130.790.

- c) **Submission to Chairman of HFSRB**
Following HFSRB staff review, applications (including related documentation) that comply with all HFSRB requirements and are unopposed shall be forwarded to the Chairman for review and action.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.560 HFSRB Action

- a) **Action by Chairman**

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The Chairman, acting on behalf of HFSRB, shall review all applications for exemption and approve, deny, or refer the application or material change to HFSRB for review and action. ~~The Chairman may approve any unopposed application that meets all of the review criteria or refer it to the full Board for review and action [20 ILCS 3960/12].~~

- 1) The chairman shall act on an exemption application for a change of ownership among related persons within 45 days after HFSRB staff deems the application complete, provided the application includes the requisite information. If the Board Chair has a conflict of interest or for other good cause, the Chair may request that the Board consider the application. [20 ILCS 3960/8.5(a)]~~An exemption application for a change of ownership of a health care facility between related persons shall be acted upon by the Chairman no later than 60 days after being declared complete by HFSRB staff or 60 days after receipt of all public hearing comments and transcripts, whichever is later.~~
- 2) The Chair shall act upon an exemption application for the discontinuation of a health care facility, discontinuation of a category of service, or change of ownership that is not among related persons after Board staff finds that the application is complete and includes the requested information. The Chair may refer the application to the Board.

b) Action by HFSRB

- 1) HFSRB shall evaluate each application for exemption referred by the Chairman and either issue an exemption or advise the applicant or exemption holder in writing that the application is denied and is not in conformance with exemption requirements. The number of affirmative votes for approval of an application for exemption is specified in the Act. HFSRB shall approve an application for exemption that it determines to be in compliance with the requirements. Exemptions will not be issued for projects that have failed to meet the applicable requirements of this Subpart.
- 2) HFSRB will defer consideration of an application for exemption when the application is the subject of litigation, until all litigation related to the application has been completed.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1130.570 Validity of an Exemption and Reporting Requirements

- a) A project that has received an exemption shall be completed on or before the completion date approved by HFSRB or mandated by the Act and this Part. An exemption shall be valid through completion provided the requirements of this Section are met.
- b) For purposes of this Section, "completion" occurs on the following date:
 - 1) for change of ownership of a health care facility, the date that a new license has been issued (or, if licensing is not applicable, Medicare and/or Medicaid certification has been obtained), or a stock transfer has been accomplished, or a majority change in voting membership or sponsorship of a not-for-profit corporation has been accomplished, or the transfer of assets has occurred, or the merger or consolidation has been accomplished, whichever is applicable;
 - 2) for discontinuations, the date the entire health care facility or category of service ceases operation, such as when the facility stops providing services to patients or surrenders its license to the Department.~~all other projects, the date that construction has been completed and patients or residents are receiving service.~~
- c) The exemption holder shall provide written notice and related documentation to HFSRB of the following:
 - 1) for discontinuations, notice of~~Each exemption holder shall notify HFSRB of project completion no later than 90~~30 days following the project completion date;~~and~~
 - 2) for changes of ownership in which the applicant submitted key terms of the transaction, certification that the transaction was or was not completed according to the key terms contained in the application. The exemption holder must submit the certification within 90 days after the closing date of the transaction; and
 - 32) for changes of ownership in which the applicant submitted the final transaction documents, notice of project completion, no later 90 days after the change of ownership.~~Where required under other Sections of this Part,~~

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~~a final cost report and all other required documentation shall be submitted to HFSRB no later than 90 days following the project completion date, as identified by the exemption holder.~~

- d) An exemption for a change of ownership of a health care facility shall be invalid if the health care facility ceases to be an existing health care facility.
- e) When an applicant has submitted key terms of the transaction rather than final transaction documents, an exemption for a change of ownership of a health care facility shall be invalid if the exemption holder fails to submit a statement to the Board within 90 days after the closing date of the transaction, or such longer period as provided by the Board, certifying that the change of ownership has been completed in accordance with the key terms contained in the application. If such key terms of the transaction change, a new application is required. [20 ILCS 3960/8.5(a)]
- f) Other events causing an exemption to become invalid include:
 - 1) Change of permit (see Section 1130.710(c));
 - 2) Failure to submit the Expenditure Commitment or Financial Commitment~~Obligation~~ Report, which should be included with the annual progress reports;
 - 3) Failure to submit annual progress reports to HFSRB;
 - 4) Failure to submit Final Cost Reports to HFSRB;
 - 5) Implementation of a prohibited alteration (see Section 1130.750(c)); and
 - 6) Relinquishment of an exemption without Board approval.
- g) ~~f)~~ *The State Board may approve the transfer of an existing permit without regard to whether the permit to be transferred has yet been obligated, except for permits establishing a new facility or a new category of service. [20 ILCS 3960/6(b)]*
- h) ~~g)~~ Failure to comply with the requirements of this Section within the specified time frames shall subject the exemption holder to the sanctions and penalties provided by the Act (see 20 ILCS 3960/14.1) and Section 1130.790.

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HFSRB NOTE: See Section 1130.520 regarding changes of ownership for facilities with outstanding permits.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.580 Relinquishment of an Exemption

The holder of an HFSRB exemption may request to withdraw ~~or abandon~~ that exemption. The relinquishment request requires an application to and approval by HFSRB for relinquishment. Upon approval of relinquishment by HFSRB, the exemption is considered null and void. Requests for relinquishment shall be considered only for exemptions that are current and valid. Requests shall be filed with HFSRB prior to the completion date of the exemption.

- a) **Relinquishment Procedure**
The permit holder shall notify HFSRB in writing, prior to the execution of the withdrawal of a project. The notice shall include:
 - 1) A description of the exemption and related costs;
 - 2) A detailed explanation of the reasons for relinquishment; and
 - 3) If the approval of the permit or exemption was based upon need, an explanation of how that need will be met in absence of the project.
- b) HFSRB staff shall review the request for relinquishment and prepare a report of its findings. HFSRB staff findings and all related documentation shall be sent to the Chairman. The Chairman, acting on behalf of HFSRB, shall approve the request or refer it to the full Board for action. The approval or denial of a request for relinquishment constitutes HFSRB's final administrative decision.
- c) Upon approval of a request for relinquishment, HFSRB staff shall adjust all inventories accordingly.
- d) Decisions on requests for relinquishment shall be transmitted in writing to the exemption holder.
- e) Any relinquishment undertaken without prior HFSRB approval shall be considered a violation of the Act and shall be subject to the sanctions and penalties in the Act (see 20 ILCS 3960/14.1) and in Section 1130.790.

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- f) A request for relinquishment shall be assessed an application-processing fee of \$1,000 (see Section 1130.230(h)(8)(B)).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.590 Revocation of an Exemption

- a) HFSRB shall revoke an exemption upon a determination that an exemption holder has failed to comply with the requirements of the Act and this Part. ~~The HFSRB determination to revoke an exemption~~ may be based upon, but not limited by, any of the following reasons:
- 1) The project for which the exemption was granted has been altered without the required notice and approval of HFSRB;
 - 2) The exemption holder has failed to complete the project on or before the completion date;
 - 3) The exemption holder or applicant materially changed information or details submitted in the exemption application or in any written materials submitted to HFSRB;
 - 4) The permit holder or applicant submitted false information in the Application for Exemption or in any written materials submitted to HFSRB;
 - 5) The permit holder or applicant misrepresented information presented at an HFSRB meeting, at an HFSRB public hearing, or in response to HFSRB or HFSRB staff inquiries;
 - 6) The exemption holder or applicant has been convicted of any of the following crimes during the previous five years. The convictions shall be verified by a certified copy of the court of conviction.
 - A) A felony;
 - B) Two or more misdemeanors involving moral turpitude;

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- 7) The exemption holder, applicant, or health care facility representative has refused to allow an inspection or survey of the health care facility by HFSRB representatives (i.e., IDPH surveyors);
 - 8) The facility has insufficient financial or other resources to operate the facility in accordance with the exemption application or with any other information submitted to HFSRB;
 - 9) The facility's license has been revoked by IDPH.
- b) If HFSRB intends to revoke an exemption, the exemption holder shall be provided with written notification of the intent to revoke and notice of allegations. The exemption holder shall be afforded an opportunity for a hearing before an administrative law judge. HFSRB may also impose other sanctions or penalties mandated in the Act (see 20 ILCS 3960/14.1) and Section 1130.790, including fines, in addition to the revocation determination.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART F: OPERATIONAL REQUIREMENTS FOR THE REVIEW AND PROCESSING OF APPLICATIONS FOR PERMIT

Section 1130.610 Duration of the Review Period and Time Frames

- a) **Emergency Applications**
Initial application for emergency projects (as defined in 77 Ill. Adm. Code 1110.40) may be made verbally or in writing or by electronic means to the Administrator. The Administrator, upon receiving the concurrence of the Chairman (or in the absence of the Chairman, the Vice-Chairman) that the situation is emergent in nature in accordance with the provisions of 77 Ill. Adm. Code 1110.40, is authorized to give verbal approval. Any such communications shall be followed by a written application and written approval. *This procedure is exempt from the public hearing requirements of the Act [20 ILCS 3960/12].* The written application shall identify the applicant and shall summarize the nature of the problem the emergency project will correct and the anticipated cost of the project.
- b) **Substantive and Non-substantive Applications**
The review period for HFSRB staff shall be a minimum of 30 days following the application's completeness date and shall not exceed 60 days for non-substantive

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projects and 120 days for substantive projects, with the exception of projects proposing to establish or discontinue a category of service, *which shall be reviewed by the Board within 60 days [20 ILCS 3960/12], and applications for changes of ownership among related persons, which shall be acted upon by the Board Chair within 45 days. If the Board Chair has a conflict of interest or for other good cause, the Chair may request review by the Board. [20 ILCS 3960/8.5(a)]*; The review period can be extended pursuant to the provisions of this Subpart. All applications other than emergency applications shall be acted upon by HFSRB at the next regularly scheduled meeting that is at least 10 business days following the completion of the HFSRB staff review.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.620 Technical Assistance, Classification, Completeness Review, and Review Procedures

- a) Technical Assistance
 - 1) The application shall be completed in accordance with the requirements of this Part that are applicable to the individual project. An applicant may request technical assistance from or a pre-application conference with ~~from~~ HFSRB staff regarding completion of the application and the applicability of the requirements of this Part.
 - 2) Technical assistance may be provided to any person regarding pre-application conferences, the filing of an application, or other request to HFSRB, provided that the communication is *not intended to influence any decision on the application. Once an application is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed format, and shall be included in the public record.* [20 ILCS 3960/4.2]
 - 3) *Nothing in the Act shall prohibit staff members from providing technical assistance to applicants. Nothing in the Act shall prohibit staff from verifying or clarifying an applicant's information as they prepare the Board's staff report.* [20 ILCS 3960/4.2(a)]
 - 4) Technical assistance may be provided for the benefit of HFSRB to clarify issues relevant to an application or other business of HFSRB. The

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assistance may be in the form of written correspondences, conversations, site visits, meetings, or consultations with independent experts. HFSRB staff shall prepare a written record of any technical assistance provided after an application is deemed complete, for inclusion in the application file.

- b) **Classification of an Application**
An application for permit shall be classified as substantive, non-substantive or emergency, as discussed in 77 Ill. Adm. Code 1110.40.
- c) **Completeness Review**
 - 1) Within 10 business days after ~~receiving receipt of~~ an application for permit, HFSRB staff shall determine whether the application is substantially complete and ready to be reviewed for compliance with applicable review criteria and standards. The completeness review shall be conducted with the understanding that additional information may be necessary during the staff-review period for criteria compliance, to further clarify or explain statements or data in the application. An application for any project shall be deemed complete if all of the following have been met:
 - A) all review criteria applicable to the individual project have been addressed, including the Safety Net Impact Statement (for applicants other than ~~long-term~~ long-term care providers);
 - B) the required fee (as outlined in ~~subsection (d) of this Section 1130.230~~) has been submitted;
 - C) the number of copies, forms, and format as specified in the application have been submitted;
 - D) all annual progress reports on previously approved projects for the facility and/or applicants have been submitted;
 - E) all required information concerning completion of previously approved projects for the facility and/or applicants has been submitted;
 - F) when the project proposed contains major medical equipment, the

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cost of the equipment to be acquired has been provided;

- G) all persons who are applicants have been identified and the applicants that hold the license and that will operate the facility have provided documentation from the Illinois Secretary of State that the applicant is registered to conduct business in Illinois and is in good standing or, if the applicant is not required to be registered to conduct business in Illinois, evidence of authorization to conduct business in other states;
 - H) all HFSRB requests and questionnaires for information or data for all Illinois facilities owned or operated by any applicant, such as but not limited to the Annual Hospital or Long-term Care Questionnaire (77 Ill. Adm. Code 1100.60 and 1100.70) or Cancer Registry (77 Ill. Adm. Code 840.110(d) and 840.115(i)) have been received and are complete;
 - I) verification that the applicant has fulfilled all compliance requirements with all existing permits that have been approved by HFSRB;
 - J) documentation of compliance with the Flood Plain Rule under Illinois Executive Order #2006-05;
 - K) documentation of compliance with the requirements of the Illinois State Agency Historic Resources Preservation Act; and
 - L) identification of a site.
- 2) An application shall be incomplete if any of the elements described in subsection (c)(1) are not present or if additional information or documentation is required to clarify a response. Failure to address an applicable criterion or to respond that an applicable criterion does not apply to the proposed project shall be a basis for deeming the application incomplete.
- 3) If an application fails to include any of the elements described in subsection (d)(1) or if additional information or documentation is required to clarify a response, the application shall not be scheduled for

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consideration by HFSRB until such time that the required information is submitted and accepted.

- 4) Applications received after 8:30 a.m. shall be deemed as being received the following business day.
- 5) Within the completeness review period, HFSRB shall notify the applicant in writing of whether the application is substantially complete, within the completeness review period, of its decision and, in the case of an incomplete application, the reasons the application is incomplete.
- 6) If the application is ~~deemed complete~~, the date of completion date shall initiate the review period. If the application is ~~deemed incomplete~~, the applicant shall be allowed 45 days after from the date of receipt of the notification to provide all necessary information to complete the application. Upon receiving receipt of all requested additional information requested, HFSRB staff shall again review the application for completeness and shall notify the applicant of its decision. If HFSRB staff find that the application remains incomplete at the end of the allotted response period, the application shall be declared null and void, and all fees paid forfeited.

HFSRB NOTE: The applicant is responsible for assuring~~It is the responsibility of the applicant to assure~~ that HFSRB receives the requested additional information within the prescribed time frame.

d) Review Procedures

- 1) All applications will be reviewed and evaluated for conformance with the applicable review criteria in effect at the time the application is deemed complete.
- 2) Each application will be reviewed and considered on an individual basis unless HFSRB has established review criteria or procedures that pertain or relate to comparative review or "batching" of applications.
- 3) Applications for permit shall be subject to the need figures set forth in the most recent update to the Inventory of Health Care Facilities and Services and Need Determinations, as adjusted by HFSRB decisions in effect prior to the date HFSRB takes action on the application. HFSRB action

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includes the approval, issuance of an intent to deny, or denial of an application.

- 4) All applications except emergency applications are subject to the public hearing requirements of the Act. All evidence submitted at a public hearing shall be taken into account in the determination of compliance or noncompliance of an application with applicable review criteria.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.635 Additional Information Provided During the Review Period

a) Additional Information

- 1) During the review period, HFSRB may request information or data from the applicant or from other persons to clarify the application and conduct the HFSRB staff review.
- 2) The applicant may also submit information or data if the information is:
 - A) due to a modification of the project; or
 - B) in response to an Intent to Deny, or in response to a request from HFSRB.
- 3) All additional information shall be submitted to HFSRB's staff in writing, on 8½" by 11" paper.
- 4) All additional information shall be submitted within the required time frame established in subsections (b) and (c) and shall be sent only by any recognized overnight courier or personal delivery service.
- 5) Additional information submitted by fax or email will not be accepted.
- 6) All additional information shall be made part of and included in the project record.

b) Public Comment Information

Public comment information from persons other than the applicant that ~~were~~has been submitted in accordance with the public comment and public hearing

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provisions of this Part shall not be considered requested or additional information. The information shall be made part of and included in the project record.

- c) **Public Response to Staff Review and Findings**
The applicant and members of the public may submit, to the State Board, written responses regarding the facts set forth in the review or findings of the Board staff or reviewing organization. Members of the public shall submit any written response to the staff review and findings at least 10 days before the meeting of the State Board. The staff may revise any findings to address corrections of factual errors cited in the public response. At the meeting, the State Board may, in its discretion, permit the submission of other additional written materials. [20 ILCS 3960/6 (c-5)]
- d) **Ex Parte Information**
HFSRB will comply with the requirements of the Act pertaining to ex parte communications. (See 20 ILCS 3960/4.2.)

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.640 Extension of the Review Period

- a) **Extension by HFSRB of the Review of Information**
As required to complete its review, HFSRB staff may extend the review period for up to 120 days to analyze~~for the analysis of~~ additional information. HFSRB will consider the application at the next regularly scheduled meeting that is at least 10 days following the completion of the HFSRB review of the additional information.
- b) **Extension Due to Deferral by Applicant**
The applicant may defer consideration of a project by HFSRB. A deferral extends from the HFSRB meeting at which the project has been scheduled to the next scheduled HFSRB meeting, subject to a review period of up to 60 days for analyzing~~analysis of~~ additional information. A request for deferral, specifying the reasons for the request, shall be submitted to HFSRB, as follows:
 - 1) **Written Request** – to be received by HFSRB staff no later than 5 business days prior to the scheduled HFSRB meeting; or
 - 2) **Verbal Request** – by issuing a formal request to HFSRB during the consideration of the project at the HFSRB meeting.

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- c) An applicant may not defer:
- 1) initial consideration of the application by HFSRB to a meeting that is scheduled more than 6 months from the date the application was deemed complete; or
 - 2) HFSRB consideration of an application that has received an Intent to Deny beyond a meeting date that is more than 12 months from the date of HFSRB's decision of Intent to Deny.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.650 Modification of an Application

- a) Modifications to an application are allowed during the review period, prior to final HFSRB decision. Modifications (as defined in Section 1130.140) shall be classified as Type A or Type B. Type A modifications shall be subject to the public hearing requirements of the Act. If requested, a hearing would occur within the time allocated for HFSRB staff review. Type A modifications consist of any of the following:
- 1) A change in the number of beds proposed in the project.
 - 2) A change in the ~~site of the project~~ site to a new location within the planning area. A change in site to a location outside the planning area originally identified in the application is not considered a modification. It ~~and~~ voids the application.
 - 3) A change in the cost of the project exceeding 10% of the original estimated project cost.
 - 4) A change in the total gross square footage (GSF) of the project exceeding 10% of the original GSF.
 - 5) An increase in the categories of service to be provided.
 - 6) A change in the person who is the applicant, including the addition of one or more co-applicants to the application.

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- 7) Any modification to a project, including modifications specified in subsections (a)(1) through (a)(6), that, by itself, would require a certificate of need (CON) permit or exemption.
- b) All other modifications, including those made by an applicant in conformance with and limited to the comments, recommendations or objections of HFSRB, are Type B modifications and are not subject to public hearing.
- c) An applicant can modify a project only twice during the review period; provided, however, an applicant may modify a project at any time if the modification is in conformance with and limited to the comments, recommendations or objections of HFSRB.
- d) If a modification is not in conformance with and limited to the comments, recommendations or objections of HFSRB, HFSRB staff shall:
 - 1) have up to 60 days to review the modification and any supplemental information submitted pursuant to the applicable review criteria;
 - 2) hold a public hearing if requested; and
 - 3) submit its findings to HFSRB at the next regularly scheduled meeting that is at least 10 days following the completion of the HFSRB staff review.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.655 HFSRB Consideration and Action

- a) Chairman Consideration and Action
 - ~~1) Applications for permit that meet all of HFSRB's review criteria and are unopposed shall be:~~
 - 1A) reviewed for approval by the Chairman, acting on behalf of HFSRB [20 ILCS 3960/5]; or
 - 2B) referred by the Chairman to the full Board for review and action.
 - 2) ~~The review and subsequent action by either the Chairman or the full Board shall take place prior to the next regularly scheduled HFSRB meeting that~~

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~~is at least 10 business days following the completion of the staff review of the applications.~~

- b) **HFSRB Consideration and Action**
HFSRB shall review each application for permit to determine compliance with all applicable review criteria. HFSRB shall consider the application material, additional information, public comment and public hearing testimony, HFSRB staff findings, and other information coming before it and take the following action:
- 1) approve the application and issue a permit;
 - 2) issue an Intent to Deny (an initial denial of a project);
 - 3) issue an initial denial of a project and afford the applicant an opportunity for an administrative hearing;
 - 4) issue a final denial of a project subsequent to an administrative hearing or waiver of a hearing; or
 - 5) ~~defer the decision to consideration on an application to a subsequent meeting.~~ HFSRB deferral of an application shall extend the review period, if it were to otherwise expire, until the date of the subsequent HFSRB meeting. HFSRB may defer consideration of an application for permit when the application is the subject of litigation, until all litigation related to the application is complete~~has been completed~~.
- c) **HFSRB Written Decisions**
HFSRB shall *issue written decisions, upon request of the applicant or an adversely affected party, to the Board within 30 days after the meeting in which the final decision has been made.* [20 ILCS 3960/12]

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.660 Approval of an Application

- a) The number of affirmative votes required for approval of an application and issuance of a permit by HFSRB is specified in the Act. HFSRB shall consider the application and any additional information or modification submitted by the applicant, HFSRB staff reports, the public hearing testimony and written

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comments, if any, and other information coming before it in making its determination whether to approve the project. Applications are reviewed to determine compliance with review criteria contained in 77 Ill. Adm. Code 1110 and 1120. The failure of a project to meet one or more of the applicable review criteria shall not prohibit the issuance of a permit. A permit is effective on the date of HFSRB authorization.

- b) HFSRB may propose conditions to be placed upon any application for permit. Projects that are approved with conditions or stipulations shall contain the following:
 - 1) Specified conditions that are expressly agreed to by the applicant;
 - 2) Establishment of time frames for compliance with conditions;
 - 3) Establishment of reporting requirements; and
 - 4) Assurance that any change to the application for permit does not constitute a Type A modification as delineated in Section 1130.650(a) that would require a public hearing.
- c) A permit holder's failure to comply with any conditions within the prescribed time frames, without a previously authorized extension, shall provide a basis for HFSRB to invalidate the permit, or issue conditions, fines or other penalties or sanctions mandated in the Act and Section 1130.790.~~Following issuance of a permit, HFSRB shall send a permit acceptance agreement to the permit holder, specifying and consolidating all post-permit requirements necessary to maintain compliance with the permit.~~
- d) ~~Failure to comply with any conditions within the prescribed time frames shall provide a basis to invalidate the permit, or issue conditions, fines or other penalties or sanctions mandated in the Act and Section 1130.790.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.670 Intent to Deny an Application

- a) Issuance of Intent to Deny
Failure of an application for permit to receive the number of affirmative votes required by the Act upon initial consideration by HFSRB shall constitute an Intent

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to Deny the application. ~~After issuing~~Subsequent to the issuance of an Intent to Deny, HFSRB will ~~give the applicant will be given an opportunity to appear before HFSRB and present such information as may be relevant to the approval of the permit~~ [20 ILCS 3960/10]. The date of the Intent to Deny is the date of the HFSRB meeting when the action occurred.

b) Applicant's Response

The applicant shall notify HFSRB in writing within 14 calendar days after ~~the issuance of an Intent to Deny to~~ and indicate whether the applicant intends to appear before HFSRB and/or submit additional information. The applicant is responsible for assuring~~It is the responsibility of the applicant to assure that HFSRB receives in receipt of the response within 14 days after issuance of the~~ Intent to Deny.

c) Action Following Notice of Intent to Deny

- 1) If the applicant waives the right to appear before HFSRB or if a written response is not received within 14 days after ~~the issuance of an~~ Intent to Deny, then the application shall be considered withdrawn.
- 2) If the applicant indicates that no additional information will be submitted, HFSRB shall take action on the application at its next meeting.
- 3) If the applicant indicates that additional information will be submitted, the applicant shall be afforded a ~~period of 60 days from the date of issuance of~~ the Intent to Deny to submit the material. Upon receipt of additional information, HFSRB staff shall commence a review and submit its findings to HFSRB in accordance with the provisions of this Subpart. HFSRB staff shall be allowed up to 60 days following the receipt of all material to review the material and issue a supplemental report.

d) Deferrals by Applicant

A project that has received an Intent to Deny and has been scheduled for HFSRB consideration can be deferred by the applicant. A notice of deferral may be provided in writing prior to the scheduled HFSRB meeting or be provided verbally at the HFSRB meeting. An applicant may not defer HFSRB consideration beyond an HFSRB meeting date that is more than 12 months from the ~~date of issuance of~~ the Intent to Deny.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1130.680 Denial of an Application

- a) If, ~~after subsequent to an issuance of an~~ Intent to Deny, an application for permit fails to receive the required number of affirmative votes for approval as specified in the Act, the HFSRB vote shall constitute a denial of the application for permit.
- b) If HFSRB denies an application for permit, the decision and notice of opportunity for administrative hearing shall be transmitted to the applicant by certified mail.
- c) At the conclusion of such administrative hearing, or upon default of the applicant, HFSRB shall make its final administrative decision, specifying its findings of fact and conclusions of law. The Administrator shall transmit the decision to the applicant by certified mail.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART G: PERMIT VALIDITY, REPORTING REQUIREMENTS AND REVOCATION

Section 1130.710 Validity of Permits

A permit is effective on the date of HFSRB authorization.

- a) A permit shall be valid until the project has been completed, provided that:
 - 1) financial commitment of the project occurs within the time frames specified in the Act, unless HFSRB extends the financial commitment period is extended by HFSRB (as defined in Section 1130.730); and
 - 2) the project commences and proceeds to completion with due diligence. The financial commitment period shall be extended for any project for which issuance of a permit has been contested and is in administrative review. The financial commitment period will be extended by the length of time equal to the number of days from the date a summons was received until the date of final disposition of the suit.
- b) Projects shall proceed with due diligence and shall be completed (see Section 1130.140) no later than the completion date approved by HFSRB. A permit holder shall be subjected to sanctions provided in the Act and Section 1130.790 if the project is not completed by the completion date provided in the original

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~~permit or renewal letter. All permits for projects that are not completed in the time frames specified shall subject the permit holder to the sanctions and penalties provided in the Act and this Subpart, unless renewed by HFSRB pursuant to Section 1130.740.~~

- c) A permit is valid only for the defined construction or modification, equipment, site, amount, time period and persons named in the application for the permit and shall not be transferable or assignable. A permit is invalidated by:
 - 1) a change in the person who is the permit holder;
 - 2) a change in the membership or sponsorship of a not-for-profit corporation that is the permit holder; or
 - 3) the transfer or assignment of a controlling interest in, or voting rights of, a for-profit corporation that is the permit holder.
- d) ~~A permit shall not be bought, sold, or transferred either on its own or as part of a transaction for a change of ownership of a health care facility or for the acquisition of major medical equipment.~~
- de) Other events causing a permit to become invalid include:
 - 1) Change of permit (see Section 1130.710(c));
 - 2) Failure to submit the Expenditure Commitment or Financial Commitment~~Obligation~~ Report, which should be included with the annual progress reports;
 - 3) Failure to submit annual progress reports to HFSRB;
 - 4) Failure to submit Final Cost Reports to HFSRB;
 - 5) Implementation of a prohibited alteration (see Section 1130.750(c));
 - 6) Relinquishment of a permit without Board approval; and
 - 7) Failure to comply with the requirements of Section 1130.660(d).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1130.720 Financial Commitment

- a) ~~A permit holder shall financially commit projects~~Projects for construction, establishment or modification ~~shall be financially committed by expending or committing to expend at least 33% of the total project cost no later than:~~
- 1) 24 months for major construction projects; or
 - 2) 12 months for all projects that do not include major construction; or
 - 3) The HFSRB completion date of the permit, if it occurs before the deadlines in subsections (a)(1) and (a)(2).
- b) Projects that have no cost shall be considered financially committed upon HFSRB issuance of a permit.
- c) Permits for projects that have a cost and that have not been financially committed as stated in this Section shall be considered expired and the project abandoned. ~~A permit holder who fails~~Failure to meet the financial commitment requirements as stated ~~shall be subject the permit holder to fines under the Act and pursuant to Section 1130.790(d)(1).~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.730 Extension of the Financial Commitment Period

- a) HFSRB may grant the permit holder a single extension ~~of time to~~ financially commit at least 33% of the total project costs. An extension shall be for a period of up to one year ~~from and shall commence on the~~ previously defined financial commitment date.
- b) The permit holder shall submit a written request for extension, along with an application ~~processing~~ fee.
- c) A request for extension must be in writing and received by HFSRB at least 45 days prior to the defined financial commitment date or the permit expiration date if, based on the 12-month or 24-month requirement for financial commitment, the permit expiration date comes before the defined financial commitment date. A request for extension shall be assessed a \$500 application processing fee and is

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subject to the requirements of Section 1130.230. A request for extension that is received less than 45 days prior to the permit financial commitment date shall be subject to an additional \$500 late ~~application-processing~~ application-processing fee. If HFSRB does not receive payment ~~has not been received within 30 days after receipt of written notice for payment~~, the request for extension will ~~shall~~ not be processed.

- d) HFSRB staff shall review the request for extension and prepare a report of its findings. If the findings are that the request is in conformance with all HFSRB criteria, HFSRB staff findings and all related documentation shall be sent to the Chairman. The Chairman, acting on behalf of HFSRB, shall approve or deny the request, or refer the request to HFSRB for action. If HFSRB staff find that not all criteria are all criteria are not positive, or if the Chairman refers this to the full Board for action, then the matter shall be sent by HFSRB staff to HFSRB members. HFSRB shall evaluate the information submitted in making its determination whether to grant the extension. Projects that continue to comply with the provisions of 77 Ill. Adm. Code 1110 and 1120 and that have shown good cause by submitting the required information for an extension request specified in subsection (b) of this Section, and for which the causes for delays are beyond the permit holder's control, shall be approved for extension. Denial by HFSRB of an extension request shall constitute the final HFSRB decision and is not subject to administrative appeal.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.740 Permit Renewal

A permit holder may request a completion date that is later than an approved project completion date by submitting to HFSRB a request for permit renewal.

- a) Permit renewal by HFSRB must be requested prior to the required project completion date.
- b) A permit renewal shall commence on the expiration date of the original permit.
- c) The request for permit renewal shall be in writing and shall be received by HFSRB at least 45 days prior to the expiration date of the permit, and shall include the following information:
- 1) the requested completion date;

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- 2) a status report on the project detailing what percent has been completed and a summary of project components yet to be finished and the amount of funds expended on the project to date;
 - 3) a statement as to the reasons why the project has not been completed; and
 - 4) confirmatory evidence by the permit holder's authorized representative that the project's costs and scope ~~comply~~are in compliance with ~~the application~~what HFSRB approved and that sufficient financial resources are available to complete the project.
- d) HFSRB staff shall review the request and prepare a report of its findings. If the findings are that the request is in conformance with all HFSRB criteria, and if this is the first request for this project, then the request, HFSRB staff findings, and all related documentation shall be sent to the Chairman. The Chairman, acting on behalf of HFSRB, shall approve or deny the request or refer the request to the full Board for action. If HFSRB staff find that all criteria are not positive, if this is not the first request for this project or, if the Chairman refers this to the full Board for action, then HFSRB will evaluate the information submitted to determine if the project has proceeded with due diligence (as defined in Section 1130.140). The number of affirmative votes required to approve a renewal request is specified in the Act. If a request for renewal of permit is denied, HFSRB may issue a Notice of Intent to Revoke a Permit if the project is not completed by the HFSRB-approved completion date. The permit holder shall be afforded an opportunity for an administrative hearing pursuant to Subpart J.

HFSRB NOTE: Permit revocation procedures are explained in Section 1130.780.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.750 Alteration of Post-Permit Projects

- a) **Applicability**
~~The cumulative effect of alterations to a project shall not exceed the following:~~
- 1) Permit holders shall report all~~All alterations shall be reported to~~ HFSRB before executing the alteration~~any alteration is executed~~. Some proposed alterations require HFSRB approval and some are prohibited. Proposed

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alterations that are not cited under these two categories require only written notification to HFSRB prior to execution of the alteration.

- 2) Any change after ~~the issuance of a permit is issued~~ may ~~constitute~~ constitute an alteration. Permit holders shall report all All alterations ~~shall be reported to HFSRB before the alteration is any~~ alteration is executed.
 - 3) The alteration requirements are applicable only to projects with open permits (approved projects that are not yet completed).
 - 4) Alteration provisions are valid only for the projects defined and approved in the permit.
 - 5) A project with a permit can be altered any time between the date of permit issuance and ~~the project completion date~~.
 - 6) All alterations requiring HFSRB action shall be reviewed and approved on a cumulative basis. More than one alteration can be reviewed and approved during the life of a project; however, the limits on alterations shall be applied cumulatively for a single permit.
- b) Limits on Allowable Alterations Requiring HFSRB Approval
The cumulative effect of alterations to a project shall not exceed the following:
- 1) a change in the approved number of beds or stations, provided that the change would not independently require a permit or exemption from HFSRB;
 - 2) abandonment of an approved category of service established under the permit;
 - 3) any increase in the square footage of the project up to 5% of the approved gross square footage;
 - 4) any decrease in square footage greater than 5% of the project;
 - 5) any increase in the cost of the project not to exceed 7% of the total project cost. This alteration may exceed the capital expenditure minimum in place when the permit was issued, provided that it does not exceed 7% of

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the total project cost;

- 6) any increase in the amount of funds to be borrowed for those permit holders that have not documented a bond rating of "A-" or better from Fitch's or Standard and Poor's rating agencies, or A3 or better from Moody's (the rating shall be affirmed within the latest 18 month period prior to the submittal of the application).

c) Prohibited Alterations

Notwithstanding the provisions of subsection (b), the following alterations are not allowed and, if incurred, invalidate the permit:

- 1) an increase in the total project costs that exceeds 7% of the permit amount;
- 2) an increase in the project's gross square footage that exceeds 5% of the project's approved gross square footage, unless that increase is required or mandated by local, State or federal building or life safety requirements that were not in effect at the time of permit issuance;
- 3) any other change in the project's scope or funding that would independently require a CON permit or exemption.

d) Alteration Procedures

1) Written Notification

- A) The permit holder shall notify HFSRB in writing of any alteration to a project. The notice shall include a description of the alteration and related costs (if any) and shall address all applicable review criteria related to the alteration if the alteration requires HFSRB approval. HFSRB staff shall review the alteration request for compliance with the review criteria and submit its findings to HFSRB. If additional information is needed by HFSRB staff to perform a review of the request, the permit holder shall be notified.
- B) All alteration requests shall be submitted to the State Board in writing on 8½" by 11" paper.

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- C) All alteration requests shall be submitted within the allowable time frames established in subsection (a)(1) and shall be sent only by any recognized overnight courier or personal delivery service.
 - D) Alteration requests submitted by email or fax will not be accepted.
- 2) Compliance with 77 Ill. Adm. Code 1110 and 1120
A request for alteration reviewed by HFSRB is subject to the provisions of 77 Ill. Adm. Code 1110 and 1120 that are applicable to the individual project. The components and any other proposed alterations to a project that would, when taken as a separate component, require a permit under the Act shall not be subject to review under this Section but shall require a new application for a permit.
- 3) HFSRB Staff Review
HFSRB staff shall review the alteration request for compliance with the review criteria, and prepare a report of its findings for HFSRB review. HFSRB will notify the permit holder if additional information is needed to review the request, ~~the permit holder will be notified.~~
- 4) Board Review and Action
- A) The alteration request, HFSRB staff findings, and all related documentation shall be sent to the Chairman if:
 - i) staff review determines that the alteration request is in conformance with all HFSRB criteria; and
 - ii) this is the first alteration request for the project.
 - B) The Chairman, acting on behalf of HFSRB, shall approve or deny the request or refer the request to the full Board for consideration and action. Other conditions under which the alteration request shall be referred to the full Board for consideration and action are as follows:
 - i) the request is not in conformance with all HFSRB criteria;
or

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- ii) the request is not the first one for an alteration concerning the project in question.
 - C) The number of affirmative votes required for approval of an alteration request is specified in the Act. The approval or denial of a request for alteration constitutes HFSRB's final administrative decision.
- 5) **Inventory and Permit Amount Adjustments**
Upon ~~approving~~approval of a request for alteration, HFSRB will revise the permit to reflect the alteration and shall adjust all inventories accordingly. If a permit holder reduces the scope or size of the project, the permit amount shall be reduced accordingly.
- 6) **Notification of Decision to Applicant**
HFSRB staff shall submit to the permit holder that submitted a request for an alteration a written notice of HFSRB's decision.~~Decisions on requests for alteration shall be transmitted, in writing, to the permit holder by HFSRB staff.~~
- 7) **Applicable Penalties**
Any alteration undertaken without prior HFSRB notice or notice and approval (when required) shall be considered a violation of the Act and/or subsection (a)(1) of this Section and shall subject the permit or exemption holder to fines, permit revocation, and the penalties and sanctions mandated in the Act (see 20 ILCS 3960/14.1) and in Section 1130.790.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.760 Annual Progress Reports

- a) Each permit holder shall submit annual progress reports to HFSRB staff every 12 months from the permit issuance date until the project is completed. *A permit holder must submit annual progress reports no earlier than 30 days before and no later than 30 days after each anniversary date of the Board's approval of the permit until the project is completed.*
- b) Permit holders shall limit post-permit reports to annual progress reports and the final completion and cost report.~~To maintain a valid permit and to monitor progress toward project commencement and completion, routine post-permit~~

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~~reports shall be limited to annual progress reports and the final completion and cost report.~~

- c) *Annual progress reports shall include information regarding the committed funds expended toward the approved project.*
- d) *If the project is not completed in one year, then, by the second annual report, the permit holder shall expend 33% or more of the total project cost or shall make a commitment to expend 33% or more of the total project cost by signed contracts or other legal means, and the report shall contain information regarding those expenditures or commitments.*
- e) *If the project is to be completed in one year, then the first annual report shall contain the financial ~~expenditure~~ commitment information for the total project cost.*
- f) *The State Board may extend the financial ~~expenditure~~ commitment period after considering a permit holder's showing of good cause and request for additional time to complete the project. [20 ILCS 3960/5] The financial commitment period may be extended once for a maximum of one year. (See Section 1130.730.) If the financial commitment period is extended, the financial commitment information shall be submitted no later than the due date of the next annual report that immediately follows the new financial commitment date.*
- g) *If a permit holder fails to provide the required annual reports, the permit holder's future applications will be considered incomplete until HFSRB staff receives the required reports. ~~Failure to provide the required annual progress reports will result in future applications being considered incomplete by HFSRB staff until the required reports are received.~~*
- h) *A permit holder's failure ~~Failure~~ to timely submit ~~process~~ the required annual progress reports shall be considered a violation of the Act and shall subject the permit or exemption holder to fines, permit revocation, and the penalties and sanctions mandated in the Act (see 20 ILCS 3960/14.1) and Section 1130.790.*
- i) *All information submitted to HFSRB regarding annual progress reports shall be submitted on 8½" by 11" paper.*

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- j) All information regarding annual progress reports shall be submitted within the allowable time frames established in subsection (a) and shall be sent only by ~~any~~ recognized overnight courier or personal delivery service.
- k) Annual reports submitted by email or fax will not be accepted.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.770 Project Completion, Final Realized Costs and Cost Overruns

- a) Written Notification
 - 1) Each permit and exemption holder shall notify HFSRB upon its project completion.
 - 2) All information concerning project completion shall be submitted on 8½" by 11" paper.
 - 3) All information regarding project completion shall be submitted within the allowable time frames established in subsection (a)(5) and shall be sent only by any recognized overnight courier or personal delivery service.
 - 4) Notices of project completion and final realized costs will not be accepted by email or fax.
 - 5) The report of project completion and final realized costs, including supporting documentation listed in subsections (c) and (d), shall be submitted within 90 days following the project completion date.
 - 6) The permit holder may request an extension of the deadline for submission of the final project cost report by meeting the requirements stated in Section 1130.740 (Project Renewal).
- b) For projects with no cost, the permit holder shall submit a written notice to HFSRB of the project's conclusion (e.g., initiation of a new service, discontinuation, certification of additional dialysis stations).
- c) For a project with a cost below the capital expenditure minimum, the permit holder shall submit a notice that the project has been brought to a conclusion and submit a report of final realized costs containing the following:

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- 1) a detailed itemization of all project costs and sources of funds;
 - 2) a certification that the final realized costs, as itemized, are the total costs required to complete the project and that there are no additional-~~or~~ associated costs or capital expenditures related to the project;
 - 3) certification attesting to compliance with the requirements of this Section shall be in the form of a notarized statement signed by an authorized representative of the permit holder; and
 - 4) for major construction projects, the final Application and Certification for Payment for the construction contract, as per form G702 published by the American Institute of Architects or equivalent.
- d) For a project with a cost above the capital expenditure minimum in place at the time of permit approval, the permit holder shall submit a notice that the project has been brought to a conclusion and submit a report of final realized costs containing the following:
- 1) itemization of all project costs;
 - 2) certification that the final realized costs, as itemized, are the total costs required to complete the project and that there are no additional or associated costs or capital expenditures related to the project;
 - 3) certification of compliance with all terms of the permit to date, including project cost, square footage, services, etc.; certification attesting to compliance with the requirements of this Section must be in the form of a notarized statement signed by an authorized representative of the permit holder;
 - 4) the final Application and Certification for Payment for the construction contract, as per the American Institute of Architects form G702 or equivalent; and
 - 5) for permits with a project cost equal to or greater than three times the capital expenditure minimum in place at the time of permit approval, an audited financial report of all project costs and sources of funds. The audited financial report, when required, shall be completed by an

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independent certified public accountant. A financial report completed by a permit holder's internal auditor will not be accepted.

- e) Failure to file final realized costs reports will result in subsequent applications for permit filed by the permit holder to be deemed incomplete by HFSRB staff until the required report is filed. In addition, the permit holder will be subject to fines, penalties and sanctions as mandated in the Act (see 20 ILCS 3960/14.1) and Section 1130.790.
- f) Failure to timely file the project's report of project completion and final realized costs, all necessary supporting documentation following the project completion, or any project cost overrun information shall subject the permit or exemption holder to fines, permit revocation, and the penalties and sanctions mandated in the Act (see 20 ILCS 3960/14.1) and Section 1130.790.
- g) Any amount of the final realized cost that exceeds the approval permit amount shall be considered a cost overrun without a permit unless the amount is subsequently approved by HFSRB. *Projects may deviate from the costs, fees, and expenses provided in their project cost information for the project's cost components, provided that the final total project cost does not exceed the approved permit amount [20 ILCS 3960/5].*
- h) Any project with a cost overrun shall not be complete until HFSRB determines that the project has complied with all project completion requirements, as determined by HFSRB.
- i) Any project that is compliant with the conditions of its permit shall not be complete until HFSRB determines that the project completion requirements have been met.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.775 Relinquishment of a Permit

A permit holder~~The holder of an HFSRB permit~~ may request to withdraw ~~it~~~~or abandon that~~ permit. The request requires an application to and approval by HFSRB for relinquishment. Upon approval of relinquishment by HFSRB, the permit is considered null and void. Requests for relinquishment shall be considered only for permits that are current and valid. Requests shall be filed with HFSRB prior to the completion date of the permit. HFSRB will not process a request for relinquishment until it receives the application-processing fee.

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- a) Relinquishment Procedure
The permit holder shall notify HFSRB in writing, prior to the abandonment or withdrawal of a project. The notice shall include:
 - 1) A description of the permit and related costs;
 - 2) A detailed explanation of the reasons for abandonment; and
 - 3) If the approval of the permit or exemption was based upon need, an explanation of how that need will be met in absence of the project.
- b) HFSRB staff shall review the request for withdrawal and prepare a report of its findings. HFSRB staff findings and all related documentation shall be sent to the Chairman. The ~~Chairman~~Chairman, acting on behalf of HFSRB, shall approve the request or refer it to the full Board for action. The approval or denial of a request for relinquishment constitutes HFSRB's final administrative decision.
- c) Upon approval of a request for relinquishment, HFSRB staff shall adjust all inventories accordingly.
- d) Decisions on requests for relinquishment shall be transmitted in writing to the permit holder.
- e) Any relinquishment undertaken without prior HFSRB approval shall be considered a violation of the Act and shall be subject to the sanctions and penalties in the Act (see 20 ILCS 3960/14.1) and ~~in~~ Section 1130.790.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.780 Revocation of a Permit

- a) HFSRB shall revoke a permit upon a determination that a permit holder has failed to comply with the requirements of the Act and this Section. ~~The~~This HFSRB determination ~~to revoke a permit~~ may be based upon, but not limited by, any of the following:
 - 1) the project for which the permit was granted has been altered without the required notice and/or approval of HFSRB;

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- 2) the permit holder has failed to complete the project on or before the completion date;
 - 3) The permit holder or applicant materially changed information or details submitted in the CON application or in any written materials submitted to HFSRB;
 - 4) The permit holder or applicant submitted false information in the CON application or in any written materials submitted to HFSRB;
 - 5) The permit holder or applicant misrepresented information presented at a Board meeting, at an HFSRB public hearing, or in response to HFSRB or HFSRB staff inquiries;
 - 6) The permit holder or applicant has been convicted of any of the following crimes during the previous five years. The convictions shall be verified by a certified copy of the court of conviction:
 - A) A felony;
 - B) Two or more misdemeanors involving moral turpitude;
 - 7) The permit holder, applicant, or health care facility representative has refused to allow an inspection or survey of the health care facility by Board representatives (i.e., IDPH surveyors);
 - 8) The facility has insufficient financial or other resources to operate the facility in accordance with the CON application or with any other information submitted to the Board;
 - 9) The facility's license has been revoked by IDPH.
- b) If HFSRB intends to revoke a permit, the permit holder shall be provided with written notification of the intent to revoke and notice of allegations. The permit holder shall be afforded an opportunity for a hearing before an administrative law judge, and may request to appear before HFSRB prior to the start of an administrative hearing. HFSRB may also impose other sanctions or penalties mandated in the Act (see 20 ILCS 3960/14.1) and Section 1130.790, including fines, ~~in addition to the revocation determination~~ (see 20 ILCS 3960/14.1(c)).

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(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.790 Penalties, Fines and Sanctions Mandated in the Illinois Health Facilities Planning Act for Non-compliance with the Act and HFSRB Rules

- a) *Any person establishing, constructing, or modifying a health care facility or portion thereof without obtaining a required permit, or in violation of the terms of the required permit, shall not be eligible to apply for any necessary operating licenses or be eligible for payment by any State agency for services rendered in that facility or portion thereof until the required permit is obtained. [20 ILCS 3960/13.1]*
- b) *Any person acquiring major medical equipment or establishing, constructing or modifying a health care facility without a permit issued under the Act or in violation of the terms of such a permit is guilty of a business offense and may be fined up to \$25,000. [20 ILCS 3960/14]*
- c) *HFSRB may deny an application for permit or may revoke or take other action as permitted by the Act with regard to a permit as HFSRB deems necessary, including the imposition of fines. [20 ILCS 3960/14.1(a)]*
- d) *HFSRB may impose fines as specified below for the enumerated violations:*
 - 1) *A permit holder who fails to comply with the requirements for maintaining a valid permit shall be fined an amount not to exceed 1% of the approved permit amount, plus an additional 1% of the approved permit amount for each 30-day period, or fraction thereof, that the violation continues. [20 ILCS 3960/14.1(b)(1)]*
 - 2) *A permit holder who alters the scope and size of an approved project or whose project costs exceed the allowable permit amount without first obtaining HFSRB approval shall be fined an amount not to exceed the sum of:*
 - A) *The lesser of \$25,000 or 2% of the approved permit amount; and*
 - B) *In those cases where the approved permit amount is exceeded by more than \$1,000,000, an additional \$20,000 for each \$1,000,000, or fraction thereof, in excess of the approved permit amount. [20 ILCS 3960/14.1(b)(2)]*

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- 3) *A permit holder who fails to comply with the post-permit and reporting requirements set forth in Section 5 shall be fined an amount not to exceed \$10,000 plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues. This fine shall continue to accrue until the date that the post-permit requirements are met and the post-permit reports are received by the State Board, or until the matter is referred by the State Board to the State Board's legal counsel. The accrued fine is not waived by the permit holder submitting the required information and reports. Prior to any fine beginning to accrue, the Board shall notify, in writing, a permit holder of the due date for the post-permit and reporting requirements no later than 30 days before the due date for the requirements. [20 ILCS 3960/14.1(b)(2.5)]*
- 43) *A person who acquires major medical equipment, or who establishes a category of service without first obtaining a permit or exemption, as the case might be, shall be fined an amount not to exceed \$10,000 for each such acquisition or category of service established plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues. [20 ILCS 3960/14.1(b)(3)]*
- 54) *A person who constructs, modifies, ~~or~~ establishes, or changes ownership of a health care facility without first obtaining a permit or exemption shall be fined an amount not to exceed \$25,000 plus an additional \$25,000 for each 30-day period, or fraction thereof, that the violation continues. [20 ILCS 3960/14.1(b)(4)]*
- 65) *A person who discontinues a health care facility or category of service without first obtaining a permit or exemption shall be fined an amount not to exceed \$10,000 plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues. Facilities licensed under the Nursing Home Care Act or the MR/DD Community Care Act, with exception of facilities operated by a county or Illinois Veterans Homes, are exempt from this permit requirement. However, facilities licensed under the Nursing Home Care Act or the MR/DD Community Care Act must comply with Section 3-423 of the Nursing Home Care Act or Section 3-423 of the MR/DD Community Care Act and must provide the Board with 30-days' written notice of its intent to close. [20 ILCS 3960/14.1(b)(5)]-*

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76) *A person subject to the Act who fails to provide information requested by HFSRB or its staff within 30 days after a formal written request shall be fined an amount not to exceed \$1,000, plus an additional \$1,000 for each 30-day period, or fraction thereof, that the information is not received by HFSRB or its staff. [20 ILCS 3960/14.1(b)(6)]*

- e) If an individual or entity has failed to comply with the Act or HFSRB rules and has been notified by HFSRB about an allegation of noncompliance, this shall provide a basis for HFSRB to defer consideration of any and all applications, rulings, or advisory opinions filed before HFSRB until the noncompliant matter is resolved.
- f) Failure to pay any fine imposed under this Section within 30 days after its imposition, or by a specified date if the default of payment extends past 30 days, shall subject the person to other sanctions permitted by the Act as HFSRB deems appropriate.
- g) If an individual, entity or person who has failed to comply with the Act or HFSRB rules, waives his or her right to an administrative hearing regarding the noncompliance and waives an opportunity to appear before HFSRB to respond to the noncompliance matters, HFSRB is authorized to use in-kind services to reduce the fines in the negotiation of settlements.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART H: DECLARATORY RULINGS

Section 1130.810 Declaratory Rulings

HFSRB shall render determinations on various matters relating to permits and the applicability of the statute and regulations. Requests for ~~determinations~~determination shall be made in writing. Pursuant to Section 5-150 of the Illinois Administrative Procedure Act, these determinations are declaratory rulings and are not subject to appeal. ~~Matters~~ The following matters shall be subject to declaratory rulings by HFSRB include, including, but are not limited to:

- a) whether a proposed project requires a permit or exemption;
- b) corrections to the facility inventories utilized by HFSRB;

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- c) recognition that a particular service was in existence prior to permit requirements;
- d) amount of fees required;
- e) project classification as substantive or non-substantive; and
- f) applicability of rules.

HFSRB NOTE: Declaratory ruling requests pertaining to an application for permit or exemption during the review period may be submitted only by the applicant and by HFSRB staff.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART I: PUBLIC HEARING AND COMMENT PROCEDURES

Section 1130.910 Applicability

- a) **Public Hearing on Certificates of Exemption-for-Change-of-Ownership**
The Act requires that HFSRB staff afford an opportunity for public hearing when an exemption application for a change of ownership, discontinuation of a health care facility, or discontinuation of a category of service-exemption is declared complete (see 20 ILCS 3960/8.5).
- b) **Public Hearing on Proposed Rules**
In addition to the requirements of the IAPA, HFSRB shall adopt procedures concerning public notice and hearing on proposed rules (see 20 ILCS 3960/12).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.920 Notice of Review and Opportunity for Public Hearing and Comment on Applications for Permit

- a) **Notice of Review and Opportunity for Public Hearing and Comment**
After HFSRB staff deems complete an application for permit, or after the applicant makes a type A modification to an application that is deemed complete~~has been received and has been deemed complete or after certain types of modification have been made to a complete application~~ (pursuant to the provisions of this Part), HFSRB shall afford an opportunity for public hearing and written comments on the project by preparing and publishing a Notice of Review

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and Opportunity for Public Hearing and Comment (Notice). This Notice shall consist of at least the following elements:

- 1) Identification of the proposed project, including the project cost and a brief description of the project and the tentative date that the application is scheduled for HFSRB review;
- 2) Identification, including the mailing address and telephone number, of the agency that is responsible for the public hearing;
- 3) Information regarding where a copy of the application may be viewed by the public and how copies of the application may be obtained;
- 4) A statement that any person has the right to request a public hearing and to submit written comments on the proposed project;
- 5) The date (which shall be at least 15 days from the date of publication of the Notice) by which a written request for a public hearing shall be received by HFSRB; and
- 6) HFSRB staff must receive all public comments regarding an application.~~All public comment regarding an application shall be received by HFSRB staff no later than 20 days prior to the tentatively scheduled consideration of the application by HFSRB. If the that date of consideration date is extended, then the public comment period will also be extended. If subsequent to HFSRB consideration of an application, a final decision is not made (application is deferred or is issued an Intent to Deny, or is denied), then the public comment period shall be extended to the 20 days prior to the next consideration.~~

HFSRB NOTE: The provisions of this subsection (a) do not apply to written comments that are submitted pursuant to the time frames established by a hearing officer as part of a public hearing concerning an application for permit.

- b) HFSRB shall forward the~~The Notice of Review and Opportunity for Public Hearing and Comment shall be forwarded promptly to the applicant by certified mail and publish the notices shall be published in a newspaper of general circulation in the area or community where the project is to occur.~~

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- c) Notice to all other persons, including health care facilities and members of the general public, shall be deemed to have been given by ~~publishing~~~~publication of~~ the notice in a newspaper in the area or community where the project is to occur.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.930 Notice of Public Hearing on Applications for Permit

- a) Content and Distribution of Notice of Public Hearing on Application for Permit
If HFSRB staff receive a request for a public hearing on a proposed project in response to the Notice of Review and Opportunity for Public Hearing or Comment within the time frame established in the notice, HFSRB staff shall schedule a public hearing on the proposed project and prepare and publish a Notice of Public Hearing. The Notice of Public Hearing shall consist of at least the following:
- 1) Identification of the subject to be heard;
 - 2) Identification of the law under which the subject is being heard;
 - 3) Identification of the agency conducting the hearing;
 - 4) Announcement of the time, date and location of the hearing;
 - 5) Announcement that the hearing is an open public meeting at which ~~opportunity will be afforded all parties at interest~~ will be afforded an opportunity to present written and/or verbal comments relevant to the project; and
 - 6) Announcement that allegations or assertions should be relevant to the need for the proposed project and be supported with two copies of documentation or materials that are preferably printed or typed on 8½" by 11" paper.
- b) Notice to all other persons, including members of the general public, who are to be served by the proposed project shall be deemed to have been given by publication of the Notice of Public Hearing in a newspaper in the area or community where the project is to occur.

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HFSRB NOTE: If the applicant or other person requests a public hearing on a proposed project after an application for permit has been submitted, but prior to the application being deemed complete or after a modification that requires an opportunity for a public hearing (pursuant to the provisions of this Part) is received, HFSRB staff shall not provide a Notice of Review and Opportunity for Public Hearing or Comment. ~~But-but~~ shall, at the time the application is deemed complete or the modification is received, schedule a public hearing and prepare and publish a Notice of Public Hearing.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.940 Procedures for Public Hearing on Applications for Permit

Procedures for public hearing shall include at least the following:

- a) A place of reasonable size and accessibility shall be provided;
- b) A hearing officer or officers ~~whowith~~ shall conduct the hearing and take all necessary steps to assure the hearing's proper completion;
- c) The hearing officer shall have the authority to require the swearing in of persons presenting testimony and to determine the order in which testimony is taken and the time to be allocated for each person to testify;
- d) The hearing officer shall maintain order and may set and announce new hearing dates, times and places. The hearing officer's verbal announcement shall, for this purpose, constitute public notice;
- e) The proceeding shall be tape-recorded or otherwise recorded. A full and complete transcript need not be made, however, unless required by law and paid for by the requesting party;
- f) The hearing shall be deemed to have been completed and terminated when the hearing officer so finds and has determined that all exhibits, documents and other written materials presented or requested at the hearing are in his or her custody; and
- g) The hearing officer shall, within a reasonable time, submit a public hearing report that shall include all exhibits and documents to HFSRB staff for submission to HFSRB.

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(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.950 Written Comments on Applications for Permit

a) Provision for and Types of Written Comments

- 1) Written comments regarding an application and any supplemental information pertaining to an application shall be submitted in accordance with the Notice of Review requirements of this Subpart, in accordance with public hearing requirements established at the direction of the hearing officer, or in accordance with requirements for additional testimony established as a request from and at the direction of HFSRB.
- 2) Persons who have previously participated in any public hearings or submitted written comments related to a project shall not repeat previously submitted comments.

b) Submission of Comments

- 1) Written comments are to be submitted to HFSRB or its Administrator at:

Illinois Health Facilities and Services Review Board
525 West Jefferson St., 2nd Floor
Springfield IL 62761

- 2) Those written comments that have been addressed and submitted as described in this subsection will be included as part of the public record, provided that HFSRB receives these comments ~~have been received~~ within the prescribed time frame and in ~~accordance~~ with the requirements of this Subpart. Persons submitting comments are responsible for assuring that the Board's staff receive the comments within the prescribed time frame. No person shall knowingly provide ex parte comment to any HFSRB member or staff in contravention of Section 1130.630(d) (see 20 ILCS 3960/4.2).

c) Format of Comments

- 1) Written comments shall contain a signature and the name and address of the person submitting the comments. Written comments shall be on 8½" by 11" paper.

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- 2) All written comments shall be submitted within the allowable time frames established in Sections 1130(b) and 1130.920(a)(5), and shall be sent only by any recognized overnight courier or personal delivery service.
- 3) Written comments submitted by email or fax will not be accepted.
- d) Forwarding of Comments to HFSRB and to Applicant
~~HFSRB staff shall forward all timely written comments to HFSRB members. All written comments that are received within the specified time frame will be forwarded by HFSRB staff to HFSRB members and to the applicant prior to in advance of the HFSRB meeting date.~~
- e) Ex Parte Comments
Written comments that are received after the prescribed date shall be considered ex parte and shall not be forwarded to HFSRB or to the applicant.
- f) Validity of Comments
 - 1) Written comments filed with HFSRB or oral statements made under oath to HFSRB ~~regarding~~ under any Board matter that are subsequently found to be false or inaccurate will serve as a basis for an HFSRB investigation ~~of the matter.~~
 - 2) HFSRB may require the person who made the false or inaccurate comments or statements to appear before the Board. HFSRB may censure that person. Further, HFSRB may determine that person to be ineligible to provide written comments or oral statements concerning any future Board considerations.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.980 Procedures Concerning Public Hearing for Certificate of Exemption for Change of Ownership

The procedures pertaining to public hearing requirements concerning an application for exemption for a proposed change of ownership of a health care facility are as specified in Section 1130.520.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1130.990 Procedures for Public Hearing and Comment on Proposed Rules

- a) All proposed rulemaking is subject to the provisions of the IAPA.
- b) HFSRB will provide notice of the public comment period, together with the publication of the proposed rules in the Illinois Register, as part of the IAPA's First Notice requirements.
- c) HFSRB shall conduct public hearings on proposed rules, if requested in writing within 14 business days following the publication of the proposed rules in the Illinois Register. Notice of public hearings will be posted on the HFSRB website (<http://hfsrb.illinois.gov>).
- d) ~~Commenters~~ Commenters participating at a public hearing are encouraged to submit their testimony in writing.
- e) The entire proceedings of every HFSRB public hearing will be transcribed by a court reporter and this transcript will serve as the administrative record of the HFSRB public hearing.
- f) Written comments should be submitted in accordance with the First Notice requirements published in the Illinois Register.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.995 Procedures for Written Public Comment on All Other Matters

Written publicPublic comment is permitted for all other matters subject to HFSRB proceedings that are not otherwise specified in this Part above (e.g., requests for alterations, renewals, extensions, declaratory rulings). ~~The~~Public comment shall identify the subject matter and conform to~~be in conformance with~~ the following:

- a) Persons who ~~have previously~~ participated in any public hearings or submitted written comments related to a project shall not repeat previously submitted comments.
- b) HFSRB staff must receive all~~All public comment shall be received by HFSRB staff~~ no later than 20 days prior to HFSRB's tentatively scheduled consideration

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of the matter by HFSRB. If that date of consideration is extended, then the public comment period ~~shall~~ will also be extended.

- c) Comments shall be in writing. ~~Written comments are to be submitted to HFSRB staff. Only those written comments that have been addressed or submitted to HFSRB or its Administrator and received at HFSRB headquarters shall be included as part of the public record, provided that HFSRB receives these~~ such ~~comments have been received within the prescribed time frame and the comments meet~~ are in accord with the requirements of this Subpart. Persons submitting comments are responsible for assuring that HFSRB staff receive the comments within the prescribed time frame. In addition, persons providing comments to HFSRB ~~shall be responsible to~~ assure that the ~~any~~ submission is not in violation of the ex parte provisions of the Act.
- d) Written comments shall contain a signature and the name and address of the person submitting the comments. Written comments shall be on 8½" by 11" paper.
- e) All written comments shall be submitted within the ~~allowable~~ time frames established in subsection (b) and shall be sent only by any recognized overnight courier or personal delivery service.
- f) Written comments that are submitted by fax or email will not be accepted.
- g) Ex Parte Comments
Written comments that are received after the prescribed date shall be considered ex parte and shall not be forwarded to HFSRB or to the applicant and shall not be considered in making a determination.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART J: PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS

Section 1130.1020 Initiation of a Contested Case (Pleadings)

- a) In contested cases, in which HFSRB is required to serve ~~on the respondent a notice~~ Notice of opportunity ~~for an administrative hearing~~ Administrative Hearing, that notice shall contain:
 - 1) *a statement of the nature of the action;*

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- 2) *a statement of the legal authority and jurisdiction under which the action is being initiated;*
 - 3) *a reference to the particular Sections of the statutes and/or rules involved;*
 - 4) *allegations of noncompliance;*
 - 5) *a statement of the procedure for requesting an administrative hearing, including a date by which the request must be received by HFSRB, which must be set at least 10 days after the notice is mailed or personally served;*
 - 6) *except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or reference number. [5 ILCS 100/10-25]*
- b) A person who receives a Notice of an Opportunity for an Administrative Hearing shall submit a written request for a hearing to HFSRB. The request shall be sent to HFSRB at the address stated in the notice and shall be received by the date set forth in the notice. Failure to comply with this Section shall constitute a waiver of the person's right to an administrative hearing.
- c) Upon ~~receiving receipt of~~ a timely request for hearing, HFSRB shall issue a ~~notice~~ Notice of ~~hearing~~ Hearing or ~~prehearing conference~~ Prehearing Conference. *The notice of hearing or prehearing conference shall contain:*
- 1) *a statement of the nature of the hearing;*
 - 2) *a statement of the time and place that the hearing or prehearing conference will be held;*
 - 3) *a statement of the legal authority and jurisdiction under which the hearing is to be held; and*
 - 4) *the names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing, unless otherwise confidential by law. [5 ILCS 100/10-25]*

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- d) Amendments to the pleadings may be allowed upon proper motion at any time during the pendency of the proceedings on such terms as shall be just and reasonable.
- e) All written documents provided for under this Section shall be liberally construed with a view toward doing substantial justice between the parties.
- f) Venue shall be the location designated in the Notice of Administrative Hearing. Venue may be moved to another location upon stipulation by all parties or upon a showing to and a finding by the administrative law judge that exceptional circumstances, including but not limited to age, infirmity or inability to travel, exist that make it desirable, in the interest of justice, to allow a change of venue.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.1030 Waiver of Hearing

An applicant waives the right to a hearing if, after HFSRB issues a denial, the applicant submits a modified application for permit. An applicant also waives the right to a hearing if the applicant does not request a hearing within the required timeframe.~~applicant's right to an administrative hearing on an application denied by HFSRB pursuant to Section 10 of the Act shall be waived by the submission of a modified application for permit for the project that was the subject of the application that was denied. If an administrative hearing is not requested within the required timeframe, the right to an administrative hearing is waived.~~ Any pending administrative hearing on an application for permit shall be dismissed by the administrative law judge upon the showing that a modified application was submitted by the applicant and the matter was referred to HFSRB. The waiver of a right to an administrative hearing on a denied application does not waive the right to an administrative hearing on the denial of the modified application.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.1040 Parties to Hearings

- a) The parties to proceedings before HFSRB are complainants, applicants, respondents, and intervenors.
- b) HFSRB shall be deemed a complainant in any proceedings initiated by its own action.

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- c) An applicant is the person required by the Act to obtain a permit from HFSRB who files an application with HFSRB.
- d) ~~A respondent is a party other than an applicant against whom a complaint or petition is filed.~~
- de) Intervenor is "adversely affected persons" and are granted the right to be parties to proceedings before HFSRB. These persons are defined as:
 - 1) the ~~area-wide~~areawide health planning organization for the health service area in which the proposed project is to be located;
 - 2) ~~the area-wide~~areawide health planning organizations serving contiguous health service areas or located within the same Standard Metropolitan Statistical Area (SMSA);
 - 3) any person residing within the geographic area served or to be served by the applicant;
 - 4) any person who regularly uses health care facilities within that geographic area;
 - 5) health care facilities and HMOs located in the health service area in which the project is proposed to be located that provide services similar to the services of the applicant;
 - 6) health care facilities and HMOs that, prior to ~~receipt by~~HFSRB staff receivingof the application being reviewed, have formally indicated an intention to provide similar services in the future;
 - 7) third party payers who reimburse health care facilities for services in the health service area in which the proposed project is to be located;
 - 8) any agency that establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located; and
 - 9) IDPH.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1130.1080 Disqualification of Administrative Law Judge

Prior to the commencement of a hearing, a party may file a written motion to disqualify the administrative law judge supported by an affidavit setting forth the facts upon which the motion is made. The administrative law judge who is the subject of a motion to disqualify shall review the motion and affidavit and shall issue his or her report to HFSRB. The report shall include a proposed ruling on the motion and the reasons for the ruling. If HFSRB determines that bias or a conflict of interest exists, it shall grant the motion and the HFSRB Chairman shall appoint a new administrative law judge within 30 days after HFSRB's determination. *An adverse ruling, in and of itself, shall not constitute bias or conflict of interest* [5 ILCS 100/10-30].

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1130.1130 Motions

- a) Motions, unless made during a hearing or pre-hearing, shall be made in writing and shall set forth the relief or order sought and the legal authority for the action requested. Except as otherwise provided in this Part or by a specific statute, motions may seek any relief or order recognized in the Illinois Code of Civil Procedure and Rules of the Illinois Supreme Court, and shall include a reference to the applicable Section of such Code or Rules. Motions based on a matter that does not appear on record shall be supported by affidavit.
- b) Written motions shall be titled as to the party making the motion and the nature of the relief sought. The title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number. No motion shall be identically titled with any other motion. Examples of properly titled motions: Respondent's Motion to Dismiss, Respondent's Second Motion to Dismiss.
- c) Motions to the pleadings if not raised at the earliest opportunity shall be deemed waived. Motions to the pleadings shall not be granted if the pleadings are in conformity with Section 1130.1020.
- d) The administrative law judge shall not have the authority to dismiss, postpone, vacate, or overturn an order or notice issued by HFSRB, but may make a recommendation to HFSRB any time that circumstances merit such a recommendation.

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- e) Motions for a continuance shall be granted only for good cause shown. Motions for a continuance shall be in writing and filed at least 5 working days prior to the hearing. Motions for a continuance shall be made immediately when the party learns that a continuance is needed and statements as to when the party learned that a continuance was needed, steps that were taken to avoid the continuance, and the current reasons the continuance is needed shall be contained in the motion. After one continuance has been granted to a party additional continuances may be granted to that party only if:
 - 1) a hearing on the issue of whether or not to grant the continuance has been held and the administrative law judge finds that the moving party has presented sufficient evidence showing entitlement to another continuance;
 - 2) there is an emergency; or
 - 3) all parties so stipulate.
- f) Whenever possible, as much of the hearing as possible shall be completed and only those matters that must be continued shall be continued.
- g) If there is an unforeseen emergency, motions for a continuance may be made by telephone rather than in writing. Motions by telephone shall be made through a conference call involving the administrative law judge and all parties and shall be confirmed within three business days by the filing of a written motion.
- h) Responses shall be in writing unless made at a prehearing conference or a hearing.
- i) Demands for a Bill of Particulars shall not be allowed.
- j) All motions under this Section shall be filed with the administrative law judge.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1130.APPENDIX A Capital Expenditure Minimums/Review Thresholds

In accordance with P.A. 96-31, the following capital expenditure minimums/review thresholds become effective July 1, ~~2015~~2012. These thresholds were adjusted by 2.5% in accordance with P.A. 96-31. The source for the increases is RS Means.

Capital Expenditure (Hospitals)	\$ 12,797,313 <u>12,182,576</u>
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Capital Expenditure (Long-Term Care)	\$ 7,233,262 <u>6,885,803</u>
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Capital Expenditure (All Other Applicants)	\$ 3,338,430 <u>3,178,064</u>
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(Source: Amended at 40 Ill. Reg. _____, effective _____)