

## DIVISION 570

### CERTIFICATE OF NEED REVIEW REQUIREMENTS AND PROCEDURES

#### Submission of Certificate of Need Application

**333-570-0010** After the letter of intent is properly filed and the waiting period determined under OAR 333-555-0010 has elapsed, an applicant which is not eligible for abbreviated review shall submit to the division: (1) Four completed copies of the application form provided by the division which shall be substantially as shown in Division 580 of this Chapter; and

- (2) The appropriate application fee made payable to the State Treasurer.
- (3) Only one applicant is required to apply for a certificate of need for any one project. If more than one party has submitted a letter of intent and been ruled subject to review for the same project, the parties shall decide among themselves who will apply for the certificate of need. If these parties cannot agree on who shall apply, they may submit competing applications. In such cases, the applications will be reviewed under the simultaneous review procedures in OAR 333-560-0030.

Stat. Auth.: ORS 431.120(6), ORS 442.315  
Stats. Implemented: ORS 431.120(6), ORS 443.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94

#### Initial Review of Application

**333-570-0020** (1) After receiving the application and fee, the division shall notify the applicant in writing not later than 15 days after receipt by the division of the application and fee that:

- (a) The application is complete;
  - (b) The application is not complete, and request additional information; or
  - (c) The application is not complete and is being returned to the applicant for necessary revision and resubmission.
- (2) An application shall not be found incomplete if it contains the information prescribed and adopted by rule by the division as being necessary.
  - (3) If the division fails to make a determination within 15 days after receipt of the application and fee, the application shall be automatically considered by the division as complete.
  - (4) An application which remains incomplete for at least one year following its submission shall be considered to have been withdrawn.

Stat. Auth.: ORS 431.120(6), ORS 442.315  
Stats. Implemented: ORS 431.120(6), ORS 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94

#### Notice

**333-570-0030** (1) After determining an application complete, the division shall provide by direct mailing written notification to the following that the application is complete:

- (a) The applicant;
- (b) Any health care facilities and HMOs located in the service area which provide similar institutional health services;
- (c) The chairperson of the council;

- (d) Newspapers providing general circulation to the affected community; and
- (e) Persons who have requested and been granted designation as affected parties.

(2) Notices shall include the following information:

- (a) The division, under ORS 442.315 and this chapter, is considering the application;
- (b) A proposed schedule of review to include, but not limited to:
  - (A) The date by which the division must render a decision pursuant to OAR 333-570-0070(1);
  - (B) That persons potentially affected may request to receive correspondence relating to the application; and
  - (C) The mailing address for all communications relating to the application for a certificate of need.

Stat. Auth.: ORS 431.120(6), ORS 442.315  
Stats. Implemented: ORS 431.60, ORS 442.315

Hist. HD 13-1994, f. & cert. ef. 4-22-94; OHD 11-1998, f. & cert. ef. 10-22-98

### **Additional Information**

**333-570-0040** Following receipt of a complete certificate of need application, the division may request or accept additional information only if such information is necessary for the division to make an equitable and informed decision through application of applicable rules.

Stat. Auth.: ORS 431.120(6), ORS 442.315

Stats. Implemented: ORS 431.120(6), ORS 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94

### **Modification to Application**

**333-570-0050** (1) An applicant may withdraw its certificate of need application from review at any time.

(2) An applicant may amend its application provided that such amendments are received not later than 45 days following submission of a complete application. This section applies only during the course of review of an application and does not apply to an application undergoing reconsideration or appeal:

- (a) In accord with OAR 333-545-0020(3), any substantial change in a proposal shall be considered an amendment, whether or not such change is in response to concerns raised by the division. Amendments include, but are not limited to, modifications such as those described in OAR 333-575-0000(4)(a) to (k). Clarifications or explanations of aspects of a proposal, which do not involve material changes in the project, will not be considered amendments;
- (b) Amendments proposed after 45 days following submission of a complete application may be made only if the division agrees to accept the amendment;
- (c) The division may condition the consideration of any amendments submitted after the deadline stated in this section on the applicant granting an extension of the review period sufficient, in the division's judgment, to allow consideration of the new material.

Stat. Auth.: ORS 431.120(6), ORS 442.315  
Stats. Implemented: ORS 431.120(6), ORS 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94

## Public Meeting

**333-570-0060** (1) Any person affected by an application which is not subject to abbreviated review may request the division to hold a public meeting and, if the request is timely, the division shall hold such a meeting. The purpose of the public meeting is to discuss issues relevant to the application(s) under review and to allow submission of documents or other evidence relevant to the application.

- (2) Requests for a public meeting shall be made not later than 21 days before the division's decision is due. Applicants and other interested parties are advised to submit requests for public meetings at the earliest possible opportunity, because in some cases the division may issue its proposed order more quickly than required.
- (3) The division may hold a public meeting at its initiative.
- (4) Any person may speak at a public meeting, and any person who speaks at the public meeting may be questioned by the division's staff. No questions by other than staff of the division will be allowed, unless permission is given by the chair.
- (5) The administrator of the Health Division, or the administrator's designee, shall chair and conduct the meeting.
- (6) Notice of public meeting during the course of review shall be served on the parties specified in OAR 333-570-0030(1).

Stat. Auth.: ORS 431.120(6), ORS 442.315

Stats. Implemented: ORS 431.120(6), ORS 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94

## Decision on Approval or Denial of Application

**333-570-0070** (1) Within 90 days of a written declaration by the division of a complete application not eligible for abbreviated review, unless time is extended pursuant to subsection (c) of this section or OAR 333-560-0030, the division shall:

- (a) Make written findings and a decision; and
  - (b) Serve by registered or certified mail on the following, the findings, decision and notice of opportunity for reconsideration:
    - (A) The applicant; and
    - (B) Persons who have requested and been granted designation as affected parties.
  - (c) The 90-day time frame for review may be extended by the division with the written agreement of the applicant. In the case of applications subject to simultaneous review under OAR 333-560-0030, extension of the time frame for review will require the written agreement of all applicants involved in simultaneous review, and the same extension must be applied to all such applications. If an applicant submits additional information within two weeks of the date that the proposed or final decision is due, the division may extend the time frame for review on its own initiative, in order to allow sufficient time to review the material submitted.
- (2) The chairperson of the council shall be sent a copy of the findings and decision by regular (not registered or certified) mail.
  - (3) The division may approve or deny the application in whole or in part:
    - (a) The division may place conditions on an application which is being approved that apply to the

implementation of the project. Any condition must be directly related to the project under review and to review criteria and standards which have been adopted into rule;

- (b) A binding arrangement allowing purchase of the site, should the application be approved, or acquisition itself, is required to have occurred before an application may be approved.
- (4) The decision reached according to section (1) of this rule shall be the “proposed decision” referred to in ORS 442.315(5)(a) and shall become the final decision of the division unless, within ten days after service of the “proposed decision”, the request for informal hearing is received by the division.
- (5) Upon request of the applicant or any affected person who is dissatisfied with the proposed decision, the division shall grant an informal hearing prior to a final decision. A request for an informal hearing must be received by the division within ten days after service of the proposed decision. The division will give notice of the date, time and place of the informal hearing and will hold the hearing not later than 15 days following receipt of the request.
- (6) The informal hearing is for the purpose of providing an opportunity to the applicant or any affected person requesting the hearing to discuss the proposed decision with the division. The hearing may include the provision of new information, or other actions that may result in the division amending its proposed decision. The application may be modified at the informal hearing only if the provisions in OAR 333-570-0050(2) are met.
- (7) The informal hearing will be conducted in the following manner:
  - (a) The informal hearing will be conducted by the administrator, or the administrator’s designee;
  - (b) No minutes or transcript of the informal hearing will be made;
  - (c) The party requesting the informal hearing does not have to be represented by counsel and will be given ample opportunity to present information;
  - (d) Other affected parties will be allowed to testify at the informal hearing following the requestor’s testimony;
  - (e) Only staff of the Health Division will be allowed to question people testifying at the informal hearing, unless permission is given by the hearing officer for others to question those testifying;
  - (f) The administrator, or the administrator’s designee, may set time limits for testimony in order to assure a timely and equitable presentation of information;
  - (g) The party requesting the informal hearing may be requested by the administrator, or the administrator’s designee, to submit, in writing, new information that has been presented orally;
  - (h) The administrator, or the administrator’s designee, may allow information to be submitted after the adjournment of the informal hearing. In such an instance, a specific date for receiving such information will be established and will serve as the date when the informal hearing will be considered closed.
- (8) The division will render a final decision within ten days of the closing of the informal hearing.
- (9) When a request for informal hearing has been made in a timely manner but is later withdrawn, the order on the

affected application shall become final either on the date the request is withdrawn or ten days from the date of service of the proposed order, whichever comes later.

- (10) The final decision of the division shall be subject to a reconsideration hearing according to provisions of Divisions 670 of this chapter, if a petition for hearing is received within 60 days after service of the final decision.
- (11) A certificate of need granted to a health care facility is the property of the licensed provider, not of the owner of a physical plant, if these are different.

Stat. Auth.: ORS 431.120(6), ORS 442.315

Stats. Implemented: ORS 431.120(6), ORS 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94

### **Reports of Reviews Being Conducted**

**333-570-0080** At least annually, the division shall prepare reports of reviews being conducted, the status of each review being conducted, reviews completed since the last such report, and a general statement of the findings and decision made for completed reviews.

Stat. Auth.: ORS 431.120(6), ORS 442.315

Stats. Implemented: ORS 431.120(6), ORS 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94