

## **111-2-2-.02 Nature of Certificate of Need.**

(1) **Purpose.** The purpose of the Certificate of Need evaluation process is to ensure that adequate health care services and facilities are developed in an orderly and economical manner and are made available to all Georgians and that only those health care services that are found to be in the public interest shall be provided in the State. The goals are to:

(a) Review proposed health care services;

(b) Contain health costs;

(c) Promote economic value;

(d) Ensure compatibility of health care services with the needs of various areas and populations of Georgia; and

(e) Prevent unnecessary duplication or services.

(2) **Contents.** The certificate, or attachments, shall specify, but not be limited to:

(a) the scope of the project;

(b) the defined location of the project;

(c) the person to whom the certificate was issued;

(d) the maximum capital expenditure, if any, which may be obligated under the certificate;

(e) the service area of the project;

(f) the valid dates;

(g) the schedule of time periods to be followed in making the service or equipment available or in completing the project;

(h) the services or units of services, which have been approved; and

(i) when the progress reporting requirements under 111-2-2-.04(2) and 111-2-2-.02(5) are due.

(3) **Validity.** A Certificate of Need shall be valid only for the defined scope, physical location, cost, service area, and person named in the application as the applicant.

(4) **Non-transferability.** A Certificate of Need shall not be transferable or assignable, nor shall a project for which a Certificate of Need has been issued be transferred from or assigned by one person to another, except under the following circumstances:

(a) the death of the holder of the Certificate, provided the transfer is solely from the estate of the holder to his or her heirs; or

(b) an existing licensed health care facility to which a Certificate has been issued is acquired by another person, in which instance the Certificate shall be valid for the person who acquires the facility and for the scope, location, cost, and service area previously approved by the Department.

(5) **Effective Period.** Unless otherwise provided by a service-specific rule, or unless the Department in accordance with 111-2-2-.02(7) has extended the effective period, the effective period of a Certificate of Need shall be as follows:

(a) Certificates involving neither construction nor equipment acquisition shall be effective for 12 months;

(b) Certificates solely involving acquisition of equipment shall be effective for 12 months, by which date the applicant must be in possession of the equipment; and

(c) Certificates for projects involving construction shall be effective based on a reasonable, phased timetable presented in the application, which may be amended during the review cycle, as planned, developed, proposed, and submitted by the applicant. In determining the reasonableness of the proposed phases and time periods, the Department will be guided by the applicable horizon year for the project. However, in appropriate circumstance, the Department may approve an effective period in excess of the applicable horizon year. The approved and valid phases and effective period shall be included in the Certificate of Need. When the Department extends the effective period pursuant to 111-2-2-.02(7) or when, due to an appeal of a project, a project's effective date is not the approved date, the Department will update the effective period, including the horizon year, of the project accordingly.

(6) **Initial 12-month Implementation Period for Projects Involving Construction.** Unless otherwise provided in a service-specific rule or unless the Department in accordance with 111-2-2-.02(7) has extended the initial 12-month implementation period, all projects involving construction regardless of the dollar amount must, within 12 months of the effective date of the certificate, demonstrate, as evidenced by a progress report (as described at 111-2-2-.04(2)) and supporting documentation, substantial performance in beginning the project. Substantial performance shall be demonstrated by the following:

(a) The construction plans have been approved by the Department's Architect;

(b) The construction contract has been signed and specifically indicates beginning and completion dates; and

(c) Construction materials and equipment are on site.

(7) **Extension of Time Periods.** The Department may, upon written request of the certificate holder, grant an extension of the effective period of a Certificate of Need or of the initial 12-month implementation period if the applicant's request is received by the Department 30 days prior to expiration of the Certificate of Need or of the initial 12-month implementation period, as applicable.

(a) A request for an extension of the initial 12-month implementation period, or any extension thereof, shall demonstrate:

1. that failure to perform as required is caused by circumstances beyond the control of the certificate holder. Occurrences that may justify an extension of the initial 12-month implementation period may include, without limitation, fire, flood, explosion, catastrophic weather conditions, riots or other civil disturbances, work stoppages or strikes, zoning or permitting changes, and similar occurrences. Ordinarily, lack of adequate or accurate planning, uncertainty as to reimbursement and/or financial difficulties will not justify an extension of the implementation period;

2. that the certificate holder has made substantial and timely progress in implementing the project. In order to show substantial and timely progress in implementing the project, the certificate holder must show that the project was on schedule and could reasonably have been implemented during the initial 12-month implementation period or extension thereof, but for the occurrence or circumstance beyond the certificate holder's control;

(b) A request for an extension of the effective period of a certificate of need, or any phase or extension thereof, shall:

1. demonstrate that failure to perform as required is caused by circumstances beyond the control of the certificate holder. Occurrences that may justify an extension of the effective period, or any phase or extension thereof, may include, without limitation, fire, flood, explosion, catastrophic weather conditions, riots or other civil disturbances, work stoppages or strikes, zoning or permitting changes, and similar occurrences.

2. demonstrate that but for the circumstances beyond the control of the certificate holder, the project, or phase thereof, would have been completed within the effective period;

3. demonstrate that the certificate holder has made substantial and timely progress in completing the project, or phase thereof;

4. indicate the expected completion date of the project, or phase thereof, as applicable; and

5. affirm that the project, or phase thereof, will be completed within the requested extension period.

(c) The length of an extension of the effective period or of the initial 12-month implementation period of a Certificate of Need shall be determined by the Department and shall be reasonable and consistent with the circumstances. In no case, shall the Department extend the initial 12-month implementation period of a Certificate of Need beyond an additional 12 months.

(d) In circumstances where the certificate holder is precluded from normal progression due to litigation involving the Certificate or where the method of financing is precluded by litigation, the Department may, at its discretion, suspend any or all of the time periods specified herein until the litigation has been resolved.

**(8) Expiration and Cancellation.** If, within the effective period specified in 111-2-2-.02(5) and initial 12-month implementation period specified in 111-2-2-.02(6), as applicable, the required performance standards are not met, the Certificate will be deemed to have expired unless an extension has been obtained from the Department pursuant to 111-2-2-.02(7). Unless the certificate holder demonstrated good cause not to deem the Certificate to have expired, which shall be determined by the Department, the Certificate will be canceled and notifications of same issued to the applicant, local governing authorities, Regional Development Center, and a newspaper of general circulation in the area where the application originated. An applicant whose Certificate has expired may not resubmit an application for the same or a substantially similar project until at least 120 days after expiration of the Certificate.

**(9) Modification by Operation of Law of Certificate for Failure to Complete.** Upon expiration of the effective period, if a certificate holder has not completed all activities or has not implemented all services or units of services granted in the Certificate of Need issued on the approved date (or if appealed, the effective date), the Certificate shall be modified upon such expiration to include and be valid for only those activities, services, or units of services, which have been completed and implemented as of the date of expiration.

Authority O.C.G.A. Secs. 31-5A et seq., 31-6 et seq. **History.** Original Rule entitled "Nature of Certificate of Need" adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.