

Understanding Florida's Certificate of Need (CON) Appeals Process

SUMMARY OF FINDINGS

- All applicants comparatively reviewed by the Agency for Health Care Administration (AHCA) in the same batching cycle are entitled to challenge the initial decision of the Agency through the administrative process.
- Healthcare facilities within the same district can initiate an administrative hearing upon showing that an existing program will be substantially affected by the issuance of any Certificate of Need (CON).
- The failure of an applicant to file a timely request for an administrative hearing challenging the denial of its application shall result in the denial becoming final Agency action and the application being severed from the remainder of the batch.
- Petitions challenging CON decisions or seeking to intervene in CON proceedings are assigned to the Division of Administrative Hearings (DOAH) by the Clerk of the Agency for Health Care Administration.

INTRODUCTION

This is the second in a series of three policy briefs that will explain in detail the Florida CON Process. The first policy brief, “*Understanding Florida’s Certificate of Need (CON) Program*,” provided the overall framework of the CON process. It was commissioned by the Health Council of East Central Florida with support from the Winter Park Health Foundation.

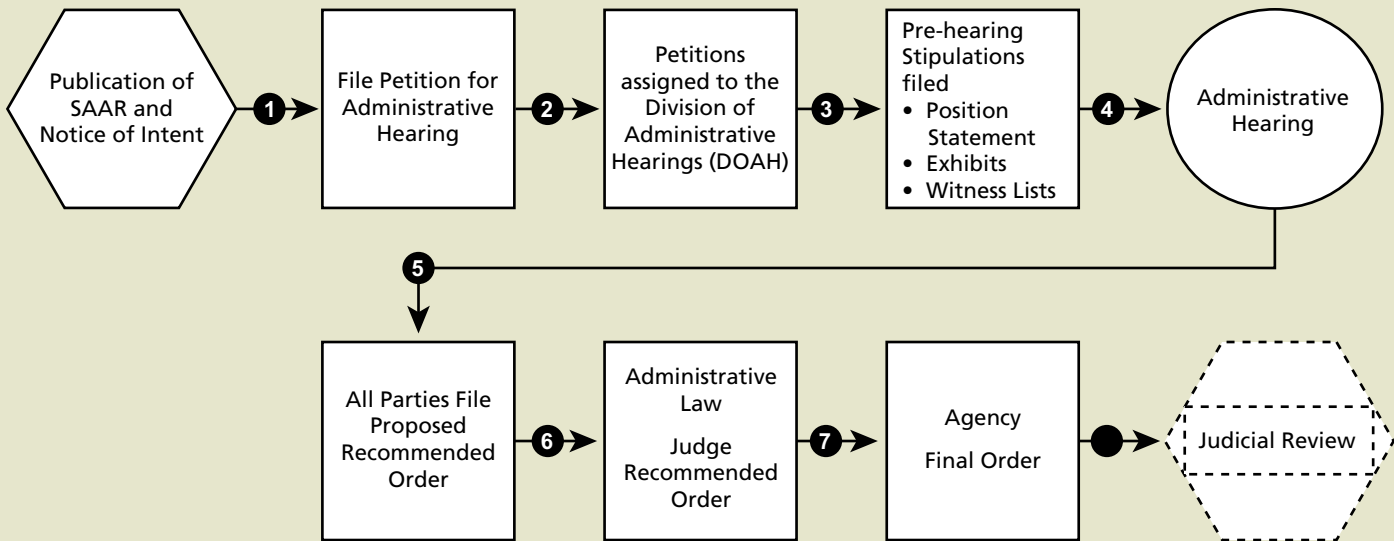
A PDF file of the full text brief can be found at www.hcecf.org.

The purpose of this brief is to provide an objective summary description of Florida’s current CON appeals process.

APPEALS ACTION

Within 60 days after all applications in a comparative review period have been deemed completed, AHCA discloses in writing the findings of facts and determinations that lead to the Agency’s initial decision in the State Agency Action Report (SAAR), which also outlines any conditions attached to the CON. The Agency also issues a Notice of Intent (NOI), which grants or denies a CON. All applications reviewed by the Agency in the same batching cycle are entitled to challenge the initial decision of the Agency through the administrative hearing process. Petitions challenging the Agency’s NOI to grant or deny may be filed by any applicant for its own project or a project comparatively reviewed with its project. Existing healthcare facilities

Figure 1: Florida's Certificate of Need Appeals Process



within the same district can initiate or intervene in an administrative hearing upon showing that an established program will be substantially affected by the issuance of any CON. If a denied applicant fails to file a timely and proper request for an administrative hearing, the denial becomes final Agency action and the application is severed from the remainder of the batch. If no administrative hearing is requested on a project, the SAAR and the NOI become the Agency's final order.

FLORIDA'S CON APPEALS PROCESS

1. File Request for Administrative Hearing

The Agency is required to publish their NOI in the Florida Administrative Weekly (F.A.W.) within 14 days after the SAAR is issued. The petitioning entity must file a written petition with the Agency for an administrative hearing within 21 days following the publication of the Notice of Intent in the F.A.W. Failure to file a petition within the required time frame will constitute a waiver of the right to a hearing as well as the right to contest the final decision of the Agency.

2. Assignment of Hearing

Within 14 days after the deadline has elapsed for requesting a hearing, the CON office will assign the proceeding to the Division of Administrative Hearings (DOAH) of the Department of Management Services. A copy of the hearing request is sent to each applicant. An administrative law judge is assigned to the case to conduct all necessary proceedings required under the law and to submit a Recommended Order to the requesting Agency. All hearings are held in Tallahassee unless it has been determined that a change in location is necessary to facilitate the proceedings.

3. Pre-hearing Stipulations Filed

The filing date for the pre-hearing stipulation is set by the administrative law judge. Collectively, these documents contain the position statement of all of the parties and verify that all exhibits and witnesses to be presented at the formal hearing have been reviewed by all parties. Failure to file pre-hearing stipulations by the required date may result in hearing cancellation or exclusion of exhibits and witnesses not previously disclosed.

4. Formal Administrative Hearing

Formal hearings begin 60 days after the assignment of the administrative law judge. All parties, with the exception of the Agency, are responsible for their expenses associated with obtaining counsel, gathering and submitting exhibits, securing witnesses, taking depositions and preparing a transcript. On average, hearings last approximately one to five weeks depending on the issues involved.

5. Proposed Recommended Order

All parties are able to submit their proposed recommended order after the formal hearing is held and within the time period established by the administrative law judge. The proposed recommended order contains the statement of the case, the statement of the issues, the proposed findings of fact, the proposed conclusion of law, the proposed recommendation from the perspective of that party, and the certificate of service.

6. Recommended Order

The administrative law judge issues a recommended order 30 days after receipt of the proposed recommended orders from the parties.

7. Final Order

All parties may file Exceptions to the Recommended Order. The Exceptions are filed at AHCA and considered by the Agency Secretary prior to issuing the Final Order. The final order is issued by the Agency within 45 days of the receipt of the recommended order. The final order may or may not endorse the recommended order of the administrative law judge.

Judicial Review

Within 30 days after the issuance of the final order, a party of an administrative hearing for a CON may seek a judicial review in the District Court of Appeal. In the event that the court determines that there

was a complete absence of a justifiable issue of law or fact raised by the losing party, the court may award reasonable attorney's fees and costs to the prevailing entity.

CONCLUSION

The administrative appeals process ensures that all applicants can challenge the issuance or denial of a CON through an administrative hearing. Section 408.039, Florida Statutes, entitled "Review Process" describes this process in detail. Also, see Rules 59C-1.004 through 59C-1.012 Florida Administrative Code, for additional information.

REFERENCES:

Agency for Health Care Administration Website at: http://ahca.myflorida.com/MCHQ/CON_FA/overview/appeal.shtml

FS. 408.039

UNDERSTANDING FLORIDA'S CERTIFICATE OF NEED (CON) PROGRAM

This policy brief was prepared by the Health Council of East Central Florida in hopes of providing an informative and educational overview of Florida's CON appeals process.

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