

CERTIFICATE OF NEED COMMISSION BYLAWS

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ARTICLE I - PREAMBLE

The Michigan Certificate of Need Commission (CON Commission) is created in the Michigan Department of Public Health (MDPH) and is established pursuant to the Michigan Public Health Code, 1978 P.A. 368, MCL 333.1101, et seq., MSA 14.15 (1101) et seq., as amended by Public Acts 308, 331 and 332 of 1988, and 396 of 1993, which augmented the Public Health Code by the addition of Part 222 (the Code) . The Bylaws developed by the CON Commission shall remain in effect until otherwise amended as provided for in Article XII.

ARTICLE II - DEFINITIONS

The terms used in these bylaws have the meaning ascribed to them in Parts 201 and 222 of the Code.

ARTICLE III - GENERAL PURPOSE

The CON Commission shall exercise its duties to promote all of the following:

- A. The availability and accessibility of quality health services at reasonable cost and with reasonable geographic proximity for all people in the state;
- B. Appropriate differential consideration of the health care needs of residents in rural counties in ways that do not compromise the quality and affordability of health care services for those residents; and
- C. Consideration of the impact of a proposed restriction on the acquisition of or availability of covered clinical services on the quality, availability, and cost of health services in this state.

ARTICLE IV - ONGOING FUNCTIONS

The ongoing functions of the CON Commission shall include, but not be limited to, the following:

- A. Revise, add to, or delete 1 or more of the covered clinical services listed in Section 22203 of the Code. When the Commission proposes to add a new covered clinical service, the Commission shall develop proposed review standards and make the review standards available to the public not less than 30 days before conducting a public hearing pursuant to Section 22215(3) of the Code.
- B. Approve, disapprove or revise Certificate of Need review standards that establish the need, if any, for the:
 - 1. initiation, replacement or expansion of covered clinical services;
 - 2. acquisition or beginning operation of new health facilities;
 - 3. making changes in bed capacity; and
 - 4. making covered capital expenditures.

Such Certificate of Need review standards shall include conditions, standards, assurances or information that must be met, demonstrated or provided by a person who applies for a Certificate of Need, and they may also establish ongoing quality assurance requirements, including any or all of the following:

- a. mechanisms for assuring appropriate utilization of the project;
- b. methods for evaluating the effectiveness of the project;
- c. means of assuring delivery of the project by qualified personnel and in compliance with applicable safety and operating standards;
- d. evidence of the current and historical compliance with federal and state licensing and certification requirements in this state by the applicant or the applicant's owner, or both, to the degree determined appropriate by the CON Commission in light of the subject of the review standard; and
- e. other criteria approved by the CON Commission as appropriate to evaluate the quality of the project.

Before taking a proposed action on new or revised CON review standards, the Commission shall consider the advice and recommendations of the MDPH and the ad hoc advisory committee convened pursuant to Article VI.

- C. The CON Commission shall direct MDPH to prepare and submit recommendations regarding CON Commission duties and functions of interest to the CON Commission, including, but not limited to, specific modifications of proposed actions listed in Section 22215 of the Code.
- D. The CON Commission shall approve, disapprove or revise proposed criteria for determining health facility viability pursuant to Section 22225(2)(d).
- E. The CON Commission shall annually assess the operations and effectiveness of the Certificate of Need program based on periodic reports from MDPH and from other information available to the CON Commission. Every five years after October 1, 1992, the CON Commission shall make recommendations to the standing committees in the Michigan Senate and House of Representatives having jurisdiction over matters pertaining to public health. The recommendations shall be in respect to statutory changes to improve or eliminate the Certificate of Need program.
- F. Upon submission by MDPH, the CON Commission shall approve, disapprove or revise standards to be used by MDPH in designating a regional Certificate of Need review agency pursuant to Section 22226 of the Code.
- G. The CON Commission shall approve, disapprove or revise Certificate Of Need review standards governing the acquisition of new technology.
- H. Approve, disapprove or revise proposed procedural rules for the Certificate of Need program pursuant to Section 22255 of the Code.

- I. If an applicant for a Certificate of Need, pursuant to Section 22231(11) of the Code, makes a written request to MDPH for the return of all of the application fee paid by the applicant based on a claim that MDPH exceeded the time frames set forth in Section 22231, the CON Commission shall make a determination as to whether good cause exists for such actions of MDPH.
- J. Before taking action under subsections A., B., or C. of this Article, the Commission shall consider the advice and recommendations of MDPH and the Department of Attorney General as to the administrative feasibility and legality of proposed actions.
- K. Before taking final action under subsections A., B. or C. of this Article, the Commission shall conduct a public hearing on its proposed action.
- L. The Commission shall make recommendations regarding the revision of CON application fees so that the CON application fees collected equal approximately 1/2 of the cost to the Department of implementing Part 222 of the Code, if reports received under Section 22221(f) of the Code indicate that the CON application fees collected have not been within 10% of 1/2 of the cost to the Department for implementing Part 222 of the Code.

ARTICLE V - OVERSIGHT BY THE MICHIGAN LEGISLATURE AND THE GOVERNOR

The CON Commission shall assure oversight of its functions by the Michigan Legislature and the Governor in accordance with the following:

- A. Not less than 30 days before final actions are proposed to be taken on functions described under Article IV, subsections A., B., D., and G., the CON Commission shall submit such proposed final actions for comment to the standing committees in the Michigan Senate and House of Representatives having jurisdiction over public health matters, as provided by Section 22215(3) of the Code.
- B. Final CON Commission actions described under Article IV, subsections A., B., D., and G. shall be submitted to the Governor and the standing committees of the Michigan Senate and House of Representatives having jurisdiction over public health matters before they become effective, as provided by Section 22215(4) of the Code.
- C. The Commission shall submit final actions to the Governor and the standing committees pursuant to subsection B. of this article no sooner than 135 days after the first meeting of an ad hoc advisory committee convened pursuant to Article VI, unless the Commission approves, by majority vote, to suspend this subsection for good cause.

ARTICLE VI - AD HOC ADVISORY COMMITTEES

The Commission shall appoint ad hoc advisory committees to assist in the development of proposed Certificate of Need review standards.

- A. The Commission shall appoint persons to an ad hoc advisory committee based on the following composition:
 - 1. Experts with professional competence in the subject matter of the proposed standard shall constitute a majority of the ad hoc advisory committee.
 - 2. Representatives of health care provider organizations concerned with licensed health facilities or licensed health professions.
 - 3. Representatives of organizations concerned with health care consumers and the purchasers and payers of health care services.
- B. The duties of an ad hoc advisory committee shall be developed and approved by the chairperson of the Commission after seeking the advice and comments of the members of the Commission and the MDPH.
- C. The chairperson of an ad hoc advisory committee shall be appointed by the chairperson of the Commission.
- D. The Commission shall direct an ad hoc advisory committee to develop and submit recommendations within a specified time limit on new or revised CON review standards in accordance with the approved duties.
- E. Prior to taking a vote on a recommendation, a member of an ad hoc advisory committee shall declare all conflicts of interest consistent with Article XI of these bylaws.
- F. All meetings of ad hoc advisory committees shall comply with the provisions of the Michigan Open Meetings Act, being Public Act 267 of 1976, as amended.

ARTICLE VII - MEMBERSHIP OF THE CON COMMISSION

A. Size and Composition

The CON Commission shall consist of 5 members appointed by the Governor with the advice and consent of the Senate pursuant to Section 22211 of the Code.

B. Term of Office

The members of the CON Commission, with the exception of initial members, shall serve for a term of three years or until a successor is appointed. Of the members initially appointed, 1 shall serve for a term of one year, 2 shall serve for a term of two years, and 2 shall serve a term of three years.

A vacancy on the CON Commission shall be filled for the balance of the unexpired term in the same manner as the original appointment.

C. Voting Procedures and Proxy Votes

1. A majority of the CON Commission members appointed and serving shall constitute a quorum. Final action by the CON Commission shall be only by affirmative vote of a majority of CON Commission members appointed and serving.
2. A CON Commission member shall not vote by proxy. A proxy of a CON Commission member shall not be seated, nor shall they vote, offer motions or second motions.

D. Financial Reimbursement of CON Commission Members

1. Expenses of CON Commission members incurred in the performance of official duties shall be reimbursed as provided in Section 1216 of the Code.
2. The Michigan Legislature annually shall fix the per diem compensation of CON Commission members.

E. Administrative and Professional Staff Support

1. MDPH shall furnish administrative services to the CON Commission, shall have charge of the CON Commission's offices, records and accounts, and shall provide secretarial and other staff necessary to allow the proper exercise of the powers and duties of the CON Commission.
2. MDPH shall assign professional employees to staff the CON Commission to assist the CON Commission in the performance of its substantive responsibilities under Part 222 of the Code.

ARTICLE VIII - MEETINGS OF THE CON COMMISSION

A. Compliance With Open Meetings Act

The CON Commission shall adhere to the provisions of the Michigan Open Meetings Act, being Public Act 267 of 1976, as amended.

B. Notice of Meetings

MDPH shall make available the times and places of the meetings of the CON Commission. MDPH shall also keep minutes of such meetings and a record of the actions of the CON Commission.

C. Regular and Special Meetings

1. The CON Commission shall hold regular meetings quarterly at places and dates fixed by the CON Commission.

2. Special meetings may be called by the chairperson of the CON Commission, by not less than two CON Commission members, or by MDPH.
3. A regular or special meeting of the CON Commission may be recessed and reconvened consistent with the provisions of the Michigan Open Meetings Act, being Public Act 267 of 1976, as amended.

D. Meeting Attendance

1. Members of the CON Commission are expected to attend all regular and special meetings except on those occasions where good cause exists (which includes emergency situations).
2. When a member of the CON Commission is aware that he or she will be unable to attend a regular or special meeting, every effort should be made to give advance notice to the MDPH Commission secretary who shall notify the chairperson and vice-chairperson of the CON Commission.
3. The chairperson of the CON Commission shall determine whether a good cause exists for the absence of a member from a regular or special meeting of the CON Commission. When the attendance of the chairperson is under question, the responsibility for determining good cause falls to the vice-chairperson of the CON Commission.
4. The Governor may remove a CON Commission member from office for failure to attend 3 consecutive meetings in a 1-year period. The chairperson or vice-chairperson of the CON Commission shall promptly inform the Governor's office of such situations, and shall indicate as to whether good cause existed for such absences.

ARTICLE IX - OFFICERS AND PROCEDURES FOR ELECTING OFFICERS

A. Election of Chairperson and Vice-Chairperson

At its first meeting and annually thereafter, the CON Commission shall elect a chairperson and vice-chairperson for a 1-year term (or until the next regularly scheduled meeting following the anniversary of their election) not to exceed three consecutive terms. The chairperson and vice-chairperson shall be of separate major parties.

B. Procedures for Selecting Officers

1. Nominations for officers may be made by any CON Commission member appointed and serving and in attendance at the meeting where the selection of officers is to occur.
2. Selection of officers shall be determined by an affirmative vote of a majority of CON Commission members appointed and serving.

C. Responsibilities of Officers

The chairperson or, in his or her absence, the vice- chairperson shall preside over the CON Commission at all its regular and special meetings. In the event that neither the chairperson nor vice-chairperson is able to preside over a meeting or a portion thereof, the remaining members of the CON Commission shall select a temporary presiding officer.

D. Filling Vacancies in Officers

1. If the office of chairperson becomes vacant for any reason, the vice-chairperson shall become chairperson of the CON Commission.
2. If the office of vice-chairperson becomes vacant as a result of the vice-chairperson becoming chairperson under 1. above or for any other reason, the CON Commission shall elect a new vice-chairperson by an affirmative vote of a majority of those members appointed and serving.
3. If the offices of chairperson and vice- chairperson become vacant simultaneously, the CON Commission shall conduct a special election to fill those positions. New officers shall be elected by an affirmative vote of a majority of those members appointed and serving.
4. Persons elected to fill vacancies in officers of the CON Commission shall serve out the balance of the remaining terms of officers which they replaced. Persons elected under the above provisions must meet all other applicable requirements contained in these bylaws for holding office.

ARTICLE X - PARLIAMENTARY PROCEDURE AND LEGAL COUNSEL

- A. The Attorney General of the State of Michigan, or his or her duly designated Assistant Attorney General, shall serve as parliamentarian for the CON Commission. The duties of the parliamentarian shall be to advise the presiding officer with respect to any matters pertaining to parliamentary procedure.
- B. Any question arising concerning procedure at a meeting of the CON Commission shall be resolved by the presiding officer in accordance with these bylaws.
- C. The Attorney General of the State of Michigan, or his or her duly designated Assistant Attorney General, shall serve as legal counsel to the CON Commission.

ARTICLE XI - STANDARDS OF CONDUCT BY CON COMMISSION MEMBERS AND CONFLICT OF INTEREST PROVISIONS

- A. CON Commission members are subject to the provisions of:

1. Michigan Public Act 317 of 1968, being Sections 15.321 to 15.330 (contracts of public servants with public entities);
2. Michigan Public Act 196 of 1973, being Sections 15.341 to 15.348 (code of ethics for public officers and employees);
3. Michigan Public Act 472 of 1978, being Sections 4.411 to 4.431 (lobbyists and lobbying regulation);

B. Definition - Conflict of Interest

A conflict of interest for CON Commission members shall exist when the individual member has a direct personal, professional, or monetary interest in a matter under consideration by the CON Commission.

C. Procedures - Conflict of Interest

1. A CON Commission member shall disclose that he or she has a potential conflict of interest or conflict of interest at the commencement of consideration of a substantive matter before the CON Commission, or, where consideration has already commenced, at the point where a conflict or potential conflict of interest becomes apparent to the member.
2. Prior to a vote on a substantive matter before the CON Commission, the presiding officer shall inquire of the membership as to the existence of a potential conflict of interest or conflict of interest.
3. A potential conflict of interest or conflict of interest shall not affect the existence of a quorum for purposes of a vote.
4. The minutes of the meeting shall reflect when a conflict of interest existed and that an abstention from voting had occurred.
5. In the event that there are questions as to whether a potential conflict of interest or conflict of interest exists in the case of an individual member, the question shall be settled by an affirmative vote of a majority of those CON Commission members appointed and serving, excluding the member in question.

ARTICLE XII - AMENDMENTS OF BYLAWS

- A. Any amendments to these bylaws shall be proposed by the CON Commission or presented in writing to the CON Commission by MDPH at least 30 days in advance of the meeting where final action is scheduled to be taken.
- B. Any amendments to these bylaws shall be deemed to be approved upon an affirmative vote of a majority of the CON Commission members appointed and serving.