

ILLINOIS REGISTER

HEALTH FACILITIES AND SERVICES REVIEW BOARD

NOTICE OF ADOPTED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
1130.140	Amendment
1130.531	New Section
- 4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960/12]
- 5) Effective Date of Rulemaking:
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, 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: 40 Ill. Reg. 13795; October 7, 2016
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Difference(s) between proposal and final version: Move the definition of “CMMS” to correct the alphabetical order.
- 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 this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: Codifying the Board’s practice of removing beds from the Inventory after the Board approves a discontinuation. The Board is updating the definition of “substantially changes the scope or changes the functional operation of the facility” to make it more precise. The Board is reinstating exemption requirements for projects involving neonatal intensive care beds.

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- 16) Information and questions regarding this adopted rulemaking shall be directed to:

Jeannie Mitchell
Assistant General Counsel
Health Facilities and Services Review Board
69 W. Washington Street, Suite 3501
Chicago, IL 60602

(312)814-6226
Jeannie.Mitchell@illinois.gov

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

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Section

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

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- 1130.215 Health Care Facilities Subject to the Act
- 1130.220 Necessary Parties to the Application for Permit or Exemption
- 1130.230 Fees
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- 1130.250 HFSRB Meetings

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Section

- 1130.310 Projects or Transactions Subject to the Act

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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- 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
- 1130.525 Requirements for Exemptions Involving the Discontinuation of a Health Care Facility or Category of Service
- 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
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1130.680 Denial of an Application

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1130.710 Validity of Permits
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1130.730 Extension of the Financial Commitment Period
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1130.790 Penalties, Fines and Sanctions for Non-compliance with the Act and HFSRB Rules

SUBPART H: DECLARATORY RULINGS

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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
1130.990 Procedures for Public Hearing and Comment on Proposed Rules
1130.995 Procedures for Written Public Comment on All Other Matters

SUBPART J: PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS

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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
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- 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, effective July 9, 1999; amended at 24 Ill. Reg. 6013, effective April 7, 2000; amended at 25 Ill.

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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. 14647, effective October 14, 2016; amended at 41 Ill. Reg. _____, effective _____.

SUBPART A: AUTHORITY

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 and pursuant to the Act.

"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.

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"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 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 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.*

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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.

"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

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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 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

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or Medicaid Certification, and as outlined by documentation from the facility as to the physical space required for appropriate clinical practice.

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

"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 for the completion of the project, when the permit was approved or renewed. 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;

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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 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

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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 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 category of service on a voluntary or involuntary basis. A permit or exemption is required prior to a discontinuation. For discontinuations approved by HFSRB, the discontinued beds will be removed from the Inventory once the permit is issued.

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

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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 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;

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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;

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

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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 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.

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"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: 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.

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"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 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.

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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.

"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; 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

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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 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.

"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]

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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.

"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 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(e) and Section 1130.140;~~

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[the discontinuation of a health care facility or category of service](#) 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:

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 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

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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.

"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,*

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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 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 41 Ill. Reg. _____, effective _____)

SUBPART E: OPERATIONAL REQUIREMENTS FOR EXEMPTIONS

Section 1130.531 Requirements for Exemptions for the Establishment or Expansion of Neonatal Intensive Care Service and Beds ~~(Repealed)~~

- a) 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, as well as the following information:
 - 1) A description of the project that identifies the location of the neonatal intensive care unit and the number of neonatal intensive care beds proposed;
 - 2) Verification that a final cost report will be submitted to the Agency no later than 90 days following the anticipated project completion date;
 - 3) Verification that failure to complete the project within the 24 months after the Board approved the exemption will invalidate the exemption.

- b) Extension of Exemption
The exemption holder can request an extension. To receive the extension, the exemption holder must show that the project has proceeded with due diligence.

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(Source: Former Section repealed at 39 Ill. Reg. 6347, effective June 1, 2015, and new Section added at 41 Ill. Reg. _____, effective _____)