

**RULES
OF
DEPARTMENT OF COMMUNITY HEALTH
HEALTH PLANNING**

**CHAPTER 111-2-2
CERTIFICATE OF NEED**

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111-2-2-.01 Definitions.

111-2-2-.01 Definitions.

As used in these Rules, the term:

(1) "Acquisition of an existing health care facility" means to come into possession or control of a health care facility by purchase, gift, merger of corporations, lease, purchase of stock, inheritance, or by any other legal means.

(2) "Acquisition of diagnostic or therapeutic equipment":

(a) as it relates to a diagnostic, treatment, or rehabilitation center, means to come into possession, or control of, or to otherwise use diagnostic or therapeutic equipment by purchase, gift, donation, lease, transfer, or by any other legal means by or on behalf of the diagnostic, treatment, or rehabilitation center; and

(b) as it relates to a health care facility, means to come into possession or control of diagnostic or therapeutic equipment by purchase or lease by or on behalf of the health care facility.

(3) "Ambulatory surgery" means surgical procedures that include but are not limited to those recognized by the Centers for Medicare and Medicaid Services ("CMS"), by the Georgia Division of Medical Assistance ("DMA"), by the State Health Benefit Plans, or by any successor entities as reimbursable ambulatory surgery procedures. Ambulatory surgery is provided only to patients who are admitted to a facility which offers ambulatory surgery and which does not admit patients for treatment that normally requires stays that are overnight or exceed 24 hours and which does not provide accommodations for treatment of patients for periods of twenty-four hours or longer.

(4) "Ambulatory surgical or obstetrical facility", as defined at O.C.G.A. § 31-6-2(1), means a public or private facility, not a part of a hospital, which provides surgical or obstetrical treatment performed under general or regional anesthesia in an operating room environment to patients not requiring hospitalization.

(5) "Applicant" means the owner or lessee of an existing health care facility or the person who would be the owner or lessee of a proposed facility, as named in the application. An applicant may also be multiple owners or lessees of existing health care facilities who share common ownership or corporate affiliation and wish to submit an application to the Department for a single Certificate of Need for certain

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non-clinical health services, for example, but not limited to, parking decks, infrastructure improvement or replacement, and capital renovation expenditures.

(6) "Application", as defined at O.C.G.A. § 31-6-2(2), means a written request for a Certificate of Need made to the Department, containing such documentation and information as the Department may require.

(7) "Approved date" means the date that the Department issues a Certificate of Need to an applicant.

(8) "Associated with and simultaneously developed or proposed" means that if the Department determines that a single project or the substantial equivalent of a single project is divided into separate components which are associated and which are developed or planned simultaneously, so that the project or the substantial equivalent of a project or any component thereof does not require a total capital expenditure in excess of the capital expenditure or diagnostic or therapeutic equipment threshold, the Department shall combine the components for purposes of computing the amount of the total capital expenditure or expense and shall treat the combined components as a single project or substantial equivalent of a project. The Department shall include items and expenditures which are related and which occur simultaneously in computing an applicable threshold regardless of whether the items or expenditures individually may otherwise be below the threshold or may be otherwise unreviewable exclusive of the items exempted from review by 111-2-2-.03 (1)-(3) and 111-2-2-.03 (5) -(19);

(a) The Department may determine that activities, services, expenditures, and items are associated if they share a relationship or association based on law, regulation, definition, function, procedure, or process; and

(b) The Department shall determine that expenditures related to activities, services, and items are simultaneously developed or planned if such expenditures occur within a 6-month period. The 6-month period shall run from operation of the activity, service or item to initial capital expenditure on the second activity or item or from operation of the activity or item to operation of the second activity or item. For services, the date of operation shall be the date that the service is actually offered. If applicable, for facilities, the date of operation shall be the date a Certificate of Occupancy is issued.

(9) Reserved.

(10) "Basic perinatal services" means providing basic inpatient care for pregnant women and newborns without complications; managing perinatal emergencies; consulting with and referring to specialty and subspecialty hospitals; identifying high-risk pregnancies; providing follow-up care for new mothers and infants; and providing public/community education on perinatal health.

(11) "Bed capacity", as defined at O.C.G.A. § 31-6-2(4), means space used exclusively for inpatient care, including space designed or remodeled for inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by Rules of the Department, except that single beds in single rooms shall be counted even if the room contains inadequate square footage.

(12) "By or on behalf of" means any expenditures made by a health care facility, a political subdivision of the State, a diagnostic, treatment, or rehabilitation center, or a hospital authority, itself as well as capital expenditures made by other persons or related entities to assist the facility, subdivision, center, or authority, directly or indirectly, to offer services to its patients or residents. Related entities include entities that are associated or affiliated with, have control over or are controlled by, or have any direct financial interest in, the health care facility, political subdivision of the State, diagnostic, treatment, or rehabilitation center, or hospital authority, including, without limitation, an underwriter, guarantor, parent organization, sister organization, subsidiary or sub-entity, foreign corporation, joint venturer, partner, general partner, or building lessor, as applicable.

(13) "Capital expenditure" in relation to a proposed modification, renovation, or addition to a health care facility or to a diagnostic, treatment, or rehabilitation center, or acquisition of equipment, means an expenditure by or on behalf of a health care facility or diagnostic, treatment, or rehabilitation center that, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Any series of capital expenditures, each less than a threshold, but which when taken together are in excess of a threshold, directed toward the accomplishment of a single project, requires a Certificate of Need. Any series of capital expenditures, which are associated and simultaneously developed or proposed, will be presumed to be a single project. In calculating the capital expenditure for modifications, additions, or renovations "capital expenditure" is the amount per construction bid or total amount of invoices or purchase orders for the single project excluding diagnostic or therapeutic equipment.

(14) "Certificate of Need", as defined at O.C.G.A. § 31-6-2(6), means an official determination by the Department, evidenced by certification issued pursuant to an application, that the action proposed in the application satisfies and complies with the criteria contained in the Statute and Rules promulgated pursuant thereto.

(15) Reserved.

(16) "Clinical health services", as defined at O.C.G.A. § 31-6-2(8), means diagnostic, treatment, or rehabilitative services provided in a health care facility, or parts of the physical plant where such services are located in a health care facility, and includes, but is not limited to, the following: radiology and diagnostic imaging, such as magnetic resonance imaging and positron emission tomography; radiation therapy; biliary lithotripsy; surgery; intensive care; coronary care; pediatrics; gynecology; obstetrics; general medical care; medical/surgical care; inpatient nursing care, whether intermediate, skilled or extended care; cardiac catheterization; open-heart surgery; inpatient rehabilitation; and alcohol, drug abuse, and mental health services.

(17) "Consumer", as defined at O.C.G.A. § 31-6-2(10), means a person who is not employed by any health care facility or provider and who has no financial or fiduciary interest in any health care facility or provider.

(18) "Continuing care retirement community" means an organization, whether operated for profit or not, whose owner or operator undertakes to provide shelter, food, and either nursing care or personal services, whether such nursing care or personal services are provided in the facility or in another setting, and other services, as designated by agreement, to an individual not related by consanguinity or

affinity to such owner or operator providing such care pursuant to an agreement for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum and monthly maintenance charges or in installments. Agreements to provide continuing care include agreements to provide care for any duration, including agreements that are terminable by either party.

(19) "Cost estimate" means an estimate of the total cost of a project's development and construction prepared by a licensed architect or engineer within sixty days prior to the date of submittal of an application.

(20) "Defined location," as it relates to the approved location of a project or substantial equivalent of a project, means the address of the project, or in the case of a health care facility or diagnostic, treatment, or rehabilitation center with multiple addresses, the campus of such health care facility or diagnostic, treatment, or rehabilitation center. However, in no case shall a campus be considered a single defined location if varying locations and facilities of such campus are more than 3 miles apart or within more than one county.

(21) "Destination cancer hospital" means an institution with a licensed bed capacity of 50 or less which provides diagnostic, therapeutic, treatment, and rehabilitative care services to cancer inpatients and outpatients, by or under the supervision of physicians, and whose proposed annual patient base is composed of a minimum of 65 percent of patients who reside outside of the State of Georgia.

(22) "Develop", as defined at O.C.G.A. § 31-6-2(14), with reference to a project, means:

(a) constructing, remodeling, installing, or proceeding with a project, or any part of a project, or a capital expenditure project, the cost estimate for which exceeds \$2,500,000.00, which amount shall be adjusted annually as provided by law; or

(b) the expenditure or commitment of funds exceeding \$1,000,000.00, which amount shall be adjusted annually as provided by law, for orders, purchases, leases, or acquisitions through other comparable arrangements of new or additional major medical equipment, including activities, items and services, which are associated with and simultaneously developed or proposed; provided, however, that this shall not include build out costs, as defined by the department, but shall include all functionally related equipment, software, and any warranty and services contract costs for the first five years. Build out costs are defined as expenditures made for items such as electrical, plumbing, masonry such as concrete pads, construction of modular buildings, and renovation of the space that will actually house the equipment, such as the room where an MRI unit would be used. Build out costs shall also include expenditures for new construction for a building to house the equipment or to renovate a building or structure to house the equipment, or expenditures for administrative office space unrelated to the actual functionality of the equipment, related equipment, or software necessary to operate the equipment. Reviewability of acquisitions by lease or gift will be based on the value of the major medical equipment to be acquired. The value of the major medical equipment is the expenditure that would be required for purchase.

(c) Notwithstanding subparagraphs (a) and (b) above, the expenditure or commitment or incurring an obligation for the expenditure of funds to develop Certificate of Need applications, studies, reports,

schematics, preliminary plans and specifications, or working drawings, or to acquire, develop, or prepare sites shall not be considered to be the developing of a project.

(23) "Diagnostic imaging" means magnetic resonance imaging, computed tomography (CT) scanning, positron emission tomography (PET) scanning, positron emission tomography/computed tomography, and other advanced imaging services as defined by the department by rule, but such term shall not include X-rays, fluoroscopy, or ultrasound services.

(24) "Diagnostic, treatment, or rehabilitation center", as defined at O.C.G.A. § 31-6-2(16), means any professional or business undertaking, whether for profit or not for profit, which offers or proposes to offer any clinical health service in a setting which is not part of a hospital; provided, however, that any such diagnostic, treatment, or rehabilitation center that offers or proposes to offer surgery in an operating room environment and to allow patients to remain more than 23 hours shall be considered a hospital for purposes of O.C.G.A. § 31-6, et seq.

(25) "Effective date" means:

(a) for approved projects that have not been appealed pursuant to the appeal provisions of the Rules of the Health Planning Review Board, the approved date;

(b) for projects, which are appealed pursuant to the appeal provisions of the Rules of the Health Planning Review Board, the date of the final resolution of any such administrative appeal if the resolution results in the approval of the project; or

(c) for projects which undergo judicial review, the effective date shall be the date referenced in (b) above, unless the Department, pursuant to Rule 111-2-2-.07(2)(h), or the reviewing court stays the effective date of the project pending the outcome of the judicial review. If the Department or the reviewing court stays the effective date, the effective date shall be the date of the final resolution of any such judicial review if the resolution results in approval of the project.

(26) "Expiration date" is the date upon which a certificate of need expires and becomes null and void.

(27) "Functionally related diagnostic or therapeutic equipment" means that pieces of diagnostic or therapeutic equipment are interdependent to the extent that one piece of equipment is unable to function in the absence of or without the functioning piece or equipment, or that pieces of equipment are normally used together in the provision of a single health care facility or diagnostic, treatment, or rehabilitation center service.

(28) "Health care facility", as defined at O.C.G.A. § 31-6-2(17), means hospitals; destination cancer hospitals; other special care units; including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; personal care homes; ambulatory surgical or obstetrical facilities; health maintenance organizations; home health agencies; diagnostic, treatment, or rehabilitation centers, but only to the extent that O.C.G.A. § 31-6-40(a)(3) or (7) or both are applicable thereto.

(29) "Health maintenance organization", as defined at O.C.G.A. § 31-6-2(18), means a public or private organization organized under the laws of this state which:

(a) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physicians' services, hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area coverage;

(b) is compensated, except for co-payments, for the provision of the basic health care services listed in subparagraph (a) of this paragraph to enrolled participants on a predetermined periodic rate basis; and

(c) provides physicians' services primarily:

1. directly through physicians who are either employees or partners of such organization; or
2. through arrangements with individual physicians organized on a group practice or individual practice basis.

(30) "Home health agency", as defined at O.C.G.A. § 31-6-2(20), means a public agency or private organization, or a subdivision of such an agency or organization, which is primarily engaged in providing to individuals who are under a written plan of care of a physician, on a visiting basis in the places of residence used as such individuals' homes, part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse, and one or more of the following services:

(a) physical therapy;

(b) occupational therapy;

(c) speech therapy;

(d) medical social services under the direction of a physician; or

(e) part-time or intermittent services of a home health aide.

(31) "Hospital", as defined at O.C.G.A. § 31-6-2(21), means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term includes public, private, psychiatric, rehabilitative, geriatric, osteopathic, micro-hospitals, and other specialty hospitals.

(32) "Incur a financial obligation", in relation to the offering of a new institutional health service, means that, within time periods described in Section 111-2-2-.02(5) and (6) of these Rules, the applicant has fulfilled the following performance requirements.

(a) With regard to new construction or renovation:

1. has acquired title, an option to purchase or a leasehold to an appropriate site;
2. has filed with the Department the complete set of plans, drawings, and specifications for the project;
3. has obtained a firm commitment for adequate capital financing; and
4. has entered into a construction contract that provides for a specific date for commencement, and completion of construction within a reasonable time span.

(b) With regard to equipment not associated with a construction project;

1. a purchase or lease agreement has been entered into or, if acquired by a comparable arrangement, the applicant has possession of the equipment.

(33) Reserved.

(34) "Intermediate care facility", as defined at O.C.G.A. § 31-6-2(22), means an institution which provides, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but who, because of their mental or physical condition, require health related care and services beyond the provision of room and board.

(35) "Joined applications" means two or more applications which involve similar projects in the same service area or overlapping service areas all of which have been declared complete within thirty days of the date the first application was declared complete, and whose time limits are scheduled to run from the latest date that any one of the joined applications was declared complete for review.

(36) "Joint venture ambulatory surgical center" means a freestanding ambulatory surgical center that is jointly owned by a hospital in the same county as the center or a hospital in a contiguous county if there is no hospital in the same county as the center and a single group of physicians practicing in the center and that provides surgery in a single specialty as defined by the department; provided, however, that general surgery, a group practice which includes one or more physiatrists who perform services that are reasonably related to the surgical procedures performed in the center, and a group practice in orthopedics which includes hand surgeons with a certificate of added qualifications in Surgery of the Hand from the American Board of Plastic and Reconstructive Surgery shall be considered a single specialty. The ownership interest of the hospital shall be no less than thirty percent (30%) and the collective ownership of the physicians or group of physicians shall be no less than thirty percent (30%).

(36.1) Micro-hospital means a hospital in a rural county which has at least two and not more than seven inpatient beds and which provides emergency services seven days per week and 24 hours per day.

(37) "Mobile unit" means an object with the ability by structure, function or design to move or be moved from one site to another, such that upon arriving at a site the object is not permanently fixed but is temporarily secured for the purpose of providing a service to individuals.

(38) "New and emerging health care service" means a health care service or utilization of medical equipment which has been developed and has become acceptable or available for implementation or use but which has not yet been addressed under the rules and regulations promulgated, adopted and included within and hereto.

(39) "New institutional health service", as defined at O.C.G.A. § 31-6-40(a) means:

(a) the construction, development, or other establishment of a new health care facility;

(b) any expenditure by or on behalf of a health care facility in excess of \$2,500,000.00, which amount shall be adjusted annually as provided by law, and which, under generally accepted accounting principles consistently applied, is a capital expenditure, except expenditures for acquisition of an existing health care facility not owned or operated by or on behalf of a political subdivision of this state, or any combination of such political subdivisions, or by or on behalf of a hospital authority, as defined in O.C.G.A. § 31-7-4 or certificate of need owned by such facility in connection with its acquisition. See the definition of "threshold" below for expenditures that shall be counted to calculate the threshold;

(c) any increase in the bed capacity of a health care facility, regardless of whether a capital expenditure is made, which increases the total bed capacity. An exception to this rule will be made in accordance with Rule 111-2-2-.03(14);

(d) clinical health services that are offered in or through a health care facility, which were not offered on a regular basis in or through such health care facility within the twelve (12) month period prior to the time such services would be offered;

(e) any conversion or upgrading of any general acute care hospital to a specialty hospital or of a facility such that it is converted from a type of facility not covered by these Rules to any of the types of health care facilities which are covered by these Rules;

(f) the purchase or lease by or on behalf of a health care facility of diagnostic or therapeutic equipment with a value in excess of \$1,000,000.00; provided, however, that diagnostic or other imaging services that are not offered in a hospital or in the offices of an individual private physician or single group practice of physicians exclusively for use on patients of that physician or group practice shall be deemed to be a new institutional health service regardless of the costs of equipment; and provided, further, that this shall not include build out costs, as defined in Rule 111-2-2-.01(22)(b), but shall include all functionally related equipment, software, and any warranty and services contract costs for the first five years, which amount shall be adjusted annually as provided by law. See the definition of "threshold" below for expenditures that will be counted to calculate the threshold;

(g) the acquisition of an existing health care facility which is owned or operated by or on behalf of a political subdivision of this State; any combination of such political subdivisions, or by or on behalf of a hospital authority except as otherwise provided in these Rules.

(h) clinical health services which are offered in or through a diagnostic, treatment, or rehabilitation center which were not offered on a regular basis in or through that center within the twelve (12) month

period to the time such services would be offered, but only if the clinical health services are any of the following:

1. Radiation therapy;
2. Biliary lithotripsy;
3. Surgery in an operating room environment, including but not limited to ambulatory surgery; and
4. Cardiac catheterization.

(40) "Nonclinical health services", as defined at O.C.G.A. § 31-6-2(25), means services or functions provided or performed by a health care facility, and the parts of the physical plant where they are located in a health care facility that are not diagnostic, therapeutic, or rehabilitative services to patients and are not clinical health services as defined in this chapter.

(41) "Offer", as defined at O.C.G.A. § 31-6-2(26), means that the health care facility is open for the acceptance of patients or performance of services and has qualified personnel, equipment, and supplies necessary to provide specified clinical health services.

(42) "Operating room environment", as defined at O.C.G.A. § 31-6-2(27), means an environment which meets the minimum physical plant and operational standards specified in the applicable administrative rules of the state which shall consider and use the design and construction specifications as set forth in the Guidelines for Design and Construction of Health Care Facilities published by the American Institute of Architects.

(43) "Pediatric cardiac catheterization" means the performance of angiographic, physiologic, and as appropriate, therapeutic cardiac catheterization on children fourteen (14) years of age or younger.

(44) "Person", as defined at O.C.G.A. § 31-6-2(29), means any individual, trust, or estate, partnership, limited liability company or partnership, corporation (including associations, joint-stock companies and insurance companies), state, political subdivision, hospital authority, or instrumentality (including a municipal corporation) of a state as defined in the laws of this State. This term shall include all related parties, including individuals, business corporations, general partnerships, limited partnerships, limited liability companies, limited liability partnerships, joint ventures, nonprofit corporations, or any other for profit or not for profit entity that owns or controls, is owned or controlled by, or operates under common ownership or control with a person.

(45) "Personal Care Home", as defined at O.C.G.A. § 31-6-2(30), means a residential facility that is certified as a provider of medical assistance for Medicaid purposes pursuant to Article 7 of Chapter 4 of Title 49 having at least twenty-five (25) beds and providing, for compensation, protective care and oversight of ambulatory, non-related persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing, or intermediate care. Personal care homes including those facilities which monitor daily residents' functioning and location, have the capability for crisis intervention, and provide supervision in areas of nutrition, medication, and provision of transient medical care. Such term does not include:

(a) Old age residences which are devoted to independent living units with kitchen facilities in which residents have the option of preparing and serving some or all of their own meals; or

(b) Boarding facilities that do not provide personal care.

(46) "Project", as defined at O.C.G.A. § 31-6-2(31), means a proposal to take an action for which Certificate of Need review is required under these Rules. A project or proposed project may refer to the proposal from its earliest planning stages up through the point at which the new institutional health service is offered. In accordance with the definition of "associated with and simultaneously developed or proposed," the Department shall consider simultaneous activities, including, but not limited to, construction, remodeling, development, and acquisitions, unless expressly not included by other provisions of these Rules, which are determined by the Department to be associated with one another, to be a single project.

(47) "Rural county" means a county having a population of less than ~~35,000~~ 50,000 according to the United States decennial census of ~~2000~~ 2010 or any future such census.

(48) "Service-specific Rule" means those rules that are part of 111-2-2 that regard specific clinical health care services as outlined at 111-2-2-.20et seq.

(49) "Single specialty ambulatory surgical center" means an ambulatory surgical center where surgery is performed in the offices of an individual private physician or single group practice of private physicians if such surgery is performed in a facility that is owned, operated, and utilized by such physicians who are also of a single specialty; provided, however, that general surgery, a group practice which includes one or more physiatrists who perform services that are reasonably related to the surgical procedures performed in the center, and a group practice in orthopedics which includes plastic hand surgeons with a certificate of added qualifications in Surgery of the Hand from the American Board of Plastic and Reconstructive Surgery shall be considered a single specialty.

(50) "Skilled nursing facility", as defined at O.C.G.A. § 31-6-2(34), means a public or private institution or a distinct part of an institution which is primarily engaged in providing inpatient skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(51) "Specialty hospital" means a hospital that is primarily or exclusively engaged in the care and treatment of one of the following: patients with a cardiac condition, patients with an orthopedic condition, patients receiving a surgical procedure, or patients receiving any other specialized category of services defined elsewhere in these Rules. A "specialty hospital" does not include a destination cancer hospital.

(52) "State health plan", as defined at O.C.G.A. § 31-6-2(36), means a comprehensive program based on recommendations by the Health Strategies Council and the board, approved by the Governor, and implemented by the State of Georgia for the purpose of providing adequate health care services and facilities throughout the State. The State Health Plan is divided into a series of component plans modified from time to time as needed.

(53) "Substantial equivalent of a project" means a proposal to take an action for which a letter of non-reviewability or determination is sought under these Rules. A substantial equivalent of a project may refer to the proposal from its earliest planning stages up through the point at which the service is offered. In accordance with the definition of "associated with and simultaneously developed or proposed," the Department shall consider simultaneous activities, including, but not limited to, construction, remodeling, development, and acquisitions, unless expressly not included by other provisions of these Rules, which are determined by the Department to be associated with one another, to be a single substantial equivalent of a project.

(54) "Threshold" means the dollar amount of capital expenditures for which, when exceeded, a Certificate of Need is required.

(a) In calculating the dollar amounts of a proposed project for purposes of 111-2-2-.01 (39)(b) and (39)(f), and 111-2-2-.01 (49) and (36) of these Rules, the capital costs of all items subject to review by these Rules and items not subject to review by these Rules associated with and simultaneously developed or proposed with the project shall be counted, except for the expenditure or commitment of or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites;

(b) The following threshold amounts are effective as of July 1, 2008:

1. The capital expenditure threshold of 111-2-2-.01 (39)(b), is \$2,500,000.00;
 2. The equipment threshold of 111-2-2-.01 (39)(f) is \$1,000,000.00;
 3. The physician-owned, single-specialty, office-based ambulatory surgery center threshold of 111-2-2-.01 (49) is \$2,500,000.00;
 4. The joint venture ambulatory surgical center threshold of 111-2-2-.01 (36) is \$5,000,000.00;
- With respect to (b)1., 3., and 4. above, beginning on July 1, 2009, the Department shall update or adjust this CON threshold amount by the annual percentage of change in an appropriate composite price index that, in the judgment of the Department, represents national construction prices for the preceding calendar year such as those published by the Department of Commerce of the United States government or other government agency;

With respect to (b)2. above, beginning on July 1, 2010, the Department shall update or adjust this CON threshold amount by the annual percentage of change in an appropriate consumer price index, or its successor or appropriate replacement index, for the preceding calendar year, such as those published by the United States Department of Labor or other United States government agency. However, diagnostic or other imaging services that are not offered in a hospital or in the offices of an individual private physician or single group practice of physicians exclusively for use on patients of that physician or group practice shall be deemed to be a new institutional health service regardless of the cost of the equipment. Also, however, this amount or threshold figure shall not include build out costs, as defined in Rule 111-2-2-.01(22)(b), but shall include all functionally related equipment, software, and any warranty and services contract costs for the first five (5) years.

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(c) For purposes of computing the capital expenditure threshold of 111-2-2-.01 (39)(b) and 111-2-2-.01 (22)(a) and the physician-owned, single specialty ambulatory surgical center threshold of 111-2-2-.03 (20) and the joint venture ambulatory surgical center threshold of 111-2-2-.03 (21), the Department shall include, but not be limited to, the following guidelines:

1. Pursuant to the definition of "associated with and simultaneously developed or proposed," the total cost of all associated capital expenditures for items to be obligated for or purchased within a six month period for a single program, service, plan, or project, regardless of whether or not the cost of any individual item is in excess of the capital expenditure threshold and regardless of whether or not the expenditure or item is otherwise reviewable under these Rules or the CON Statute, is included in the computation;

2. The cost of depreciable equipment that is not used for diagnosis or treatment, such as office equipment, usual business equipment, and office and waiting room furniture, is included in the computation, if such items are associated with and simultaneously developed or proposed with the project. If such furnishing and equipment are used, the cost that shall be used in calculating the threshold shall be the depreciated value or current market value of the furnishings or equipment, whichever is greater;

3. The cost of normal inventories of supplies, such as glassware, chemicals, drugs, linens, and paper, is exempt from the computation as an operating expense;

4. The value of the facilities to be acquired by lease, gift, donation or other means is based on a current (within six months) appraisal of the facility, except that the value of newly constructed facilities shall be based on the actual square footage cost to construct the facility;

5. For facilities that are acquired by lease, the computation of value shall be based on the rentable square footage of the facility and not the useable square footage. Notwithstanding this Rule, lease payments shall be considered to be operating expenses for leases other than capital leases;

6. For facilities that are only partly occupied by a person, the computation shall include a pro-rata share of the value of the common space, unless the rentable square footage is provided as required by 5. above and that rentable square footage already includes an allocation for common space, as documented by the lease agreement; and

7. In the case of a gift or donation, the value of equipment, furnishings or facilities is the fair market value of the equipment, furnishings, or facilities;

(d) For purposes of computing the equipment threshold of 111-2-2-.01 (22)(b), 111-2-2-.01 (39)(f), the Department shall include, but not be limited to, the following guidelines:

1. The cost of diagnostic or therapeutic equipment includes all capital costs, expenditures, charges, fees and assessments which are reasonably necessary to put the equipment into use for the purposes for which the equipment was intended, including but not limited to the following expenses:

(i) Any expense incurred for the purchase of a warranty on the diagnostic or therapeutic equipment from the manufacturer or vendor for the first five years of operation;

(ii) Any expense incurred for operator training;

(iii) Any expense incurred for installation and assembly of the equipment;

(iv) Any expense incurred for transportation and insurance costs pertaining to the purchase and/or delivery of the equipment;

(v) Any expense incurred for functionally related diagnostic or therapeutic equipment, such as, but not limited to, water chillers, surge protectors, laser cameras, computer workstations, etc.

(vi) Any expense incurred for any options, extra packages, or accessories to be used in the operation of the equipment;

(vii) Any expense incurred for RF shielding, lead shielding, magnetic shielding necessary to protect patients or staff in the operation of the equipment;

(viii) Any dollar amount attributable to service contracts for the first five (5) years of operation;

(ix) Any dollar amount attributable to volume or bulk purchase discounts given to the party requesting a letter of non-reviewability by the manufacturer or vendor of the equipment;

(x) For mobile units of equipment, expenditures and values associated with the motor coach, trailer, van, rig, or other form of modular or transitional housing shall be included in the computation of the threshold;

2. The acquisition by whatever means of one or more items of functionally related diagnostic or therapeutic equipment shall be considered as one project. The acquisition of functionally related accessories shall also be counted. Pursuant to the definition of "functionally related diagnostic or therapeutic equipment," any individual components or pieces of diagnostic or therapeutic equipment, which depend on one another in order to function and that are purchased within a six (6) month period, shall be considered in the aggregate in calculating the threshold;

3. Diagnostic or therapeutic equipment shall include single and multiple units of equipment, if such units are associated with and simultaneously developed or proposed with one another. Pursuant to the definition of "associated with and simultaneously developed or proposed," the Department may determine that individual pieces or units of diagnostic or therapeutic equipment are associated with one another if such pieces or units of equipment are used for the same or similar health services and if such pieces or units of equipment are developed, proposed, or acquired simultaneously. Such associated and simultaneous units purchased within a 6-month period shall be aggregated to calculate the threshold;

4. Purchase or lease shall include purchases, contracts, encumbrances of funds, lease arrangements, conditional sales or a comparable arrangements that purport to be a transfer of ownership in whole or in part;

5. In the case of a lease, loan, or gift, the value of the diagnostic or therapeutic equipment is the fair market value of the diagnostic or therapeutic equipment, as evidenced by documentation from a reputable vendor or manufacturer; and

(55) "Uncompensated indigent or charity care" means the dollar amount of "net uncompensated indigent or charity care after direct and indirect (all) compensation" as defined by, and calculated in accordance with, the Department's Hospital Financial Survey and related instructions.

(56) "Urban county" means a county having a population equal to or greater than ~~35,000~~ 50,000 according to the United States decennial census of ~~2000~~ 2010 or any future such census.