

## Tips for Submitting a Complete CON Application

### **I. General**

Each Certificate of Need Application is reviewed for **public need, financial feasibility, architectural and engineering standards, character and competence or current compliance, and legal issues related to the organizational structure of proposed operators and/or contractual arrangements**. The certificate of need application requests information necessary to complete thorough reviews in each of these areas. When applications are incomplete, the Department of Health requests the missing information in the form of a letter to the applicant. These letters provide the applicant with another opportunity to provide the state with necessary information, but also delay the review process. Applications that are properly completed can be processed more efficiently.

When filling out an application, pay attention to each item requested, provide the requested information, and ensure that information in each schedule is consistent with all other schedules. Each review team has provided below a list of common omissions from, and defects in, submitted CON applications. These lists are not intended to include every required element of an application. However, addressing these common deficiencies from the outset will expedite your application's review.

### **II. Public Need**

The intent of the 'need' review is to determine whether there is a public need for the requested project. Determination of 'need' is based upon factors and methodologies set forth in regulations (Title 10, Article 2, of the Official Compilation of the Rules and Regulations of the State of New York, Part 709). These factors include, but are not limited to, population demographics, service utilization patterns, epidemiology of selected diseases and conditions and access to services. It is the applicant's responsibility to demonstrate public need for the proposed project.

Applicants should ensure that the following information is clearly and completely furnished in the appropriate "Community Need," "Program Information," or "Community Planning" schedule:

- A. The primary service area by zip code and population.
  - 1) The demographic criteria and health status indicators that support the need for the proposed service or project. Information concerning the relationship of the proposed project to the local health department's community health assessment, the hospital's community service plan, or health disparities in the community would assist in the Department's review.
  - 2) The assumptions and calculations that support the projected utilization for the proposed service.
  - 3) Where residents of the service area currently receive the proposed service.

- 4) Existing barriers (geographic, structural, cultural, linguistic, financial) that prevent patients from receiving the proposed services.
- 5) Proposed plan to serve Medicaid beneficiaries and the uninsured.
- 6) The impact of the proposed service on existing providers.

### **III. Financial Feasibility**

The financial review evaluates the financial capability and feasibility of the project and is based on the applicant's ability to fund the project, reasonableness of the budget, current financial status and capacity to retire debt.

Applicants should ensure that applications include the following information and/or address the following issues as appropriate:

- A. Submit a letter of interest from the intended source of permanent financing.  
The letter must include an estimate of the:
  - i) Principal
  - ii) Term
  - iii) Interest rate
  - iv) Payout period presently being considered.
- B. Provide revenue and expense projections in current year dollars, including:
  - i) Supporting calculations for the rates assumed for each payor.
  - ii) Supporting calculations for rent expense.
  - iii) Basis for expense and utilization assumptions.
  - iv) Budget that is at least breakeven or includes supporting calculations demonstrating how losses would be addressed.
- C. Address working capital requirements (see Schedule 5). Working capital is the term used to describe the funds needed to initiate operations of an entity and meet initial cash flow needs until revenues can support operations.
  - i) Demonstrate access to working capital funds equal to two months of budgeted third-year expenses for start-ups; OR
  - ii) Two months of first-year expenses for changes in existing operations;
  - iii) At least 50% of working capital needs must be supplied in cash (equity) not debt, and all sources of equity must be documented.
  - iv) If any working capital will be borrowed, provide a letter of interest from the intended source of working capital financing, to include an estimate of principal, term and interest rate. The term of working capital borrowing should not exceed five years unless clearly justified.
- D. For existing operators/sponsors, provide the past three years' certified financial statements for the facility or operation. In the event certified financial statements are not available, please provide un-audited financial statements or appropriate tax

documents as supporting documentation. If applicable, address the reason(s) for any losses and steps implemented to improve operations.

- 1) For applications to change operator, submit an original affidavit from the applicant, which is acceptable to the Department and signed by the principals of the proposed operator or CEO of a public or not-for-profit entity, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28, 36 or 40 of the Public Health Law, with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

- E. State the amount of equity to be invested in the project and document the source(s):
  - i) Minimum project cost equity expectations are 10 percent of proposed total project cost for all applications other than nursing home applications.
  - ii) For nursing home applications, minimum project cost equity expectations are 25 percent of total project cost. The equity may be reduced if the project contains certain desirable elements (e.g., decertification or conversion of beds). In addition, exceptions may be made for hardship cases. Please call the Bureau of Financial Analysis (518-402-0953) to discuss these issues with respect to your project.
- F. Submit a pro forma balance sheet, reflective of the first day of operation subsequent to change in ownership. Provide a line-by-line comparison between the pro forma balance sheet and the most recently available certified financial statements. Provide all assumptions utilized in preparation of the pro forma balance sheet.

G. Frequently Asked Questions Pertaining to Schedules 8, 9, and 13:

**Schedule 8B**

**Question:** *Should I use column (A) or (C) to figure our total project cost and processing fees?*

**Answer:** Please use column C as the final figures.

**Question:** *How do I estimate the processing fee amount correctly?*

**Answer:** Multiply the processing fee percentage (see chart at [http://nyhealth.gov/facilities/cons/more\\_information/fees.htm](http://nyhealth.gov/facilities/cons/more_information/fees.htm)) by Line 8. You will receive a letter from the Department assessing the fee after your project is approved.

**Schedule 9**

**Question:** *How do I fill out schedule 8B and 9?*

**Answer:** Total project financing should equal the total from Schedule 8B line 10 in almost all cases. The 8B and 9 figures may not match in certain types of applications, such as projects refinancing existing debt. Generally, they should be equal on both pages.

**Schedule 13C**

**Question:** *What is the proper way to fill out the current year/first/third year costs on this schedule?*

**Answer:** When filling out costs, if the project has both inpatient and outpatient costs, please break out the costs separately by submitting 2 cost schedules – one for each component. If your project consists of one component, such as increasing visits, then you only need one schedule.

**Question:** *What costs should I use in current year, first year and third year column?*

**Answer:** The cells for current, first, and third year costs relate to the specific project only, not necessarily the entire facility. There are certain circumstances where revenues of the entire facility should be provided -- e.g., a complete modernization of a building or a change in ownership of a facility. Typically, however, the costs should be unit-specific, in order to allow DOH staff to focus on the budget.

## **IV. Character and Competence**

Assessment of the character and competence of an applicant is based primarily upon relevant experience and past performance in operating a health care facility or home care agency including records of violations, if any, and whether a substantially consistent high level of care was maintained. Applicants without experience in providing health care services are evaluated based on, among other factors, compliance with laws and regulations pertinent to their business or profession and the status of any professional licenses.

The following information should be included in applications as appropriate:

- A. Review the instructions accompanying Schedule 2.
- B. All required forms and every section in each form should be completed. Nothing should be left blank. This includes:
  - 1) Filling out the section for all licenses held and facilities/agencies owned. If the answer is 'none' or not applicable, please write: "None" or "NA."
  - 2) Completing the Affirmative Statement of Qualifications section. (Do not feel constrained by the size of the box – attach additional pages if needed.)
  - 3) Disclosing ownership interests in all health care facilities/agencies during the past ten years.
  - 4) Disclosing membership on not-for-profit boards.
  - 5) Including in response to Question 8 on Schedule 2A any name change due to marriage.
  - 6) For attorneys, submitting a certificate of good standing from each state in which he/she is licensed to practice.
  - 7) Submitting Schedule 2a's for ALL individuals that are required to submit them.
- C. Complete Schedule 2A for the following individuals:
  - 1) Article 28 Facilities (Hospitals, Diagnostic and Treatment Centers, Nursing Homes):
    - a. Not-for-Profit Corporations – Each member, officer, and director.
    - b. Business Corporations – Each shareholder, officer, and director of the proposed operator.
      - i) Please note that the stock of a business corporation seeking approval to operate a facility under Public Health Law Article 28 (other than a freestanding dialysis facility) must be owned exclusively by natural persons. N.Y. Public Health Law §2801-a(4)(e). This restriction does not apply to certain business corporations formed under New York law that seek approval to operate diagnostic and treatment centers that provide only end stage renal dialysis services under Public Health Law §2801-a(15). The stock of such a business corporation may be owned by other legal entities, such as business corporations, limited liability companies and partnerships.

- ii) In the case of a business corporation seeking to establish a facility that provides only end stage renal dialysis services under Public Health Law §2801-a(15), all individual stockholders with an ownership interest of 10 percent or more must submit Schedule 2A, and all legal entities that have an ownership interest of 10 percent or more (direct or indirect) in the proposed operator must ensure that their officers, directors, members, managers or partners, as appropriate, submit Schedule 2A.
- c. Limited Liability Companies – Each member and manager.
  - i) If a member is a corporation, partnership or limited liability company, also complete Schedule 2A for each shareholder, director, officer, partner, manager, and member of the member entity.
  - ii) Please note that any shareholder, director, officer, partner, manager, or member of the member entity must be a natural person. N.Y. Public Health Law §2801-a(4)(e).
- d. Partnerships – Each partner.
  - i) Please note: Each partner must be a natural person.

2) Article 36 Agencies:

- a. Not-for-Profit Corporations – Each member, officer, and director.
  - i) If a member is a corporation, partnership, or limited liability company, also complete Schedule 2A for each member, director, officer, manager, or partner of the member.
- b. Business Corporations – Each shareholder with an interest of 10 percent or more and each director and officer.
  - i) If a shareholder is a corporation, also complete Schedule 2A for each shareholder owning 10 percent or more of the issued stock of the shareholder corporation, and each director and officer of the shareholder corporation.
  - ii) If a shareholder is a limited liability company or partnership, also complete Schedule 2A for each member, manager and partner of the shareholder.
- c. Limited Liability Company – Each member and manager.
  - i) If a member is a corporation, also complete Schedule 2A for each shareholder owning 10 percent or more of the issued stock of the member, and each director and officer of the member.
  - ii) If a member is a partnership or limited liability company, also complete Schedule 2A for each member, manager, and partner of the member.
- d. Trustees – Each individual trustee.
  - i) If a trustee is a business corporation, also complete Schedule 2A for each shareholder owning 10 percent or more of the issued stock of the trustee, and each director and officer of the trustee.

- ii) If a Trustee of a Trust is a not-for-profit corporation, also complete Schedule 2A for each member, officer, and director of the trustee.
- iii) If a trustee is a limited liability company or partnership, also complete Schedule 2A for each member, manager, and partner of the trustee.

D. Submit Schedule 2B for:

- 1) Members, directors and officers of not-for-profits who will contribute capital to the project.
- 2) Members and managers of limited liability companies;
- 3) Stockholders, directors and officers of business corporations; but for Article 36 applications, only stockholders with an interest of 10 percent or more; and
- 4) All partners in a general or limited liability partnership.

E. Submit Schedule 2C for:

- 1) Directors of not-for-profit corporations who will not contribute capital to the project.

F. Submit documentation of requests for out-of state reviews for any proposed operator who owns/operates facilities/agencies outside of New York State.

G. Submit required organizational documents for the proposed operator, each controlling person, immediate, intermediary, ultimate parent or member entity. Also submit all amendments, modifications or restatements to documents. Required organizational documents include:

- 1) Corporations: Certificate of Incorporation and Bylaws
- 2) LLCs: Articles of Organization and Operating Agreement
- 3) Partnerships: Partnership Agreement
- 4) All applicants - Certificate of Assumed Name (if applicable)

H. Special Requirements For Diagnostic & Treatment Centers (D&TCs):

- 1) If the proposed ownership of a diagnostic and treatment center does not include a physician, submit a completed Schedule 2A for the proposed medical director.
- 2) Submit a list of physicians who have expressed an interest in practicing at the Center which reflects each physician's specialty, board certification status, as well as a list of the names of the acute care facilities where each physician has admitting privileges.
- 3) Describe how the corporation/LLC anticipates securing input to ensure it is meeting community needs.
- 4) Identify any other entities operating at the proposed location. Please explain physical set up of each in relation to the proposed facility.

## V. Architectural Review

The architecture and engineering (A/E) review ensures compliance with Title 10, Chapter V, Article 2 (Parts 710-717) of the Official Compilation of the Rules and Regulations of the State of New York. General guidance concerning architectural and engineering submissions is set forth below:

### A. **LIMITED REVIEWS** [10 NYCRR 710.1(c)(5), and 710.1(c)(6)]

- 1) Until further notification, Bureau of Architecture and Engineering Facility Planning will process all non-clinical limited review applications and certain minor construction projects in accordance with 10 NYCRR 710.1(c)(5)(iii), based on a written certification by an architect or engineer licensed by the State of New York that the project complies with Parts 711 through 717 (as applicable) of 10 NYCRR.
  - a. The certification must be made available for review at the next on-site survey conducted by the Department in accordance with Article 28 of the Public Health Law and 10 NYCRR.
  - b. The costs of any subsequent corrections necessary to achieve compliance with the requirements of Part 711 through 717 (as applicable) of 10 NYCRR, when the prior work was not completed properly and was not accurately certified, will not be considered allowable costs for reimbursement under Part 86 of 10 NYCRR.
- 2) All Limited Review requests proposing capital construction or a relocation without construction shall include:
  - a. Architect/Engineer Letter of Certification as described above. (link to sample)
  - b. Architectural Narrative: Identify the major program elements and how they will be accommodated within the building design.
  - c. Physicist's Letter of Certification concerning shielding, if ionizing radiation is involved.
  - d. Architect/Engineer Letter of Certification for MRI Installations concerning shielding, if MRI is involved.
  - e. Schematic Drawings that indicate scope of work and project location.

### B. **ADMINISTRATIVE and FULL REVIEWS** (10 NYCRR 710.1(c)(3), 710.1(c)(2))

- 1) **Changes in Ownership:** Where the project involves only a change of ownership in an existing certified facility, and no construction or relocation is proposed, no architectural information is required.
- 2) **New Occupancy or New Construction:** Where the project involves a new Article 28 occupancy in an existing building, or new construction or renovation, an Architect/Engineer Letter of Certification that the project will comply with Parts 711 through 718 (as applicable) of 10 NYCRR.
- 3) **Schedule 6 - Functional Program** (10 NYCRR 711.1(b)): This is the critical basis for the proposed design and scope of the project and includes:
  - a. Purpose of the project;
  - b. Space requirements;

- c. Projected demand or utilization;
  - d. Staffing patterns;
  - e. A description of each function or service and the operational space required for each;
  - f. Number of staff or other occupants for each space;
  - g. Numbers, types and areas (in net square feet) of all spaces;
  - h. Special design features;
  - i. Systems of operation;
  - j. Interrelationships between spaces and functions.
- 4) **Schedule 6 - Detailed Architectural Narrative.** Please provide a written narrative without tables or charts as follows:
- a. Introduction (purpose/need)
    - i) Identify the applicant/facility name, intent of request, (i.e., "Facility/applicant is requesting approval for. . .")
    - ii) Location (*street address, including city, county*)
    - iii) Purpose (*describe the need for and purpose of the project*).
  - b. Existing Program Inventory-briefly describe existing general facility program (e.g., 200 bed general hospital/cardiac specialty, 10 OR Ambulatory Surgery/Endoscopy).
  - c. Program Inventory at Project Completion – (e.g., Upon completion of this project the total bed capacity will increase from 200 to 250 beds; or Upon completion the existing Ambulatory Surgery facility will increase from 10 OR's to 20 OR's.)
  - d. Existing Building Inventory – number of existing stories, number of proposed stories and floor location for specific project program. (e.g., The project will consist of renovation to the existing 3rd and 4th floors of the 10-story hospital.)
  - e. Building Inventory at Project Completion, including the number of proposed stories and floor location for each program component of the project.
  - f. Project Description
    - i) Describe program areas including total square footage of new construction and/or renovation- (e.g., This project will consist of new construction and/or renovation consisting of a total of 5,000 SF to include a lobby, waiting room, reception area, public toilets, 6 exam rooms, 2 administrative offices, soiled workroom, nurse station)
    - ii) Please describe the proposed program areas for each floor level.
    - iii) For renovation projects please describe the existing use of areas to be renovated and where those programs will be relocated.
    - iv) For renovation and new construction projects, please indicate total square footages for both renovation and new construction per floor.

- g. For nursing home replacement applications, provide a detailed justification for replacement, including a list of problems in the following format:
  - i) Code deficiencies (Life Safety Code, Building Code of New York State)
  - ii) Functional regulatory deficiencies (State Hospital Code)
  - iii) Infrastructure deficiencies
  - iv) Other (e.g., cosmetic changes)
- 5) **Schedule 6 - Schematic Drawings.** Drawings must include:
  - a. Site plan that indicates access to the facility by people with disabilities, availability of accessible parking, and location of adjacent roadways.
  - b. Floor plans (1/16" minimum scale, do not reduce) that identify 2 means of egress to NFPA compliant exits (include ground floor plan if necessary confirming exit discharge), path of travel for patients and staff, and location of fire and/or smoke partitions.
- 6) **Physicist's Letter of Certification** for proposed construction, if ionizing radiation is involved.
- 7) **Architect's/Engineer's Letter of Certification for MRI Installations** concerning magnetic and radiofrequency shielding.

**C. Cost Control - Schedules 8, 10 and 11:** For projects involving capital costs, please submit the following:

- 1) A completed:
  - a. Schedule 8A/B allocating project costs on their appropriate lines.
  - b. Schedule 10 - Space & Construction Cost Distribution
  - c. Schedule 11 - Moveable Equipment
- 2) **Schedule 8A – Cost Summary** - The actual projected construction dates should be entered in the appropriate spaces on Schedule 8A.
- 3) **Schedule 8B –Total Project Costs:** Use the table on this schedule to show a breakdown of the costs of the proposed project. All costs on this schedule are to be based on reasonably attainable constructions dates
  - a. **Column A:** Enter the present cost of each item in column (A). This is the cost as if construction was to start as of the date of filing the application.
  - b. **Column B:** Enter the increase in cost that you estimate will occur by the midpoint of the construction period in column (B), and enter in the heading of column (B) the percentage that you use to calculate this figure. If the construction period is less than one year it is not necessary to complete column (B).
  - c. **Column C:** Enter the sum of column (A) and (B) in column (C).
  - d. **Land and Building Costs (Lines 1.1 and 1.2) -**
  - e. **Construction and Renovation (Lines 2.1 and 2.2) -** Costs in column A of line 2.1 and 2.2 should match total costs shown on Schedule 10 Column H.
  - f. **Site Development (Line 2.3)**
    - i) Provide detailed estimates.

- ii) Examples of work included on this line include but are not limited to: site clearing, demolition, grading, excavating, water, sewer, storm drainage, concrete curbs and sidewalks, asphalt paving, retaining walls, brick pavers, hydro-seeding, erosion control.
  - g. **Temporary Utilities (Line 2.4)**
    - i) Provide details and estimates.
    - ii) Examples include temporary electricity, temporary heat, temporary water.
  - h. **Asbestos Abatement (Line 2.5 )** - Provide copies of the asbestos survey and cost estimates.
  - i. **Design Contingency (Line 3.1)**
    - i) No more than 10% of lines 2.1 and 2.2 will be allowed.
    - ii) The design contingency is to be used only to refine the design between the time the CON is submitted and the construction is begun.
  - j. **Construction Contingency (Line 3.2)** - No more than 5% of line 2.1 (new work) and 10% of line 2.2 (renovation and demolition) will be allowed.
  - k. **Fixed equipment (NIC) (Line 4.1)**
    - i) Provide a detailed list of fixed equipment not included in the construction lines (2.1 and 2.2).
    - ii) Fixed equipment is generally defined as large equipment that requires attachment or installation to the building structure.
  - l. **Planning Consultant fees (Line 4.2 )** - Provide a breakdown of costs and description of services provided.
  - m. **Architect/Engineering Fees (Line 4.3)** - Provide a breakdown of costs and description of services provided.
  - n. **Construction Manager Fees (Line 4.4)** - Provide a breakdown of costs and a description of services provided.
  - o. **Other Fees (Consultant, etc.) (Line 4.5)** - Provide a breakdown of costs and a description of services provided.
  - p. **Movable Equipment (from Schedule 11) (Line 5.1)** - A detailed Schedule 11 must be included. Moveable equipment is generally defined as equipment capable of being easily moved from one site to another.
  - q. **Telecommunications (Line 5.2)** - Provide a breakdown of costs and a description of services provided.
- 4) **Schedule 10 - Space & Construction Cost Distribution:** A detailed Schedule 10, broken down by building, floor and functional code, is required for all projects involving construction. New construction and renovation must be entered on separate schedules.
- a. **New Construction/Renovation:** Check the appropriate box at the top of the form to identify the reporting of new construction or alteration construction. If both types are involved, complete a separate schedule

for each type. Submit a separate report for each major structure and/or wing to be constructed or renovated.

- b. **Total Construction Costs (Column H):** Enter the costs as of the date of filing the application. These costs must be carried over to Schedule 8B Column (A): either on line 2.1 "New Construction" or line 2.2 "Renovation and Demolition."
- c. **Space Description (Columns A through F):**
  - i) Enter the building number in column (A) and the floor number in column (B).
  - ii) Please ignore column (C); it is no longer in use.
  - iii) Use Appendix A to complete column (D) – Functional Code. This appendix lists the functional codes for space distribution. Any functional codes not listed in the appendix should be entered as code 900 OTHER in column (D).
  - iv) Column E should be entered automatically based on the code selected from Appendix A.
  - v) Enter the functional gross square feet in column (F) for each functional code in column (D). Enter an asterisk (\*) in column (F), when reporting building systems work which is necessitated by work in a functional area and located outside this functional area. List the building systems work on the next line directly following the program area which requires the building systems work.
- d. **Cost Estimate (Column G):** The cost estimate in column (G) should be in first quarter dollars of the year the application is submitted.
- e. **Total Construction Cost (Column H)**
  - i) Multiply column (F) (Functional Gross SF) by Column (G) (Construction Cost/SF) and enter the product in column (H).
  - ii) Columns (F) and (G) should be subtotaled for each building. A sum of the subtotals should be shown at the end of the report in the row entitled "Totals for Whole Project."
  - iii) Complete column (I) for alteration construction projects only. For each functional category listed, enter one of the following types of alterations:
    - (A) Minor Alterations — Use of existing partitions, minor mechanical work.
    - (B) Medium Alterations — Some new partitions, half new mechanical work.
    - (C) Major Alterations — Gutting and rebuilding.
- f. **Signature:** This schedule may be completed and signed by the applicant, a representative of the applicant, or by the applicant's architect, engineer or estimator.

5) **Schedule 11 - Moveable Equipment** - A detailed Moveable Equipment Schedule 11 is required for all projects requiring moveable equipment. Schedule 11 should include a breakdown of each type of equipment, their quantities and their associated unit cost.

- a. The total cost for equipment shown on Schedule 11 should correspond with the amount shown on Schedule 8, line 5.1.
- b. Vendor proposals, when available, may be submitted with applications which involve the acquisition of equipment to avoid delay in processing. If proposals are not attached, competitive price quotations must be submitted to the Bureau of Architectural and Engineering Facility Planning prior to the awarding of the contract or start of construction. All prices quoted in the application, in the absence of vendor proposals, must reflect current vendor prices.
- c. In those instances where the facility selects a vendor other than the lowest bidder for the designated equipment, an explanatory letter must accompany the submission of competitive proposals (e.g., where service by one manufacturer for such items as a nurse call system or sterilizers is of importance).
- d. Use Table I to list all proposed new equipment (new equipment includes used and/or reconditioned equipment), grouped by functional area.
- e. Use Table II to list all proposed one-for-one direct replacement of equipment in use. Provide an attachment describing what is being done with the old equipment listed in Table II.
- f. Attach additional Tables if necessary to list all equipment acquisitions.
- g. Enter the functional area associated with the equipment. The functional areas are listed in Appendix A (included with Schedule 10 - Space & Construction Cost Distribution).
- h. In the applicable columns enter the identifying information about the equipment.
- i. Enter either the total lease cost of equipment if the equipment is leased, or the purchase price if the equipment is purchased. If the lease amount is entered, put an "L" in the applicable column. If the purchase price is entered, put a "P" in the applicable column.