

Certification of Need (CON) Application Instructions

BACKGROUND – ALL Administrative & Substantial Review Projects

In accordance with the **Mental Hygiene Law (MHL) §5.07**, OPWDD must develop a comprehensive service delivery system that meets the needs of individuals with developmental disabilities through joint planning efforts with local governmental units (LGU) and local health systems agencies (HSA). In turn, these LGUs and HSAs are given the opportunity to review operational planning documents developed by OPWDD, and to make recommendations.

Further, in accordance with **MHL §16.09**, an agency must get approval from the Commissioner of OPWDD before commencing construction of any public or private facility which requires an operating certificate (OC), including new construction, alteration, reconstruction, improvement, extension or modification of a facility.

The Certification of Need (CON) process requires an individual, association, corporation, public or private agency to submit an application to OPWDD for authorization to proceed with projects described in the regulation at **14 NYCRR 620**.

Prior to formal submission of a CON application, and as early as possible, the provider must consult with applicable local authorities, LGUs and the appropriate HSA to ensure that the proposed project is needed and appropriate. If a project should, at the time it moves forward to completion, result in an increase in cost, certified capacity, or change in the class of OC approved at the time of the original CON, it will be necessary to submit an *amended application* for the CON to address the change(s).

BACKGROUND – Issuing operating certificates (OC) for Home & Community-Based (HCBS) Waiver Services and the Nurse Practice Act Exemption

The **Nurse Practice Act Exemption Clause** for OPWDD was enacted by **Chapter 58 of the Laws of 2014** which now allows for the delegation of certain nursing tasks to be performed by direct support professionals (*who have been trained using OPWDD-approved curriculum*) during the provision of certain HCBS waiver services in non-certified settings. Previously, the NPA exemption only allowed for the delegation of nursing services in *certified residential facilities*.

The **2015-16 Enacted New York State Budget** includes further changes necessary to fully implement the NPA Exemption Clause throughout OPWDD's service system. Specifically, changes in the MHL will now require OPWDD to issue operating certificates for all services provided under the HCBS waiver. These HCBS waiver services were previously authorized through the issuance of a provider agreement by the NYS Department of Health (DOH).

For the INITIAL CONVERSION process of provider agreements to operating certificates, the CON application form will be submitted by agencies who have already been approved to provide HCBS waiver services by OPWDD as part of the 2014 Waiver Provider Renewal Process. To facilitate this process, the Division of Quality Improvement will provide each agency with their own list of approved waiver services along with the CON application form.

FOLLOWING the initial conversion process, any subsequent action taken with an operating certificate for a waiver service; i.e., either by adding or removing a service or requesting the NPA exemption during the provision of habilitation and respite services, the provider must comply with the Part 620 Certification of Need (CON) requirements found in Title 14 of the New York State Codes, Rules, and Regulations (14 NYCRR).

Certification of Need (CON) Application Instructions

OPWDD has revised the CON application in response to these afore-mentioned changes to facilitate the conversion of provider agreements to operating certificates. The completed CON application will be submitted to the Regional Office (RO) staff. The RO staff will continue to assist in the process, as with all other administrative and substantial review projects.

APPLICABILITY

CONs ensure that all services and program development projects requiring an Operating Certificate from OPWDD are included in the plans of statewide, regional and county authorities.

A CON application is required for:

- I. Administrative Review Projects;**
- II. Substantial Review Projects;**
- III. HCBS Waiver Service Provision;**
- IV. Nurse Practice Act (NPA) Exemption Implementation.**

I. ADMINISTRATIVE REVIEW PROJECTS include:

- **New program development or operation requiring an OC with capital expenditure under \$600,000**, and whose acquisition, construction or capital expenditure for physical plant and/or equipment/assets in support of the program, or a combination thereof is under 600K;
- **Existing program development with capital expenditure under \$600,000 but more than \$30,000** for the acquisition, construction, or capital expenditure for physical plant and/or equipment/assets, or a combination thereof that falls within \$30 –\$600K;
- **Change of ownership/auspice/merger** of a facility, program, or program site whether by purchase, donation, merger or otherwise;
- **Change in certified capacity** of an existing program;
- **Relocation/Construction/Renovation** of an existing program or part thereof which involves acquisition of property and/or renovation or reconstruction by purchase *costing less than \$600,000*; or which involves acquisition of property and/or renovation or reconstruction by other means which, if acquired by purchase, would have *cost less than \$600,000*;
- **Expansion/Reduction** of specific services currently offered;
- **Certificate of Incorporation**, the certificate of which requires Commissioner approval;
- **Amendment of a Certificate of Incorporation** of an *existing* corporation extending its powers of purpose to enable it to operate a new program or facility, as well as one which does not add or delete the power to provide services for persons who are developmentally disabled;
- **Conversion** of a program from one class and/or type of facility to another; e.g., ICF to IRA;

II. SUBSTANTIAL REVIEW PROJECTS include:

- **Property acquisition costing \$600,000 or more**, including costs of any renovation or reconstruction; or by other means which, if acquired by purchases, costing \$600K or more;
- **Construction or capital expenditure costing \$600,000 or more**, regardless of whether it allows for any change in service or certified capacity; and
- When an original CON is issued as an Administrative Review Project however, prior to the issuance of the OC, the following changes to the project occur:
 - ✓ The costs increases to \$600,000, or more;
 - ✓ The certified capacity increases by 10% or 5 persons (whichever is greater); OR
 - ✓ The proposed program class changes,

THEN, a revised CON must be submitted as a Substantial Review Project; unless all involved planning bodies concur that the project should proceed and agree to waive the substantial review process.

Certification of Need (CON) Application Instructions

III. HOME & COMMUNITY BASED WAIVER SERVICES include:

- Community Habilitation*
- Day Habilitation*
- Prevocational Services*
- Pathway to Employment*
- Supported Employment*
- Respite*
- Residential Habilitation
- Assistive Technology
- Environmental Modification
- Plan of Care Support Services (PCSS)
- Family Education & Training
- Fiscal Intermediary (FI)/Broker *includes: Individual Directed Goods and Services (IDGS), Community Transition Services (CTS), Live in Caregiver, and Broker Services*
- Intensive Behavioral Services (IBS)

***NOTE:** The above (*) HCBS waiver services are those to which the NPA exemption applies: Community Habilitation, Day Habilitation, Community Prevocational Services, Pathway to Employment, Supported Employment, and Respite.

IV. NURSE PRACTICE ACT EXEMPTION

As indicated above, the NPA exemption allows for the delegation of certain nursing tasks to be performed by direct support professionals (*who have been trained using OPWDD-approved curriculum*) during the provision of Home and Community-based habilitation and respite waiver services to individuals living in their own private homes and in other community settings not certified by OPWDD. Previously, the NPA exemption only allowed for the delegation and provision of nursing services to individuals living in *certified residential facilities*.

The CON process **does not** apply to the following:

- **Campus-based ICF/IDD programs** - those listed in **MHL §13.17**;
- **Family Care Homes**;
- **Any program/service that does NOT require an operating certificate.**

INSTRUCTIONS FOR COMPLETING THE CON APPLICATION FORM

Please provide information as indicated in the form and be sure to complete all fields; an incomplete submission may cause undue delay in the process.

NOTE: The form cannot be saved to your desktop unless it is opened with Adobe Acrobat X Pro. If you are using Adobe Reader X, be sure to have all information needed when filling out the form before printing because it will not save entered information.

I. General Information

1. Enter provider legal name as it appears on incorporation papers;
2. Enter provider administrative office;
3. Enter the name of the Board President or Executive Director;
4. Enter address of proposed program; if applicable. Indicate “**N/A**”, if requesting that an operating certificate be issued for an HCBS waiver service (s) or the NPA exemption be applied in the provision of community and day habilitation and respite services;

Certification of Need (CON) Application Instructions

5. Enter operating certificate number and the OC's expiration date; if the proposed program is new, indicate that the OC is "*pending*";
6. Enter name of contact person, including email address and 10 digit phone number;
7. Indicate state or not-for-profit status;
8. Check the appropriate box for all applicable actions to be taken. Indicate projected opening date. The number of CON applications that must be submitted will depend on the actions needed to change an existing operating certificate. **ONLY ONE CON application** will be required for the following actions, unless otherwise specified (including but not limited to):
 - a. **Opening a new program**; If the new program is brand new construction (from the ground up), indicate "New Site" in question #11.
 - b. **Relocating a program** from one site to another;
 - c. **Converting one program class to another program**; i.e., ICF TO IRA;
 - d. **Converting a group of programs** within a class to another program class; i.e., 5 ICF's TO 5 IRA's. **EXCEPTION**: One CON application can be completed for the 5 conversions unless the request also involves a change to one (or more) of the 5 programs, i.e., in addition to the conversion, one of the 5 ICFs involves a decrease in capacity. In this instance, a separate CON must be completed for the one program looking to convert and change its capacity and another CON application can be submitted for those other 4 programs involving straight conversions. Please provide the address and operating certificate for each of the programs for which a CON application is being submitted. If additional space is needed, indicate "see attached" and enclose a listing of the referenced sites with the CON application. **Please contact your Regional Office CON Liaison with any questions regarding the number of CONs that need to be submitted.**
 - e. **Change of Capacity**: Increase*/Decrease capacity;
***NOTE**: *When there is a proposed capacity increase in an existing home serving Willowbrook class members, the Willowbrook attorneys must approve the increase in accordance with the Willowbrook Injunction. Any state or voluntary provider seeking to increase the capacity of an OPWDD certified home must submit a request for Expansion of Community and Qualifying Facilities. The guidance for doing so may be found on OPWDD's website at <http://www.opwdd.ny.gov/node/1097>. As indicated in the memo, this also includes any requests to change the status of a temporary use bed (TUBS) to a regular, fully certified bed. Questions related to this and other Willowbrook requirements should be sent to OPWDD's Willowbrook Liaison, Lori Lehmkuhl at Lori.Lehmkuhl@opwdd.ny.gov.*
 - f. **Adding/Removing HCBS waiver services**;
 - g. **NPA**: Requesting the NPA exemptions during the provision of habilitation as well as respite services to individuals living in their own, private homes and other community settings not certified by OPWDD;
 - h. **Closing a program**;
 - i. **Merging** one program with another;
 - j. **Any new construction or renovation**;
 - k. **Multiple actions affecting one program site** (one OC); i.e., IRA relocation and increase in capacity;
9. **The full listing of waiver services can be found on page 5 of the application. Also, page 5 should be used to request the NPA exemption during the provision of habilitation services and respite services.**

Check the appropriate box that indicates program class or waiver service that will be effected by the action taken. ☞ ***DAY HABILITATION-** Please note that if the service of day habilitation is being provided at a program site, a CON is required for the day habilitation site itself *as well as the service*. Therefore, each program site will have its own OC number associated with it in addition to an OC for the waiver day services. Indicate effective date(s) of those waiver services and NPA exemption(s) requested in the space provided.

Certification of Need (CON) Application Instructions

For **questions 10-13** check the appropriate box (es) as indicated below; if “other” is indicated in any of the boxes, provide details in **Section II. Proposed Program Information** under **3.b.** as part of the narrative.

10. Check the appropriate box that indicates whether the property will be purchased, rented or other. Indicate “N/A – No property involved” if this CON application is intended for HCBS waiver services or an NPA exemption request.
11. Check the appropriate box if the program involves construction of a new site, renovations to an existing/acquired site, and/or the cost exceeds \$30, 000. If there is no construction or renovation involved in the site, check the box for “not applicable”.
12. Check the appropriate box (es) indicating all anticipated sources of **capital** funding for the program, if applicable.
13. Check the appropriated box (es) indicating all anticipated sources of **operational** funding for the program, if applicable.

II. Proposed Program Information

1. Check all that apply indicating qualifying diagnosis of individuals to be served; check “All OPWDD Qualifying Diagnosis” if applying for HCBS waiver services and/or NPA exemption;
2. Enter information requested in the text box provided; indicate number of individuals by location of current residence;
3. Enter information requested in the text box provided; if needed attach a narrative to the application labeled: “**II. Proposed Program Information 3**”.

III. Integration with Related Resources

Enter the types of facilities and services projected to be used by the program; check all that apply.

IV. Statement of Need

1. Enter yes/no if over \$600,000 or N/A if not applicable;
2. Enter yes/no if contact has been made with the local government unit (LGU)*;
**If no, provider must contact LGU for DDRO to process application;*

V. Service Information

1. Enter number of years applicant has been in operation and/or has been providing services to individuals with DD/IDD;
2. Check appropriate box(s) to indicate which programs and/or services the applicant currently operates and provides to the DD/IDD population; check all that apply;
3. Enter services or programs, other than those listed in **Section V. 2.**

VI. Income /Expenses

Anticipated Operating Income

- a. Fees (Billing): Enter projected income generated from fees billed as it relates to this program;
- b. Medicaid: Enter projected income generated from Medicaid billing (agency rate);
- c. SSI: Enter projected income from individual’s SSI;
- d-f. Enter projected income as applicable;
- g. Enter any other projected income and specify the source as applicable.

Anticipated Operating Expenses

- a-d. List all projected operating expenses as they relate to the proposed program;
- e. Other expenses: List any other projected operating expenses.

***NOTE:** *Applicant must ensure that income is equal to expenses. If amounts are different, include explanation.*

VII. Financial Statements

Attach the last 2 years of CPA audited financial statements if not on file with the DDRO.

Certification of Need (CON) Application Instructions

VIII. Proposed Construction

Provide a narrative in the space provided of any construction to be performed. Include a summary of scope of work, a preliminary estimate of construction time schedule, an estimate of the cost of construction, including the source of funding.

IX. Incorporation Information

1. If incorporation papers are not on file with DDRO, please attach to the application;
2. Indicate yes/no if corporation is limited to a geographical area. If yes, indicate the areas in the space provided;
3. If the current certificate of incorporation does not cover proposed services, then the certificate must be amended before approval is granted to provide proposed service(s).
See the Department of State website at <http://www.dos.ny.gov/corps/nfpcorp.html> for more information.
 - a. Indicate the number of years the agency has been incorporated. Date first incorporated?
 - b. Indicate location/address.
 - c. Indicate the purpose for which the agency was initially incorporated.
4. Indicate yes/no whether roster of Board of Directors are on file with OPWDD;
5. If no, attach a list of the current Board members and their addresses to the application.

X. Statement of Understanding

After reviewing the statements listed in 1-6, both the Executive Director and Board Director of the non-for-profit agency must sign the document in the space provided indicating concurrence with all items listed. For state-operated programs, the Director (or designee) will sign.

SUBMITTING THE FORM to the REGIONAL OFFICES CON eMAIL ADDRESSES

When completed, print the application form, sign and submit electronically to the following email addresses for each of the following Regional Offices mailboxes where your program site is located:

REGION 1:

- con.application.region1.finger.lakes@opwdd.ny.gov
- con.application.region1.western.ny@opwdd.ny.gov

REGION 2:

- con.application.region2.sunmount@opwdd.ny.gov
- con.application.region2.central.ny@opwdd.ny.gov
- con.application.region2.broome@opwdd.ny.gov

REGION 3:

- con.application.region3.capital.district@opwdd.ny.gov
- con.application.region3.taconic@opwdd.ny.gov
- con.application.region3.hudson.valley@opwdd.ny.gov

REGION 4: con.application.region4.nyc@opwdd.ny.gov

REGION 5: con.application.region5.long.island@opwdd.ny.gov

 MAILBOX ADDRESS for **ARTICLE 16 CLINICS**

NOTE: When transmitting CON applications for Article 16 Clinics, please submit to OPWDD's Clinic Services mailbox: clinic.services.information@opwdd.ny.gov

Certification of Need (CON) Application Instructions

APPLICATION NUMBER: CON NAMING CONVENTION *(For OPWDD use only)*

The following provides DDRO development staff with instructions on assigning an application number to the CON form:

1. When an application comes into the DDRO, date stamp the form or manually write in the date. That date becomes part of the application number and is entered into the application number box on the top of the CON form by DDRO staff.
2. The application is numbered using a four part naming convention.
3. Each part of the convention is separated by a **hyphen (-)**.
4. The first part is a 2 or 3 letter code based on the program type with the following codes:
 - **IRA** – Individual Residential Alternative
 - **ICF** – Intermediate Care Facility
 - **CR** – Community Residence
 - **DH** – Day Habilitation
 - **DTM** – Day Treatment Program
 - **DTG** – Day Training Program
 - **SHW** – Sheltered Workshop
 - **CL** – Clinic
5. The second part of the convention uses the date the CON is received using the following format: **“MMDDYY”**; i.e., **2 digit month, 2 digit day and 2 digit year**.
6. A hyphen is added at the end of the MMDDYY date and the **number one (1)** is assigned to the first application to arrive that day. If two or more applications of any type arrive on the same day, the convention is to give each a number in the sequence/order in which it arrives; i.e., the first one is **MMDDYY-1**, the second one **MMDDYY -2**, the third **MMDDYY-3**, etc., until all the applications received that day have a discrete identifier.
7. Each DDRO will add its own location code at the end of the date as follows:
 - Broome – **BR**
 - Capital – **CA**
 - Central New York- **CE**
 - Finger Lakes – **FL**
 - Hudson Valley – **HV**
 - Long Island – **LI**
 - New York City - Bronx - **BX**
 - New York City - Brooklyn - **BR**
 - New York City – Staten Island - **SI**
 - New York City - Manhattan – **MA**
 - New York City – Queens - **QN**
 - Taconic – **TA**
 - Sunmount - **SM**
 - Western New York - **WS**

EXAMPLES:

- ❖ A Day Habilitation application arrives on January 8, 2014 at Hudson Valley, using the above conventions, the application number would be assigned as follows: **DH-010814-1-HV**
- ❖ Two applications arrive at Western NY on November 25, 2014. The first one is for an IRA and the second one is for a Day Hab. The application numbers become:
 - **IRA-112514-1-WS**
 - **DH-112514-2-WS**
- ❖ Three applications arrive at Sunmount on June 27, 2014. The first two are for IRAs and the last is for a Day Hab. The application numbers become:
 - **IRA-062714-1-SM**
 - **IRA-062714-2-SM**
 - **DH-062714-3-SM**