

Title 15: Mississippi State Department of Health
Part 3: Bureau of Acute Care Systems
Subpart 5: ICU Infrastructure Program

Chapter 1 ICU Infrastructure Program

Subchapter 1 General

Legal Authority: In Section 3 of Senate Bill 3055, 2020 Regular Legislative Session (the “Mississippi ICU Infrastructure Act”), the Mississippi Legislature designated the Mississippi State Department of Health (“MSDH”) in response to the COVID-19 pandemic, to establish and administer the ICU Infrastructure Program for the purpose of providing funds to hospitals to increase treatment capacity related to the COVID-19 pandemic, including adding intensive care units, isolation rooms or negative pressure rooms, and related construction and facilitation costs, but not to include any administrative expenses or costs or any staffing expenses or costs. Section 4(1)(a) of Senate Bill 3055, 2020 Regular Legislative Session authorizes MSDH to promulgate rules and regulations to govern the program, thus authorizing MSDH to develop procedures, and forms to govern the administration of the program.

Source: Senate Bill 3055, 2020 Regular Legislative Session

Emergency Rule Making Authority: COVID-19 is a global pandemic that has reached the State of Mississippi, causing a major impact on the public health, safety, and welfare on the citizens of the state, placing them in imminent peril, including with regard to their economic security and wellbeing. Funding for the program is provided from the State of Mississippi’s allocation of \$1.25 billion from the “Coronavirus Relief Fund” (Title VI, Sec. 601) of the “Coronavirus Aid, Relief, and Economic Security Act” (H.R. 748), signed into law by President Donald J. Trump on March 27, 2020. Mississippi’s allocation is available until December 30, 2020, thus requiring funds to be expended within a limited time period. Through Senate Bill 3055, 2020 Regular Session, and the “Mississippi ICU Infrastructure Act” funding is available for this comprehensive program until December 15, 2020. In accordance with Miss. Code Ann. §§ 25-43-3.108 and 25-43-1.104 (Rev. 2006) of the “Mississippi Administrative Procedures Act” and the rules enacted by the Mississippi Secretary of State’s Office, MSDH hereby gives notice of the immediate adoption of these Program Rules due to “an imminent peril to the public health, safety or welfare” and pursuant to the authority found in State of Emergency COVID-19” Proclamation issued by Governor Tate Reeves on March 14, 2020. These Rules and Regulations shall become effective immediately upon filing with the Secretary of State's Office.

Source: Senate Bill 3055, 2020 Regular Legislative Session: Miss. Code Ann. §§ 25-43-3.108 and 25-43-1.104 (Rev. 2006).

Rule 1.1.1 Program Objectives and Purposes

Pursuant to the Mississippi ICU Infrastructure Act, MSDH hereby creates the “ICU Infrastructure Program,” which is designed to provide funds to hospitals to increase treatment capacity related to the COVID-19 pandemic, including adding intensive care units, isolation

rooms or negative pressure rooms, and related construction and facilitation costs, but not to include any administrative expenses or costs or any staffing expenses or costs.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.2. Definitions

- a. “BACS” means the Bureau of Acute Care Systems, Mississippi State Department of Health
- b. “Certificate of Need Laws” means the provisions of Mississippi Code Sections, 41-7-171, et.seq., 41-7-193(1), and 47-7-197
- c. “Coronavirus or COVID-19” means the Coronavirus Disease 2019.
- d. “COVID-19 System of Care Plan” means a formally organized plan developed by the Department and approved by the State Board of Health, which outlines the statewide COVID-19 system. The Plan provides for a system, which is efficient and inclusive, matching appropriate resources to the needs of COVID-19 patients from initial infection detection through convalescence.
- e. “Department, the Department, or MSDH” means the Mississippi State Department of Health, as established by Miss. Code Ann. §§43-3-1, *et seq.* (Rev. 2006).
- f. “Designation” means a formal recognition of hospitals by the Department as providers of specialized trauma services to meet the needs of the severely injured patient.
- g. “Eligible Expenses” means a cost incurred by a Recipient beginning on March 1, 2020, and ending on December 15, 2020, for adding intensive care units, isolation rooms or negative pressure rooms, and Related Construction and Facilitation Costs, but not to include any administrative expenses or costs or any staffing expenses or costs.
- h. “Eligible Recipient” means a licensed hospital in the state of Mississippi currently participating or that will attest to the intent to participate in the COVID-19 System of Care Plan, prior to receipt of funds, and will have the proper facilities, staffing and equipment to provide ventilatory support for ICU COVID-19 patients are Eligible Recipients for the program. No other entities will be considered by the Department. Eligible Recipients must have a current license issued by HFLC and COVID-19 Self-Designation Application on file with BACS
- i. “HFLC” means the Bureau of Health Facilities Licensure and Certification, Mississippi State Department of Health.
- j. “Intensive Care Unit (ICU)” means an organized system for the provision of care to critically ill patients that provides intensive and specialized medical and nursing care, an enhanced capacity for monitoring, and multiple modalities of physiologic organ support to sustain life during a period of life-threatening organ system insufficiency. Under this program, an ICU must be able to provide ventilatory support of a COVID-19 patient.

- k. "Isolation Rooms" means rooms used to isolate persons with suspected or confirmed COVID-19. Environmental factors are controlled to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids.
- l. "ICU Infrastructure Act" means Senate Bill 3055, 2020 Regular Legislative Session.
- m. "Negative Pressure Rooms" means patient-care room used to isolate persons with suspected or confirmed COVID-19 disease that should provide negative pressure in the room (so that air flows under the door gap into the room); *and* an air flow rate of 6-12 Air Changes per Hour (ACH) (6 ACH for existing structures, 12 ACH for new construction or renovation); *and* direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.
- n. "Level III Trauma Centers" means hospitals that have met the requirements for Level III as stated in - Title 15: Mississippi Department of Health, Part 3: Bureau of Acute Care Systems, Subpart 1: Trauma System of Care, Chapter 5 and are Designated by the Department.
- o. "Level IV Trauma Centers" means hospitals that have met the requirements for Level IV as stated in - Title 15: Mississippi Department of Health, Part 3: Bureau of Acute Care Systems, Subpart 1: Trauma System of Care, Chapter 6 and are Designated by the Department.
- p. "Program" means the "ICU Infrastructure Program," which was established by the Mississippi ICU Infrastructure Act.
- q. "Program Attestation and Sub-Grant Agreement" means the instruments sent by the Department to Eligible Recipients for certification of program requirements and binds the Eligible Recipient to all terms and conditions of the Program prior to release of funds.
- r. "Program Report" means the form that each Eligible Recipient must complete and submit electronically to the Department, along with required supporting documentation for Eligible Expenses, including, but not limited to, invoices, purchase orders, or receipts.
- s. "Project Proposal" means the instrument by which an Eligible Recipient indicates its desire to participate in the Program and provides essential information from the Eligible Recipient for participation in the Program.
- t. "Related Construction and Facilitation Costs" means allowable construction and facilitation costs for intensive care units, negative pressure rooms, or isolation rooms, Related Medical Equipment and any needed HVAC system alterations to accommodate the negative pressure, isolation rooms and intensive care units.
- u. "Related Medical Equipment" means approved medical equipment for the management of COVID-19 patients in intensive care units, negative pressure rooms, or isolation rooms. All equipment must be approved by or under an EUA by the FDA for use in a hospital intensive care unit, negative pressure rooms, or isolation rooms.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.3 COVID-19 System of Care Plan Participation Requirement

Eligible Recipients participating in this Program will be required to maintain participation in the COVID-19 System of Care Plan for the remainder of the COVID-19 Pandemic state of emergency.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.4 Project Proposals

A. Requests for participation in the Program are made through Project Proposals and all Eligible Recipients will be required to execute a sub-grant agreement with the Department.

B. Project Proposals from Eligible Recipients must be received by the Department electronically or by courier on or before 5:00 p.m., on October 19, 2020, for first round consideration.

1. Electronic submissions to ICUprogram@msdh.ms.gov

2. Courier delivery to:

ICU Infrastructure Program

ATTN: Ashley Green

Mississippi State Department of Health

570 East Woodrow Wilson Avenue

Jackson, Mississippi 39216

C. The Project Proposal provided by the Eligible Recipient shall contain the following information to indicate how the Project will increase treatment capacity related to the COVID-19 pandemic, including adding intensive care units, isolation rooms or negative pressure rooms, and related construction and facilitation costs, related medical equipment and any needed HVAC system alterations for use in intensive care units, isolation rooms or negative pressure rooms, but not to include any administrative expenses or costs or any staffing expenses or costs:

1. The name of the Eligible Recipient
2. The Eligible Recipient's mailing address
3. The physical address of the facility where the Eligible Recipient intends to add intensive care unit(s), isolation rooms, negative pressure rooms, medical equipment or make any needed HVAC system alterations
4. The Eligible Recipient's primary point of contact for the proposed project to include name, position, phone number and business email address.
5. The Eligible Recipient's Mississippi Hospital License Number
6. A project narrative including a timeline for the project indicating all project activities will be complete before December 15, 2020
7. A facility plan indicating where the project activity will occur
8. Detailed project budget

9. The Eligible Recipient shall certify that there is a need to add intensive care units, isolation rooms, negative pressure room, medical equipment and make any needed HVAC system alterations to increase treatment capacity related to the COVID-19 pandemic
10. The Eligible Recipient shall certify that the facility adding intensive care units, isolation rooms or negative pressure rooms can adequately staff such units or rooms
11. The Eligible Recipient shall certify that related medical equipment or any needed HVAC system alterations are for use in intensive care units, isolation rooms or negative pressure rooms that will care for COVID-19 patients and that the facility has adequate staff to operate and maintain the equipment
12. Other information as may be required by the Department

D. Project proposals submitted after October 19, 2020 may be considered if funding is or becomes available.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.5 Project Proposal Evaluation

- A. The Program will review Project Proposals submitted to the Program on or before 5:00 p.m. on October 19, 2020 and determine prioritization for complete or partial funding of projects based on:
 1. COVID-19 System of Care Plan participation level
 2. Number of increased intensive care unit beds, isolation room beds or negative pressure room beds created per dollar requested
- B. Project proposals submitted after October 19, 2020 will be considered based on the same evaluation criteria, if funding is available.
- C. Project proposals shall not be evaluated based upon or subject to the Certificate of Need Laws.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.6 Proposal Funding

- A. All funds must be used in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act.
- B. All Sub-Grant activities must be completed before December 15, 2020.
- C. No individual hospital shall receive more than twenty-five percent (25%) of the funds appropriated to this program by the Legislature.

- D. Out of the funds appropriated to this program, the Department shall expend twenty percent (20%) or more of such funds for hospitals in Mississippi that are either Designated as a Level III Trauma Center or a Level IV Trauma Center.
- E. The use of funds allocated under this program shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor the Mississippi State Department of Health, or such other federal or state agencies with authority to conduct such reviews.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.7 Return of funds

- A. Any funds provided by the Department under Sub-Grant to an Eligible Recipient that are found to be fully or partially noncompliant with the requirements of the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act, Mississippi ICU Infrastructure Act, or the MSDH ICU Infrastructure Program and the Rules and Regulations the federal CARES Act, or these rules and regulations shall be returned to the state.
- B. All funds provided by the Department under Sub-grant to an Eligible Recipient issued from this program and not expended by an Eligible Recipient by December 10, 2020 will be returned to the department on or before December 15, 2020.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.8 Program Attestation and Sub-Grant Agreement

- A. Prior to release of any Program funds all Eligible Recipient will be required to certify, through a Program Attestation and Sub-Grant Agreement, that it understands and agrees to certain required provisions, including but not limited to, the following statements:
 - 1. The Eligible Recipient understands and agrees to follow and comply with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act;
 - 2. Further, the Eligible Recipient understands and agrees to follow and comply with all provisions of the Program, including but not limited to, the Mississippi ICU Infrastructure Act, and the MSDH ICU Infrastructure Program Rules and Regulations;
 - 3. That, if the Eligible Recipient is found to be fully or partially noncompliant with any Program requirements, the Eligible Recipient agrees to return all or a portion any monies received from the Program, and the Eligible Recipient understands the it, or its legally responsible officials, may be subject to additional civil and criminal penalties;

4. That the Eligible Recipient certifies and acknowledges that by accepting reimbursement for Eligible Expenses under the Program, it may be subject to additional monitoring, oversight, and/or auditing by the U.S. Department of Treasury's Office of the Inspector General, the Mississippi Office of the State Auditor, the Mississippi State Department of Health, or such other federal or state agencies with authority to conduct such reviews;
 5. That the Eligible Recipient certifies that it is adding intensive care units, isolation rooms or negative pressure rooms and can adequately staff such units or rooms;
 6. If applicable, that the Eligible Recipient certifies that related medical equipment is for use in intensive care units, isolation rooms or negative pressure rooms that will care for COVID-19 patients and that the facility has adequate staff to operate and maintain the equipment.
- B. The Program Attestation and Sub-Grant Agreement must be signed under penalty of perjury certifying that all responses and statements are true and correct and are not false, fraudulent, or materially misleading.
- C. All supporting information requested in the Sub-Grant Agreement must be provided. The failure to enter into the Program Attestation and Sub-Grant Agreement and agree to the required certifications and representations will result in the Eligible Recipient being disqualified from the Program.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.9 Reporting Requirements

Upon entering into the Sub-Grant Agreement, Eligible Recipients will be required to submit their Eligible Expenses through the prescribed Program Report form. All Eligible Expenses must be itemized on the form, and the Eligible Recipient must certify that it has not received any other funds from any other source to cover these items. The Program Report forms must be signed under penalty of perjury by the Eligible Recipient or its designated representative with authority to do so. Furthermore, the Eligible Recipient must submit supporting documentation for all Eligible Expenses, including, but not limited to invoices, purchase orders, receipts, bills, charges, or other financial statements. Failure to submit supporting documentation will result in those expenses being denied as ineligible.

Rule 1.1.10 Appeals Process

- A. An Eligible Recipient may appeal any award or disqualification notice received from MSDH by giving written notice within seven (7) calendar days of the date of the MSDH notice of award decision. The appeal must be received by MSDH at the address below by 5:00 p.m. CST of the 7th day. If an appeal is not made within the seven (7) calendar day timeframe, the Eligible Recipient will have waived its right to appeal the decision and the original decision shall be deemed final.

B. Appeals must be written and state with specificity the basis for the Eligible Recipient's disagreement with the decision. Appeals are determined solely on the written record. The appeal must attach copies of all documents, records, papers or other information to support the appeal. In addition, all appeals must be dated and contain the Eligible Recipient's name and the name of any authorized representative.

C. To be considered, the written appeal must be delivered by one of two methods:

By United States Mail to the following address:
Mississippi State Department of Health
ICU Infrastructure Program – Appeals
P.O. Box 1700
Jackson, MS 39215-1700

Or by courier mail or hand delivery to the following:
Mississippi State Department of Health
ICU Infrastructure Program – Appeals
570 East Woodrow Wilson Avenue
Jackson, MS 39216

D. MSDH will review the appeal and all supporting material to determine if the appeal can be resolved based upon the Eligible Recipient's submission and Program requirements. If so, a final written determination of the appeal will be issued by MSDH.

E. If the appeal cannot be resolved after the initial review, MSDH will forward the appeal for review by an Independent Hearing Officer (“IHO”), to be designated by the Attorney General of Mississippi. MSDH will provide to the IHO the Eligible Recipient's file, the appeal and all supporting material provided by the Eligible Recipient on appeal, all program requirements and policies, an MSDH explanation of the case, and MSDH's recommendation (if any). The IHO will review all the written materials and issue a written recommendation to MSDH. MSDH will review and make a final written determination which will be issued by MSDH to the Eligible Recipient within ten (10) days of the receipt of the IHO's decision.

F. All appeal determinations made by MSDH are final with no further administrative review and are not subject to judicial review.

G. An Eligible Recipients may withdraw an appeal at any time by providing written notice to MSDH. Such written notice must be delivered to MSDH at the addresses set forth above.

H. Program requirements established by MSDH as dictated by federal and state law may not be waived or abrogated.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.11 Fraud Referrals

In cases in which fraud is suspected or where false or materially misleading information or documentation has been provided by an Eligible Recipient, a written referral will be made to the Mississippi State Auditor's Office, the Office of the United States Attorney, or other appropriate federal or state agencies. MSDH will cooperate fully in such investigations and provide all information and documentation which it has received or gathered on the Eligible Recipient.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.12 Waiver

The ICU Infrastructure Program Rules may be amended by MSDH at any time and are further subject to amendment pursuant to any change in the federal law providing for the grant funds and the regulations and guidance implemented related thereto. MSDH, in its sole discretion, may temporarily waive any requirement of the Rules to the extent that the result of such waiver promotes the public purpose of the Mississippi ICU Infrastructure Act and is not prohibited by state or federal law.

Source: Senate Bill 3055, Section 4(1)(a), 2020 Regular Legislative Session

Rule 1.1.13 Availability of Funds

This program is contingent upon the availability of funds as appropriated by the Legislature and provided by the Federal government.