**Section 1126.130 Definitions**

"Act" means the Illinois Health Facilities Planning Act [20 ILCS 3960].

"Adverse Action" means a disciplinary action taken by IDPH, federal Centers for Medicare and Medicaid Services (CMMS), or any other State or federal agency against a person or entity that owns and/or operates a licensed or Medicare or Medicaid certified SMHRF in the State of Illinois. These actions include, but are not limited to, a financial penalty, probation, revoked license, restricted license or the inability to be licensed or relicensed  as set forth in SMHRA Section 4-109 and 77 Ill. Adm. Code 380.750.

"Agency" or "IDPH" means the Illinois Department of Public Health.

"Applicant" means one or more persons, as defined in the Act, who apply for a permit or exemption. (See 77 Ill. Adm. Code 1130.220 to determine what parties must jointly apply for an application.)

"Authorized Representative" means a person who has authority to act on behalf of the legal entity or person that is the applicant or permit holder. Authorized representatives are, in the case of a:

corporation, any of its officers or members of its board of directors;

limited liability company, any of its managers or members (or the sole manager or member when two or more managers or members do not exist);

partnership, any of its general partners (or the sole general partner when two or more general partners do not exist);

estate or trust, any of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and

sole proprietor, the individual who is the proprietor.

"Capital Expenditure" *means an expenditure made by or on behalf of* a SMHRF *(as such a facility is defined in* the *Act)* that*, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, or is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part, and* that *exceeds the capital expenditure minimum. For purposes of this* definition*, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if* the *expenditure exceeds the capital expenditure minimum. Donations of equipment or facilities to* a SMHRF that, *if acquired directly by* that *facility would be subject to review under* the *Act shall be considered capital expenditures, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review.* [20 ILCS 3960/3]

"Capital Expenditure Minimum" means the dollar amount or value that would require a permit for capital projects and major medical equipment. Capital expenditure minimums are annually adjusted to reflect the increase in construction costs due to inflation under 77 Ill. Adm. Code 1130.310.

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

"Chairman" means the presiding officer of HFSRB.

"Change of Ownership" means a change in the person who has operational control of an existing SMHRF or *a change in the person who has ownership or control of* a SMHRF's *physical plant and capital assets. A change of ownership is indicated by,* but not limited to, *the following transactions: sale, transfer, acquisition, leases, change of sponsorship or other means of transferring control.* [20 ILCS 3960/3] Examples of change of ownership include:

a transfer of stock or assets resulting in a person obtaining majority interest (i.e., over 50%) in the person who is licensed or certified (if the facility is not subject to licensure), or in the person who owns or controls the SMHRF's physical plant and capital assets;

the issuance of a license by IDPH to a person different from the current licensee;

a change in the membership or sponsorship of a not-for-profit corporation;

a change of 50% or more of the voting members of a not-for-profit corporation's board of directors, during any consecutive 12 month period, that controls a SMHRF's operations, license, certification (when the facility is not subject to licensing), or physical plant and capital assets;

a change in the sponsorship or control of the person who is licensed or certified (when the facility is not subject to licensing) to operate, or who owns the physical plant and capital assets of a governmental SMHRF; or

any other transaction that results in a person obtaining control of a SMHRF's operations or physical plant and capital assets, including leases.

"Charity Care" *means care provided by* a SMHRF *for which the provider does not expect to receive payment from the patient*/resident *or a third party payer*. [20 ILCS 3960/3]

"Clinical Service Area" means a department and/or service that is directlyrelated to the diagnosis, treatment, or rehabilitation of persons receiving services from the SMHRF. A clinical service area's physical space shall include those components required under the facility's licensure or Medicare and/or Medicaid certification, and/or as outlined by documentation from the facility as to the physical space required for appropriate clinical practice.

"Combined Service Area Project" means a project that consists of both clinical service areas and nonclinical service areas.

"Completion Date" or "Project Completion Date" means the date established by the applicant for the completion of the project, as stated in the CON permit application.

"Construction" or "Modification" *means the establishment, erection, building, alteration, reconstruction, modernization, improvement, extension, discontinuation, change of ownership of or by a* SMHRF*, or the purchase or acquisition by or through* a SMHRF *of equipment or service for diagnostic or therapeutic purposes or for facility administration or operation or any capital expenditure made by or on behalf of* a SMHRFthat *exceeds the capital expenditure minimum; however, any capital expenditure made by or on behalf of* a SMHRF *for the construction or modification of a facility licensed under the Assisted Living and Shared Housing Act* [210 ILCS 9] *or a conversion project undertaken in accordance with Section 30 of the Older Adult Services Act* [320 ILCS 42] *shall be excluded from any obligations under the Act.* [20 ILCS 3960/3]

"Contested Case" has the meaning ascribed in Section 1-30 of the Illinois Administrative Procedure Act [5 ILCS 100].

"Control" means a person possesses any of the following discretionary and nonministerial rights or powers:

In the case of an entity, the ability to direct the management and policies of the entity, whether through the voting of securities, corporate membership, contract or otherwise. Examples of control include, without limitation:

holding 50% or more of the outstanding voting securities of an issue;

in the case of an entity that has no outstanding voting securities, having the right to 50% or more of the profits or, in the event of dissolution, the right to 50% or more of the assets of the entity;

having the power to appoint or remove 50% or more of the governing board members of an entity;

having the power to require or approve the use of funds or assets of the entity; or

having the power to approve, amend or modify the entity's bylaws or other governance documents.

In the case of capital assets or real property, the power to direct or cause the direction of the personal property, real property or capital assets that are components of the project (i.e., fixed equipment, mobile equipment, buildings and portions of buildings). Examples of control include, without limitation:

ownership of 50% or more in the property or asset;

serving as lessee or sublessee.

"Director" means the Director of the Department of Public Health.

"Due Diligence" means to take actions toward the completion of a project for which a permit has been issued with that diligence and foresight that persons of ordinary prudence and care commonly exercise under like circumstances. An accidental or unavoidable cause that cannot be avoided by the exercise of due diligence is a cause that reasonably prudent and careful persons, under like circumstances, do not and would not ordinarily anticipate, and whose effects under similar circumstances they do not and would not ordinarily avoid.

"Entity" means any corporation, company, partnership, joint venture, association, trust, foundation, fund or other legally recognized organization, public body or municipality.

"Establish" or "Establishment" *means the construction of a* newSMHRF*,* the licensing of unlicensed buildings or structures as a SMHRF, the *replacement of an existing* SMHRF *on another site, or* *the initiation of a category of service* defined by the Board*.* [20 ILCS 3960/3]

"Estimated Project Cost" or "Project Cost" means the sum of all costs, including the fair market value of any equipment or other real property (whether acquired by lease, donation or gift) necessary to complete a project, including:

preplanning costs;

site survey and soil investigation fees;

site preparation costs;

off-site work;

construction contracts and contingencies (including demolition);

capital equipment included in construction contracts;

architectural and engineering fees;

consultant and other professional fees that are related to the project;

capital equipment not in construction contracts;

bond issuance expenses;

net interest expense during construction; and

all other costs that are to be capitalized.

"Ex Parte Communication" *means a communication between a person who is not a State Board member or employee that reflects on the substance of a* formally filed *State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of a pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. Technical assistance with respect to an application, not intended to influence any decision on the application, may be provided by* State Board *employees to the applicant. Once an application is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed, standardized format, and shall be included in the application file.* [20 ILCS 3960/4.2]

"Fair Market Value" means the dollar value of a project or any component of a project that is accomplished by lease, donation, gifts or any other means that would have been required for purchase, construction or acquisition.

"Final Decision" or "Final Administrative Decision" or "Final Determination" means:

the decision by HFSRB to approve or deny an application for permit. Action taken by HFSRB to deny an application for permit is subsequent to an administrative hearing or to the waiver of an administrative hearing; or

the decision by HFSRB on all matters other than the issuance of a permit.

HFSRB NOTE: The decision is final at the close of business of the HFSRB meeting at which the action is taken.

"Final Realized Costs" means all costs that are normally capitalized under generally accepted accounting principles that have been incurred to complete a project for which a permit or exemption was issued. These costs include all expenditures and the dollar or fair market value of any component of the project, whether acquired through lease, donation or gift.

"Financial Commitment" means the commitment of at least 33% of total funds assigned to cover total project cost, which occurs by:

The actual expenditure of 33% or more of the total project cost; or

The commitment to expend 33% or more of the total project cost by signed contracts or other legal means.

"Financial Commitment Date" means the date on which the permit holder expended or committed to expend by contract or other legal means at least 33% of the total project cost.

"Hearing Officer" means the person with authority to conduct public hearings and to take all necessary steps to assure the proper completion of public hearings and to assure compliance with requirements of the Act. Responsibilities include: determining the order and time allotment for public testimony; maintaining order; setting and announcing new hearing dates, times and places, as necessary; determining the conclusion of the hearing and assuring that all documents, exhibits and other written materials presented or requested at the hearing are in the hearing officer's custody; and preparing a report for submittal to HFSRB.

"HFSRB " or "State Board" means the Illinois Health Facilities and Services Review Board.

"HFSRB Inventory" or "Inventory" means the HFSRB Inventory of Health Care Facilities and Services and Need Determinations, located at HFSRB's website (www.hfsrb.illinois.gov).

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Intent to Deny" means the negative decision of HFSRB, following its initial consideration of an application for permit that failed to receive the number of affirmative votes required by the Act.

"Major Construction Project" means:

*Projects for the construction of new buildings;*

*Additions to existing facilities;*

*Modernization projects whose cost is in excess of $1,000,000 or 10% of the facility's operating revenue, whichever is less; and*

*such projects as* HFSRB *shall define and prescribe pursuant to* the *Act.* [20 ILCS 3960/5]

"Medicaid Certified" or "Medicare Certified" or "Medicaid Certification" or "Medicare Certification" means approval for a facility to receive reimbursement under Title XVIII (Medicare) and/or XIX (Medicaid) of the Social Security Act (42 USC 1395).

"Modification of an Application" or "Modification" means any change to an application during the review period (i.e., prior to a final HFSRB action). These changes include, but are not limited to:

changing the proposed project's physical size or gross square feet;

the site within a planning area;

the operating entity when the operating entity is not the applicant;

the number of proposed beds;

the categories of service to be provided;

the cost;

the method of financing;

the proposed project completion date;

the configuration of space within the building; or

any change in the person who is the applicant, including the addition or deletion of one or more persons as co-applicants.

HFSRB NOTE: A change of site to a site outside the planning area originally identified in the application is not considered a modification and invalidates the application.

"Newspaper of General Circulation" means newspapers other than those intended to serve a particular, defined population, such as the publications of professional and trade associations.

*"Newspaper of Limited Circulation" means a newspaper intended to serve a particular or defined population of a specific geographic area within a Metropolitan Statistical Area such as a municipality, town, village, township or community area, but does not include publications of professional and trade associations.* [20 ILCS 3960/8.5(a)]

"Non-Substantive Projects" means projects that have been classified as non-substantive under 77 Ill. Adm. Code 1110.40. HFSRB will review a non-substantive project within 60 days.

"Notification of HFSRB Action" means the transmittal of HFSRB decisions to the applicant or permit or exemption holder. Notification shall be given to the applicant's or permit holder's designated contact person, legal representative or chief executive officer.

"Operational" means that a permit holder is providing the services approved by HFSRB and, for a new SMHRF, licensure or Medicare and/or Medicaid certification has been obtained and residents/patients are utilizing the facility or equipment or are receiving service.

"Permit" means authorization to execute and complete a project related to a SMHRF, as reviewed and approved by HFSRB and as specified in the Act.

"Person" *means any one or more natural persons, legal entities, governmental bodies other than federal, or any combination thereof.* [20 ILCS 3960/3]

"Proposal" or "Project" means any proposed construction or modification of a long term care facility or any proposed acquisition of equipment to be undertaken by an applicant.

"Related Person" means *any person that:*

*is at least 50% owned, directly or indirectly, by either the* SMHRF*or a person owning, directly or indirectly, at least 50% of the* SMHRF;

*owns, directly or indirectly, at least 50% of the* SMHRF [20 ILCS 3960/3];

is otherwise controlled or managed by one or more SMHRFs;

controls or manages the SMHRF; or

is otherwise, directly or indirectly, under common management or control with one or more SMHRFs.

"Review Period" means the time from the date an application for permit or exemption is deemed complete until HFSRB renders its final decision.

"Site" means the physical location of a proposed project and is identified by address or legal property description.

"SMHRA" means the Specialized Mental Health Rehabilitation Act of 2013 [210 ILCS 49]

"SMHRF" means Specialized Mental Health Rehabilitation Facility.

"Square Feet" or "SF" or "Square Footage" means a unit of measure of physical service areas or buildings considered by HFSRB.

Departmental Gross Square Feet (DGSF) means the designation of physical areas for departments and services. It consists of the entirety of space dedicated to the use of that department or service, including walls, shafts and circulation.

Building Gross Square Feet (BGSF) means the designation of physical area of an entire building. It includes all exterior walls and space within those walls.

"Substantially Changes the Scope or Changes the Functional Operation of the Facility" means:

the addition of a category of service;

a change of a material representation made by the applicant in an application for permit or exemption subsequent to receipt of a permit that is relied upon by HFSRB in making its decision. Material representations are those that provide a factual basis for issuance of a permit and include:

withdrawal or nonparticipation in the Medicare and/or Medicaid programs;

charge information;

other representations made to HFSRB as stipulated or agreed upon in the public record and specified in the application or the permit approval letter.

"Substantive Projects" means types of projects that are defined in the Act and classified as substantive. *Substantive projects shall include no more than the following:*

*Projects to construct a new or replacement facility located on a new site or a replacement facility located on the same site as the original facility and the costs of the replacement facility exceed the capital expenditure minimum;*

*Projects proposing a new service or discontinuation of a service, which shall be reviewed by the Board within 60 days;*

*Projects proposing a change in the bed capacity of* a SMHRF *by an increase in the total number of beds or by a redistribution of beds among various categories of service or by a relocation of beds from one facility to another by more than 20 beds or more than 10% of total bed capacity, as defined by HFSRB, whichever is less, over a 2 year period.* [20 ILCS 3960/12]

"Technical Assistance" means help provided by an employee of HFSRB to a person, SMHRF or the State Board, and is not considered ex parte communication as defined in Section 4.2 of the Act. Technical assistance may be provided to any person regarding pre-application conferences, the filing of an application, or other request to HFSRB provided that the communication is *not intended to influence any decision on the application.*  Technical assistance may be provided for the benefit of HFSRB to clarify issues relevant to an application or other business of HFSRB. The assistance may be in the form of written correspondences, conversations, site visits, meetings, and/or consultations with independent experts. *Once an application or exemption is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed, standardized format, and shall be included in the application file*, within 10 business days after the assistance is provided*.* [20 ILCS 3960/4.2]

"Temporary Suspension of Facility or Category of Service" means a facility that has ceased operation or that has ceased to provide a category of service (see 77 Ill. Adm. Code 1100.220 for category of service definition) for a period not to exceed one year, due to unanticipated or unforeseen circumstances (such as the loss of appropriate staff or a natural or unnatural disaster). The time period may be extended upon finding that the resumption of facility operation or category of service has proceeded with due diligence and HFSRB approval of the requested extension. The facility administrator shall file notice to HFSRB of a temporary suspension of service, in compliance with the requirements described in Section 1130.240(d).

"Underserved" means a planning area in Illinois that does not have another Specialized Mental Health Rehabilitation Facility.