

Kentucky’s Certificate of Need (CON) Program
Emergency Medical Services Task Force
August 16, 2022

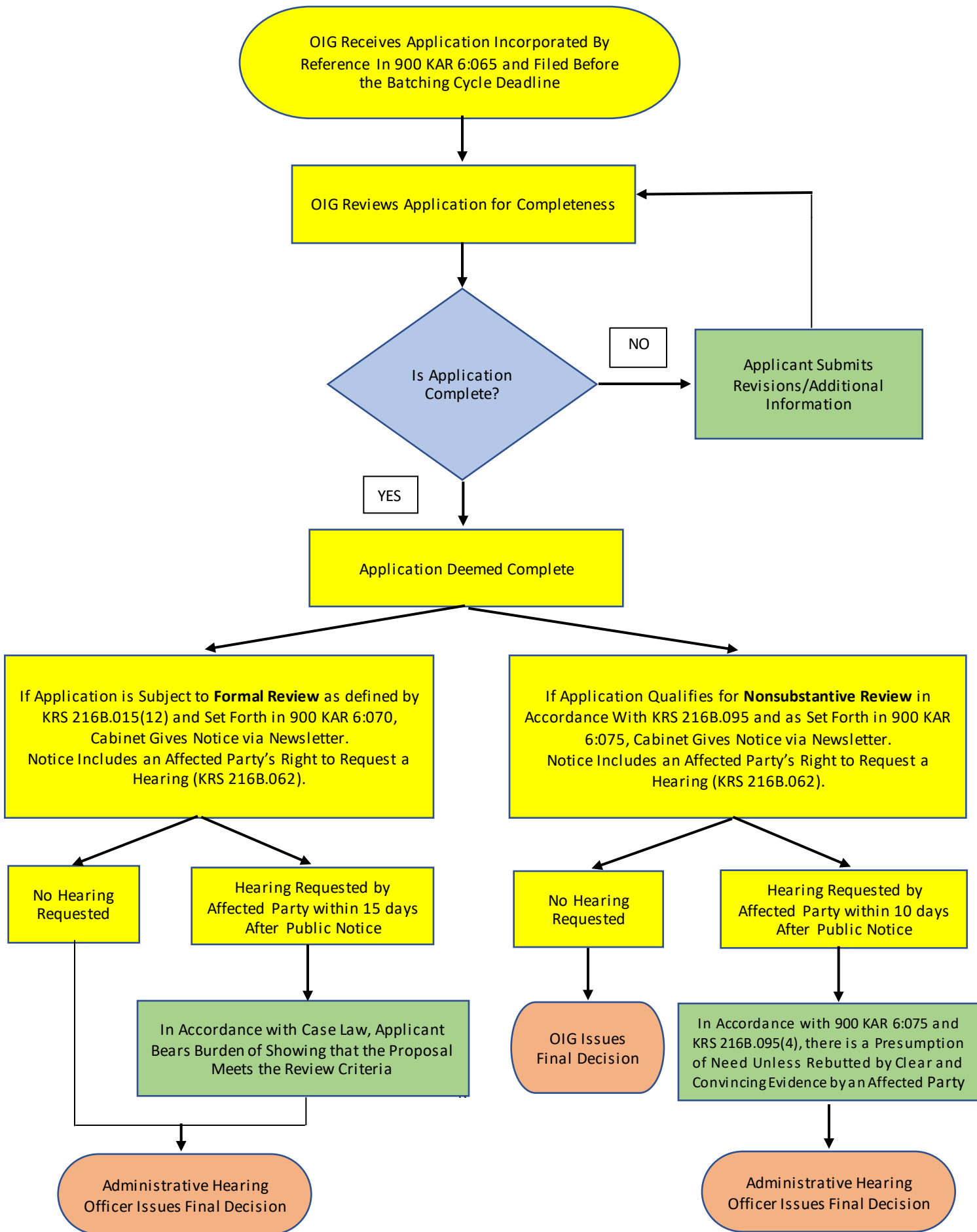
Statutory Authority: In accordance with KRS Chapter 216B, certain types of health care providers are required to obtain Certificate of Need (CON) approval from the Cabinet for Health and Family Services (“cabinet”) before applying for licensure to operate a health facility or service.

Framework: The process by which a potential health care provider can obtain a CON is governed by both statute and regulation. The cabinet is authorized by KRS 216B.040(2)(a)1. to create procedures for reviewing CON applications and develop timetables for review cycles in accordance with enabling regulations (900 KAR 5:020, 900 KAR 6:010 – 6:130).

Review Criteria: When reviewing a CON application, the Cabinet looks to ensure that the application meets the five (5) criteria established by KRS 216B.040(2)(a)2., including consistency with the State Health Plan. The five criteria are summarized in the following chart:

Consistency with the State Health Plan	Need and accessibility	Interrelationships and linkages	Costs, economic feasibility, and resource availability	Quality of Care
The State Health Plan is defined by KRS 216B.015(28) and incorporated by reference in 900 KAR 5:020. It outlines the numerical need criteria by which CON applications are assessed by the cabinet. The applicant must show the proposed facility is consistent with the state's assessment of need for various health services.	The proposal must meet an identified need in a defined geographic area and be accessible to all residents of the area.	The proposal must serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the healthcare system in the region and state, accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the healthcare system.	The proposal, when measured against the cost of alternatives for meeting needs, must be an effective and economical use of resources, not only of capital investment, but also ongoing requirements for health manpower and operational financing.	The applicant must be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality healthcare services, as established by the cabinet.

Certificate of Need (CON) Application Review Flowchart



A CON subject to formal review is necessary for the following levels of care:

- Ambulance providers if not eligible for a CON exemption under KRS 216B.020(6)–(8) or ineligible for nonsubstantive review status under KRS 216B.020(9)
- Ambulatory surgical centers
- Chemical dependency treatment programs
- Home health agencies
- Hospices, including residential hospice if provided by a non-hospice entity
- Hospitals
- Long-term care facilities: Nursing Facilities, Personal Care Homes, Intermediate Care Facilities (ICF), Intermediate Care Facilities for Individuals with Intellectual or Developmental Disabilities
- Freestanding or Mobile Technology - (PET, MRI, Megavoltage Radiation, and/or Cardiac Catheterization)
- Open heart surgery program
- Organ transplant program
- Prescribed pediatric extended care facility
- Psychiatric residential treatment facilities, Level I and Level II
- Special care neonatal beds

A CON subject to nonsubstantive review is necessary for the following levels of care:

- Acute care hospital seeking to transfer acute care beds to a new facility under common ownership/in the same county and in accordance with additional criteria established by 900 KAR 6:075, Section 2(3)(f)
- Adult day health
- Ambulance providers – prior to July 1, 2026, proposals from city or county-owned ambulance providers seeking to provide non-911 transports, or hospitals seeking to provide ambulance transport from a location that is not a health facility (KRS 216B.020(9))
- Industrial ambulance providers
- Freestanding birthing center
- Freestanding emergency department (FSED) owned by a KY-licensed hospital and located off-campus
- Private duty nursing agency
- Program of All-Inclusive Care for the Elderly that provides a CON service (e.g. adult day, home health) to its members

The following facilities require licensure, but do not require CON:

- Abortion facilities
- Alcohol and drug prevention programs
- Alcohol and other drug treatment entities
- Ambulance providers – city-owned ambulance that provides transport in a coterminous city outside of its service area if the governing body of the coterminous city enters into an agreement with the city-owned ambulance service (KRS 216B.020(6))
- Ambulance providers – prior to July 1, 2026, a hospital-owned ambulance service that provides non-emergency or emergency transport originating from the hospital (KRS 216B.020(7)); a hospital-owned ambulance service that provides inter-facility transport if authorized by the ambulance provider in the service area where the other facility is located (KRS 311A.025); or cities or counties seeking to provide emergency ambulance transport services (KRS 216B.020(8))
- Ambulatory infusion agencies
- Assisted living communities (New licensure level created by SB 11 from the 2022 session. Regulation pending/responsibility for regulating ALCs will transfer from the Department for Aging and Independent Living to the Office of Inspector General.)
- Behavioral health services organizations
- Blood establishments
- Community mental health centers
- Family care homes
- Group homes
- Health care services agencies (New licensure level created by HB 282 from the 2022 session. Regulation pending. This level of care will be “registered”, not licensed.)
- Hospital-owned pain management clinics
- Non-physician owned pain management facilities grandfathered by HB 1 from the 2012 Special Session
- Nursing home beds exclusively limited to on-campus residents of a certified continuing care retirement community
- Personal services agencies (This level of care is state “certified”, not licensed.)
- Renal dialysis facilities
- Residential hospice facilities established by licensed hospice programs
- Residential crisis stabilization units
- Specialty intermediate care clinics
- State Veterans’ nursing homes

CON Batching Cycle Timetable – July 2022

Batching Cycle	Deadline for Filing Application	Initial Completeness Review	Deadline for Submitting Additional Information	Deadline for Deeming an Application Complete	Deadline for Decision on Non Sub Status	Date of Public Notice	Deadline for Requesting Non Sub Review Hearing	Deadline for Requesting Formal Review Hearing	Non Sub Review Decision	Formal Review Decision
A	03/02/2022	03/17/2022	04/01/2022	04/07/2022	04/07/2022	04/21/2022	05/01/2022	05/06/2022	05/26/2022	07/20/2022
B	03/30/2022	04/14/2022	04/29/2022	05/05/2022	05/05/2022	05/19/2022	05/29/2022	06/03/2022	06/23/2022	08/17/2022
C	04/27/2022	05/12/2022	05/27/2022	06/02/2022	06/02/2022	06/16/2022	06/26/2022	07/01/2022	07/21/2022	09/14/2022
A	06/01/2022	06/16/2022	07/01/2022	07/07/2022	07/07/2022	07/21/2022	07/31/2022	08/05/2022	08/25/2022	10/19/2022
B	06/29/2022	07/14/2022	07/29/2022	08/04/2022	08/04/2022	08/18/2022	08/28/2022	09/02/2022	09/22/2022	11/16/2022
C	07/27/2022	08/11/2022	08/26/2022	09/01/2022	09/01/2022	09/15/2022	09/25/2022	09/30/2022	10/20/2022	12/14/2022
A	08/31/2022	09/15/2022	09/30/2022	10/06/2022	10/06/2022	10/20/2022	10/30/2022	11/04/2022	11/24/2022	01/18/2023
B	09/28/2022	10/13/2022	10/28/2022	11/03/2022	11/03/2022	11/17/2022	11/27/2022	12/02/2022	12/22/2022	02/15/2023
C	10/26/2022	11/10/2022	11/25/2022	12/01/2022	12/01/2022	12/15/2022	12/25/2022	12/30/2022	01/19/2023	03/15/2023
A	11/30/2022	12/15/2022	12/30/2022	01/05/2023	01/05/2023	01/19/2023	01/29/2023	02/03/2023	02/23/2023	04/19/2023
B	12/28/2022	01/12/2023	01/27/2023	02/02/2023	02/02/2023	02/16/2023	02/26/2023	03/03/2023	03/23/2023	05/17/2023
C	01/25/2023	02/09/2023	02/24/2023	03/02/2023	03/02/2023	03/16/2023	03/26/2023	03/31/2023	04/20/2023	06/14/2023
A	03/01/2023	03/16/2023	03/31/2023	04/06/2023	04/06/2023	04/20/2023	04/30/2023	05/05/2023	05/25/2023	07/19/2023
B	03/29/2023	04/13/2023	04/28/2023	05/04/2023	05/04/2023	05/18/2023	05/28/2023	06/02/2023	06/22/2023	08/16/2023
C	04/26/2023	05/11/2023	05/26/2023	06/01/2023	06/01/2023	06/15/2023	06/25/2023	06/30/2023	07/20/2023	09/13/2023
A	05/31/2023	06/15/2023	06/30/2023	07/06/2023	07/06/2023	07/20/2023	07/30/2023	08/04/2023	08/24/2023	10/18/2023

FORMAL REVIEW APPLICATIONS INCLUDE:

- A** Organ Transplantation, Magnetic Resonance Imaging, Megavoltage Radiation Equipment, Cardiac Catheterization, Open Heart Surgery, Positron Emission Tomography Equipment, Psychiatric Residential Treatment Facility Level I and II, and New Technological Developments
- B** Long Term Care Beds, Intermediate Care Beds for Individuals with an Intellectual Disability (ICF/IID), Residential Hospice Facilities, Hospice Services, Home Health Agencies
- C** Acute Care Hospitals (including all other State Health Plan covered services to be provided within the proposed acute care hospital), Acute Care Hospital Beds, Psychiatric Hospital Beds, Special Care Neonatal Beds, Comprehensive Physical Rehabilitation Beds, Chemical Dependency Treatment Beds, Freestanding Ambulatory Surgical Centers, and Ground Ambulance Services (Class I, II, III and IV)

NONSUBSTANTIVE REVIEW: Nonsubstantive review applications pursuant to KRS 216B.095 and KRS 216B.075, may be filed in any batching cycle by the deadline for filing application.