

CHAPTER 36**(HB 138)**

AN ACT relating to physician assistants.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) "Abortion facility" means any place in which an abortion is performed;
- (2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;
- (3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; and the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;
- (4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars (\$1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;
- (5) "Cabinet" means the Cabinet for Health Services;
- (6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
 - (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or
 - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;
- (7) "Capital expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the 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;
- (8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;

- (9) "Certified surgical assistant" means a certified surgical assistant or certified first assistant who is certified by the National Surgical Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification of Surgical Technologists, or the American Board of Surgical Assistants. The certified surgical assistant is an unlicensed health-care provider who is directly accountable to a physician licensed under KRS Chapter 311 or, in the absence of a physician, to a registered nurse licensed under KRS Chapter 314;
- (10) "Continuing care retirement community" means a community that provides, on the same campus, a continuum of residential living options and support services to persons sixty (60) years of age or older under a written agreement. The residential living options shall include independent living units, nursing home beds, and either assisted living units or personal care beds;
- (11) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;
- (12) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;
- (13) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;
- (14) "Independent living" means the provision of living units and supportive services including, but not limited to, laundry, housekeeping, maintenance, activity direction, security, dining options, and transportation;
- (15) "Intraoperative surgical care" includes the practice of surgical assisting in which the certified surgical assistant *or physician assistant* is working under the direction of the operating physician as a first or second assist, and which may include the following procedures:
- (a) Positioning the patient;
 - (b) Preparing and draping the patient for the operative procedure;
 - (c) Observing the operative site during the operative procedure;
 - (d) Providing the best possible exposure of the anatomy incident to the operative procedure;
 - (e) Assisting in closure of incisions and wound dressings; and

- (f) Performing any task, within the role of an unlicensed assistive person, ***or if the assistant is a physician assistant, performing any task within the role of a physician assistant, as*** required by the operating physician incident to the particular procedure being performed;
- (16) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;
- (17) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;
- (18) "Nonclinically-related expenditures" means expenditures for:
- (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
 - (b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:
 - 1. Parking facilities;
 - 2. Telecommunications or telephone systems;
 - 3. Management information systems;
 - 4. Ventilation systems;
 - 5. Heating or air conditioning, or both;
 - 6. Energy conservation; or
 - 7. Administrative offices;
- (19) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;
- (20) "Perioperative nursing" means a practice of nursing in which the nurse provides preoperative, intraoperative, and postoperative nursing care to surgical patients;
- (21) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;
- (22) ***"Physician assistant" means the same as the definition provided in KRS 311.550;***
- (23) "Record" means, as applicable in a particular proceeding:
- (a) The application and any information provided by the applicant at the request of the cabinet;

- (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
- (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
- (d) Any staff reports or recommendations prepared by or for the cabinet;
- (e) Any recommendation or decision of the cabinet;
- (f) Any testimony or documentary evidence adduced at a hearing;
- (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
- (h) Any other items required by administrative regulations promulgated by the cabinet;

~~(24)~~~~(23)~~ "Registered nurse first assistant" means one who:

- (a) Holds a current active registered nurse licensure;
- (b) Is certified in perioperative nursing; and
- (c) Has successfully completed and holds a degree or certificate from a recognized program, which shall consist of:
 1. The Association of Operating Room Nurses, Inc., Core Curriculum for the registered nurse first assistant; and
 2. One (1) year of postbasic nursing study, which shall include at least forty-five (45) hours of didactic instruction and one hundred twenty (120) hours of clinical internship or its equivalent of two (2) college semesters.

A registered nurse who was certified prior to 1995 by the Certification Board of Perioperative Nursing shall not be required to fulfill the requirements of paragraph (c) of this subsection;

~~(25)~~~~(24)~~ "Secretary" means the secretary of the Cabinet for Health Services;

~~(26)~~~~(25)~~ "Sexual assault examination facility" means a licensed health facility, emergency medical facility, primary care center, or a children's advocacy center or rape crisis center that is regulated by the Cabinet for Health Services or the Cabinet for Families and Children, and that provides sexual assault examinations under KRS 216B.400;

~~(27)~~~~(26)~~ "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;

~~(28)~~~~(27)~~ "Substantial change in a health service" means:

- (a) The addition of a health service for which there are review criteria and standards in the state health plan;
- (b) The addition of a health service subject to licensure under this chapter; or
- (c) The reduction or termination of a health service which had previously been provided in the health facility;

~~(29)~~~~(28)~~ "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;

- ~~(30)~~~~(29)~~ "Substantial change in a project" means a change made to a pending or approved project which results in:
- (a) A substantial change in a health service, except a reduction or termination of a health service;
 - (b) A substantial change in bed capacity, except for reductions;
 - (c) A change of location; or
 - (d) An increase in costs greater than the allowable amount as prescribed by regulation;
- ~~(31)~~~~(30)~~ "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another person;
- ~~(32)~~~~(31)~~ "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;
- ~~(33)~~~~(32)~~ "To establish" means to construct, develop, or initiate a health facility;
- ~~(34)~~~~(33)~~ "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and
- ~~(35)~~~~(34)~~ "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 2. KRS 216B.160 is amended to read as follows:

All health care facilities and services licensed under this chapter shall include in their policies and procedures a care delivery model based on patient needs which includes, but is not limited to:

- (1) Defined roles and responsibilities of licensed and unlicensed health care personnel;
- (2) A policy that establishes the credentialing, oversight, appointment, and reappointment of the registered nurse first assistant and for granting, renewing, and revising of the registered nurse first assistant's clinical privileges;
- (3) ***A policy that establishes the credentialing, oversight, appointment, and reappointment of the physician assistant and for granting, renewing, and revising of the physician assistant's clinical privileges;***
- (4) A policy that establishes the credentialing, oversight, appointment, and reappointment of the certified surgical assistant and for granting, renewing, and revising of the certified surgical assistant's clinical privileges;
- ~~(5)~~~~(4)~~ A staffing plan that specifies staffing levels of licensed and unlicensed personnel required to safely and consistently meet the performance and clinical outcomes-based standards as outlined in the facility's or service's quality improvement plan;

- (6)~~(5)~~ A staffing model that is developed and implemented in an interdisciplinary and collaborative manner;
- (7)~~(6)~~ A policy and method that incorporates at least four (4) components in an ongoing assessment done by the registered nurse of the severity of the patient's disease, patient condition, level of impairment or disability, and the specific unit patient census to meet the needs of the individual patient in a timely manner; and
- (8)~~(7)~~ A staffing model that supports the delivery of patient care services with an appropriate mix of licensed health care personnel that will allow them to practice according to their legal scope of practice, and for nurses, the professional standards of practice referenced in KRS Chapter 314, and facility and service policies.

If a nursing facility, intermediate care facility, or skilled care facility meets the most current state or federal regulations which address safe and consistent staffing levels of licensed and unlicensed personnel, those shall suffice for compliance with the standards in this section. This section shall not be interpreted as requiring any health care facility to develop a policy or a procedure for a service not offered by the facility.

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provision of law, a health benefit plan issued or renewed on or after July 15, 2001, that provides coverage for surgical first assisting or intraoperative surgical care benefits or services shall be construed as providing coverage for a certified surgical assistant or physician assistant who performs services as identified in subsection (15) of Section 1 of this Act.

Approved March 15, 2001