900 KAR 6:095. Certificate of need administrative escalations.

RELATES TO: KRS 216B.015(6), (31), 216B.061(1)(e), 216B.990(2)
STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1, 216B.061(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.061(4) requires the cabinet to establish the requirements for administrative escalations. This administrative regulation establishes the requirements for an administrative escalation.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized for a certificate of need project.
(2) "Cabinet" is defined by KRS 216B.015(6).
(3) "Substantial change in a project" is defined by KRS 216B.015(31).

Section 2. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need or a previously approved administrative escalation unless the person has received an administrative escalation or an additional certificate of need from the cabinet.
(2) A request for an administrative escalation shall be submitted to the cabinet on the CON - Form 6, Cost Escalation Form, incorporated by reference in 900 KAR 6:055.
(3) The cabinet shall authorize an administrative escalation for funds that have not been obligated and that do not exceed the following limits if there is not a substantial change in the project:
(a) $100,000, if the capital expenditure authorized by the certificate of need or a previously approved cost escalation is less than $500,000; and
(b) Twenty-five (25) percent of the capital expenditure if the capital expenditure authorized by the certificate of need or a previously approved cost escalation is $500,000 or more.
(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to 900 KAR 6:020.
(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:
(a) Constitute a substantial change in a project; and
(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).
(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized for a certificate of need project shall be:
(a) Presumed to be a willful violation of KRS Chapter 216B; and
(b) Subject to the penalties set forth at KRS 216B.990(2). (36 Ky.R. 248; Am. 814; eff. 10-21-2009; 43 Ky.R. 1310; eff. 3-31-2017; 47 Ky.R. 1695; eff. 6-16-2021.)