

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The State Health Plan shall be used to:

- (1) Review a certificate of need application pursuant to KRS 216B.040; and
- (2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference.

- (1) The "2023~~[2022]~~ Update to the State Health Plan", March 2023~~[July 2022]~~, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

ADAM MATHER, Inspector General
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 10, 2023

FILED WITH LRC: March 15, 2023 at 8:00 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 15, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-

564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation incorporates by reference the current State Health Plan as defined by KRS 216B.015(28) and as required by KRS 216B.040(2)(a).

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes, KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a., by establishing the State Health Plan's review criteria used for determinations regarding the issuance and denial of certificates of need.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing the review criteria for certificate of need determinations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

In response to suggestions and comments submitted to the cabinet by interested groups, the amendment to this administrative regulation makes the following changes to the State Health Plan (SHP): 1. Updates the title and edition date of the SHP on page i of the Plan; 2. Updates the Table of Contents on page ii to show deletions and revised page numbers; 3. Updates the title of the SHP on page iii of the Plan under the heading "Purpose"; 4. Adds new language to the review criteria on pages 23 and 24 to allow acute care hospitals to convert existing acute care beds to psychiatric beds for adult patients under the following conditions: a. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent according to the most recent edition of the Kentucky Annual Hospital Utilization and Services Report; i. All of the proposed psychiatric beds are being converted from licensed acute care beds; and ii. No more than twenty-five (25) acute care beds will be converted to psychiatric beds; b. All of the psychiatric beds will be implemented on-site at the applicant's existing licensed facility; and c. All of the psychiatric beds shall be dedicated exclusively to the treatment of adult patients, aged eighteen (18) to sixty-four (64); 5. Deletes outdated language on page 24 referring to tuberculosis beds. That is no longer a bed category in Kentucky 6. Adds language on page 33 to allow a long-term care pediatric facility to add fifty (50) or fewer beds if: a. It is certified under Title XVIII and XIX of the Social Security Act; b. It provides high and low intensity nursing facility services to children, including resident admitted to the facility prior to age twenty-one (21) and remain in the facility after reaching age twenty-one (21); 7. Amends language on page 35 to allow an acute care hospital, a critical access hospital, or a nursing facility to establish or expand a home health service to provide services exclusively to their patients who

require home health services at the time of discharge; 8. Deletes the criteria on page 47 for megavoltage radiation, thereby making it subject to nonsubstantive review; 9. Deletes the criteria on page 52 for magnetic resonance imaging, thereby making it subject to nonsubstantive review; and 10. Amends the criteria on page 55 for ophthalmological ambulatory surgical centers to: a. Allow joint ownership by ophthalmologists with optometrists; b. Decrease the time required that the group has been practicing from 10 years to 5 years; c. Delete the requirement for a \$300,000 investment in laser technology; and d. Allow the facility to be located in any county in which one of the owners is located. These changes align with the proposed amendment of 900 KAR 6:075, Section 2(3)(h) – (l), filed concurrently with this administrative regulation to grant nonsubstantive review status to certificate of need applications for: 1. Applications by licensed hospitals to convert existing acute care beds to psychiatric beds for adult patients if certain criteria are met; 2. Applications by a licensed hospital to provide megavoltage radiation therapy; 3. Applications to provide positron emission tomography services; 4. Applications to provide magnetic resonance imaging services; and 5. Applications by a licensed acute care hospital, critical access hospital, or nursing facility proposing to establish or expand a home health service to serve patients discharged from its facility.

(b) The necessity of the amendment to this administrative regulation:

This amendment is needed to expand health services throughout the state, including rural areas, to enhance immediate access to resources.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment conforms to the content of the authorizing statutes because it incorporates by reference the State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment assists in the effective administration of the statutes by establishing the review criteria for certificate of need determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects entities that submit certificate of need applications and affected persons as defined by KRS 216B.015(3). A total of 81 applications were submitted to the cabinet in calendar year 2022; 70 certificate of need applications were submitted in calendar year 2021; and 60 certificate of need applications were submitted in calendar year 2020.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Entities that submit a certificate of need application are subject to the criteria set forth in the State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The certificate of need application filing fee for nonsubstantive review and formal review is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Entities subject to certificate of need approval must demonstrate that their proposal is consistent with the State Health Plan pursuant to KRS 216B.040(2)(a)2.a.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis:

There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

State general funds and agency monies are used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied?

Yes, tiering is used as there are different certificate of need review criteria for each licensure category addressed in the State Health Plan.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and may impact any government owned or controlled health care facility.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment will not generate additional revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year?

This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years?

This amendment imposes no additional costs on the administrative body during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):See response above.

Expenditures (+/-):This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year?

This administrative regulation imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years?

This administrative regulation imposes no additional costs on regulated entities during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This new administrative regulation is not expected to have a major economic impact on the regulated entities.