

216B.020 Certificate of need -- Exemptions -- Categories of care not exempted -- Requirements for issuance of certificate of need.

- (1) The provisions of this chapter that relate to the issuance of a certificate of need shall not apply to abortion facilities as defined in KRS 216B.015; any hospital which does not charge its patients for hospital services and does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government; assisted living residences; family care homes; state veterans' nursing homes; services provided on a contractual basis in a rural primary-care hospital as provided under KRS 216.380; community mental health centers for services as defined in KRS Chapter 210; primary care centers; rural health clinics; private duty nursing services operating as health care services agencies as defined in KRS 216.718; group homes; licensed residential crisis stabilization units; licensed free-standing residential substance use disorder treatment programs with sixteen (16) or fewer beds, but not including Levels I and II psychiatric residential treatment facilities or licensed psychiatric inpatient beds; outpatient behavioral health treatment, but not including partial hospitalization programs; end stage renal disease dialysis facilities, freestanding or hospital based; swing beds; special clinics, including but not limited to wellness, weight loss, family planning, disability determination, speech and hearing, counseling, pulmonary care, and other clinics which only provide diagnostic services with equipment not exceeding the major medical equipment cost threshold and for which there are no review criteria in the state health plan; nonclinically related expenditures; nursing home beds that shall be exclusively limited to on-campus residents of a certified continuing care retirement community; home health services provided by a continuing care retirement community to its on-campus residents; the relocation of hospital administrative or outpatient services into medical office buildings which are on or contiguous to the premises of the hospital; the relocation of acute care beds which occur among acute care hospitals under common ownership and which are located in the same area development district so long as there is no substantial change in services and the relocation does not result in the establishment of a new service at the receiving hospital for which a certificate of need is required; the redistribution of beds by licensure classification within an acute care hospital so long as the redistribution does not increase the total licensed bed capacity of the hospital; residential hospice facilities established by licensed hospice programs; the following health services provided on site in an existing health facility when the cost is less than six hundred thousand dollars (\$600,000) and the services are in place by December 30, 1991: psychiatric care where chemical dependency services are provided, level one (1) and level two (2) of neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are in place as of July 15, 1990; or ambulance services operating in accordance with subsection (6), (7), or (8) of this section. These listed facilities or services shall be subject to licensure, when applicable.
- (2) Nothing in this chapter shall be construed to authorize the licensure, supervision, regulation, or control in any manner of:
 - (a) Private offices and clinics of physicians, dentists, and other practitioners of

the healing arts, except any physician's office that meets the criteria set forth in KRS 216B.015(5) or that meets the definition of an ambulatory surgical center as set out in KRS 216B.015;

- (b) Office buildings built by or on behalf of a health facility for the exclusive use of physicians, dentists, and other practitioners of the healing arts; unless the physician's office meets the criteria set forth in KRS 216B.015(5), or unless the physician's office is also an abortion facility as defined in KRS 216B.015, except no capital expenditure or expenses relating to any such building shall be chargeable to or reimbursable as a cost for providing inpatient services offered by a health facility;
 - (c) Outpatient health facilities or health services that:
 - 1. Do not provide services or hold patients in the facility after midnight; and
 - 2. Are exempt from certificate of need and licensure under subsection (3) of this section;
 - (d) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees, if the facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four (24) hours;
 - (e) Establishments, such as motels, hotels, and boarding houses, which provide domiciliary and auxiliary commercial services, but do not provide any health related services and boarding houses which are operated by persons contracting with the United States Department of Veterans Affairs for boarding services;
 - (f) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination and recognized by that church or denomination; and
 - (g) On-duty police and fire department personnel assisting in emergency situations by providing first aid or transportation when regular emergency units licensed to provide first aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.
- (3) The following outpatient categories of care shall be exempt from certificate of need and licensure on July 14, 2018:
- (a) Primary care centers;
 - (b) Special health clinics, unless the clinic provides pain management services and is located off the campus of the hospital that has majority ownership interest;
 - (c) Specialized medical technology services, unless providing a State Health Plan service;
 - (d) Retail-based health clinics and ambulatory care clinics that provide nonemergency, noninvasive treatment of patients;

- (e) Ambulatory care clinics treating minor illnesses and injuries;
 - (f) Mobile health services, unless providing a service in the State Health Plan;
 - (g) Rehabilitation agencies;
 - (h) Rural health clinics; and
 - (i) Off-campus, hospital-acquired physician practices.
- (4) The exemptions established by subsections (2) and (3) of this section shall not apply to the following categories of care:
- (a) An ambulatory surgical center as defined by KRS 216B.015(4);
 - (b) A health facility or health service that provides one (1) of the following types of services:
 - 1. Cardiac catheterization;
 - 2. Megavoltage radiation therapy;
 - 3. Adult day health care;
 - 4. Behavioral health services;
 - 5. Chronic renal dialysis;
 - 6. Birthing services; or
 - 7. Emergency services above the level of treatment for minor illnesses or injuries;
 - (c) A pain management facility as defined by KRS 218A.175(1);
 - (d) An abortion facility that requires licensure pursuant to KRS 216B.0431; or
 - (e) A health facility or health service that requests an expenditure that exceeds the major medical expenditure minimum.
- (5) An existing facility licensed as an intermediate care or nursing home shall notify the cabinet of its intent to change to a nursing facility as defined in Public Law 100-203. A certificate of need shall not be required for conversion of an intermediate care or nursing home to the nursing facility licensure category.
- (6) Ambulance services owned and operated by a city government, which propose to provide services in coterminous cities outside of the ambulance service's designated geographic service area, shall not be required to obtain a certificate of need if the governing body of the city in which the ambulance services are to be provided enters into an agreement with the ambulance service to provide services in the city.
- (7) Ambulance services owned by a hospital shall not be required to obtain a certificate of need for the sole purpose of providing non-emergency and emergency transport services originating from its hospital.
- (8) (a) As used in this subsection, "emergency ambulance transport services" means the transportation of an individual that has an emergency medical condition with acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to place the individual's health in serious jeopardy or result in the serious impairment or dysfunction of the individual's bodily organs.
- (b) A city or county government that has conducted a public hearing for the

purposes of demonstrating that an imperative need exists in the city or county to provide emergency ambulance transport services within its jurisdictional boundaries shall not be required to obtain a certificate of need for the city or county to:

1. Directly provide emergency ambulance transport services as defined in this subsection within the city's or county's jurisdictional boundaries; or
 2. Enter into a contract with a hospital or hospitals within its jurisdiction, or within an adjoining county if there are no hospitals located within the county, for the provision of emergency ambulance transport services as defined in this subsection within the city's or county's jurisdictional boundaries.
- (c) Any license obtained under KRS Chapter 311A by a city or county for the provision of ambulance services operating under a certificate of need exclusion pursuant to this subsection shall be held exclusively by the city or county government and shall not be transferrable to any other entity.
- (d) Prior to obtaining the written agreement of a city, an ambulance service operating under a county government certificate of need exclusion pursuant to this subsection shall not provide emergency ambulance transport services within the boundaries of any city that:
1. Possesses a certificate of need to provide emergency ambulance services;
 2. Has an agency or department thereof that holds a certificate of need to provide emergency ambulance services; or
 3. Is providing emergency ambulance transport services within its jurisdictional boundaries pursuant to this subsection.
- (9) (a) Except where a certificate of need is not required pursuant to subsection (6), (7), or (8) of this section, the cabinet shall grant nonsubstantive review for a certificate of need proposal to establish an ambulance service that is owned by a:
1. City government;
 2. County government; or
 3. Hospital, in accordance with paragraph (b) of this subsection.
- (b) A notice shall be sent by the cabinet to all cities and counties that a certificate of need proposal to establish an ambulance service has been submitted by a hospital. The legislative bodies of the cities and counties affected by the hospital's certificate of need proposal shall provide a response to the cabinet within thirty (30) days of receiving the notice. The failure of a city or county legislative body to respond to the notice shall be deemed to be support for the proposal.
- (c) An ambulance service established under this subsection shall not be transferred to another entity that does not meet the requirements of paragraph (a) of this subsection without first obtaining a substantive certificate of need.

- (10) Notwithstanding any other provision of law, a continuing care retirement community's nursing home beds shall not be certified as Medicaid eligible unless a certificate of need has been issued authorizing applications for Medicaid certification. The provisions of subsection (5) of this section notwithstanding, a continuing care retirement community shall not change the level of care licensure status of its beds without first obtaining a certificate of need.
- (11) An ambulance service established under subsection (9) of this section shall not be transferred to an entity that does not qualify under subsection (9) of this section without first obtaining a substantive certificate of need.
- (12) (a) The provisions of subsections (7), (8), and (9) of this section shall expire on July 1, 2026.
- (b) All actions taken by cities, counties, and hospitals, exemptions from obtaining a certificate of need, and any certificate of need granted under subsections (7), (8), and (9) of this section prior to July 1, 2026, shall remain in effect on and after July 1, 2026.

Effective: July 14, 2022

History: Amended 2022 Ky. Acts ch. 110, sec. 13, effective July 14, 2022; and ch. 126, sec. 9, effective July 14, 2022. -- Amended 2018 Ky. Acts ch. 143, sec. 10, effective July 14, 2018. -- Amended 2017 Ky. Acts ch. 42, sec. 13, effective June 29, 2017. -- Amended 2015 Ky. Acts ch. 66, sec. 6, effective March 25, 2015. -- Amended 2012 Ky. Acts ch. 90, sec. 2, effective July 12, 2012; and ch. 103, sec. 2, effective July 12, 2012. -- Amended 2005 Ky. Acts ch. 102, sec. 1, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 264, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 582, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 299, sec. 1, effective July 15, 1996; ch. 351, sec. 2, effective July 15, 1996; and ch. 371, sec. 38, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 512, Part 7, sec. 24, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 61, sec. 4, effective March 16, 1992. -- Amended 1990 Ky. Acts ch. 235, sec. 7, effective July 13, 1990; and ch. 499, sec. 2, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 436, sec. 2, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 31, sec. 3, effective February 28, 1986. -- Amended 1984 Ky. Acts ch. 301, sec. 2, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 347, sec. 3, effective July 15, 1982. -- Created 1980 Ky. Acts ch. 135, sec. 3, effective July 15, 1980.

Legislative Research Commission Note (7/14/2022). This statute was amended by 2022 Ky. Acts chs. 110 and 126, which do not appear to be in conflict and have been codified together.