

### **216B.095 Nonsubstantive review of application.**

- (1) An applicant may waive the procedures for formal review of an application for a certificate of need and request a nonsubstantive review as provided below. The cabinet may grant or deny nonsubstantive review status within ten (10) days of the date the application is deemed completed and shall give notice to all affected persons of the decision to conduct a nonsubstantive review. Any affected person other than the applicant may request a hearing by filing a request with the cabinet within ten (10) days of the notice to conduct a nonsubstantive review. As applicable, hearings shall be conducted as provided in KRS 216B.085. Based solely upon the record established with regard to the matter, the cabinet shall approve or deny a certificate of need on all projects assigned nonsubstantive review status within thirty-five (35) days of the determination of nonsubstantive review status. If the application is denied nonsubstantive review status, it shall automatically be placed in the formal review process.
- (2) If a certificate of need is denied following a nonsubstantive review, the applicant may request that the application be placed in the next cycle of the formal review process. Nothing in this subsection shall require an applicant to pursue a formal review before obtaining judicial review pursuant to KRS 216B.115.
- (3) The cabinet may grant nonsubstantive review status to an application for a certificate of need which is required:
  - (a) To change the location of a proposed health facility;
  - (b) To replace or relocate a licensed health facility, if there is no substantial change in health services or substantial change in bed capacity;
  - (c) To replace or repair worn equipment if the worn equipment has been used by the applicant in a health facility for five (5) years or more;
  - (d) For cost escalations; or
  - (e) In other circumstances the cabinet by administrative regulation may prescribe.
- (4) Notwithstanding any other provision to the contrary in this chapter, the cabinet may approve a certificate of need for a project required for the purposes set out in subsection (3)(a) to (e) of this section, unless it finds the facility or service with respect to which the capital expenditure is proposed to be made is not required; or to the extent the facility or services contemplated by the proposed capital expenditure is addressed in the state health plan, the cabinet finds that the capital expenditure is not consistent with the state health plan.
- (5) The decision of the cabinet approving or denying a certificate of need pursuant to this section shall be final for purposes of judicial appeal, unless the applicant requests the application be placed in the formal review process. An approved certificate shall be issued thirty (30) days after notice of the cabinet's decision, unless a judicial appeal is taken and issuance is enjoined by the court.
- (6) Notwithstanding any other provision of law, the cabinet shall not grant nonsubstantive review status to a certificate of need application that indicates an intent to apply for Medicaid certification of nursing home beds within a continuing care retirement community established under KRS 216B.015, 216B.020, 216B.330,

and 216B.332.

- (7) Notwithstanding any provision of state law or the state health plan promulgated by administrative regulation in accordance with KRS 216B.040, the cabinet shall grant nonsubstantive review for a certificate of need proposal to establish an ambulatory surgical center if the applicant complies with the following:
- (a) The applicant is an ambulatory surgical center that was organized and in operation as the private office of a physician or physician group prior to October 1, 2006;
  - (b)
    - 1. The cabinet's general counsel has submitted a letter to the Accreditation Association for Ambulatory Health Care advising that the cabinet does not object to the applicant's parent company applying for and obtaining Medicare certification; or
    - 2. The applicant is an ambulatory surgical center that has received from the cabinet a favorable advisory opinion dated June 14, 2005, confirming that the applicant would be exempt from the certificate of need or licensure requirement;
  - (c) The applicant's ambulatory surgical center has been inspected and accredited by the Accreditation Association for Ambulatory Health Care since December 31, 2006, and has maintained accreditation with that organization consistently since that time; and
  - (d) The applicant was a party to litigation concerning the ambulatory surgical center and physician office issue and, prior to July 12, 2012, obtained a Court of Appeals ruling in its favor.

**Effective:** July 14, 2022

**History:** Amended 2022 Ky. Acts ch. 126, sec. 10, effective July 14, 2022. -- Amended 2012 Ky. Acts ch. 103, sec. 4, effective July 12, 2012. -- Amended 2000 Ky. Acts ch. 264, sec. 4, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 371, sec. 53, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 512, Part 7, sec. 39, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 499, sec. 10, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 210, sec. 23, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 347, sec. 19, effective July 15, 1982. -- Created 1980 Ky. Acts ch. 135, sec. 18, effective July 15, 1980.