

CERTIFICATE OF NEED TASK FORCE

Minutes of the 1st Meeting of the 2023 Interim

June 19, 2023

Call to Order and Roll Call

The first meeting of the Certificate of Need Task Force was held on June 19, 2023, at 10:30 AM in Room 171 of the Capitol Annex. Senator Donald Douglas, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Donald Douglas, Co-Chair; Representative Russell Webber, Co-Chair; Senator Karen Berg, Senator Stephen Meredith, Senator John Schickel, Representative Lindsey Burke, Representative Daniel Elliott, Representative Marianne Proctor, and Representative Susan Witten.

Guests: Samantha Scotti, Project Manager, Health Program, National Conference of State Legislatures; Adam Mather, Inspector General, Office of Inspector General, Cabinet for Health and Family Services; Kara Daniel, Deputy Inspector General, Office of Inspector General, Cabinet for Health and Family Services; and Judy Taylor, Kentucky Ambulance Providers Association.

LRC Staff: DeeAnn Wenk, CSA, Logan Bush, and Becky Lancaster.

Introduction of Committee Members

Each member present introduced themselves to the committee.

Certificate of Need Requirements National Overview

Samantha Scotti, Project Manager, Health Program, National Conference of State Legislatures (NCSL), discussed NCSL background information, state examples, legislation, research, task forces, and studies, related to national certificate of need programs. She provided additional NCSL resources related to certificate of need.

In response to questions and comments from Representative Webber, Ms. Scotti stated that West Virginia modified its certificate of need program in 2023 and some modifications exempted specific types of health facilities.

In response to questions and comments from Senator Berg, Ms. Scotti stated that the NCSL webpage includes all facilities and services regulated in each state's certificate of need program.

In response to questions and comments from Representative Witten, Ms. Scotti stated that typically geo fencing modifications are made by the certificate of need regulating or oversight entity.

In response to questions and comments from Representative Proctor, Ms. Scotti stated that she can follow up on the dates that Kentucky suspended the certificate of need program during the COVID-19 pandemic.

In response to questions and comments from Senator Douglas, Ms. Scotti stated that states are acknowledging that access to services in rural areas is a unique issue and discussing different considerations to be applied in rural areas. She stated that task forces and studies in South Carolina and Georgia are looking into how certificate of need affects rural health care access.

Kentucky Certificate of Need Requirements Overview

Adam Mather, Inspector General, Office of Inspector General, Cabinet for Health and Family Services, discussed Kentucky's certificate of need purpose, governing statutes, enabling regulations, five application review criteria as operationalized in the state health plan, and the application review flowchart. He discussed the certificate of need formal review application process, provided a list of facilities that require a formal review, described nonsubstantive review and process, circumstances that grant nonsubstantive review status, exemptions authorized by state law including certain ground ambulance services, and pending certificate of need regulations.

In response to questions and comments from Senator Douglas, Mr. Mather gave an example that a hospital in an area providing sufficient MRI services for the community, the hospital may challenge the certificate of need application for another entity, and the hearing officer would determine the need through the hearing process. Kara Daniel, Deputy Inspector General, Office of Inspector General, Cabinet for Health and Family Services, stated that the administrative hearing office within the Cabinet for Health and Family Services, determines who will be the hearing officer for a review.

In response to questions and comments from Senator Berg, Mr. Mather stated that he would follow up with the number of reviews that are approved and denied. There are changes in the state health plan that may modify the number of review requests. The Office Inspector General surveys different facilities and is comparable to an accrediting body such as Joint Commission in Kentucky. Kentucky requires outpatient surgical centers, pain centers, and birthing centers to meeting ongoing quality assertions.

In response to questions and comments from Senator Meredith, Mr. Mather stated that the 35 states that have certificate of need programs implement them differently. A certificate of need goes away when a license is granted and there is an ability for the facility to change ownership.

In response to questions and comments from Representative Webber, Ms. Daniel stated that the cost escalation category in a nonsubstantive review is detailed in statute. Mr. Mather gave an example of a cost escalation nonsubstantive review. Ms. Daniel stated that an affective party is defined as other entities that provide and/or receive healthcare in the regional area as determined by the hearing officer. If there is no opposition during the nonsubstantive review, the Office of Inspector General will issue a final decision. The burden of proof of need in the formal review process is on the party that is seeking approval, but in a nonsubstantive review the need is presumed or need qualifications have been met.

In response to questions and comments from Representative Proctor, Mr. Mather stated that the certificate of need limits the scope or ability for expansion for a facility but emergency exemptions can be granted. He stated that preferential treatment for expansion is not granted to existing licensed facilities with a certificate of need.

In response to questions and comments from Representative Burke, Ms. Daniel stated that the state health plan is adopted through regulation, need calculations are done within the state health plan, data surveys are conducted annually to determine the number of services provided by each facility in each area, and an update to the state health plan is statutorily required to be adopted each year after a period for public comments. Mr. Mather stated that there is no requirement for a facility to obtain a certificate of need to close a facility, but there are notification requirements.

In response to questions and comments from Senator Douglas, Mr. Mather stated that Kentucky Medicaid does not have a specific metric that measures quality of care but does rely heavily on Center for Medicaid and Medicare Services (CMS) metrics to measure quality of care. Ms. Daniel stated that in accordance with case state law, an applicant seeking government dispensation bares the burden of proof that they qualify for it. There is a separate office of hearing officers in the Ombudsmen's Office, who go through specialized law judge training to become hearing officers.

In response to questions and comments from Representative Witten, Ms. Daniel stated that there may or may not be a formula for the number of beds in a facility for each category of service in the state health plan.

Adjournment

There being no further business, the meeting was adjourned at 11:59 AM.