

1 AN ACT relating to certificate of need.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 216B.020 is amended to read as follows:

4 (1) The provisions of this chapter that relate to the issuance of a certificate of need shall
5 not apply to abortion facilities as defined in KRS 216B.015; any hospital which
6 does not charge its patients for hospital services and does not seek or accept
7 Medicare, Medicaid, or other financial support from the federal government or any
8 state government; assisted living residences; family care homes; state veterans'
9 nursing homes; services provided on a contractual basis in a rural primary-care
10 hospital as provided under KRS 216.380; community mental health centers for
11 services as defined in KRS Chapter 210; primary care centers; rural health clinics;
12 private duty nursing services operating as health care services agencies as defined
13 in KRS 216.718; group homes; licensed residential crisis stabilization units;
14 licensed free-standing residential substance use disorder treatment programs~~[with~~
15 ~~sixteen (16) or fewer beds, but not including Levels I and II psychiatric residential~~
16 ~~treatment facilities or licensed psychiatric inpatient beds]~~; outpatient behavioral
17 health treatment, ~~[but not]~~including partial hospitalization programs; **psychiatric**
18 **hospitals; physical rehabilitation hospitals; chemical dependency programs or**
19 **centers; hospices; home health agencies; kidney disease treatment centers;**
20 **freestanding hemodialysis units; alcohol abuse, drug abuse, rehabilitative, and**
21 **mental health services;** end stage renal disease dialysis facilities, freestanding or
22 hospital based; swing beds; special clinics, including but not limited to wellness,
23 weight loss, family planning, disability determination, speech and hearing,
24 counseling, pulmonary care, and other clinics which only provide diagnostic
25 services with equipment not exceeding the major medical equipment cost threshold
26 and for which there are no review criteria in the state health plan; nonclinically
27 related expenditures; nursing home beds that shall be exclusively limited to on-

1 campus residents of a certified continuing care retirement community; home health
2 services provided by a continuing care retirement community to its on-campus
3 residents; the relocation of hospital administrative or outpatient services into
4 medical office buildings which are on or contiguous to the premises of the hospital;
5 the relocation of acute care beds which occur among acute care hospitals under
6 common ownership and which are located in the same area development district so
7 long as there is no substantial change in services and the relocation does not result
8 in the establishment of a new service at the receiving hospital for which a certificate
9 of need is required; the redistribution of beds by licensure classification within an
10 acute care hospital so long as the redistribution does not increase the total licensed
11 bed capacity of the hospital; residential hospice facilities established by licensed
12 hospice programs; the following health services provided on site in an existing
13 health facility when the cost is less than six hundred thousand dollars (\$600,000)
14 and the services are in place by December 30, 1991: psychiatric care where
15 chemical dependency services are provided, level one (1) and level two (2) of
16 neonatal care, cardiac catheterization, and open heart surgery where cardiac
17 catheterization services are in place as of July 15, 1990; or ambulance services
18 operating in accordance with subsection (6), (7), or (8) of this section. These listed
19 facilities or services shall be subject to licensure, when applicable.

20 (2) Nothing in this chapter shall be construed to authorize the licensure, supervision,
21 regulation, or control in any manner of:

22 (a) Private offices and clinics of physicians, dentists, and other practitioners of
23 the healing arts, except any physician's office that meets the criteria set forth
24 in KRS 216B.015(5) or that meets the definition of an ambulatory surgical
25 center as set out in KRS 216B.015;

26 (b) Office buildings built by or on behalf of a health facility for the exclusive use
27 of physicians, dentists, and other practitioners of the healing arts; unless the

- 1 physician's office meets the criteria set forth in KRS 216B.015(5), or unless
2 the physician's office is also an abortion facility as defined in KRS 216B.015,
3 except no capital expenditure or expenses relating to any such building shall
4 be chargeable to or reimbursable as a cost for providing inpatient services
5 offered by a health facility;
- 6 (c) Outpatient health facilities or health services that:
- 7 1. Do not provide services or hold patients in the facility after midnight;
8 and
9 2. Are exempt from certificate of need and licensure under subsection (3)
10 of this section;
- 11 (d) Dispensaries and first-aid stations located within business or industrial
12 establishments maintained solely for the use of employees, if the facility does
13 not contain inpatient or resident beds for patients or employees who generally
14 remain in the facility for more than twenty-four (24) hours;
- 15 (e) Establishments, such as motels, hotels, and boarding houses, which provide
16 domiciliary and auxiliary commercial services, but do not provide any health
17 related services and boarding houses which are operated by persons
18 contracting with the United States Department of Veterans Affairs for
19 boarding services;
- 20 (f) The remedial care or treatment of residents or patients in any home or
21 institution conducted only for those who rely solely upon treatment by prayer
22 or spiritual means in accordance with the creed or tenets of any recognized
23 church or religious denomination and recognized by that church or
24 denomination; and
- 25 (g) On-duty police and fire department personnel assisting in emergency
26 situations by providing first aid or transportation when regular emergency
27 units licensed to provide first aid or transportation are unable to arrive at the

1 scene of an emergency situation within a reasonable time.

2 (3) The following outpatient categories of care shall be exempt from certificate of need
3 and licensure on July 14, 2018:

4 (a) Primary care centers;

5 (b) Special health clinics, unless the clinic provides pain management services
6 and is located off the campus of the hospital that has majority ownership
7 interest;

8 (c) Specialized medical technology services, unless providing a State Health Plan
9 service;

10 (d) Retail-based health clinics and ambulatory care clinics that provide
11 nonemergency, noninvasive treatment of patients;

12 (e) Ambulatory care clinics treating minor illnesses and injuries;

13 (f) Mobile health services, unless providing a service in the State Health Plan;

14 (g) Rehabilitation agencies;

15 (h) Rural health clinics; and

16 (i) Off-campus, hospital-acquired physician practices.

17 (4) The exemptions established by subsections (2) and (3) of this section shall not
18 apply to the following categories of care:

19 (a) An ambulatory surgical center as defined by KRS 216B.015(4);

20 (b) A health facility or health service that provides one (1) of the following types
21 of services:

22 1. Cardiac catheterization;

23 2. Megavoltage radiation therapy;

24 3. Adult day health care;{

25 4. ~~Behavioral health services;~~

26 5. ~~Chronic renal dialysis;~~

27 6. ~~Birth services;}~~ or

- 1 ~~4.17.7~~Emergency services above the level of treatment for minor illnesses or
2 injuries;
- 3 (c) A pain management facility as defined by KRS 218A.175(1);
- 4 (d) An abortion facility that requires licensure pursuant to KRS 216B.0431; or
- 5 (e) A health facility or health service that requests an expenditure that exceeds the
6 major medical expenditure minimum.
- 7 (5) An existing facility licensed as an intermediate care or nursing home shall notify
8 the cabinet of its intent to change to a nursing facility as defined in Public Law 100-
9 203. A certificate of need shall not be required for conversion of an intermediate
10 care or nursing home to the nursing facility licensure category.
- 11 (6) Ambulance services owned and operated by a city government, which propose to
12 provide services in coterminous cities outside of the ambulance service's designated
13 geographic service area, shall not be required to obtain a certificate of need if the
14 governing body of the city in which the ambulance services are to be provided
15 enters into an agreement with the ambulance service to provide services in the city.
- 16 (7) Ambulance services owned by a hospital shall not be required to obtain a certificate
17 of need for the sole purpose of providing non-emergency and emergency transport
18 services originating from its hospital.
- 19 (8) (a) As used in this subsection, "emergency ambulance transport services" means
20 the transportation of an individual that has an emergency medical condition
21 with acute symptoms of sufficient severity that the absence of immediate
22 medical attention could reasonably be expected to place the individual's health
23 in serious jeopardy or result in the serious impairment or dysfunction of the
24 individual's bodily organs.
- 25 (b) A city or county government that has conducted a public hearing for the
26 purposes of demonstrating that an imperative need exists in the city or county
27 to provide emergency ambulance transport services within its jurisdictional

1 boundaries shall not be required to obtain a certificate of need for the city or
2 county to:

- 3 1. Directly provide emergency ambulance transport services as defined in
4 this subsection within the city's or county's jurisdictional boundaries; or
- 5 2. Enter into a contract with a hospital or hospitals within its jurisdiction,
6 or within an adjoining county if there are no hospitals located within the
7 county, for the provision of emergency ambulance transport services as
8 defined in this subsection within the city's or county's jurisdictional
9 boundaries.

10 (c) Any license obtained under KRS Chapter 311A by a city or county for the
11 provision of ambulance services operating under a certificate of need
12 exclusion pursuant to this subsection shall be held exclusively by the city or
13 county government and shall not be transferrable to any other entity.

14 (d) Prior to obtaining the written agreement of a city, an ambulance service
15 operating under a county government certificate of need exclusion pursuant to
16 this subsection shall not provide emergency ambulance transport services
17 within the boundaries of any city that:

- 18 1. Possesses a certificate of need to provide emergency ambulance
19 services;
- 20 2. Has an agency or department thereof that holds a certificate of need to
21 provide emergency ambulance services; or
- 22 3. Is providing emergency ambulance transport services within its
23 jurisdictional boundaries pursuant to this subsection.

24 (9) (a) Except where a certificate of need is not required pursuant to subsection (6),
25 (7), or (8) of this section, the cabinet shall grant nonsubstantive review for a
26 certificate of need proposal to establish an ambulance service that is owned by
27 a:

- 1 1. City government;
 - 2 2. County government; or
 - 3 3. Hospital, in accordance with paragraph (b) of this subsection.
- 4 (b) A notice shall be sent by the cabinet to all cities and counties that a certificate
5 of need proposal to establish an ambulance service has been submitted by a
6 hospital. The legislative bodies of the cities and counties affected by the
7 hospital's certificate of need proposal shall provide a response to the cabinet
8 within thirty (30) days of receiving the notice. The failure of a city or county
9 legislative body to respond to the notice shall be deemed to be support for the
10 proposal.
- 11 (c) An ambulance service established under this subsection shall not be
12 transferred to another entity that does not meet the requirements of paragraph
13 (a) of this subsection without first obtaining a substantive certificate of need.
- 14 (10) Notwithstanding any other provision of law, a continuing care retirement
15 community's nursing home beds shall not be certified as Medicaid eligible unless a
16 certificate of need has been issued authorizing applications for Medicaid
17 certification. The provisions of subsection (5) of this section notwithstanding, a
18 continuing care retirement community shall not change the level of care licensure
19 status of its beds without first obtaining a certificate of need.
- 20 (11) An ambulance service established under subsection (9) of this section shall not be
21 transferred to an entity that does not qualify under subsection (9) of this section
22 without first obtaining a substantive certificate of need.
- 23 (12) (a) The provisions of subsections (7), (8), and (9) of this section shall expire on
24 July 1, 2026.
- 25 (b) All actions taken by cities, counties, and hospitals, exemptions from obtaining
26 a certificate of need, and any certificate of need granted under subsections (7),
27 (8), and (9) of this section prior to July 1, 2026, shall remain in effect on and

1 after July 1, 2026.

2 →Section 2. KRS 216B.065 is amended to read as follows:

3 (1) *As used in this section:*

4 *(a) "Health facility" does not include psychiatric hospitals, physical*
5 *rehabilitation hospitals, chemical dependency programs or centers,*
6 *hospices, community mental health centers, home health agencies, kidney*
7 *disease treatment centers, freestanding hemodialysis units, or freestanding*
8 *birthing centers; and*

9 *(b) "Health services" does not include alcohol abuse, drug abuse,*
10 *rehabilitative, or mental health.*

11 (2) Before any person enters into a contractual agreement to acquire a licensed health
12 facility, the person shall notify the cabinet of the intent to acquire the facility or
13 major medical equipment and of the services to be offered in the facility and its bed
14 capacity or the use of the medical equipment. The notice shall be in writing and
15 shall be filed at least thirty (30) days prior to entry into a contract to acquire the
16 health facility or major medical equipment with respect to which the notice is given.

17 ~~(3)~~⁽²⁾ A certificate of need shall be required for the acquisition of a health facility or
18 major medical equipment, only if:

19 (a) The notice required in this section is not filed and the arrangement will
20 require the obligation of a capital expenditure which exceeds the capital
21 expenditure minimum; or

22 (b) The cabinet finds within thirty (30) days after the date it received notice that
23 the health services or bed capacity of the health facility will be substantially
24 changed in being acquired.

25 ~~(4)~~⁽³⁾ Donations, transfers, and leases of major medical equipment and health
26 facilities shall be considered acquisitions of equipment and facilities, and an
27 acquisition of medical equipment or a facility for less than fair market value shall

1 be considered an acquisition if the fair market value exceeds the expenditure
2 minimum.

3 ~~(5)~~~~(4)~~ Before any health facility reduces or terminates a health service or reduces its
4 bed capacity, the facility shall notify the cabinet of its intent. The notice shall be in
5 writing and shall be filed at least thirty (30) days prior to the reduction or
6 termination. A certificate of need shall be required for the reduction or termination
7 only if the notice required in this section is not filed.

8 ➔Section 3. KRS 216.380 is amended to read as follows:

9 (1) The licensure category of critical access hospital is hereby created for existing
10 licensed acute-care hospitals which qualify under this section for that status.

11 (2) It shall be unlawful to operate or maintain a critical access hospital without first
12 obtaining a license from the Cabinet for Health and Family Services. An acute-care
13 hospital converting to a critical access hospital shall not require a certificate of
14 need. A certificate of need shall not be required for services provided on a
15 contractual basis in a critical access hospital. A certificate of need shall not be
16 required for an existing critical access hospital to increase its acute-care bed
17 capacity to twenty-five (25) beds.

18 (3) Except as provided in subsection (4) of this section, only a hospital licensed as a
19 general acute-care hospital may be relicensed as a critical access hospital if:

20 (a) The hospital is located in a county in a rural area that is:

21 1. Located more than a thirty-five (35) mile drive, or, where the terrain is
22 mountainous or only secondary roads are available, located more than a
23 fifteen (15) mile drive, from another acute-care hospital or critical
24 access hospital; or

25 2. Certified by the secretary as a necessary provider of health care services
26 to area residents;

27 (b) For the purposes of paragraph (a) of this subsection, a hospital shall be

1 considered to be located in a rural area if the hospital is not in a county which
2 is part of a standard metropolitan statistical area, the hospital is located in a
3 rural census tract of a metropolitan statistical area as determined under the
4 most recent modification of the Goldsmith Modification, or is designated by
5 the state as a rural provider. The secretary shall designate a hospital as a rural
6 provider if the hospital is not located in a county which has the largest county
7 population of a standard metropolitan statistical area;

8 (c) Except as provided in paragraph (d) of this subsection, the hospital provides
9 not more than twenty-five (25) acute care inpatient beds for providing acute
10 inpatient care for a period that does not exceed, as determined on an annual,
11 average basis, ninety-six (96) hours;

12 (d) If the hospital is operating swing beds under which the hospital's inpatient
13 hospital facilities are used for the provision of extended care services, the
14 hospital may be designated as a critical access hospital so long as the total
15 number of beds that may be used at any time for furnishing of either extended
16 care services or acute inpatient services does not exceed twenty-five (25)
17 beds. For the purposes of this section, any bed of a unit of the hospital that is
18 licensed as a nursing facility at the time the hospital applies to the state for
19 designation as a critical care access hospital shall not be counted.

20 (4) The secretary for health and family services may designate a facility as a critical
21 access hospital if the facility:

22 (a) Was a hospital that ceased operations on or after ten (10) years prior to April
23 21, 2000; or

24 (b) Was a hospital that was converted to a licensed ambulatory health center or
25 other type of licensed health clinic or health center and, as of the effective
26 date of that conversion, meets the criteria for licensure as a critical access
27 hospital under this subsection or subsection (3) of this section.

- 1 (5) A critical access hospital shall provide the following services:
- 2 (a) Twenty-four (24) hour emergency-room care that the secretary determines is
3 necessary for insuring access to emergency care services in each area served
4 by a critical access hospital; and
- 5 (b) Basic laboratory, radiologic, pharmacy, and dietary services. These services
6 may be provided on a part-time, off-site contractual basis.
- 7 (6) A critical access hospital may provide the following services:
- 8 (a) Swing beds or a distinct unit of the hospital which is a nursing facility in
9 accordance with KRS Chapter 216B and subject to approval under certificate
10 of need;
- 11 (b) Surgery;
- 12 (c) Normal obstetrics;
- 13 (d) Primary care;
- 14 (e) Adult day health care;
- 15 (f) Respite care;
- 16 (g) Rehabilitative and therapeutic services including, but not limited to, physical
17 therapy, respiratory therapy, occupational therapy, speech pathology, and
18 audiology, which may be provided on an off-site contractual basis;
- 19 (h) Ambulatory care;
- 20 (i) Home health services~~[which may be established upon obtaining a certificate~~
21 ~~of need]~~; and
- 22 (j) Mobile diagnostic services with equipment not exceeding the major medical
23 equipment cost threshold pursuant to KRS Chapter 216B and for which there
24 are no review criteria in the State Health Plan.
- 25 (7) In addition to the services that may be provided under subsection (6) of this section,
26 a critical access hospital may establish the following units in accordance with
27 applicable Medicare regulations and subject to certificate of need approval:

- 1 (a) A psychiatric unit that is a distinct part of the hospital, with a maximum of ten
2 (10) beds; and
- 3 (b) A rehabilitation unit that is a distinct part of the hospital, with a maximum of
4 ten (10) beds notwithstanding any other bed limit contained in law or
5 regulation.
- 6 (8) Psychiatric unit and rehabilitation unit beds operated under subsection (7) of this
7 section shall not be counted in determining the number of beds or the average
8 length of stay of a critical access hospital for purposes of applying the bed and
9 average length of stay limitations under paragraph (c) of subsection (3) of this
10 section.
- 11 (9) The following staffing plan shall apply to a critical access hospital:
- 12 (a) The hospital shall meet staffing requirements as would apply under section
13 1861(e) of Title XVIII of the Federal Social Security Act to a hospital located
14 in a rural area except that:
- 15 1. The hospital need not meet hospital standards relating to the number of
16 hours during a day, or days during a week, in which the hospital shall be
17 open and fully staffed, except insofar as the facility is required to make
18 available emergency services and nursing services available on a
19 twenty-four (24) hour basis; and
- 20 2. The hospital need not otherwise staff the facility except when an
21 inpatient is present; and
- 22 (b) Physician assistants and nurse practitioners may provide inpatient care within
23 the limits of their statutory scope of practice and with oversight by a physician
24 who is not required to be on-site at the hospital.
- 25 (10) A critical access hospital shall have a quality assessment and performance
26 improvement program and procedures for review of utilization of services.
- 27 (11) A critical access hospital shall have written contracts assuring the following

1 linkages:

2 (a) Secondary and tertiary hospital referral services which shall provide for the
3 transfer of a patient to the appropriate level of care and the transfer of patients
4 to the critical access hospital for recuperative care;

5 (b) Ambulance services;

6 (c) Home health services; and

7 (d) Nursing facility services if not provided on-site.

8 (12) If the critical access hospital is part of a rural health network, the hospital shall have
9 the following:

10 (a) An agreement for patient referral and transfer, development, and use of
11 communications systems including telemetry and electronic sharing of patient
12 data, and emergency and nonemergency transportation; and

13 (b) An agreement for credentialing and quality assurance with a network hospital,
14 peer review organization, or other appropriate and qualified entity identified
15 in the state rural health plan.

16 (13) The Cabinet for Health and Family Services and any insurer or managed care
17 program for Medicaid recipients that contracts with the Department for Medicaid
18 Services for the receipt of Federal Social Security Act Title XIX funds shall provide
19 for reimbursement of services provided to Medicaid recipients in a critical access
20 hospital at rates that are at least equal to those established by the Federal Health
21 Care Financing Administration or Centers for Medicare and Medicaid Services for
22 Medicare reimbursement to a critical access hospital.

23 (14) The Cabinet for Health and Family Services shall promulgate administrative
24 regulations pursuant to KRS Chapter 13A necessary to implement this section.