

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) **(a)** The provisions of this chapter that relate to the issuance of a certificate of
5 need shall not apply to:
- 6 **1.** Abortion facilities as defined in KRS 216B.015;
 - 7 **2.** Any hospital which does not charge its patients for hospital services and
8 does not seek or accept Medicare, Medicaid, or other financial support
9 from the federal government or any state government;
 - 10 **3.** Assisted living residences; family care homes; state veterans' nursing
11 homes;
 - 12 **4.** Services provided on a contractual basis in a rural primary-care hospital
13 as provided under KRS 216.380;
 - 14 **5.** Community mental health centers for services as defined in KRS
15 Chapter 210;
 - 16 **6.** Primary care centers;
 - 17 **7.** Rural health clinics;
 - 18 **8.** Private duty nursing services operating as health care services agencies
19 as defined in KRS 216.718;
 - 20 **9.** Group homes;
 - 21 **10.** Licensed residential crisis stabilization units;
 - 22 **11.** Licensed free-standing residential substance use disorder treatment
23 programs with sixteen (16) or fewer beds, but not including Levels I and
24 II psychiatric residential treatment facilities or licensed psychiatric
25 inpatient beds;
 - 26 **12.** Outpatient behavioral health treatment, but not including partial
27 hospitalization programs;

- 1 **13.** End stage renal disease dialysis facilities, freestanding or hospital based;
- 2 **14.** Swing beds;
- 3 **15.** Special clinics, including but not limited to wellness, weight loss, family
- 4 planning, disability determination, speech and hearing, counseling,
- 5 pulmonary care, and other clinics which only provide diagnostic
- 6 services with equipment not exceeding the major medical equipment
- 7 cost threshold and for which there are no review criteria in the state
- 8 health plan;
- 9 **16.** Nonclinically related expenditures;
- 10 **17.** Nursing home beds that shall be exclusively limited to on-campus
- 11 residents of a certified continuing care retirement community;
- 12 **18.** Home health services provided by a continuing care retirement
- 13 community to its on-campus residents;
- 14 **19.** The relocation of hospital administrative or outpatient services into
- 15 medical office buildings which are on or contiguous to the premises of
- 16 the hospital;
- 17 **20.** The relocation of acute care beds which occur among acute care
- 18 hospitals under common ownership and which are located in the same
- 19 area development district so long as there is no substantial change in
- 20 services and the relocation does not result in the establishment of a new
- 21 service at the receiving hospital for which a certificate of need is
- 22 required;
- 23 **21.** The redistribution of beds by licensure classification within an acute
- 24 care hospital so long as the redistribution does not increase the total
- 25 licensed bed capacity of the hospital;
- 26 **22.** Residential hospice facilities established by licensed hospice programs;
- 27 **23.** The following health services provided on site in an existing health

1 facility when the cost is less than six hundred thousand dollars
 2 (\$600,000) and the services are in place by December 30, 1991:

3 a. Psychiatric care where chemical dependency services are
 4 provided;~~;~~

5 b. Level ~~I~~~~(1)~~ and Level ~~II~~~~(2)~~ of neonatal care; and~~;~~

6 c. Cardiac catheterization~~;~~ and open heart surgery where cardiac
 7 catheterization services are in place as of July 15, 1990; or

8 24. Ambulance services operating in accordance with subsection (6), (7), or
 9 (8) of this section.

10 (b) ~~The~~~~[These listed]~~ facilities or services *listed in paragraph (a) of this*
 11 *subsection* shall be subject to licensure, when applicable.

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

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

18 (b) Office buildings built by or on behalf of a health facility for the exclusive use
 19 of physicians, dentists, and other practitioners of the healing arts; unless the
 20 physician's office meets the criteria set forth in KRS 216B.015(5), or unless
 21 the physician's office is also an abortion facility as defined in KRS 216B.015,
 22 except no capital expenditure or expenses relating to any such building shall
 23 be chargeable to or reimbursable as a cost for providing inpatient services
 24 offered by a health facility;

25 (c) Outpatient health facilities or health services that:

26 1. Do not provide services or hold patients in the facility after midnight;
 27 and

- 1 2. Are exempt from certificate of need and licensure under subsection (3)
2 of this section;
- 3 (d) Dispensaries and first-aid stations located within business or industrial
4 establishments maintained solely for the use of employees, if the facility does
5 not contain inpatient or resident beds for patients or employees who generally
6 remain in the facility for more than twenty-four (24) hours;
- 7 (e) Establishments, such as motels, hotels, and boarding houses, which provide
8 domiciliary and auxiliary commercial services, but do not provide any health
9 related services and boarding houses which are operated by persons
10 contracting with the United States Department of Veterans Affairs for
11 boarding services;
- 12 (f) The remedial care or treatment of residents or patients in any home or
13 institution conducted only for those who rely solely upon treatment by prayer
14 or spiritual means in accordance with the creed or tenets of any recognized
15 church or religious denomination and recognized by that church or
16 denomination; and
- 17 (g) On-duty police and fire department personnel assisting in emergency
18 situations by providing first aid or transportation when regular emergency
19 units licensed to provide first aid or transportation are unable to arrive at the
20 scene of an emergency situation within a reasonable time.
- 21 (3) The following outpatient categories of care shall be exempt from certificate of need
22 and licensure on July 14, 2018:
- 23 (a) Primary care centers;
- 24 (b) Special health clinics, unless the clinic provides pain management services
25 and is located off the campus of the hospital that has majority ownership
26 interest;
- 27 (c) Specialized medical technology services, unless providing a state health plan

1 service;

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

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

5 (f) Mobile health services, unless providing a service in the state health plan;

6 (g) Rehabilitation agencies;

7 (h) Rural health clinics; and

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

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

11 (a) An ambulatory surgical center as defined by KRS 216B.015~~[(4)]~~;

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

14 1. Cardiac catheterization;

15 2. Megavoltage radiation therapy;

16 3. Adult day health care;

17 4. Behavioral health services;

18 5. Chronic renal dialysis;

19 6. Birthing services; or

20 7. Emergency services above the level of treatment for minor illnesses or
21 injuries;

22 (c) A pain management facility as defined by KRS 218A.175~~[(4)]~~;

23 (d) An abortion facility that requires licensure pursuant to KRS 216B.0431; or

24 (e) A health facility or health service that requests an expenditure that exceeds the
25 major medical expenditure minimum.

26 (5) An existing facility licensed as an intermediate care or nursing home shall notify
27 the cabinet of its intent to change to a nursing facility as defined in **Pub. L.**

1 ~~No. [Public Law]~~ 100-203. A certificate of need shall not be required for conversion
2 of an intermediate care or nursing home to the nursing facility licensure category.

3 (6) Ambulance services owned and operated by a city government, which propose to
4 provide services in coterminous cities outside of the ambulance service's designated
5 geographic service area, shall not be required to obtain a certificate of need if the
6 governing body of the city in which the ambulance services are to be provided
7 enters into an agreement with the ambulance service to provide services in the city.

8 (7) Ambulance services owned by a hospital shall not be required to obtain a certificate
9 of need for the sole purpose of providing non-emergency and emergency transport
10 services originating from its hospital.

11 (8) (a) As used in this subsection, "emergency ambulance transport services" means
12 the transportation of an individual that has an emergency medical condition
13 with acute symptoms of sufficient severity that the absence of immediate
14 medical attention could reasonably be expected to place the individual's health
15 in serious jeopardy or result in the serious impairment or dysfunction of the
16 individual's bodily organs.

17 (b) A city or county government that has conducted a public hearing for the
18 purposes of demonstrating that an imperative need exists in the city or county
19 to provide emergency ambulance transport services within its jurisdictional
20 boundaries shall not be required to obtain a certificate of need for the city or
21 county to:

- 22 1. Directly provide emergency ambulance transport services as defined in
23 this subsection within the city's or county's jurisdictional boundaries; or
- 24 2. Enter into a contract with a hospital or hospitals within its jurisdiction,
25 or within an adjoining county if there are no hospitals located within the
26 county, for the provision of emergency ambulance transport services as
27 defined in this subsection within the city's or county's jurisdictional

1 boundaries.

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

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

- 10 1. Possesses a certificate of need to provide emergency ambulance
11 services;
- 12 2. Has an agency or department thereof that holds a certificate of need to
13 provide emergency ambulance services; or
- 14 3. Is providing emergency ambulance transport services within its
15 jurisdictional boundaries pursuant to this subsection.

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

- 20 1. City government;
- 21 2. County government; or
- 22 3. Hospital, in accordance with paragraph (b) of this subsection.

23 (b) A notice shall be sent by the cabinet to all cities and counties that a certificate
24 of need proposal to establish an ambulance service has been submitted by a
25 hospital. The legislative bodies of the cities and counties affected by the
26 hospital's certificate of need proposal shall provide a response to the cabinet
27 within thirty (30) days of receiving the notice. The failure of a city or county

1 legislative body to respond to the notice shall be deemed to be support for the
2 proposal.

3 (c) An ambulance service established under this subsection shall not be
4 transferred to another entity that does not meet the requirements of paragraph
5 (a) of this subsection without first obtaining a substantive certificate of need.

6 (10) Notwithstanding any other provision of law, a continuing care retirement
7 community's nursing home beds shall not be certified as Medicaid eligible unless a
8 certificate of need has been issued authorizing applications for Medicaid
9 certification. The provisions of subsection (5) of this section notwithstanding, a
10 continuing care retirement community shall not change the level of care licensure
11 status of its beds without first obtaining a certificate of need.

12 (11) An ambulance service established under subsection (9) of this section shall not be
13 transferred to an entity that does not qualify under subsection (9) of this section
14 without first obtaining a substantive certificate of need.

15 (12) (a) The provisions of subsections (7), (8), and (9) of this section shall expire on
16 July 1, 2026.

17 (b) All actions taken by cities, counties, and hospitals, exemptions from obtaining
18 a certificate of need, and any certificate of need granted under subsections (7),
19 (8), and (9) of this section prior to July 1, 2026, shall remain in effect on and
20 after July 1, 2026.

21 ➔Section 2. KRS 216B.095 is amended to read as follows:

22 (1) An applicant may waive the procedures for formal review of an application for a
23 certificate of need and request a nonsubstantive review as provided below. The
24 cabinet ~~shall~~^{may} grant or deny nonsubstantive review status within ten (10) days
25 of the date the application is deemed completed and shall give notice to all affected
26 persons of the decision to conduct a nonsubstantive review.

27 **(2)** Any affected person other than the applicant may request a hearing by filing a

1 request with the cabinet within ten (10) days of the notice to conduct a
 2 nonsubstantive review. As applicable, hearings shall be conducted as provided in
 3 KRS 216B.085.

4 **(3)** ~~[Based solely upon the record established with regard to the matter,]~~The cabinet
 5 shall approve or deny **an application that has been granted nonsubstantive review**
 6 **within thirty-five (35) days of the date that nonsubstantive review status was**
 7 **granted**~~[a certificate of need on all projects assigned nonsubstantive review status~~
 8 ~~within thirty five (35) days of the determination of nonsubstantive review status. If~~
 9 ~~the application is denied nonsubstantive review status, it shall automatically be~~
 10 ~~placed in the formal review process].~~

11 **(4)**~~(2)~~ If a certificate of need is denied following a nonsubstantive review, the
 12 applicant may request that the application be placed in the next cycle of the formal
 13 review process.

14 **(5)** Nothing in this **section**~~[subsection]~~ shall require an applicant to pursue a formal
 15 review before obtaining judicial review pursuant to KRS 216B.115.

16 **(6)**~~(3)~~ The cabinet **shall**~~[may]~~ grant nonsubstantive review status to an application
 17 for a certificate of need which is required:

18 (a) To change the location of a proposed health facility;

19 (b) To replace or relocate a licensed health facility **if:**~~[]~~

20 **1. a.** ~~[If]~~ There is no substantial change in health services or substantial
 21 change in bed capacity; **and**

22 **b. The replacement or relocation is within the same county; or**

23 **2. The replacement or relocation is for a psychiatric residential treatment**
 24 **facility;**

25 (c) To replace or repair worn equipment if the worn equipment has been used by
 26 the applicant in a health facility for five (5) years or more;

27 (d) For cost escalations;~~[or]~~

- 1 (e) To establish or expand a health facility or health service for which there is
2 not a component in the state health plan;
- 3 (f) To establish an ambulatory surgical center pursuant to the conditions
4 specified in subsection (10) of this section;
- 5 (g) To establish an ambulatory surgical center that:
- 6 1. Does not charge its patients and does not seek or accept:
- 7 a. Payment from any health insurance provider, including
8 Medicare and Medicaid; or
- 9 b. Financial support from the state or federal government; and
- 10 2. Utilizes the surgical facilities of an existing licensed ambulatory
11 surgical center during times the host ambulatory surgical center is not
12 in operation;
- 13 (h) To establish an industrial ambulance service;
- 14 (i) Prior to July 1, 2026, to establish an ambulance service in accordance with
15 subsection (9) of Section 1 of this Act;
- 16 (j) For a proposal made by a Level II psychiatric residential treatment facility;
- 17 (k) To establish an inpatient psychiatric unit in an existing licensed acute care
18 hospital under the following conditions:
- 19 1. The hospital is located in a county that has no existing, freestanding
20 psychiatric hospital;
- 21 2. The occupancy of acute care beds in the hospital is less than seventy
22 percent (70%) according to the most recent edition of the Kentucky
23 Annual Hospital Utilization and Services Report produced by the
24 Cabinet for Health and Family Services;
- 25 3. All of the proposed psychiatric beds are being converted from licensed
26 acute care beds;
- 27 4. No more than twenty percent (20%) of the hospital's acute care beds

1 up to a maximum of twenty-five (25) beds will be converted to
2 psychiatric beds;

3 5. All of the psychiatric beds will be implemented on-site at the
4 applicant's existing licensed facility; and

5 6. All of the psychiatric beds will be dedicated exclusively to the
6 treatment of adult patients aged eighteen (18) to sixty-four (64);

7 (l) For a proposal made by a Kentucky licensed acute care hospital, critical
8 access hospital, or nursing facility to expand a home health service to
9 provide services exclusively to patients discharged from its facility who
10 require home health services at the time of discharge and no existing
11 licensed home health agency is available and willing to accept the referral;

12 (m) 1. For a proposal by a PACE program for a program that:

13 a. Has met the requirements of the state readiness review according
14 to a report submitted by the Department for Medicaid Services to
15 the Centers for Medicare and Medicaid Services;

16 b. Seeks to provide a health service directly to its members that is
17 not exempt from certificate of need under Section 1 of this Act;
18 and

19 c. Ensures that all services authorized under the PACE agreement
20 are provided exclusively to its members who reside within a
21 service area:

22 i. Located within the Commonwealth of Kentucky; and

23 ii. Approved by both the Department for Medicaid Services
24 and Centers for Medicare and Medicaid Services.

25 2. As used in this paragraph, "PACE" has the same meaning as in KRS
26 216B.168;

27 (n) For a proposal to reestablish a licensed health care facility or service that

1 was provided at a hospital and was voluntarily discontinued by the applicant
2 under the following circumstances:

3 1. The termination or voluntary closure of the hospital:

4 a. Was not the result of an order or directive by the cabinet,
5 governmental agency, judicial body, or other regulatory
6 authority;

7 b. Did not occur during or after an investigation by the cabinet,
8 governmental agency, or other regulatory authority;

9 c. Occurred while the facility was in substantial compliance with
10 applicable administrative regulations and was otherwise eligible
11 for relicensure; and

12 d. Was not an express condition of any subsequent certificate of
13 need approval;

14 2. The application to reestablish the health care facility or service that
15 was voluntarily discontinued is filed no more than one (1) year from
16 the date the hospital last provided the service that the applicant is
17 seeking to reestablish;

18 3. A proposed health care facility shall be located within the same county
19 as the former health care facility and at a single location; and

20 4. The application shall not seek to reestablish any type of bed utilized in
21 the care and treatment of patients for more than twenty-three (23)
22 consecutive hours;

23 (o) For a proposal that involves transferring acute care beds from one (1) or
24 more existing Kentucky-licensed hospitals to establish a new hospital under
25 the following circumstances:

26 1. The existing and new hospitals shall be under common ownership and
27 located in the same county;

1 2. No more than fifty percent (50%) of the existing hospital's acute care
 2 beds shall be transferred to the new facility; and

3 3. If the existing hospital:

4 a. Is a state university teaching hospital, the existing hospital
 5 exceeded, by at least one (1), the minimum number of quality
 6 measures required to receive supplemental university directed
 7 payments from the state Medicaid program for the state fiscal
 8 year preceding the date the application was filed; or

9 b. Is not a state university teaching hospital, the existing hospital's
 10 overall star rating by the Centers for Medicare and Medicaid
 11 Services Hospital Care Compare program was three (3) stars or
 12 higher on the most recent annual update to the overall star
 13 ratings preceding the date the application was filed; or

14 (p) In other circumstances the cabinet may prescribe by administrative
 15 regulation~~[may prescribe].~~

16 ~~(7)~~(4) If an application is granted nonsubstantive review status, unless rebutted by
 17 clear and convincing evidence submitted by an affected party, there shall be a
 18 presumption that the facility or service is:

19 (a) Needed; and

20 (b) Consistent with the state health plan~~[Notwithstanding any other provision to~~
 21 ~~the contrary in this chapter, the cabinet may approve a certificate of need for a~~
 22 ~~project required for the purposes set out in subsection (3)(a) to (e) of this~~
 23 ~~section, unless it finds the facility or service with respect to which the capital~~
 24 ~~expenditure is proposed to be made is not required; or to the extent the facility~~
 25 ~~or services contemplated by the proposed capital expenditure is addressed in~~
 26 ~~the state health plan, the cabinet finds that the capital expenditure is not~~
 27 ~~consistent with the state health plan].~~

1 ~~(8)~~~~(5)~~ The decision of the cabinet approving or denying a certificate of need
2 pursuant to this section shall be final for purposes of judicial appeal, unless the
3 applicant requests the application be placed in the formal review process. An
4 approved certificate shall be issued thirty (30) days after notice of the cabinet's
5 decision, unless a judicial appeal is taken and issuance is enjoined by the court.

6 ~~(9)~~~~(6)~~ Notwithstanding any other provision of law, the cabinet shall not grant
7 nonsubstantive review status to a certificate of need application that indicates an
8 intent to apply for Medicaid certification of nursing home beds within a continuing
9 care retirement community established under KRS 216B.015, 216B.020, 216B.330,
10 and 216B.332.

11 ~~(10)~~~~(7)~~ Notwithstanding any provision of state law or the state health plan
12 promulgated by administrative regulation in accordance with KRS 216B.040, the
13 cabinet shall grant nonsubstantive review for a certificate of need proposal to
14 establish an ambulatory surgical center if the applicant complies with the following:

15 (a) The applicant is an ambulatory surgical center that was organized and in
16 operation as the private office of a physician or physician group prior to
17 October 1, 2006;

18 (b) 1. The cabinet's general counsel has submitted a letter to the Accreditation
19 Association for Ambulatory Health Care advising that the cabinet does
20 not object to the applicant's parent company applying for and obtaining
21 Medicare certification; or

22 2. The applicant is an ambulatory surgical center that has received from the
23 cabinet a favorable advisory opinion dated June 14, 2005, confirming
24 that the applicant would be exempt from the certificate of need or
25 licensure requirement;

26 (c) The applicant's ambulatory surgical center has been inspected and accredited
27 by the Accreditation Association for Ambulatory Health Care since December

1 31, 2006, and has maintained accreditation with that organization consistently
2 since that time; and

3 (d) The applicant was a party to litigation concerning the ambulatory surgical
4 center and physician office issue and, prior to July 12, 2012, obtained a Court
5 of Appeals ruling in its favor.

6 ➔Section 3. KRS 216B.062 is amended to read as follows:

7 (1) Applications for certificates of need shall be submitted according to timetables
8 established by the cabinet by promulgation of administrative regulation, pursuant to
9 the provisions of KRS Chapter 13A. The application for a certificate of need shall
10 include the name and business address of any owner, investor, or stockholder in the
11 project whose ownership interest is greater than ten percent (10%). Once an
12 application has been deemed complete pursuant to the cabinet's administrative
13 regulations, notice shall be given as provided by the regulations of the beginning of
14 the review, the proposed review schedule, and the right to request a hearing. The
15 review shall be deemed to commence on the date of notice. No review shall take
16 longer than ninety (90) days from the commencement of the review unless the
17 applicant agrees to a deferral of action.

18 (2) **The cabinet shall not batch applications proposing the same or similar types of**
19 **services, facilities, or equipment**~~Applications proposing the same or similar types~~
20 ~~of services, facilities, or equipment shall be batched for review purposes, excluding~~
21 ~~those granted nonsubstantive review status. The cabinet shall by promulgation of~~
22 ~~administrative regulation under KRS Chapter 13A establish appropriate batching~~
23 ~~groups to assure that applications for each type of service, facility, or equipment~~
24 ~~will be eligible for consideration at set intervals. In each review batch, the cabinet~~
25 ~~shall review and, if appropriate, compare all timely filed applications proposing~~
26 ~~similar types of services, facilities, or equipment in the same health service areas].~~

27 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO

1 READ AS FOLLOWS:

2 (1) As used in this section:

3 (a) "Health care system" means a for-profit, nonprofit, or university-affiliated
4 organization that owns and manages an existing licensed hospital within an
5 urban health care market;

6 (b) "Pilot program" means the program established under this section; and

7 (c) "Urban health care market" means a county:

8 1. With a population exceeding one hundred thousand (100,000) based
9 upon the most recent United States Census Bureau Annual Estimates
10 of the Resident Population for Counties; and

11 2. That has one (1) or more licensed hospitals within the county that
12 exceeded thirty thousand (30,000) inpatient days in the prior year,
13 according to the most recent edition of the Kentucky Annual Hospital
14 Utilization and Services Report produced by the Cabinet for Health
15 and Family Services.

16 (2) (a) The General Assembly finds and declares that health care consumers will
17 benefit from increased access to quality health care services in the state's
18 urban health care markets through reforms to certificate of need.
19 Furthermore, policymakers may utilize knowledge gained from a pilot
20 program in the state's urban health care markets to inform future initiatives
21 to increase access to health care services throughout the Commonwealth.

22 (b) The cabinet shall establish a pilot program in Kentucky's urban health care
23 markets to modernize requirements for a certificate of need.

24 (c) The pilot program shall begin on January 1, 2026, and end on December
25 31, 2029, unless otherwise extended or limited by the General Assembly.

26 (3) Notwithstanding any other provisions of this chapter to the contrary, the
27 following provisions shall apply under the pilot program:

1 (a) In addition to exemptions in Section 1 of this Act, the following shall be
2 exempt from obtaining a certificate of need in an urban health care market:

3 1. Medical resonance imaging equipment;

4 2. Providers replacing worn equipment if the equipment has been used in
5 a health facility for three (3) years or more and it previously required
6 a certificate of need;

7 3. Ambulatory surgical centers solely dedicated to ophthalmological
8 services;

9 4. Megavoltage radiation therapy and PET equipment acquired by
10 existing licensed Kentucky hospitals with accredited cancer centers;

11 5. Personal care homes specializing in Alzheimer's or dementia care;

12 6. Increases in the bed capacity of an existing licensed hospital up to ten
13 (10) beds or twenty percent (20%) of capacity, whichever is greater, in
14 any consecutive three (3) year period, in a hospital that has
15 maintained an overall occupancy of acute care beds in the facility at a
16 rate greater than eighty percent (80%) for the previous twelve (12)
17 month period; and

18 7. To change the location of a proposed health facility or to relocate a
19 licensed health facility if the change of location or relocation is within
20 the same county.

21 The facilities or services listed in this paragraph shall be subject to
22 licensure, when applicable;

23 (b) In addition to those facilities or services granted nonsubstantive review
24 status in Section 2 of this Act, the following shall be granted nonsubstantive
25 review status of an application for a certificate of need in an urban health
26 care market:

27 1. Establishing or expanding:

- 1 a. Private duty nursing services to be provided solely within an
2 urban health care market;
- 3 b. Home health services to be provided solely within an urban
4 health care market;
- 5 c. Adult day care centers; and
- 6 d. Facilities specializing in the treatment of chemical dependency
7 or substance abuse disorders;
- 8 2. Increases in the bed capacity of an existing licensed hospital up to fifty
9 percent (50%) of capacity if:
- 10 a. The additional beds are utilized to establish a new hospital under
11 common ownership and within the same county;
- 12 b. The existing hospital has maintained an overall occupancy of
13 acute care beds at a rate greater than eighty percent (80%) for
14 the previous twelve (12) month period; and
- 15 c. There are a minimum of two (2) health care systems within the
16 county where the new hospital will be located; and
- 17 3. Ambulatory surgical centers dedicated solely to pain management.
18 The facilities or services listed in this paragraph shall be subject to
19 licensure, when applicable; and
- 20 (c) 1. a. An applicant listed under paragraph (b) of this subsection and
21 any affected person may submit written testimony, research, or
22 other materials for consideration to the cabinet within ten (10)
23 days of the notice to conduct a nonsubstantive review.
- 24 b. Upon request from the applicant, the cabinet shall provide the
25 applicant with a copy of any written testimony, research, or other
26 materials submitted to the cabinet by an affected person. The
27 applicant may provide a response to the cabinet within five (5)

- 1 days of receiving them from the cabinet.
- 2 c. Only the applicant may request a hearing that shall be conducted
- 3 as provided in KRS 216B.085.
- 4 2. If a certificate of need is denied following a nonsubstantive review, the
- 5 applicant may:
- 6 a. Request that the application be placed in the next cycle of the
- 7 formal review process;
- 8 b. Request that the cabinet reconsider its decision pursuant to KRS
- 9 216B.090; or
- 10 c. Seek judicial review pursuant to KRS 216B.115.
- 11 3. Notwithstanding any law to the contrary, only the applicant may
- 12 request an application to be placed in the formal review process,
- 13 request the cabinet to reconsider its decision, or seek judicial review.
- 14 (4) Upon the end of the pilot program, all facilities or services established in an
- 15 urban health care market under the pilot program shall retain:
- 16 (a) Any certificate of need granted during the pilot program; and
- 17 (b) Approval of all related investments approved during the pilot program.
- 18 (5) The cabinet shall submit a report on the progress of the pilot program by
- 19 November 1 year each of the pilot program to the Legislative Research
- 20 Commission for referral to the Interim Joint Committee on Health Services.
- 21 (6) The cabinet may promulgate administrative regulations in accordance with KRS
- 22 Chapter 13A to implement this section.