

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.040 is amended to read as follows:

- 4 (1) The cabinet shall have four (4) separate and distinct functions in administering this
5 chapter:
- 6 (a) To approve or deny certificates of need in accordance with the provisions of
7 this chapter, except as to those applications which have been granted
8 nonsubstantive review status by the cabinet;
- 9 (b) To issue and to revoke certificates of need;
- 10 (c) To provide a due process hearing and issue a final determination on all actions
11 by the cabinet to deny, revoke, modify, or suspend licenses of health facilities
12 and health services issued by the cabinet; and
- 13 (d) To enforce, through legal actions on its own motion, the provisions of this
14 chapter and its orders and decisions issued pursuant to its functions.
- 15 (2) The cabinet shall:
- 16 (a) Promulgate administrative regulations ***in accordance with***~~pursuant to the~~
17 ~~provisions of~~ KRS Chapter 13A ***to establish***:
- 18 1. ~~To establish~~ The certificate of need review procedures, including but
19 not limited to~~[-]~~ application procedures, notice provisions, procedures
20 for review of completeness of applications, and timetables for review
21 cycles; ***and***~~[-]~~
- 22 2. ~~To establish~~ Criteria for issuance and denial of certificates of need,
23 which shall be limited to the following considerations:
- 24 a. Consistency with plans. Each proposal approved by the cabinet
25 shall be consistent with the state health plan, and shall be subject
26 to biennial budget authorizations and limitations, and with
27 consideration given to the proposal's impact on health care costs in

1 the Commonwealth. The state health plan shall contain a need
2 assessment for long-term care beds, which shall be based on a
3 statistically valid analysis of the present and future needs of the
4 state as a whole and counties individually. The need assessment
5 shall be applied uniformly to all areas of the state. The
6 methodology shall be reviewed and updated on an annual basis.
7 The long-term care bed need criteria in the state health plan or as
8 set forth by the appropriate certificate of need authority shall give
9 preference to conversion of personal care beds and acute care beds
10 to nursing facility beds, so long as the state health plan or the
11 appropriate certificate of need authority establishes a need in the
12 affected counties and the proposed conversions are more cost-
13 effective than new construction. The fact that the state health plan
14 shall not address the specific type of proposal being reviewed shall
15 not constitute grounds for disapproval of the proposal.
16 Notwithstanding any other provision of law, the long-term care
17 bed need criteria in the state health plan or as set forth by the
18 appropriate certificate of need authority shall not consider, factor
19 in, or include any continuing care retirement community's nursing
20 home beds established under KRS 216B.015, 216B.020,
21 216B.330, and 216B.332;

22 b. Need and accessibility. The proposal shall meet an identified need
23 in a defined geographic area and be accessible to all residents of
24 the area. A defined geographic area shall be defined as the area the
25 proposal seeks to serve, including its demographics, and shall not
26 be limited to geographical boundaries;

27 c. Interrelationships and linkages. The proposal shall serve to

- 1 accomplish appropriate and effective linkages with other services,
 2 facilities, and elements of the health care system in the region and
 3 state, accompanied by assurance of effort to achieve
 4 comprehensive care, proper utilization of services, and efficient
 5 functioning of the health care system;
- 6 d. Costs, economic feasibility, and resources availability. The
 7 proposal, when measured against the cost of alternatives for
 8 meeting needs, shall be judged to be an effective and economical
 9 use of resources, not only of capital investment, but also ongoing
 10 requirements for health manpower and operational financing;
- 11 e. Quality of services. The applicant shall be prepared to and capable
 12 of undertaking and carrying out the responsibilities involved in the
 13 proposal in a manner consistent with appropriate standards and
 14 requirements assuring the provision of quality health care services,
 15 as established by the cabinet; **and**
- 16 f. Hospital-based skilled nursing, intermediate care, and personal
 17 care beds shall be considered by the cabinet in determining the
 18 need for freestanding long-term care beds; **and**[-]
- 19 (b) Conduct public hearings, as requested **by**:
- 20 **1. An applicant for a certificate of need, in respect to that applicant's**
 21 **certificate of need application;**
- 22 **2. A holder of a certificate of need, in respect to a revocation of that**
 23 **holder's certificate of need; or**
- 24 **3. A holder of a license, in respect to a denial, suspension, modification,**
 25 **or revocation of that holder's license**[certificate of need applications,
 26 ~~revocations of certificates of need, and denials, suspensions,~~
 27 ~~modifications, or revocations of licenses].~~

- 1 (3) The cabinet may:
- 2 (a) ~~Promulgate~~~~Issue~~ other administrative regulations in accordance with KRS
- 3 Chapter 13A necessary for the proper administration of this chapter;
- 4 (b) Administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary
- 5 process in proceedings brought before or initiated by the cabinet, and the
- 6 process shall extend to all parts of the Commonwealth. Service of process in
- 7 all proceedings brought before or initiated by the cabinet may be made by
- 8 certified mail, or in the same manner as other process in civil cases, as the
- 9 cabinet directs;
- 10 (c) Establish by promulgation of an administrative regulation in accordance
- 11 with~~under~~ KRS Chapter 13A reasonable application fees for certificates of
- 12 need;
- 13 (d) Establish a mechanism for issuing advisory opinions to prospective applicants
- 14 for certificates of need regarding the requirements of a certificate of need; and
- 15 (e) Establish a mechanism for biennial review of projects for compliance with the
- 16 terms of the certificate of need.

17 **(4) The cabinet shall establish a procedure for requesting information from a holder**

18 **of a certificate of need for the purpose of making a determination regarding an**

19 **application for a new certificate of need or an expansion of an existing certificate**

20 **of need.**

21 ➔Section 2. KRS 216B.062 is amended to read as follows:

- 22 (1) Applications for certificates of need shall be submitted according to timetables
- 23 established by the cabinet by promulgation of an administrative regulation~~,~~
- 24 ~~pursuant to the provisions of~~ in accordance with KRS Chapter 13A. The
- 25 application for a certificate of need shall include the name and business address of
- 26 any owner, investor, or stockholder in the project whose ownership interest is
- 27 greater than ten percent (10%). Once an application has been deemed complete

1 pursuant to the cabinet's administrative regulations, notice shall be given as
 2 provided by the administrative regulations of the beginning of the review, the
 3 proposed review schedule, and the right of an applicant to request a hearing. The
 4 review shall be deemed to commence on the date of notice. The cabinet shall issue
 5 a final decision on an application within~~[No review shall take longer than]~~ ninety
 6 (90) days from the commencement of the review unless the applicant agrees to a
 7 deferral of action.

8 (2) Applications proposing the same or similar types of services, facilities, or
 9 equipment shall be batched for review purposes, excluding those granted
 10 nonsubstantive review status. The cabinet shall by promulgation of an
 11 administrative regulation in accordance with~~[under]~~ KRS Chapter 13A establish
 12 appropriate batching groups to assure that applications for each type of service,
 13 facility, or equipment will be eligible for consideration at set intervals. In each
 14 review batch, the cabinet shall review and, if appropriate, compare all timely-filed
 15 applications proposing similar types of services, facilities, or equipment in the same
 16 health service areas.

17 ➔Section 3. KRS 216B.085 is amended to read as follows:

18 (1) No later than fifteen (15) days after the date the review commences, an
 19 applicant~~[any affected person]~~ may request a public hearing. Hearings shall be
 20 before a person designated by the Office of Administrative Hearings within the
 21 Department of Law to serve as hearing officer. The hearing officer shall be
 22 authorized to administer oaths, issue subpoenas, subpoenas duces tecum, and all
 23 necessary process in the proceedings.

24 (2) If a hearing is requested, the Office of Administrative Hearings within the
 25 Department of Law shall set a date, time, and place for a public hearing.
 26 Reasonable notice of the hearing shall be given to the applicant~~[all affected~~
 27 ~~persons]~~ in accordance with administrative regulations promulgated by the cabinet

1 *in accordance with KRS Chapter 13A.*

2 (3) At the hearing, *the applicant*~~[any party to the proceedings]~~ shall have the right to be
3 represented by counsel, and to present oral or written arguments and evidence
4 relevant to the matter which is the subject of the hearing~~[, and may conduct~~
5 ~~reasonable cross-examination under oath of persons who make factual allegations~~
6 ~~relevant to such matters]~~. A full and complete record shall be maintained of the
7 hearing.

8 (4) Any decision of the cabinet to issue or deny a certificate of need shall be based
9 solely on the record established with regard to the matter. All decisions granting,
10 denying, or modifying a certificate of need shall be made by the cabinet in writing.
11 The cabinet shall notify the *applicant*~~[parties to the proceedings]~~ of the decision
12 and the decision shall be final for purposes of judicial appeal unless a request for
13 reconsideration is filed *by the applicant*. An approved certificate of need shall be
14 issued forty (40) days after notice of the cabinet's decision~~[unless a request for~~
15 ~~reconsideration is filed or a judicial appeal is taken and issuance is enjoined by the~~
16 ~~court]~~.

17 ➔Section 4. KRS 216B.090 is amended to read as follows:

18 (1) *An applicant*~~[Any party to the proceedings]~~ may, for good cause shown, request in
19 writing a hearing for purposes of reconsideration of a decision of the cabinet
20 pertaining to a certificate of need or the revocation of a certificate of need under
21 procedures promulgated by administrative regulation *in accordance with KRS*
22 *Chapter 13A*. The request shall be filed within fifteen (15) days of the notice of the
23 decision. For purposes of this section, there shall be deemed to be "good cause
24 shown" if the request for a public hearing:

25 (a) Presents significant, relevant information not previously available for
26 consideration by the cabinet;

27 (b) Demonstrates that there have been significant changes in the factors or

1 circumstances relied upon by the cabinet in reaching its decision; or

2 (c) Demonstrates that the cabinet has materially failed to follow its adopted
3 procedures in reaching its decision[; ~~or~~

4 ~~(d) States that a public hearing pursuant to KRS 216B.085 was not conducted~~
5 ~~prior to a decision to deny a certificate of need].~~

6 (2) If a public hearing is granted, it shall be held within thirty (30) days after the
7 decision to grant the request for reconsideration. The hearing shall be conducted in
8 accordance with the provisions of this chapter. The cabinet shall make its decision
9 on reconsideration and shall give notice thereof. The decision of the cabinet shall be
10 final for purposes of judicial appeal. An approved certificate of need shall be issued
11 forty (40) days after notice of the cabinet's decision unless a judicial appeal is taken
12 and issuance is enjoined by the court.

13 ➔Section 5. KRS 216B.095 is amended to read as follows:

14 (1) An applicant may waive the procedures for formal review of an application for a
15 certificate of need and request a nonsubstantive review as provided in this
16 section~~[below]~~. The cabinet may grant or deny nonsubstantive review status within
17 ten (10) days of the date the application is deemed completed~~[and shall give notice~~
18 ~~to all affected persons of the decision to conduct a nonsubstantive review. Any~~
19 ~~affected person other than the applicant may request a hearing by filing a request~~
20 ~~with the cabinet within ten (10) days of the notice to conduct a nonsubstantive~~
21 ~~review]~~. As applicable, hearings shall be conducted as provided in KRS 216B.085.
22 Based solely upon the record established with regard to the matter, the cabinet shall
23 approve or deny a certificate of need on all projects assigned nonsubstantive review
24 status within thirty-five (35) days of the determination of nonsubstantive review
25 status. If the application is denied nonsubstantive review status, it shall
26 automatically be placed in the formal review process.

27 (2) If a certificate of need is denied following a nonsubstantive review, the applicant

1 may request that the application be placed in the next cycle of the formal review
2 process. ~~Nothing in~~ This subsection shall ***not*** require an applicant to pursue a
3 formal review before obtaining judicial review pursuant to KRS 216B.115.

4 (3) The cabinet may grant nonsubstantive review status to an application for a
5 certificate of need which is required:

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

7 (b) To replace or relocate a licensed health facility, if there is no substantial
8 change in health services or substantial change in bed capacity;

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

11 (d) For cost escalations; or

12 (e) In other circumstances the cabinet ~~by administrative regulation~~ may
13 prescribe ***by administrative regulation promulgated in accordance with KRS***

14 ***Chapter 13A.***

15 (4) Notwithstanding any other provision ***of this chapter*** to the contrary ~~in this~~
16 ~~chapter~~, the cabinet may approve a certificate of need for a project required for the
17 purposes set out in subsection (3)(a) to (e) of this section, unless it finds the facility
18 or service with respect to which the capital expenditure is proposed to be made is
19 not required; or to the extent the facility or services contemplated by the proposed
20 capital expenditure is addressed in the state health plan, the cabinet finds that the
21 capital expenditure is not consistent with the state health plan.

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

27 (6) Notwithstanding any other provision of law, the cabinet shall not grant

1 nonsubstantive review status to a certificate of need application that indicates an
2 intent to apply for Medicaid certification of nursing home beds within a continuing
3 care retirement community established under KRS 216B.015, 216B.020, 216B.330,
4 and 216B.332.

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

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

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

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

20 (c) The applicant's ambulatory surgical center has been inspected and accredited
21 by the Accreditation Association for Ambulatory Health Care since December
22 31, 2006, and has maintained accreditation with that organization consistently
23 since that time; and

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

27 ➔Section 6. KRS 216B.115 is amended to read as follows:

- 1 (1) An appeal to the Franklin Circuit Court may be taken from any final decision of the
2 cabinet with respect to a certificate-of-need application, a certificate of need, or a
3 license, by *an applicant*~~[any party to the proceedings]~~.
- 4 (2) An appeal may be taken by filing a petition for review in the Franklin Circuit Court
5 within thirty (30) days after notice of the final decision unless a request for
6 reconsideration has been filed, in which case the petition shall be filed within
7 fifteen (15) days of the cabinet's decision not to reconsider or notice of its decision
8 on reconsideration. The petition shall state completely the grounds upon which the
9 review is sought and shall assign all errors relied upon. The petitioner shall serve a
10 copy of the petition to each person who was a party to the proceedings. Summons
11 shall be issued upon the petition directing the adverse party or parties to file an
12 answer within twenty (20) days after service of summons. The cabinet shall, upon
13 being served with the summons and within thirty (30) days thereafter, file a copy of
14 the record, duly certified by the secretary, the cost of the record to be taxed as costs
15 upon appeal. In lieu of filing of the record, an abstract thereof may be filed if all
16 parties to the appeal agree.