

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 ~~the~~ application procedures, notice provisions, procedures
20 for review of completeness of applications, and timetables for review
21 cycles; and ~~the~~

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

- 18 (1) Applications for certificates of need shall be submitted according to timetables
- 19 established by the cabinet by promulgation of an administrative regulation~~;~~
- 20 ~~pursuant to the provisions of~~ in accordance with KRS Chapter 13A. The
- 21 application for a certificate of need shall include the name and business address of
- 22 any owner, investor, or stockholder in the project whose ownership interest is
- 23 greater than ten percent (10%). Once an application has been deemed complete
- 24 pursuant to the cabinet's administrative regulations, notice shall be given as
- 25 provided by the administrative regulations of the beginning of the review, the
- 26 proposed review schedule, and the right of an applicant to request a hearing. The
- 27 review shall be deemed to commence on the date of notice. The cabinet shall issue

1 a final decision on an application within~~[No review shall take longer than]~~ ninety
2 (90) days from the commencement of the review unless the applicant agrees to a
3 deferral of action.

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

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

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

20 (2) If a hearing is requested, the Office of Administrative Hearings within the
21 Department of Law shall set a date, time, and place for a public hearing.
22 Reasonable notice of the hearing shall be given to the applicant~~[all affected~~
23 ~~persons]~~ in accordance with administrative regulations promulgated by the cabinet
24 in accordance with KRS Chapter 13A.

25 (3) At the hearing, the applicant~~[any party to the proceedings]~~ shall have the right to be
26 represented by counsel, and to present oral or written arguments and evidence
27 relevant to the matter which is the subject of the hearing~~[, and may conduct~~

1 ~~reasonable cross-examination under oath of persons who make factual allegations~~
2 ~~relevant to such matters~~. A full and complete record shall be maintained of the
3 hearing.

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

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

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

- 21 (a) Presents significant, relevant information not previously available for
22 consideration by the cabinet;
23 (b) Demonstrates that there have been significant changes in the factors or
24 circumstances relied upon by the cabinet in reaching its decision; or
25 (c) Demonstrates that the cabinet has materially failed to follow its adopted
26 procedures in reaching its decision~~[-or~~
27 ~~(d) States that a public hearing pursuant to KRS 216B.085 was not conducted~~

1 ~~prior to a decision to deny a certificate of need~~.

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

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

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

23 (2) If a certificate of need is denied following a nonsubstantive review, the applicant
24 may request that the application be placed in the next cycle of the formal review
25 process. ~~[Nothing in]~~This subsection shall not require an applicant to pursue a
26 formal review before obtaining judicial review pursuant to KRS 216B.115.

27 (3) The cabinet may grant nonsubstantive review status to an application for a

1 certificate of need which is required:

- 2 (a) To change the location of a proposed health facility;
- 3 (b) To replace or relocate a licensed health facility, if there is no substantial
- 4 change in health services or substantial change in bed capacity;
- 5 (c) To replace or repair worn equipment if the worn equipment has been used by
- 6 the applicant in a health facility for five (5) years or more;
- 7 (d) For cost escalations; or
- 8 (e) In other circumstances the cabinet ~~{by administrative regulation}~~ may
- 9 prescribe **by administrative regulation promulgated in accordance with KRS**
- 10 **Chapter 13A.**

11 (4) Notwithstanding any other provision **of this chapter** to the contrary~~[in this~~

12 ~~chapter]~~, the cabinet may approve a certificate of need for a project required for the

13 purposes set out in subsection (3)(a) to (e) of this section, unless it finds the facility

14 or service with respect to which the capital expenditure is proposed to be made is

15 not required; or to the extent the facility or services contemplated by the proposed

16 capital expenditure is addressed in the state health plan, the cabinet finds that the

17 capital expenditure is not consistent with the state health plan.

18 (5) The decision of the cabinet approving or denying a certificate of need pursuant to

19 this section shall be final for purposes of judicial appeal, unless the applicant

20 requests the application be placed in the formal review process. An approved

21 certificate shall be issued thirty (30) days after notice of the cabinet's decision,

22 unless a judicial appeal is taken and issuance is enjoined by the court.

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

24 nonsubstantive review status to a certificate of need application that indicates an

25 intent to apply for Medicaid certification of nursing home beds within a continuing

26 care retirement community established under KRS 216B.015, 216B.020, 216B.330,

27 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.

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

(1) An appeal to the Franklin Circuit Court may be taken from any final decision of the cabinet with respect to a certificate-of-need application, a certificate of need, or a license, by an applicant~~[any party to the proceedings]~~.

(2) An appeal may be taken by filing a petition for review in the Franklin Circuit Court

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