

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.015 is amended to read as follows:

4    Except as otherwise provided, for purposes of this chapter, the following definitions shall  
5    apply:

6       (1) "Abortion facility" means any place in which an abortion is performed;

7       (2) "Administrative regulation" means a regulation adopted and promulgated pursuant  
8       to the procedures in KRS Chapter 13A;

9       (3) "Affected persons" means the applicant; any person residing within the geographic  
10      area served or to be served by the applicant; any person who regularly uses health  
11      facilities within that geographic area; health facilities located in the health service  
12      area in which the project is proposed to be located which provide services similar to  
13      the services of the facility under review; health facilities which, prior to receipt by  
14      the agency of the proposal being reviewed, have formally indicated an intention to  
15      provide similar services in the future; and the cabinet and third-party payors who  
16      reimburse health facilities for services in the health service area in which the project  
17      is proposed to be located;

18       (4) (a) "Ambulatory surgical center" means a health facility:

19           1. Licensed pursuant to administrative regulations promulgated by the  
20           cabinet;

21           2. That provides outpatient surgical services, excluding oral or dental  
22           procedures; and

23           3. Seeking recognition and reimbursement as an ambulatory surgical center  
24           from any federal, state, or third-party insurer from which payment is  
25           sought.

26       (b) An ambulatory surgical center does not include the private offices of  
27       physicians where in-office outpatient surgical procedures are performed as

1 long as the physician office does not seek licensure, certification,  
2 reimbursement, or recognition as an ambulatory surgical center from a  
3 federal, state, or third-party insurer.

4 (c) ~~If Nothing in~~ This subsection shall not preclude a physician from negotiating  
5 enhanced payment for outpatient surgical procedures performed in the  
6 physician's private office so long as the physician does not seek recognition or  
7 reimbursement of his or her office as an ambulatory surgical center without  
8 first obtaining a certificate of need or license required under KRS 216B.020  
9 and 216B.061;

10 (5) "Applicant" means any physician's office requesting a major medical equipment  
11 expenditure exceeding the capital expenditure minimum, or any person, health  
12 facility, or health service requesting a certificate of need or license;

13 (6) "Cabinet" means the Cabinet for Health and Family Services;

14 (7) "Capital expenditure" means an expenditure made by or on behalf of a health  
15 facility which:

16 (a) Under generally accepted accounting principles is not properly chargeable as  
17 an expense of operation and maintenance or is not for investment purposes  
18 only; or

19 (b) Is made to obtain by lease or comparable arrangement any facility or part  
20 thereof or any equipment for a facility or part thereof;

21 (8) "Capital expenditure minimum" means an expenditure amount of at least fifteen  
22 million dollars (\$15,000,000) adjusted by the cabinet for inflation annually by an  
23 increased rate of change in the nonseasonally adjusted annual average  
24 Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All  
25 Items, between the two (2) most recent calendar years available, as published by  
26 the United States Bureau of Labor Statistics. The cabinet shall not decrease the  
27 capital expenditure minimum~~[the annually adjusted amount set by the cabinet]~~. In

1       determining whether an expenditure exceeds the capital expenditure minimum, the  
2       cost of any studies, surveys, designs, plans, working drawings, specifications, and  
3       other activities essential to the improvement, expansion, or replacement of any  
4       plant or any equipment with respect to which the expenditure is made shall be  
5       included. Donations of equipment or facilities to a health facility which if acquired  
6       directly by the facility would be subject to review under this chapter shall be  
7       considered a capital expenditure, and a transfer of the equipment or facilities for  
8       less than fair market value shall be considered a capital expenditure if a transfer of  
9       the equipment or facilities at fair market value would be subject to review;

10      (9) "Certificate of need" means an authorization by the cabinet to acquire, to establish,  
11       to offer, to substantially change the bed capacity, or to substantially change a health  
12       service as covered by this chapter;

13      (10) "Certified surgical assistant" means a certified surgical assistant or certified first  
14       assistant who is certified by the National Surgical Assistant Association on the  
15       Certification of Surgical Assistants, the Liaison Council on Certification of Surgical  
16       Technologists, or the American Board of Surgical Assistants. The certified surgical  
17       assistant is an unlicensed health-care provider who is directly accountable to a  
18       physician licensed under KRS Chapter 311 or, in the absence of a physician, to a  
19       registered nurse licensed under KRS Chapter 314;

20      (11) "Continuing care retirement community" means a community that provides, on the  
21       same campus, a continuum of residential living options and support services to  
22       persons sixty (60) years of age or older under a written agreement. The residential  
23       living options shall include independent living units, nursing home beds, and either  
24       assisted living units or personal care beds;

25      (12) "Formal review process" means the ninety (90) day certificate-of-need review  
26       conducted by the cabinet;

27      (13) "Health facility" means any institution, place, building, agency, or portion thereof,

1       public or private, whether organized for profit or not, used, operated, or designed to  
2       provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and  
3       includes alcohol abuse, drug abuse, and mental health services. This shall include  
4       but[~~shall~~] not be limited to health facilities and health services commonly referred  
5       to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical  
6       dependency programs, nursing facilities, nursing homes, personal care homes,  
7       intermediate care facilities, assisted living communities, family care homes,  
8       outpatient clinics, ambulatory care facilities, ambulatory surgical centers,  
9       emergency care centers and services, ambulance providers, hospices, community  
10      mental health centers, home health agencies, kidney disease treatment centers and  
11      freestanding hemodialysis units, freestanding birthing centers as defined in KRS  
12      216B.198, and others providing similarly organized services regardless of  
13      nomenclature;

14     (14) "Health services" means clinically related services provided within the  
15      Commonwealth to two (2) or more persons, including but not limited to diagnostic,  
16      treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental  
17      health services;

18     (15) "Independent living" means the provision of living units and supportive services,  
19      including but not limited to laundry, housekeeping, maintenance, activity direction,  
20      security, dining options, and transportation;

21     (16) "Intraoperative surgical care" includes the practice of surgical assisting in which the  
22      certified surgical assistant or physician assistant is working under the direction of  
23      the operating physician as a first or second assist, and which may include the  
24      following procedures:

25       (a) Positioning the patient;

26       (b) Preparing and draping the patient for the operative procedure;

27       (c) Observing the operative site during the operative procedure;

1 (d) Providing the best possible exposure of the anatomy incident to the operative  
2 procedure;

3 (e) Assisting in closure of incisions and wound dressings; and

4 (f) Performing any task, within the role of an unlicensed assistive person, or if  
5 the assistant is a physician assistant, performing any task within the role of a  
6 physician assistant, as required by the operating physician incident to the  
7 particular procedure being performed;

8 (17) "Major medical equipment" means equipment which is used for the provision of  
9 medical and other health services and which costs in excess of the medical  
10 equipment expenditure minimum. In determining whether medical equipment has a  
11 value in excess of the medical equipment expenditure minimum, the value of  
12 studies, surveys, designs, plans, working drawings, specifications, and other  
13 activities essential to the acquisition of the equipment shall be included;

14 (18) "Major medical equipment expenditure minimum" means an expenditure  
15 amount of at least ten million dollars (\$10,000,000) adjusted by the cabinet for  
16 inflation annually by an increased rate of change in the nonseasonally adjusted  
17 annual average Consumer Price Index for all Urban Consumers (CPI-U), U.S.  
18 City Average, All Items, between the two (2) most recent calendar years available,  
19 as published by the United States Bureau of Labor Statistics, except that the  
20 cabinet shall not decrease the major medical equipment expenditure minimum;

21 (19)[(18)] "Nonsubstantive review" means an expedited review conducted by the cabinet  
22 of an application for a certificate of need as authorized under KRS 216B.095;

23 (20)[(19)] "Nonclinically related expenditures" means expenditures for:

24 (a) Repairs, renovations, alterations, and improvements to the physical plant of a  
25 health facility which do not result in a substantial change in beds, a substantial  
26 change in a health service, or the addition of major medical equipment, and do  
27 not constitute the replacement or relocation of a health facility; or





1        (29)~~(28)~~ "State health plan" means the document prepared triennially, updated  
2                annually, and approved by the Governor;

3        (30)~~(29)~~ "Substantial change in a health service" means:

4                (a) The addition of a health service for which there are review criteria and  
5                        standards in the state health plan; or

6                (b) The addition of a health service subject to licensure under this chapter;

7        (31)~~(30)~~ "Substantial change in bed capacity" means the addition or reduction of beds  
8                        by licensure classification within a health facility;

9        (32)~~(31)~~ "Substantial change in a project" means a change made to a pending or  
10                approved project which results in:

11                (a) A substantial change in a health service, except a reduction or termination of a  
12                        health service;

13                (b) A substantial change in bed capacity, except for reductions;

14                (c) A change of location; or

15                (d) An increase in costs greater than the allowable amount as prescribed by  
16                        regulation;

17        (33)~~(32)~~ "To acquire" means to obtain from another by purchase, transfer, lease, or  
18                        other comparable arrangement of the controlling interest of a capital asset or capital  
19                        stock, or voting rights of a corporation. An acquisition shall be deemed to occur  
20                        when more than fifty percent (50%) of an existing capital asset or capital stock or  
21                        voting rights of a corporation is purchased, transferred, leased, or acquired by  
22                        comparable arrangement by one (1) person from another person;

23        (34)~~(33)~~ "To batch" means to review in the same review cycle and, if applicable, give  
24                        comparative consideration to all filed applications pertaining to similar types of  
25                        services, facilities, or equipment affecting the same health service area;

26        (35)~~(34)~~ "To establish" means to construct, develop, or initiate a health facility;

27        (36)~~(35)~~ "To obligate" means to enter any enforceable contract for the construction,

1 acquisition, lease, or financing of a capital asset. A contract shall be considered  
2 enforceable when all contingencies and conditions in the contract have been met.

3 An option to purchase or lease which is not binding shall not be considered an  
4 enforceable contract; and

5 ~~(37)~~<sup>(36)</sup> "To offer" means, when used in connection with health services, to hold a  
6 health facility out as capable of providing, or as having the means of providing,  
7 specified health services.

8 ➔Section 2. KRS 216B.061 is amended to read as follows:

9 (1) Unless otherwise provided in this chapter, ~~a~~<sup>not</sup> person shall not do any of the  
10 following without first obtaining a certificate of need:

11 (a) Establish a health facility if establishing it will cost more than the capital  
12 expenditure minimum;

13 (b) ~~Obligate a capital expenditure which exceeds the capital expenditure~~  
14 ~~minimum~~;

15 (c) Make a substantial change in the bed capacity of a health facility if the  
16 change will cost more than the capital expenditure minimum;

17 (d) Make a substantial change in a health service if the change will cost  
18 more than the capital expenditure minimum;

19 (e) Make a substantial change in a project if the change will increase the  
20 cost of the project by more than ten percent (10%);

21 (f) Acquire major medical equipment if the acquisition will cost more than  
22 the major medical equipment expenditure minimum;

23 (g) Alter a geographical area or alter a specific location which has been  
24 designated on a certificate of need or license; or

25 (h) Transfer an approved certificate of need for the establishment of a new  
26 health facility or the replacement of a licensed facility.

27 (2) A~~No~~ person shall not separate portions of a single project into components in

1       order to evade any expenditure minimum set forth in this chapter. For purposes of  
2       this chapter, the acquisition of one (1) or more items of functionally related  
3       diagnostic or therapeutic equipment shall be considered as one (1) project.

4       (3) ~~A~~~~N~~o person shall not have ex parte contact with the final-decision-making  
5       authority engaged in certificate of need activities regarding a certificate-of-need  
6       application from the commencement of the review cycle to the final decision. If an  
7       ex parte contact occurs, it shall be promptly made a part of the record.

8       (4) ~~A~~~~N~~o person shall not obligate a capital expenditure in excess of the amount  
9       authorized by an existing certificate of need unless the person has received an  
10      administrative escalation from the cabinet as prescribed by regulation.

11      (5) ~~A~~~~N~~o person shall not proceed to obligate a capital expenditure under an approved  
12      certificate of need if there has been a substantial change in the project.

13      (6) A certificate of need shall be issued for a specific location and, when applicable, for  
14      a designated geographical area.

15      (7) ~~A~~~~N~~o person shall not establish an ambulatory surgical center as defined in KRS  
16      216B.015 without obtaining a certificate of need. An ambulatory surgical center  
17      shall require a certificate of need and license, notwithstanding any exemption  
18      contained in KRS 216B.020.

19      (8) ~~[Nothing in ]~~This chapter shall not be interpreted to require any ambulatory surgical  
20      center licensed as of July 12, 2012, to obtain a certificate of need to continue  
21      operations and exercise all of the rights of a licensed health care facility, regardless  
22      of whether it obtained a certificate of need before being licensed.