

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) ~~[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 (b) Projects which do not involve the provision of direct clinical patient care,
2 including but not limited to the following:

- 3 1. Parking facilities;
- 4 2. Telecommunications or telephone systems;
- 5 3. Management information systems;
- 6 4. Ventilation systems;
- 7 5. Heating or air conditioning, or both;
- 8 6. Energy conservation; or
- 9 7. Administrative offices;

10 (21)~~[(20)]~~ "Party to the proceedings" means the applicant for a certificate of need and
11 any affected person who appears at a hearing on the matter under consideration and
12 enters an appearance of record;

13 (22)~~[(21)]~~ "Perioperative nursing" means a practice of nursing in which the nurse
14 provides preoperative, intraoperative, and postoperative nursing care to surgical
15 patients;

16 (23)~~[(22)]~~ "Person" means an individual, a trust or estate, a partnership, a corporation, an
17 association, a group, state, or political subdivision or instrumentality including a
18 municipal corporation of a state;

19 (24)~~[(23)]~~ "Physician assistant" means the same as the definition provided in KRS
20 311.550;

21 (25)~~[(24)]~~ "Record" means, as applicable in a particular proceeding:

- 22 (a) The application and any information provided by the applicant at the request
23 of the cabinet;
- 24 (b) Any information provided by a holder of a certificate of need or license in
25 response to a notice of revocation of a certificate of need or license;
- 26 (c) Any memoranda or documents prepared by or for the cabinet regarding the
27 matter under review which were introduced at any hearing;

- 1 (d) Any staff reports or recommendations prepared by or for the cabinet;
- 2 (e) Any recommendation or decision of the cabinet;
- 3 (f) Any testimony or documentary evidence adduced at a hearing;
- 4 (g) The findings of fact and opinions of the cabinet or the findings of fact and
- 5 recommendation of the hearing officer; and
- 6 (h) Any other items required by administrative regulations promulgated by the
- 7 cabinet;

8 ~~(26)~~~~(25)~~ "Registered nurse first assistant" means one who:

- 9 (a) Holds a current active registered nurse licensure;
- 10 (b) Is certified in perioperative nursing; and
- 11 (c) Has successfully completed and holds a degree or certificate from a
- 12 recognized program, which shall consist of:
 - 13 1. The Association of Operating Room Nurses, Inc., Core Curriculum for
 - 14 the registered nurse first assistant; and
 - 15 2. One (1) year of postbasic nursing study, which shall include at least
 - 16 forty-five (45) hours of didactic instruction and one hundred twenty
 - 17 (120) hours of clinical internship or its equivalent of two (2) college
 - 18 semesters.

19 A registered nurse who was certified prior to 1995 by the Certification Board of
20 Perioperative Nursing shall not be required to fulfill the requirements of paragraph
21 (c) of this subsection;

22 ~~(27)~~~~(26)~~ "Secretary" means the secretary of the Cabinet for Health and Family
23 Services;

24 ~~(28)~~~~(27)~~ "Sexual assault examination facility" means a licensed health facility,
25 emergency medical facility, primary care center, or a children's advocacy center or
26 rape crisis center that is regulated by the Cabinet for Health and Family Services,
27 and that provides sexual assault examinations under KRS 216B.400;

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)~~~~(36)~~ "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~~~~no~~ 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 (c)~~(d)~~ Make a substantial change in a health service **if the change will cost**
18 **more than the capital expenditure minimum;**

19 (d)~~(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 (e)~~(f)~~ Acquire major medical equipment **if the acquisition will cost more than**
22 **the major medical equipment expenditure minimum;**

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

25 (g)~~(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[No]~~ 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[No]~~ 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[No]~~ 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[No]~~ 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.