

1 AN ACT relating to ambulatory surgical centers.

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

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

- 1 **25.** Freestanding birthing centers as defined in KRS 216B.198;
- 2 **26.** **Ambulatory surgical centers that are ophthalmology or endoscopy**
- 3 **surgical centers:**
- 4 **a. Limited to providing ophthalmic surgery or endoscopic**
- 5 **procedures; and**
- 6 **b. One hundred percent (100%) owned by an ophthalmologist or a**
- 7 **physician who practices at the ambulatory surgical center, or an**
- 8 **ophthalmologist group or physician group whose members**
- 9 **practice at the ambulatory surgical center;**
- 10 **27.** The following health services provided on site in an existing health
- 11 facility when the cost is less than six hundred thousand dollars
- 12 (\$600,000) and the services are in place by December 30, 1991:
- 13 **a.** Psychiatric care where chemical dependency services are
- 14 provided;~~;~~
- 15 **b.** Level ~~I~~~~(1)~~ and **Level II**~~(level two (2))~~ of neonatal care; **and**~~;~~
- 16 ~~;~~
- 17 **c.** Cardiac catheterization~~;~~ and open heart surgery where cardiac
- 18 catheterization services are in place as of July 15, 1990; or
- 19 **28.** Ambulance services operating in accordance with subsection (6), (7), or
- 20 (8) of this section.
- 21 **(b) The**~~[These listed]~~ facilities or services **listed in paragraph (a) of this**
- 22 **subsection** shall be subject to licensure, when applicable.
- 23 (2) Nothing in this chapter shall be construed to authorize the licensure, supervision,
- 24 regulation, or control in any manner of:
- 25 (a) Private offices and clinics of physicians, dentists, and other practitioners of
- 26 the healing arts, except any physician's office that meets the criteria set forth
- 27 in KRS 216B.015(5) or that meets the definition of an ambulatory surgical

- 1 center as set out in KRS 216B.015;
- 2 (b) Office buildings built by or on behalf of a health facility for the exclusive use
3 of physicians, dentists, and other practitioners of the healing arts; unless the
4 physician's office meets the criteria set forth in KRS 216B.015(5), or unless
5 the physician's office is also an abortion facility as defined in KRS 216B.015,
6 except no capital expenditure or expenses relating to any such building shall
7 be chargeable to or reimbursable as a cost for providing inpatient services
8 offered by a health facility;
- 9 (c) Outpatient health facilities or health services that:
- 10 1. Do not provide services or hold patients in the facility after midnight;
11 and
- 12 2. Are exempt from certificate of need and licensure under subsection (3)
13 of this section;
- 14 (d) Dispensaries and first-aid stations located within business or industrial
15 establishments maintained solely for the use of employees, if the facility does
16 not contain inpatient or resident beds for patients or employees who generally
17 remain in the facility for more than twenty-four (24) hours;
- 18 (e) Establishments~~[,]~~ such as motels, hotels, and boarding houses~~[,]~~ ~~that~~~~[which]~~
19 provide domiciliary and auxiliary commercial services~~[,]~~ but do not provide
20 any health related services and boarding houses ~~that~~~~[which]~~ are operated by
21 persons contracting with the United States Department of Veterans Affairs for
22 boarding services;
- 23 (f) The remedial care or treatment of residents or patients in any home or
24 institution conducted only for those who rely solely upon treatment by prayer
25 or spiritual means in accordance with the creed or tenets of any recognized
26 church or religious denomination and recognized by that church or
27 denomination; and

- 1 (g) On-duty police and fire department personnel assisting in emergency
2 situations by providing first aid or transportation when regular emergency
3 units licensed to provide first aid or transportation are unable to arrive at the
4 scene of an emergency situation within a reasonable time.
- 5 (3) The following outpatient categories of care shall be exempt from certificate of need
6 and licensure~~[on July 14, 2018]~~:
- 7 (a) Primary care centers;
- 8 (b) Special health clinics, unless the clinic provides pain management services
9 and is located off the campus of the hospital that has majority ownership
10 interest;
- 11 (c) Specialized medical technology services, unless providing a State Health Plan
12 service;
- 13 (d) Retail-based health clinics and ambulatory care clinics that provide
14 nonemergency, noninvasive treatment of patients;
- 15 (e) Ambulatory care clinics treating minor illnesses and injuries;
- 16 (f) Mobile health services, unless providing a service in the State Health Plan;
- 17 (g) Rehabilitation agencies;
- 18 (h) Rural health clinics; and
- 19 (i) Off-campus, hospital-acquired physician practices.
- 20 (4) The exemptions established by subsections (2) and (3) of this section shall not
21 apply to the following categories of care:
- 22 (a) An ambulatory surgical center as defined ~~in~~by KRS 216B.015~~[(4)]~~;
- 23 (b) A health facility or health service that provides one (1) of the following types
24 of services:
- 25 1. Cardiac catheterization;
- 26 2. Megavoltage radiation therapy;
- 27 3. Adult day health care;

- 1 4. Behavioral health services;
- 2 5. Chronic renal dialysis; or
- 3 6. Emergency services above the level of treatment for minor illnesses or
- 4 injuries;
- 5 (c) A pain management facility as defined by KRS 218A.175~~[(1)]~~;
- 6 (d) An abortion facility that requires licensure pursuant to KRS 216B.0431; or
- 7 (e) A health facility or health service that requests an expenditure that exceeds the
- 8 major medical expenditure minimum.
- 9 (5) An existing facility licensed as an intermediate care or nursing home shall notify
- 10 the cabinet of its intent to change to a nursing facility as defined in Pub. L.
- 11 No. ~~[Public Law]~~ 100-203. A certificate of need shall not be required for conversion
- 12 of an intermediate care or nursing home to the nursing facility licensure category.
- 13 (6) Ambulance services owned and operated by a city government~~[,]~~ that~~[which]~~
- 14 propose to provide services in coterminous cities outside of the ambulance service's
- 15 designated geographic service area~~[,]~~ shall not be required to obtain a certificate of
- 16 need if the governing body of the city in which the ambulance services are to be
- 17 provided enters into an agreement with the ambulance service to provide services in
- 18 the city.
- 19 (7) Ambulance services owned by a hospital shall not be required to obtain a certificate
- 20 of need for the sole purpose of providing non-emergency and emergency transport
- 21 services originating from its hospital.
- 22 (8) (a) As used in this subsection, "emergency ambulance transport services" means
- 23 the transportation of an individual that has an emergency medical condition
- 24 with acute symptoms of sufficient severity that the absence of immediate
- 25 medical attention could reasonably be expected to place the individual's health
- 26 in serious jeopardy or result in the serious impairment or dysfunction of the
- 27 individual's bodily organs.

- 1 (b) A city or county government that has conducted a public hearing for the
2 purposes of demonstrating that an imperative need exists in the city or county
3 to provide emergency ambulance transport services within its jurisdictional
4 boundaries shall not be required to obtain a certificate of need for the city or
5 county to:
- 6 1. Directly provide emergency ambulance transport services as defined in
7 this subsection within the city's or county's jurisdictional boundaries; or
 - 8 2. Enter into a contract with a hospital or hospitals within its jurisdiction,
9 or within an adjoining county if there are no hospitals located within the
10 county, for the provision of emergency ambulance transport services as
11 defined in this subsection within the city's or county's jurisdictional
12 boundaries.
- 13 (c) Any license obtained under KRS Chapter 311A by a city or county for the
14 provision of ambulance services operating under a certificate of need
15 exclusion pursuant to this subsection shall be held exclusively by the city or
16 county government and shall not be transferrable to any other entity.
- 17 (d) Prior to obtaining the written agreement of a city, an ambulance service
18 operating under a county government certificate of need exclusion pursuant to
19 this subsection shall not provide emergency ambulance transport services
20 within the boundaries of any city that:
- 21 1. Possesses a certificate of need to provide emergency ambulance
22 services;
 - 23 2. Has an agency or department thereof that holds a certificate of need to
24 provide emergency ambulance services; or
 - 25 3. Is providing emergency ambulance transport services within its
26 jurisdictional boundaries pursuant to this subsection.
- 27 (9) (a) Except where a certificate of need is not required pursuant to subsection (6),

1 (7), or (8) of this section, the cabinet shall grant nonsubstantive review for a
2 certificate of need proposal to establish an ambulance service that is owned by

3 a:

4 1. City government;

5 2. County government; or

6 3. Hospital, in accordance with paragraph (b) of this subsection.

7 (b) A notice shall be sent by the cabinet to all cities and counties that a certificate
8 of need proposal to establish an ambulance service has been submitted by a
9 hospital. The legislative bodies of the cities and counties affected by the
10 hospital's certificate of need proposal shall provide a response to the cabinet
11 within thirty (30) days of receiving the notice. The failure of a city or county
12 legislative body to respond to the notice shall be deemed to be support for the
13 proposal.

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

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

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

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

27 (1) Unless otherwise provided in this chapter, ~~a~~ person shall ***not*** do any of the

- 1 following without first obtaining a certificate of need:
- 2 (a) Establish a health facility;
- 3 (b) Obligate a capital expenditure which exceeds the capital expenditure
- 4 minimum;
- 5 (c) Make a substantial change in the bed capacity of a health facility;
- 6 (d) Make a substantial change in a health service;
- 7 (e) Make a substantial change in a project;
- 8 (f) Acquire major medical equipment;
- 9 (g) Alter a geographical area or alter a specific location which has been
- 10 designated on a certificate of need or license; **or**
- 11 (h) Transfer an approved certificate of need for the establishment of a new health
- 12 facility or the replacement of a licensed facility.
- 13 (2) ~~A~~~~No~~ person shall **not** separate portions of a single project into components in
- 14 order to evade any expenditure minimum **established**~~[set forth]~~ in this chapter. For
- 15 purposes of this chapter, the acquisition of one (1) or more items of functionally
- 16 related diagnostic or therapeutic equipment shall be considered as one (1) project.
- 17 (3) ~~A~~~~No~~ person shall **not** have ex parte contact with the final-decision-making
- 18 authority engaged in certificate of need activities regarding a **certificate of**
- 19 **need**~~[certificate of need]~~ application from the commencement of the review cycle
- 20 to the final decision. If an ex parte contact occurs, it shall be promptly made a part
- 21 of the record.
- 22 (4) ~~A~~~~No~~ person shall **not** obligate a capital expenditure in excess of the amount
- 23 authorized by an existing certificate of need unless the person has received an
- 24 administrative escalation from the cabinet **in accordance with an administrative**
- 25 **regulation promulgated by the cabinet in accordance with KRS Chapter 13A**~~[as~~
- 26 ~~prescribed by regulation]~~.
- 27 (5) ~~A~~~~No~~ person shall **not** proceed to obligate a capital expenditure under an approved

- 1 certificate of need if there has been a substantial change in the project.
- 2 (6) A certificate of need shall be issued for a specific location and, when applicable, for
3 a designated geographical area.
- 4 (7) ~~A~~~~No~~ person shall **not** establish an ambulatory surgical center as defined in KRS
5 216B.015 without obtaining a certificate of need. An ambulatory surgical center
6 shall require a ~~certificate of need and~~ license, **and a certificate of need except as**
7 **exempted**~~[notwithstanding any exemption contained]~~ in KRS 216B.020.
- 8 (8) Nothing in this chapter shall be interpreted to require any ambulatory surgical
9 center licensed as of July 12, 2012, to obtain a certificate of need to continue
10 operations and exercise all of the rights of a licensed health care facility, regardless
11 of whether it obtained a certificate of need before being licensed.