

STATEMENT OF EMERGENCY
900 KAR 6:080E.

This emergency administrative regulation is necessary to allow an ambulance service to begin operating in an area where ambulance services are no longer available without first obtaining a certificate of need if the affected county will qualify for and obtain a Class I hardship license from the Kentucky Board of Emergency Medical Services (KBEMS). This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. in order to meet an imminent threat to public health, safety, and welfare. The Cabinet for Health and Family Services has been notified that the ambulance agency serving Knott County intends to cease operation in June 2023, and the ambulance agency serving Lewis County continues to provide service in the short-term but may terminate its contract with a thirty (30) day notice, potentially leaving the county with an abrupt loss of services. There is an ongoing shortage of ambulance services available across the Commonwealth due to financial demands and workforce shortages. Under current regulations, a new ambulance service would be required to apply for a certificate of need before it could begin operation, which is a lengthy process that can take six (6) months to a year. The current version of this emergency regulation establishes the eligibility requirements and process to allow certificate-of-need-covered health services to be provided to alleviate an emergency circumstance without requiring the provider to first obtain a certificate of need. This emergency amendment would expand eligibility to include a county where an ambulance service has surrendered its license or had its license suspended by KBEMS and the county seeks a temporary Class I hardship license from KBEMS to operate or contract with a licensed agency to provide ambulance services. This will allow an ambulance provider to quickly begin serving an area where continuous ambulance services have ceased without waiting months to obtain a certificate of need. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation. This emergency regulation will be filed in conjunction with an emergency amendment to 202 KAR 7:555 by KBEMS, which will create a temporary Class I hardship license for emergency situations. Both regulations will work together to help counties avoid an interruption in ambulances services and protect the health, safety, and welfare of their residents.

ANDY BESHEAR, Governor
CARRIE BANAHAN, Deputy Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency Amendment)

900 KAR 6:080E. Certificate of Need emergency circumstances.

RELATES TO: KRS 216B.015, 216B.020, 216B.061, 216B.990

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the guidelines for alleviating an emergency circumstance for the orderly administration of the Certificate of Need Program.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 216B.015(6).
- (2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn>.
- (3) "Days" means calendar days, unless otherwise specified.
- (4) "Emergency circumstance" means a situation that poses an imminent threat to the life, health, or safety of a citizen of the commonwealth, including a situation in which a ground ambulance provider ceases to provide continuous services in its geographic service area in accordance with 202 KAR 7:555, Section 4.
- (5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.
- (6) "Public notice" means notice given through:
 - (a) The Web site of the Office of Inspector General, Division of Certificate of Need at <https://chfs.ky.gov/agencies/os/oig/dcn>; or
 - (b) The cabinet's Certificate of Need Newsletter.
- (7) "Service area" means county unless otherwise specified in the state health plan.
- (8) "State Health Plan" is defined by KRS 216B.015(28) and is incorporated by reference in 900 KAR 5:020.

Section 2. Emergency Circumstances.

- (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:
 - (a) The person is licensed by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services to provide the same or similar services necessary to alleviate the emergency;
 - (b) The Office of Inspector General, Division of Certificate of Need, is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and
 - (c) The Office of Inspector General, Division of Certificate of Need, acknowledges in writing that it recognizes that an emergency does exist.
- (2) The notice to the Office of Inspector General, Division of Certificate of Need, shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services that shall contain the following information:
 - (a) A detailed description of the emergency that shall include at least the following information:

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 - a. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service; or
 - b. An attestation from a county government that it intends to seek a temporary Class I hardship license from the Kentucky Board of Emergency Medical Services pursuant to 202 KAR 7:555, Section 5;
2. A list of the providers in the service area licensed to provide the services that will be provided during the emergency, unless the situation involves a previously licensed ground ambulance provider that ceases to provide continuous services in its geographic service area; and
3. Proof that:
 - a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service;
 - b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety; or
 - c. A previously licensed ground ambulance provider ceases to provide continuous services in its geographic service area;
- (b) The steps taken to alleviate the emergency;
- (c) The location or geographic service area where the emergency service is being provided; and
- (d) The expected duration of the emergency.
- (3) The Office of Inspector General, Division of Certificate of Need, may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency circumstance does exist.
- (4) Except for a temporary Class I hardship license issued under 202 KAR 7:555, Section 5, if the provision of service to meet the emergency circumstance is required to continue beyond sixty (60) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file the appropriate application for a certificate of need, which is incorporated by reference in 900 KAR 6:055, for the next appropriate public notice pursuant to 900 KAR 6:060. Failure to submit an application to the Office of Inspector General, Division of Certificate of Need, shall result in the rescission of the emergency acknowledgement and generate notification to the Office of Inspector General, Division of Health Care.
- (5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:
 - (a) The emergency circumstance ceases to exist;
 - (b) The cabinet issues a final decision to approve or disapprove the application for certificate of need; or
 - (c) Expiration of the temporary Class I hardship license issued under 202 KAR 7:555, Section 5.
- (6) The person providing the emergency service shall notify the Office of Inspector General, Division of Certificate of Need, within ten (10) days of the date the emergency circumstance ceases and emergency services are no longer required.

ADAM MATHER, Inspector General
CARRIE BANAHAN, Deputy Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 3:54 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 24, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 17, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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