

900 KAR 6:115. Certificate of need requirement for critical access hospitals, swing beds, and continuing care retirement communities.

RELATES TO: KRS 216B.015, 216B.020, 216B.061, 216B.332, 216B.990, 42 C.F.R. 482.58, 485.645

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1, 216B.330

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. KRS 216B.330 requires the cabinet to promulgate administrative regulations to establish the procedures and requirements for obtaining a certificate of compliance for a continuing care retirement community. This administrative regulation establishes the certificate of need requirements for critical access hospitals, swing beds, and continuing care retirement communities.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 216B.015(6).
- (2) "Days" means calendar days, unless otherwise specified.
- (3) "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.

Section 2. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to re-establish the number of acute care beds that the hospital operated prior to becoming a critical access hospital if the hospital decides to discontinue operating as a critical access hospital.

Section 3. Swing Beds.

- (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R. 482.58 or 485.645, shall not be required to obtain a certificate of need to utilize its licensed acute or critical access hospital beds as swing beds.
- (2) For a designated swing bed hospital to add new acute or critical access hospital beds that may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval.

Section 4. Certification of Continuing Care Retirement Communities.

- (1) In order to be certified as a continuing care retirement community, a certificate of compliance shall be obtained from the Office of Inspector General, Division of Certificate of Need.
- (2) In order to obtain a certificate of compliance, a continuing care retirement community shall complete and file CON - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC), incorporated by reference in 900 KAR 6:055, thereby certifying that:
 - (a) All residents shall have a written agreement with the continuing care retirement community;
 - (b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;
 - (c) None of the health facilities or health services established by the continuing care retirement community under this section shall apply for or become certified for

participation in the Medicaid Program, and that this restriction shall be disclosed in writing to each of its residents;

(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care retirement community under this section, and that this restriction shall be disclosed in writing to its residents;

(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;

(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;

(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;

(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or the resident's guardian;

(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;

(j) The continuing care retirement community shall share information on alternative living arrangements provided by the Department of Aging and Independent Living at the time a move-out notice is given to a resident; and

(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3)

(a) The Office of Inspector General, Division of Certificate of Need, shall issue a certificate of compliance within thirty (30) days of receipt of a completed CON - Form 11 if all conditions are met.

(b) If all conditions are not met, the cabinet shall advise the applicant of any deficiencies.

(c) Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Office of Inspector General, Division of Certificate of Need the:

(a) Payor source for each of its nursing home beds; and

(b) Number of each type of bed or living unit within the continuing care retirement community.

(36 Ky.R. 255; 817; 10-21-2009; Crt eff. 5-7-2019; 47 Ky.R. 1704; eff. 6-16-2021.)