FILED WITH LRC
TIME: 10 a.m.
AUG 30 2013
Donna Little
REGULATIONS COMPILER

STATEMENT OF EMERGENCY

900 KAR 5:020E

(1) This emergency administrative regulation is being promulgated to amend the 2013-2015 State Health Plan to address the need for long term care beds in the Commonwealth. Pursuant to KRS 216B.040(2)(a)2.a, the Cabinet for Health and Family Services is charged with responsibility for promulgating regulations to establish criteria for the issuance and denial of certificates of need. The State Health Plan is required to contain a need assessment for long term care beds, which shall be based on a statistically valid analysis of the present and future needs. The Cabinet must take this action to amend the State Health Plan regarding long term care to allow for the relocation of long term care beds to meet the needs of a growing and aging population, thereby protecting human health. The amendment would allow a transferring entity with a bed inventory of at least 250 beds to transfer no more than 50% of its beds to a county within the Area Development District which had an increase in the age 65 and over population of > 50% from 2000-2010 and is projected to experience >75% increase in the age 65 and over population from 2010-2020.

(2) Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) will compromise the state's ability to act quickly in its efforts to address the long term care needs of the Commonwealth.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

Steven L. Beshear
Governor

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(Emergency Amendment)

900 KAR 5:020E. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2013-2015 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2013-2015 State Health Plan", August [~~April~~] 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 275 East Main Street, 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

900 KAR 5:020E

APPROVED:

_____ _____

Emily Whelan Parento Date
Executive Director
Office of Health Policy

APPROVED:

_____ _____

Audrey Tayse Haynes Date
Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Administrative Regulation Number: 900 KAR 5:020E
Contact Person: Diona Mullins, (502) 564-9592

1. Provide a brief summary of:

   (a) What this administrative regulation does: This administrative regulation incorporates by reference the 2013-2015 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation revises the 2013-2015 State Health Plan to address the long term care review criteria.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the State Health Plan will assist in the effective administration of KRS 216B.040(2)(a)2.a. The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:

   (a) How the amendment will change this existing administrative regulation: The amendment will revise the long term care review criteria in the State Health Plan.
   (b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to comply with the content of the authorizing statutes as the present and future needs of the population are to be addressed in the State Health Plan. The establishment of a nursing facility with more than 250 beds is not desirable from an operational or resident satisfaction standpoint. The amendment would allow a facility with an inventory of at least 250 nursing facility beds to relocate no more than 50% of its beds to a county within the same Area Development District which had an increase in the age 65 and over population of over 50% from 2000-2010 and is projected to experience more than a 75% growth in the age 65 and over population from 2010-2020.
   (c) How the amendment conforms to the content of the authorizing

statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised criteria of the 2013-2015 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the long term care review criteria of the State Health Plan will address the present and future needs of the population and assist in the effective administration of KRS 216B.040(2)(a)2.a.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately ten (10) long term care facilities file certificate of need applications.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities which submit certificate of need applications for long term care services will be subject to the revised criteria set forth in the revised 2013-2015 State Health Plan.

   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.

   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications for long term care services will be subject to the revised criteria set forth in the revised 2013-2015 State Health Plan, which addresses the present and future long term care needs.

5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

   (a) Initially: No cost

   (b) On a continuing basis: No cost

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if

it is an amendment: No increase in fees or funding is necessary.

8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

9. TIERING: Is tiering applied? (Explain why or why not)
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 5:020E Contact Person: Diona Mullins

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed long term care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.

   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated for state or local government.

   (c) How much will it cost to administer this program for the first year? None.

   (d) How much will it cost to administer this program for subsequent years? None.

   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

   Revenues (+/-): None
   Expenditures (+/-): None
   Other Explanation: None

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

900 KAR 5:020E, State Health Plan for facilities and services.

Summary of Material Incorporated by Reference

The 2013-2015 State Health Plan, revised August 2013, is being incorporated by reference. The 2013-2015 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. The 2013-2015 State Health Plan, August 2013 includes revisions to the following:

a. The cover page was changed to date reflect an August 2013 revision date.

b. Page 31 was revised to add new review criterion # 4 which states:

Notwithstanding the above criteria, an application submitted to transfer or relocate existing certificate of need approved nursing facility beds shall be consistent with this plan if the following criteria are met:

a. The selling or transferring entity has a certificate of need or licensed nursing facility bed inventory of at least 250 beds;

b. The proposed relocation is within the same Area Development District in a county which had an increase in the age 65 and over population of >50% from 2000-2010 and is projected to experience >75% increase in the age 65 and over population from 2010-2020; and

c. The selling or transferring entity does not propose to sell or transfer more than fifty (50) percent of its certificate of need approved or licensed nursing facility beds.