

1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (New administrative regulation)

4 900 KAR 6:115. Certificate of need critical access hospitals, swing beds, and
5 certification of continuing care retirement communities.

6 RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

7 STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.330

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the

9 Cabinet for Health and Family Services to administer Kentucky's Certificate of Need
10 Program and to promulgate administrative regulations as necessary for the program.

11 This administrative regulation establishes the guidelines for critical access hospital,
12 swing bed, and certification of continuing care retirement community requirements
13 necessary for the orderly administration of the Certificate of Need Program.

14 Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

15 (2) "Days" means calendar days, unless otherwise specified.

16 (3) "Office of Inspector General" means the office within the Cabinet for Health and
17 Family Services that is responsible for licensing and regulatory functions of health
18 facilities and services.

19 Section 2. Critical Access Hospitals. A certificate of need shall not be required for a
20 critical access hospital to reestablish the number of acute care beds that the hospital
21 operated prior to becoming a critical access hospital if the hospital decides to

1 discontinue operating as a critical access hospital.

2 Section 3. Swing Beds. (1) An acute care hospital or a critical access hospital that
3 has been designated as a swing bed hospital by the Office of Inspector General, having
4 met the requirements of 42 C.F.R. 482.66 or 485.645, shall not be required to obtain a
5 certificate of need to utilize its licensed acute or critical access hospital beds as swing
6 beds.

7 (2) For a designated swing bed hospital to add new acute or critical access hospital
8 beds that may be utilized as swing beds, the hospital's proposal shall be consistent with
9 the State Health Plan's review criteria for hospital acute care beds and certificate of
10 need approval shall be required

11 Section 4. Certification of Continuing Care Retirement Communities. (1) In order to
12 be certified as a continuing care retirement community, a certificate of compliance shall
13 be obtained from the Office of Health Policy.

14 (2) In order to obtain a certificate of compliance, a continuing care retirement
15 community shall complete and file OHP - Form 11, Application for Certificate of
16 Compliance for Continuing Care Retirement Community, as incorporated by reference
17 in 900 KAR 6:055, thereby certifying that:

18 (a) All residents shall have a written agreement with the continuing care retirement
19 community;

20 (b) The continuing care retirement community shall offer a continuum of residential
21 living options and support services to its residents age sixty (60) and older and may
22 offer these living options and services to persons below age sixty (60) on an as needed
23 basis;

1 (c) None of the health facilities or health services established by the continuing care
2 retirement community under this section shall apply for or become certified for
3 participation in the Medicaid Program, and that this restriction shall be disclosed in
4 writing to each of its residents;

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

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

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

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

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

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

22 (j) The continuing care retirement community shall share information on alternative
23 living arrangements provided by the Department of Aging and Independent Living at the

1 time a move-out notice is given to a resident; and

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

5 (3) The Office of Health Policy shall issue a certificate of compliance within thirty
6 (30) days of receipt of a completed OHP - Form 11 if all conditions are met. If all
7 conditions are not met, the cabinet shall advise the applicant of any deficiencies. Upon
8 correction of the deficiencies, the cabinet shall issue the certificate of compliance within
9 thirty (30) days of correction.

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

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

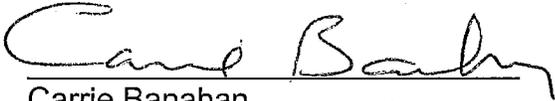
16 (6) Upon request, the continuing care retirement community shall provide the Office
17 of Health Policy the payor source for each of its nursing home beds.

18 (7) Upon request, the continuing care retirement community shall provide the Office
19 of Health Policy the number of each type of bed or living unit within the continuing care
20 retirement community.

900 KAR 6:115

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4)

APPROVED:



Carrie Banahan
Executive Director
Office of Health Policy

5/15/09
Date

APPROVED:



Janie Miller
Secretary
Cabinet for Health and Family Services

5/15/09
Date

900 KAR 6: 115

A public hearing on this administrative regulation shall, if requested, be held on July 21, 2009, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2009, 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. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business July 31, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40621, (502) 564-7905, Fax: (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 900 KAR 6:115

Contact Person: Carrie Banahan or Shane O'Donley, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for critical access hospitals, swing beds, and certification of continuing care retirement communities, for the certificate of need program. Formerly 900 KAR 6:050 established the requirements necessary for the orderly administration of the certificate of need program. Due to the large size of that administrative regulation, LRC staff requested that it be separated into several smaller regulations. Therefore, this new administrative regulation was drafted to establish the guidelines for critical access hospitals, swing beds, and certification of continuing care retirement communities, for the certificate of need program. This regulation creates no substantive change to current policies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990 by establishing the guidelines for critical access hospitals, swing beds, and certification of continuing care retirement communities, for the certificate of need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990 by establishing the guidelines for critical access hospitals, swing beds, and certification of continuing care retirement communities, for the certificate of need program.

(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: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects about 5 entities annually wishing to file a certificate of need

application for certification of continuing care retirement communities, critical access hospitals, and swing beds for the certificate of need program.

(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: As the guidelines for critical access hospitals, swing beds, and certification of continuing care retirement communities, for the certificate of need program set forth in the administrative regulation are currently established and operational, no new action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the guidelines for critical access hospitals, swing beds, and certification of continuing care retirement communities, for the certificate of need program set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish health care facilities and services in compliance with KRS 216B.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation as entities already adhere to guidelines for critical access hospitals, swing beds, and certification of continuing care retirement communities, for the certificate of need program.

(b) On a continuing basis: No additional costs will be incurred to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the guidelines critical access hospitals, swing beds, and certification of continuing care retirement communities, for the certificate of need program requirements are already used as part of our normal operations so no additional funding will be required.

(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 will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or

directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 6:115

Contact Person: Carrie Banahan or
Shane O'Donley

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No _____

If yes, complete questions 2-4.

2. 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 administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990.

4. 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.

(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? This administrative regulation will not generate any revenue.

(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? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): Expenditures (+/-): Other Explanation: