



1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (New administrative regulation)

4 900 KAR 6:105. Certificate of Need advisory opinions.

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

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

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

8 Cabinet for Health and Family Services to administer Kentucky's Certificate of Need

9 Program and to promulgate administrative regulations as necessary for the program.

10 This administrative regulation establishes the policies for issuance of advisory opinions

11 necessary for the orderly administration of the Certificate of Need Program.

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

13 (2) "Certificate of Need Newsletter" means the monthly newsletter that is published

14 by the cabinet regarding certificate of need matters and is available on the Certificate of

15 Need Web site at <http://chfs.ky.gov/ohp/con>.

16 (3) "Days" means calendar days, unless otherwise specified.

17 (4) "Improvement" means change or addition to the premises of an existing facility

18 that enhances its ability to deliver the services that it is authorized to offer under its

19 existing license or an approved certificate of need.

20 (5) "Public information channels" means the Office of Communication and

21 Administrative Review in the Cabinet for Health and Family Services.

1 (6) "Public notice" means notice given through:

2 (a) Public information channels; or

3 (b) The cabinet's Certificate of Need Newsletter.

4 Section 2. Advisory Opinions. (1) The cabinet shall issue advisory opinions
5 regarding matters related to certificate of need on its own initiative or upon request from
6 any person.

7 (2) Requests for advisory opinions shall be filed with the cabinet and shall be
8 accompanied by the OHP - Form 7, Request for Advisory Opinion, as incorporated by
9 reference in 900 KAR 6:055.

10 (3) In rendering an advisory opinion, a proposal shall be considered to constitute an
11 improvement within the definition of a non-clinically related expenditure exempt from
12 review if the proposed expenditure meets the definition of an improvement contained in
13 Section 1 of this administrative regulation.

14 (4) The cabinet may require verification of information and request additional
15 documentation at its discretion prior to issuing an advisory opinion.

16 (5) The cabinet shall issue a written advisory opinion within thirty (30) days of
17 receipt of a completed request for an advisory opinion or of receipt of additional
18 information.

19 (6) Public notice of the advisory opinion shall be published in the monthly Certificate
20 of Need Newsletter.

21 (7) An affected person may request a public hearing regarding an advisory opinion
22 in writing within thirty (30) days of the public notice of the advisory opinion.

23 (8) The public hearing shall be held within forty-five (45) days of the date of the filing

1 of the request and shall be conducted in accordance with the provisions of 900 KAR
2 6:090.

3 (9) The cabinet shall enter a final decision regarding the advisory opinion within
4 forty-five (45) days of the completion of the public hearing.

5 (10) If a public hearing is not requested, the advisory opinion shall be the final action
6 of the cabinet.

900 KAR 6:105

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

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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 6:105

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 policies for issuance of advisory opinions 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 policies for issuance of advisory opinions 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 policies for issuance of advisory opinions 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 policies for issuance of advisory opinions 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 an entity wishing to receive or request an advisory opinion for the certificate of need program. Approximately 20 advisory opinions are issued each year.

(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 policies for issuance of advisory opinions 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 policies for issuance of advisory opinions 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 the policies for issuance of advisory opinions 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 policies for issuance of advisory opinions for the certificate of need program 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 6:105

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: