

1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (New administrative regulation)

4 900 KAR 6:075. Certificate of Need nonsubstantive review.

5 RELATES TO: KRS 216B.010, 216B.095, 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 requirements necessary for consideration  
11 for nonsubstantive review of applications for the orderly administration of the Certificate  
12 of Need Program.

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

14 (2) "Certificate of Need Newsletter" means the monthly newsletter that is published  
15 by the cabinet regarding certificate of need matters and is available on the Certificate of  
16 Need Web site at <http://chfs.ky.gov/ohp/con>

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

18 (4) "Formal review" means the review of applications for certificate of need which  
19 are reviewed within ninety (90) days from the commencement of the review as provided  
20 by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set  
21 forth at KRS 216B.040 and 900 KAR 6:070.

1 (5) "Nonsubstantive review" is defined by KRS 216B.015(17).

2 (6) "Public information channels" means the Office of Communication and  
3 Administrative Review in the Cabinet for Health and Family Services.

4 (7) "Public notice" means notice given through:

5 (a) Public information channels; or

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

7 Section 2. Nonsubstantive Review. (1) The cabinet may grant nonsubstantive  
8 review status to applications to change the location of a proposed health facility or to  
9 relocate a licensed health facility only if:

10 (a) 1. There is no substantial change in health services or bed capacity; and

11 2. The change of location or relocation is within the same county; or

12 (b) The change of location for a psychiatric residential treatment facility is within the  
13 same district as defined in KRS 216B.455 and is to the same campus as a licensed  
14 psychiatric residential treatment facility.

15 (2) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant  
16 to KRS 216B.095(f), the Office of Health Policy may grant nonsubstantive review status  
17 to an application for which a certificate of need is required if:

18 (a) The proposal involves the establishment or expansion of a health facility or  
19 health service for which there is not a component in the State Health Plan;

20 (b) The proposal involves an application from a hospital to reestablish the number of  
21 acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4),  
22 if the number of nursing facility beds so converted are delicensed;

23 (c) 1. The proposal involves an application to relocate or transfer licensed acute

1 care beds, not including neonatal Level III beds, from one (1) existing licensed hospital  
2 to another existing licensed hospital within the same area development district; and the  
3 following requirements are met:

- 4 a. There is no increase in the total number of licensed acute care beds in that area  
5 development district; and
- 6 b. The hospital from which the beds are relocated delicensures those beds; and

7 2. If neonatal Level II beds are relocated or transferred pursuant to this subsection:

- 8 a. The receiving hospital shall have an existing licensed Level II or Level III neonatal  
9 unit;
- 10 b. A minimum of four (4) beds shall be relocated; and
- 11 c. The relocation shall not leave the transferring hospital with less than four (4)  
12 neonatal Level II beds unless the relocated beds represent all of its neonatal Level II  
13 beds.

14 (d) The proposal involves an application by an existing licensed hospital to:

- 15 1. Convert licensed psychiatric or chemical dependency beds to acute care beds,  
16 not including special purpose acute care beds such as neonatal Level II beds or  
17 neonatal Level III beds;
- 18 2. Convert and implement the beds on-site at the hospital's existing licensed facility;  
19 and
- 20 3. Delicense the same number of psychiatric or chemical dependency beds that are  
21 converted.

22 (e) The proposal involves an application by an existing licensed hospital providing  
23 inpatient psychiatric treatment to:

1           1. Convert psychiatric beds licensed for use with geriatric patients to acute care  
2 beds, not including special purpose acute care beds such as neonatal Level II beds or  
3 neonatal Level III beds;

4           2. Implement the beds on-site at the existing licensed hospital; and

5           3. Delicense the same number of converted beds; or

6           (f) The proposal involves an application to transfer or relocate existing certificate of  
7 need approved nursing facility beds between certificate of need approved nursing  
8 facilities or from a certificate of need approved nursing facility to a proposed nursing  
9 facility and the requirements established in this paragraph are met.

10          1. The selling or transferring facility has a certificate of need nursing facility bed  
11 inventory of at least two hundred and fifty (250) beds;

12          2. The transfer or relocation takes place within the same Area Development District;

13          3. The application includes a properly completed OHP – Form 9, Notice of Intent to  
14 Acquire a Health Facility or Health Service, as incorporated by reference in 900 KAR 6:  
15 055, and evidence of the selling or transferring entity's binding commitment to sell or  
16 transfer upon approval of the application; and

17          4. No certificate of need approved nursing facility shall sell or transfer more than fifty  
18 percent (50%) of its certificate of need approved nursing facility beds.

19          (3) If an application is denied nonsubstantive review status by the Office of Health  
20 Policy, the application shall automatically be placed in the formal review process.

21          (4) If an application is granted nonsubstantive review status by the Office of Health  
22 Policy, notice of the decision to grant nonsubstantive review status shall be given to the  
23 applicant and all known affected persons.

1 (5) If an application is granted nonsubstantive review status by the Office of Health  
2 Policy, any affected person who believes that the applicant is not entitled to  
3 nonsubstantive review status or who believes that the application should not be  
4 approved may request a hearing by filing a request for a hearing within ten (10) days of  
5 the notice of the decision to conduct nonsubstantive review. The provisions of 900 KAR  
6 6:090 shall govern the conduct of all nonsubstantive review hearings. Nonsubstantive  
7 review applications shall not be comparatively reviewed but may be consolidated for  
8 hearing purposes.

9 (6) If an application for certificate of need is granted nonsubstantive review status by  
10 the Office of Health Policy, there shall be a presumption that the facility or service is  
11 needed and applications granted nonsubstantive review status by the Office of Health  
12 Policy shall not be reviewed for consistency with the State Health Plan.

13 (7) The cabinet shall approve applications for certificates of need that have been  
14 granted nonsubstantive review status by the Office of Health Policy if:

15 (a) The application does not propose a capital expenditure; or

16 (b) The application does propose a capital expenditure, and the cabinet finds the  
17 facility or service with respect to which the capital expenditure proposed is needed,  
18 unless the cabinet finds that the presumption of need provided for in subsection (6) of  
19 this section has been rebutted by clear and convincing evidence by an affected party.

20 (8) The cabinet shall disapprove an application for a certificate of need that has  
21 been granted nonsubstantive review if the cabinet finds that the:

22 (a) Applicant is not entitled to nonsubstantive review status; or

23 (b) Presumption of need provided for in subsection (6) of this section has been

1 rebutted by clear and convincing evidence by an affected party.

2 (9) The cabinet shall approve or disapprove an application which has been granted  
3 nonsubstantive review status by the Office of Health Policy within thirty-five (35) days of  
4 the date that public notice is given that nonsubstantive review status has been granted.

5 (10) If a certificate of need is denied following nonsubstantive review, the applicant  
6 may:

7 (a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and  
8 900 KAR 6:065;

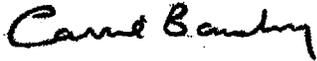
9 (b) Request that the application be placed in the next cycle of the formal review  
10 process; or

11 (c) Seek judicial review pursuant to KRS 216B.115.

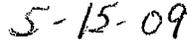
900 KAR 6:075

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:

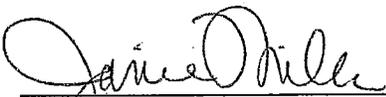


\_\_\_\_\_  
Carrie Banahan  
Executive Director  
Office of Health Policy



\_\_\_\_\_  
Date

APPROVED:



\_\_\_\_\_  
Janie Miller  
Secretary  
Cabinet for Health and Family Services



\_\_\_\_\_  
Date

900 KAR 6:075

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 6:075

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 considerations for nonsubstantive review of applications for the certificate of need program. Formerly administrative regulation 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 include information specific to nonsubstantive review of applications for certificate of need program. In addition, this regulation changes existing policy by allowing large nursing facilities to transfer a portion of the long-term care beds to another facility or proposed facility.

(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.095, 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.095, 216B.990 by establishing the considerations for nonsubstantive review of certificate of need applications.

(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.095, 216B.990 by establishing the considerations for nonsubstantive review of certificate of need applications.

(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 file a certificate of need application. Approximately 100 entities file a certificate of need application 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 considerations for nonsubstantive review of certificate of need applications 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 considerations for nonsubstantive review of certificate of need applications 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 requirements for considerations for formal review.

(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 considerations for nonsubstantive review 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 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 6:075

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.095, 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: