

1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (New administrative regulation)

4 900 KAR 6:080. Certificate of Need emergency circumstances.

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

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 guidelines for alleviating an emergency

11 circumstance 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) "Emergency circumstance" means a situation that poses an imminent threat to

18 the life, health, or safety of a citizen of the Commonwealth.

19 (5) "Office of Inspector General" means the office within the Cabinet for Health and

20 Family Services that is responsible for licensing and regulatory functions of health

21 facilities and services.

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

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

4 (a) Public information channels; or

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

6 (8) "Service Area" means county unless otherwise specified in the state health plan.

7 (9) "State Health Plan" is defined by 900 KAR 5:020.

8 Section 2. Emergency Circumstances. (1) If an emergency circumstance arises, a
9 person may proceed to alleviate the emergency without first obtaining a certificate of
10 need if:

11 (a)1. The person is not a hospital, and the person is licensed by the Office of the
12 Inspector General or the Kentucky Board of Emergency Medical Services to provide the
13 same or similar services necessary to alleviate the emergency; or

14 2. The person is a hospital, and the hospital has an already-issued certificate of
15 need to provide the service necessary to alleviate the emergency;

16 (b) The Office of Health Policy is notified in writing within five (5) days of the
17 commencement of the provision of the service required to alleviate the emergency; and

18 (c) The Office of Health Policy acknowledges in writing that it recognizes that an
19 emergency does exist.

20 (2) The notice to the Office of Health Policy shall be accompanied by an affidavit
21 and other documentation from the person proposing to provide emergency services that
22 shall contain the following information:

23 (a) A detailed description of the emergency that shall include at least the following

1 information:

2 1. A description of health care services that will be provided to the person or
3 persons to whom the services will be provided, including proof of eligibility for the
4 service;

5 2. A list of the providers in the service area licensed to provide the services that will
6 be provided during the emergency; and

7 3. Proof that:

8 a. Other providers licensed in the service area to provide the service are aware of
9 the need for the service to be provided to the person and have refused or are unable to
10 provide the service; or

11 b. Circumstances exist under which the transfer of a patient to another provider
12 licensed in the service area to provide the service would present an unacceptable risk to
13 a patient's life, health, or safety;

14 (b) The steps taken to alleviate the emergency;

15 (c) The location or geographic service area where the emergency service is being
16 provided; and

17 (d) The expected duration of the emergency.

18 (3) The Office of Health Policy may request additional information necessary to
19 make its determination from the person proposing to provide emergency services before
20 it acknowledges that an emergency circumstance does exist.

21 (4) If the provision of service to meet the emergency circumstance is required to
22 continue beyond thirty (30) days from the date that the notice is filed with the cabinet,
23 the person providing the emergency service shall file an application for a certificate of

1 need for the next appropriate public notice pursuant to 900 KAR 6:060 or 900 KAR
2 6:075 Failure to submit an application to the Office of Health Policy shall result in the
3 rescindtion of the emergency acknowledgement and generate notification to the Office
4 of Inspector General.

5 (5) The person providing the emergency service may continue to alleviate the
6 emergency circumstances without a certificate of need until:

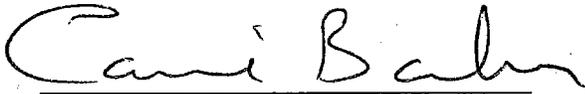
7 (a) The emergency circumstance ceases to exist; or

8 (b) The cabinet issues a final decision to approve or disapprove the application for
9 certificate of need.

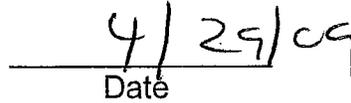
900 KAR 6:080

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

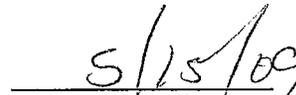


Date

APPROVED:



Janie Miller
Secretary
Cabinet for Health and Family Services



Date

900 KAR 6:080

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 6:080

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 proceeding without a certificate of need application in emergency circumstances. . 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 will allow the cabinet to respond to emergency circumstances. This regulation makes 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 alleviating an emergency.

(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 alleviating an emergency.

(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 alleviate an emergency

(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 alleviating an emergency 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 alleviating an emergency 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 guidelines for proceeding without a certificate of need application in emergency circumstances.

(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 for alleviating an emergency 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 6:080

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: