



1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (New administrative regulation)

4 900 KAR 6:095. Certificate of Need administrative escalations.

5 RELATES TO: KRS 216B.010, 216B.061, 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 requirements for administrative escalation

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

12 Section 1. Definitions. (1) "Administrative escalation" means an approval from the

13 cabinet to increase the capital expenditure authorized on a previously issued certificate

14 of need.

15 (2) "Cabinet" is defined by KRS 216B.015(5).

16 Section 2. Administrative Escalations. (1) A person shall not obligate a capital

17 expenditure in excess of the amount authorized by an existing certificate of need unless

18 the person has received an administrative escalation or an additional certificate of need

19 from the cabinet.

20 (2) Requests for administrative escalations shall be submitted to the cabinet on the

21 OHP - Form 6, Cost Escalation Form, incorporated by reference in 900 KAR 6:055.

1 (3) The cabinet shall authorize administrative escalations for funds that have not  
2 been obligated and which do not exceed the following limits if there is not a substantial  
3 change in the project:

4 (a) Twenty (20) percent of the capital expenditure authorized on the original  
5 certificate of need or \$100,000, whichever is greater, if the capital expenditure  
6 authorized on the certificate of need is less than \$500,000;

7 (b) Twenty (20) percent of the capital expenditure if the capital expenditure  
8 authorized on the certificate of need is \$500,000 to \$4,999,999;

9 (c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for  
10 projects if the capital expenditure authorized on the certificate of need is \$5,000,000 to  
11 \$24,999,999;

12 (d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, if the  
13 capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999;  
14 and

15 (e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, if the  
16 capital expenditure authorized on the certificate of need is \$50,000,000 or more.

17 (4) If an administrative escalation is authorized, the certificate of need holder shall  
18 submit any additional certificate of need application fee required by the increased  
19 capital expenditure pursuant to 900 KAR 6:020.

20 (5) The escalation of a capital expenditure in excess of the limits set forth in  
21 subsection (3) of this section shall:

22 (a) Constitute a substantial change in a project; and

23 (b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

1 (6) The unauthorized obligation of a capital expenditure in excess of the amount  
2 authorized on a certificate of need shall be:

3 (a) Presumed to be a willful violation of KRS Chapter 216B; and

4 (b) Subject to the penalties set forth at KRS 216B.990(2).

900 KAR 6:095

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 6:095

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 6:095

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 requirements for administrative escalation 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 include information specific to requirements for administrative escalation 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, 216B.010, 216B.061, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of 216B.010, 216B.061, 216B.990 by establishing the requirements for administrative escalation 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 216B.010, 216B.061, 216B.990 by establishing the requirements for administrative escalation 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 request an administrative escalation for the certificate of need program. Approximately 10 entities file an administrative escalation annually.

(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 requirements for administrative escalation 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 requirements for administrative escalation 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 requirements for administrative escalation 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 requirements for administrative escalation 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 6:095

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. 216B.010, 216B.061, 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: