

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of Health Policy

3 (Amended After Comments)

4 900 KAR 6:055. Certificate of need forms.

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 forms necessary for the orderly admin-
11 istration 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(6)(~~5~~).

16 Section 2. Forms. (1) OHP - Form 1, Letter of Intent, shall be filed by an appli-
17 cant[all][applicants] for a certificate of need pursuant to the requirements established
18 in 900 KAR 6:065.

19 (2) OHP - Form 2A, Certificate of Need Application, shall be filed by an appli-
20 cant[applicants] for a certificate of need unless the application is for[other than] ground
21 ambulance services,[providers or] change of location, replacement, or cost escalation.

1 (3) OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service,
2 shall be filed by an applicant~~[applicants]~~ for a certificate of need for a ground ambu-
3 lance service~~[providers]~~.

4 (4) OHP - Form 2C, Certificate of Need Application For Change of Location, Re-
5 placement, Cost Escalation, or Acquisition, shall be filed by an applicant~~[applicants]~~
6 for a certificate of need for change of location, replacement, cost escalation, or acquisi-
7 tion.

8 (5) OHP - Form 3, Notice of Appearance, shall be filed by a person who wish-
9 es~~[persons that wish]~~ to appear at a hearing.

10 (6) OHP - Form 4, Witness List, shall be filed by a person who elects~~[persons that~~
11 ~~elect]~~ to call a witness~~[witnesses]~~ at a hearing.

12 (7) OHP - Form 5, Exhibit List, shall be filed by a person who elects~~[persons that~~
13 ~~elect]~~ to introduce evidence at a hearing.

14 (8) OHP - Form 6, Cost Escalation Form, shall be filed by a facility~~[facilities]~~ that
15 elects~~[elect]~~ to request an administrative escalation.

16 (9) OHP - Form 7, Request for Advisory Opinion, shall be filed by anyone electing to
17 request an advisory opinion.

18 (10) OHP - Form 8, Certificate of Need Six Month Progress Report, shall be filed by a
19 holder of a certificate of need whose project is not fully implemented.

20 (11) OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service,
21 shall be submitted by a person proposing to acquire an existing licensed health facility
22 or service.

23 (12) OHP - Form 10A, Notice of Addition or Establishment of a Health Service or

1 Equipment, shall be filed by any health facility which adds equipment or makes an addi-
2 tion to a health service for which there are review criteria in the State Health Plan but for
3 which a certificate of need is not required.

4 (13) OHP – Form 10B, Notice of Termination or Reduction of a Health Service or Re-
5 duction of Bed Capacity, shall be filed by a health facility which reduces or terminates a
6 health service[.] or reduces bed capacity.

7 (14) OHP - Form 11, Application for Certificate of Compliance for a Continuing Care
8 Retirement Community (CCRC), shall be filed by a facility to obtain a certificate of com-
9 pliance as a continuing care retirement community.

10 Section 3. Incorporation by Reference. (1) The following material is incorporated by
11 reference:

12 (a) "OHP - Form 1, Letter of Intent", 05/2009;

13 (b) "OHP - Form 2A, Certificate of Need Application", 05/2014[05/2009];

14 (c) "OHP - Form 2B, Certificate of Need Application For Ground Ambulance Ser-
15 vice[Providers]", 05/2009;

16 (d) "OHP - Form 2C, Certificate of Need Application For Change of Location, Re-
17 placement, Cost Escalation, or Acquisition ", 05/2009;

18 (e) "OHP - Form 3, Notice of Appearance", 05/2009;

19 (f) "OHP - Form 4, Witness List", 05/2009;

20 (g) "OHP - Form 5, Exhibit List", 05/2009;

21 (h) "OHP - Form 6, Cost Escalation Form", 05/2009;

22 (i) "OHP - Form 7, Request for Advisory Opinion", 05/2009;

23 (j) "OHP - Form 8, Certificate of Need Six Month Progress Report",

1 05/2014[05/2009];

2 (k) "OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service",
3 05/2009;

4 (l) "OHP - Form 10A, Notice of Addition or Establishment of a Health Service or
5 Equipment", 05/2009;

6 (m) "OHP - Form 10B, Notice of Termination or Reduction of a Health Service or
7 Reduction of Bed Capacity", 08/2014[05/2009]; and

8 (n) "OHP - Form 11, Application for Certificate of Compliance for a Continuing Care
9 Retirement Community (CCRC)", 05/2009.

10 (2) This material may be inspected, copied, or obtained, subject to applicable copy-
11 right law, at the Cabinet for Health and Family Services, Office of Health Policy, 275
12 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to
13 4:30 p.m.

900 KAR 6:055

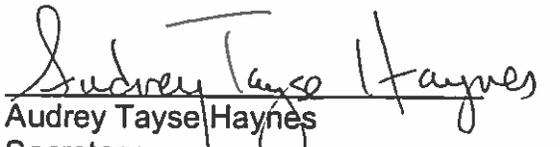
REVIEWED:



Emily Whelan Parento
Executive Director
Office of Health Policy

7/31/14
Date

APPROVED:



Audrey Tayse Haynes
Secretary
Cabinet for Health and Family Services

8/7/14
Date

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Regulation: 900 KAR 6:055
Contact Person: Diona Mullins, Policy Advisor
Office of Health Policy
(502) 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference certificate of need forms. OHP - Form 8, the Certificate of Need Six Month Progress Report form is filed by a holder of a certificate of need whose project is not fully implemented to demonstrate compliance with statutory and regulatory certificate of need implementation requirements. OHP- Form 2A is the certificate of need application for formal and nonsubstantive review. OHP-Form 10B Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, which was revised in the Amended After Comments administrative regulation, is used by a health facility or service which reduces or terminates a health service or reduces bed capacity.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.040(2)(a)1, KRS 216B.086 and KRS.216B.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates by reference various forms required for the certificate of need program. OHP - Form 8 Certificate of Need Six Month Progress Report is required to be submitted by certificate of need holders to document progress toward implementation of outstanding certificates of need. OHP- Form 2A is the certificate of need application for formal and nonsubstantive review. OHP-Form 10B is used by a health facility or service which reduces or terminates a health service or reduces bed capacity.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 216B.086 authorizes the Cabinet to revoke a certificate of need, or portion thereof, for failure of the holder of the certificate to implement the project in accordance with timetables and standards for implementation established by administrative regulation. OHP - Form 8 is utilized by certificate of need holders to report progress made toward implementation of outstanding certificates of need. KRS 216B.040(2)(a)1 requires the Cabinet to promulgate administrative regulations as necessary for the administration of the certificate of need program. OHP-Form 2A is the application for nonsubstantive and formal review applications. OHP-Form 10B is used by a health facility or service which reduces or terminates a health service or reduces bed capacity.

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: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A is revised to require nonsubstantive review applicants to ad-

dress consistency with the State Health Plan, if applicable. OHP-Form 10B is revised to address reduction of a health service.

(b) The necessity of the amendment to this administrative regulation: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. The current form is not adequate to gauge compliance with KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A is revised to require nonsubstantive review applicants to address consistency with the State Health Plan, if applicable. OHP-Form 10 B is revised to address reduction of a health service.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised OHP - Form 8 Certificate of Need Six Month Progress Report, OHP-Form 2A Certificate of Need Application, and OHP-Form 10B Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A revisions will be consistent with KRS 216B.095 in that non-substantive review applications shall be required to address consistency with the State Health Plan, if applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately 250 progress reports are required to be submitted by CON holders. Annually approximately 150 certificate of need applications are submitted.

(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: Entities which have certificates of need which have not been implemented are required to submit progress reports to the Cabinet utilizing OHP - Form 8. CON applicants will utilize OHP-Form 2A to submit CON application. Licensed health services/facilities will utilize OHP-Form 10B to report a termination or reduction of a health service or a reduction of bed capacity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.

(c) as a result of compliance, what benefits will accrue to the entities identified in question (3):The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 9:100. Nonsubstantive review applications shall be required to address consistency with the State Health Plan when completing OHP-Form 2A.

(5) Provide an estimate of how much it will cost the administrative body to imple-

ment this administrative regulation:

- (a) Initially: No cost
- (b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 900 KAR 6:055
Contact Person: Diona Mullins, (502) 564-9592

1. 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? Health care facilities owned by the state, county or city which hold unimplemented certificates of need are required to submit certificate of need six month progress reports. Health care facilities owned by the state, county or city will be required to submit certificate of need applications for the establishment or change in a health service.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.086

3. 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 amendment will not generate additional revenue for state or local government during the first year.

(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 amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

900 KAR 6:055, Certificate of Need forms.
Amended After Comments
Summary of Changes to Material Incorporated by Reference

1. OHP-Form 8, Certificate of Need Six Month Progress Report, was amended to make the changes noted below. Its edition date changed from May 2009 to May 2014.
 - a. Pages were revised to reflect a May 2014 revision date.
 - b. Page 1 was revised to add the statement "Do Not Staple Form"; delete note in the first paragraph; delete heading "Section A"; and add lines requesting email address.
 - c. Page 2 was revised to add new questions 1 and 2.
 - d. Page 3 was revised to add new questions 3-8.
 - e. Page 4 was revised to add new question 9; a section for signature; and instructions for submission.
 - f. Page 5 was revised to add new Total Cost of Implemented Project page.
 - g. Pages 6-7 were revised to add new Attachment A Progress Report Requirements for Non-Long Term Care Bed Projects.
 - h. Page 8 was revised to add new Attachment B Progress Report Requirements for Long Term Care Bed Projects.
 - i. Page 9 was revised to delete former Section B.
 - j. Pages 10-11 were revised to delete former Section C.
 - k. Pages 12-13 were revised to delete former Section D.
 - l. Pages 14-15 were revised to delete former Section E.
 - m. Page 16 was revised to delete former Section F.
 - n. Page 17 was revised to delete former Section G.
 - o. Page 18 was revised to delete former Section H.

- p. Page 19 was revised to delete former Section I.
- q. Page 20 was revised to delete former Section J.
- r. Pages 21-22 were revised to delete former Section K.
- s. Page 23 was revised to delete former Section L.
- t. Page 24 was revised to delete former Section M.
- u. Page 25 was revised to delete former Section N.

The total number of pages in this form is 25.

2. OHP-Form 2A Certificate of Need Application, revised May 2014, was amended to make the changes noted below in a. through u. Its edition date changed from May 2009 to May 2014.
 - a. Pages were revised to reflect a revision date of May 2014.
 - b. Page 6 was revised to require nonsubstantive review applications to complete Subsection 1 of Section D, if applicable.
 - c. Pages 14 and 15, Subsection 4 M, N, and O were revised to delete uncollectibles.
 - d. Pages 16 and 17, Subsection 4 P1 and P2 were revised to change uncollectibles to bad debt.

The total number of pages in this form is 20.

3. OHP-Form 10B Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, was amended to allow the reduction of a health service to be reported. Its edition date changed from May 2009 to August 2014.

The total number of pages in this form is 1.

STATEMENT OF CONSIDERATION RELATING TO
900 KAR 6:055
Office of Health Policy

Amended After Comments

(1) The public hearing on 900 KAR 6:055 scheduled for June 23, 2014 at 9:00 a.m. in the Health Services Building was cancelled; however written comments were received during the public comment period.

(2) The following individuals submitted written comments via the public comment process:

<u>NAME AND TITLE</u>	<u>AGENCY/ORGANIZATION/ENTITY/OTHER</u>
Michael T. Rust President	Kentucky Hospital Association Louisville, KY
Joseph G. Koch CEO	Bourbon Community Hospital Paris, KY
Erika Skula President/CEO	Manchester Memorial Hospital Manchester, KY
Wade R. Stone Exec. Vice President	The Medical Center Bowling Green, KY
Andy Sears Chief Strategy and Marketing Officer	Baptist Health Louisville, KY
Emily Whelan Parento Executive Director	Office of Health Policy Frankfort, KY

(3) The following individuals from the promulgating administrative body responded to the comments received:

<u>NAME AND TITLE</u>	<u>AGENCY/ORGANIZATION/ENTITY/OTHER</u>
Emily Whelan Parento Executive Director	Office of Health Policy

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: CON Forms

(a) Comment: Joseph G. Koch, Bourbon General Hospital, Erika Skula, Manchester Memorial Hospital; Wade R. Stone, The Medical Center; and Andy Sears, Baptist Health provided comments consistent with the following comments provided by Michael T. Rust, Kentucky Hospital Association:

"KHA understands the Cabinet is working to obtain more detailed information regarding existing approved CONs through the progress report process. KHA does not have any specific concerns regarding the proposed changes to the regulation 900 KAR 6:055."

(b) Response: The Cabinet will retain the proposed amendments.

(2) Subject: Drafting and Formatting Changes

(a) Comment: Agency staff determined that a number of drafting and formatting changes were needed to comply with KRS Chapter 13A by correcting section numbering, changing plural to singular, and clarifying intent.

(b) Response: Drafting and formatting changes will be made as needed.

SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Office of Health Policy (OHP) has considered the comments received regarding 900 KAR 6:055 and is amending the administrative regulation as follows:

Page 1

TITLE

Lower case for "Need".

Page 1

Section 2(1)

Line 16

After "filed by", insert "an applicant".

Delete "applicants".

Page 1

Section 2(2)

Line 18

After "filed by", insert "an applicant".
Delete "applicants".

Page 2

Section 2(3)

Line 1

After "filed by", insert "an applicant".
Delete "applicants".
After "need for", insert "a".
After "ambulance", insert "service".
Delete "providers".

Page 2

Section 2(4)

Line 3

After "filed by", insert "an applicant".
Delete "applicants".

Line 4

After "cost escalation", insert a comma.

Page 2

Section 2(5)

Line 5

After "filed by", insert "a person who wishes".
Delete "persons that wish".

Page 2

Section 2(6)

Line 7

After "filed by", insert "a person who elects".
Delete "persons that elect".
After "to call", insert "a witness".
Delete "witnesses".

Page 2

Section 2(7)

Line 9

After "filed by", insert "a person who elects".
Delete "persons that elect".

Page 2

Section 2(8)

Line 11

After "filed by", insert "a facility".
Delete "facilities".

After "that", insert "elects".
Delete "elect".

Page 3
Section 2(13)
Line 3

After "a health service", delete the comma.

Page 3
Section 3(1)(c)
Lines 11 and 12

After "Ground Ambulance", insert "Service".
Delete "Providers".

Page 4
Section 3(1)(m)
Line 3

After "Termination", insert "or Reduction".

Line 4

After "Capacity", insert "08/2014".
Delete "05/2009".

CHANGES TO MATERIAL INCORPORATED BY REFERENCE:

For OHP-Form 10B:

- * Change the revised date from "New (05/2009)" to "Revised (08/2014)".
- * In the name of the form, after "Notice Of Termination", insert "Or Reduction".
- * In the name of the form, after "Health Service", delete the comma.
- * Question 2, after "that will be terminated", insert "or reduced".
- * Question 3, after "service will be terminated", insert "or reduced".