

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of Health Policy

3 (Amendment)

4 900 KAR 5:020. State Health Plan for facilities and services.

5 RELATES TO: KRS 216B.010-216B.130

6 STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28),
7 216B.040(2)(a)2.a.

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires
9 the cabinet to promulgate an administrative regulation, updated annually, to establish
10 the State Health Plan. The State Health Plan is a critical element of the certificate of
11 need process for which the cabinet is given responsibility in KRS Chapter 216B. This
12 administrative regulation establishes the State Health Plan for facilities and services.

13 Section 1. The 2017-2019 [~~Update to the 2015-2017~~] State Health Plan shall be
14 used to:

15 (1) Review a certificate of need application pursuant to KRS 216B.040; and


16 (2) Determine whether a substantial change to a health service has occurred
17 pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

18 Section 2. Incorporation by Reference. (1) The "2017-2019 [~~Update to the 2015-~~
19 ~~2017~~] State Health Plan", July [~~January~~] 2017, is incorporated by reference.

20 (2) This material may be inspected, copied, or obtained, subject to applicable

- 1 copyright law, at the Office of Health Policy, 275 East Main Street, 4WE, Frankfort,
- 2 Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

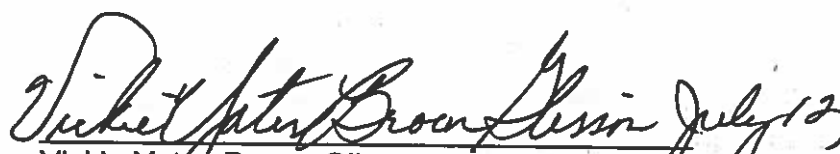
900 KAR 5:020



Paul A. Coomes
Executive Director
Office of Health Policy

6/12/17
Date

APPROVED:



Vickie Yates Brown Glisson
Secretary

July 12,
2017
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on August 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2017, 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40621, Phone: 502-564-7905, Fax: 502-564-7573; Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 900 KAR 5:020
Contact Person: Molly Lewis, Deputy General Counsel
Office of Legal Services
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(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(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 incorporates by reference the 2017-2019 State Health Plan. Substantive changes include deletion of the common review criteria; revisions to the special care neonatal beds criteria to allow conversions between Level II and Level III NICU beds and to allow a hospital with 800 births to establish a Level II program; nursing facility criteria were revised to allow transfer/relocation of nursing facility beds within the same county, to a contiguous county, or to a county within the ADD, to delete the criterion regarding alleviation of an emergency circumstance, to allow for the establishment of nursing home beds for the provision of post-acute rehabilitation services, and to delete the requirement for a facility proposing to transfer beds to participate in the Cabinet's National Background Check Programs; home health agency review criteria were revised

to delete the exemption criterion for accountable care organizations (ACOs) and to delete the requirement for Home Health applicants to participate in the Cabinet's National Background Check Program; cardiac catheterization review criteria were revised to delete the criteria regarding the cardiac catheterization pilot program for therapeutic catheterization programs without open heart surgery backup, and to establish review criteria for therapeutic catheterization programs to project 200 annual procedures and 50 procedures per interventional cardiologist by the second year of operation; the private duty nursing service definition was revised and the requirement for the applicant to participate in the Cabinet's National Background Check Program was deleted.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the State Health Plan, which is used to determine whether certificate of need applications are consistent with the State Health Plan.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by incorporating by reference the 2017-2019 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the 2017-2019 State Health Plan which will be used to determine whether certificate of need applications are consistent with the State Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected parties requesting hearings. Annually, approximately 115 certificate of need applications are filed.

(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 that submit certificate of need applications will be subject to the criteria set forth in the 2017-2019 State Health Plan.

(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): Entities that submit certificate of need applications will be subject to the revised criteria set forth in the 2017-2019 State Health Plan.

(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.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be needed to implement the provision of the amended 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 fee or funding increase is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? (explain why or why not) Tiering is used as there are different CON review criteria for each licensure category addressed in the State Health Plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 900 KAR 5:020

Contact Person: Molly Lewis, Deputy General Counsel, Office of Legal Services,

Email: molly.lewis@ky.gov, Phone: 502-564-7905

Tricia Orme, Administrative Specialist, Office of Legal Services, Email:
tricia.orme@ky.gov, Phone: 502-564-7905

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? This administrative regulation impacts the Office of Health Policy and may impact any government owned or controlled health care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a

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 administrative regulation will not generate revenue for state or local government.

(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 revenue for state or local government.

(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:

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

900 KAR 5:020. State Health Plan for facilities and health services.

Summary of Material Incorporated by Reference

The 2017 – 2019 State Health Plan, July 2017, is incorporated by reference. The 2017-2019 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

Changes include:

- The Common Review Criteria were deleted.
- Special Care Neonatal Beds criteria were revised to allow conversion between existing Level II and Level III NICU beds; to allow a hospital with 800 annual deliveries to establish a Level II program; and to delete the requirement that the Cabinet approve the collaborative agreement between Level II or Level III providers with the Level IV provider.
- Nursing Facility criteria were revised to allow transfer/relocation of nursing facility beds within the same county, to a contiguous county, or to a county within the ADD; to delete the criterion regarding alleviation of an emergency circumstance; to allow for the establishment of nursing home beds for the provision of post-acute rehabilitation services; and to delete the requirement for a facility proposing to transfer beds to participate in the Cabinet's National Background Check Programs.
- Home Health Agency review criteria were revised to delete the exemption criterion for accountable care organizations (ACOs); and to delete the requirement for Home Health applicants to participate in the Cabinet's National Background Check Program.
- Cardiac Catheterization review criteria were revised to delete the criteria regarding the cardiac catheterization pilot program for therapeutic catheterization programs without open heart surgery backup; and to establish review criteria for therapeutic catheterization programs to project 200 annual procedures and 50 procedures per interventional cardiologist by the second year of operation.
- The Private Duty Nursing Service definition was revised and the requirement for the applicant to participate in the Cabinet's National Background Check Program was deleted.

Total number of pages - 63

The total number of pages incorporated by reference in this administrative regulation is 63.