CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Certificate of Need

(Amendment)

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

RELATES TO: KRS 216B.015, 216B.020, 216B.061, 216B.990

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the guidelines for alleviating an emergency circumstance for the orderly administration of the Certificate of Need Program.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at https://chfs.ky.gov/agencies/os/oig/dcn.

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

(4) "Emergency circumstance" means a situation that poses an imminent threat to the life, health, or safety of a citizen of the commonwealth, including a situation in which a ground ambulance provider ceases to provide continuous services in its geographic service area in accordance with 202 KAR 7:555, Section 4.

(5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(6) "Public notice" means notice given through:

(a) The Web site of the Office of Inspector General, Division of Certificate of Need at https://chfs.ky.gov/agencies/os/oig/dcn; or

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

(7) "Service area" means county unless otherwise specified in the state health plan.

(8) "State Health Plan" is defined by KRS 216B.015(28) and is incorporated by reference in 900 KAR 5:020.

Section 2. Emergency Circumstances.

(1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a) The person is licensed by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services to provide the same or similar services necessary to alleviate the emergency;

(b) The Office of Inspector General, Division of Certificate of Need, is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and

(c) The Office of Inspector General, Division of Certificate of Need, acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Office of Inspector General, Division of Certificate of Need, shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services that shall contain the following information:

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

1.

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

b. An attestation from a county government that it intends to seek a temporary Class I hardship license from the Kentucky Board of Emergency Medical Services pursuant to 202 KAR 7:555, Section 5;

2. A list of the providers in the service area licensed to provide the services that will be provided during the emergency, unless the situation involves a previously licensed ground ambulance provider that ceases to provide continuous services in its geographic service area; and

3. Proof that:

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

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

c. A previously licensed ground ambulance provider ceases to provide continuous services in its geographic service area;

(b) The steps taken to alleviate the emergency;

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

(d) The expected duration of the emergency.

(3) The Office of Inspector General, Division of Certificate of Need, may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency circumstance does exist.

(4) Except for a temporary Class I hardship license issued under 202 KAR 7:555, Section 5, if the provision of service to meet the emergency circumstance is required to continue beyond sixty (60) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file the appropriate application for a certificate of need, which is incorporated by reference in 900 KAR 6:055, for the next appropriate public notice pursuant to 900 KAR 6:060. Failure to submit an application to the Office of Inspector General, Division of Certificate of Need, shall result in the rescission of the emergency acknowledgement and generate notification to the Office of Inspector General, Division of Health Care.

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

(a) The emergency circumstance ceases to exist;[ ~~or~~]

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

(c) Expiration of the temporary Class I hardship license issued under 202 KAR 7:555, Section 5.

(6) The person providing the emergency service shall notify the Office of Inspector General, Division of Certificate of Need, within ten (10) days of the date the emergency circumstance ceases and emergency services are no longer required.

ADAM MATHER, Inspector General

CARRIE BANAHAN, Deputy Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, 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. This hearing is open to the public. Any person who attends virtually 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, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the process for addressing emergency circumstances as part of the certificate of need process.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to comply with KRS 216B.040(2)(a.)1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for the certificate of need process.

(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 the statutes by establishing review procedures for the certificate of need process

(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 amendment provides the cabinet with a mechanism that will allow a county to alleviate an emergency circumstance without first obtaining a certificate of need if continuous ambulance services have ceased in the area and the county seeks a temporary Class I hardship license from the Kentucky Board of Emergency Medical Services (KBEMS).

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to provide the cabinet with a mechanism to allow a county to alleviate an emergency circumstance without first obtaining a certificate of need in a county or counties that would otherwise be left without any Class I ambulance service.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment conforms to the content of KRS 216B.040 because it establishes procedures for the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment assists in the effective administration of the statutes by establishing procedures for the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

A county or counties in which ground ambulance services have ceased will be affected by this amendment, which is intended to minimize interruptions in continuous ambulance services.

(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:

Counties seeking a temporary Class I hardship license from KBEMS must comply with the procedures set forth in this administrative regulation in order to begin providing services without first obtaining a certificate of need if an emergency circumstance exists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Counties issued a temporary Class I hardship license by KBEMS under 202 KAR 7:555 may incur costs by providing Class I ambulance services or contracting with a Class I ambulance service. However, counties will not incur any costs under this amendment to 900 KAR 6:080.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Kentucky’s citizens will benefit from counties being able to provide ambulance services under a temporary Class I hardship license after a Class I agency that previously served the county or counties has surrendered its license or had its license suspended by KBEMS.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis:

There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

State general funds and agency monies are used to implement and enforce 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 to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities authorized to provide services to alleviate an emergency without first obtaining a certificate of need.

FISCAL NOTE

(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 Cabinet for Health and Family Services, Office of Inspector General, and any county that seeks to provide ambulance services without a certificate of need due to emergency circumstances.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 194A.030(1)(c)4. and 216B.040(2)(a)1.

(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.

(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?

This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years?

This amendment imposes no additional costs on the administrative body during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year?

This administrative regulation imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years?

This administrative regulation imposes no additional costs on regulated entities during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars ($500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment is not expected to have a major economic impact on the regulated entities.