

216B.040 Functions of cabinet in administering chapter -- Regulatory authority.

- (1) The cabinet shall have four (4) separate and distinct functions in administering this chapter:
 - (a) To approve or deny certificates of need in accordance with the provisions of this chapter, except as to those applications which have been granted nonsubstantive review status by the cabinet;
 - (b) To issue and to revoke certificates of need;
 - (c) To provide a due process hearing and issue a final determination on all actions by the cabinet to deny, revoke, modify, or suspend licenses of health facilities and health services issued by the cabinet; and
 - (d) To enforce, through legal actions on its own motion, the provisions of this chapter and its orders and decisions issued pursuant to its functions.
- (2) The cabinet shall:
 - (a) Promulgate administrative regulations pursuant to the provisions of KRS Chapter 13A:
 1. To establish the certificate of need review procedures, including but not limited to, application procedures, notice provisions, procedures for review of completeness of applications, and timetables for review cycles.
 2. To establish criteria for issuance and denial of certificates of need which shall be limited to the following considerations:
 - a. Consistency with plans. Each proposal approved by the cabinet shall be consistent with the state health plan, and shall be subject to biennial budget authorizations and limitations, and with consideration given to the proposal's impact on health care costs in the Commonwealth. The state health plan shall contain a need assessment for long-term care beds, which shall be based on a statistically valid analysis of the present and future needs of the state as a whole and counties individually. The need assessment shall be applied uniformly to all areas of the state. The methodology shall be reviewed and updated on an annual basis. The long-term care bed need criteria in the state health plan or as set forth by the appropriate certificate of need authority shall give preference to conversion of personal care beds and acute care beds to nursing facility beds, so long as the state health plan or the appropriate certificate of need authority establishes a need in the affected counties and the proposed conversions are more cost-effective than new construction. The fact that the state health plan shall not address the specific type of proposal being reviewed shall not constitute grounds for disapproval of the proposal. Notwithstanding any other provision of law, the long-term care bed need criteria in the state health plan or as set forth by the appropriate certificate of need authority shall not consider, factor

in, or include any continuing care retirement community's nursing home beds established under KRS 216B.015, 216B.020, 216B.330, and 216B.332;

- b. Need and accessibility. The proposal shall meet an identified need in a defined geographic area and be accessible to all residents of the area. A defined geographic area shall be defined as the area the proposal seeks to serve, including its demographics, and shall not be limited to geographical boundaries;
 - c. Interrelationships and linkages. The proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system;
 - d. Costs, economic feasibility, and resources availability. The proposal, when measured against the cost of alternatives for meeting needs, shall be judged to be an effective and economical use of resources, not only of capital investment, but also ongoing requirements for health manpower and operational financing;
 - e. Quality of services. The applicant shall be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services, as established by the cabinet;
 - f. Hospital-based skilled nursing, intermediate care, and personal care beds shall be considered by the cabinet in determining the need for freestanding long-term care beds.
- (b) Conduct public hearings, as requested, in respect to certificate-of-need applications, revocations of certificates of need, and denials, suspensions, modifications, or revocations of licenses.
- (3) The cabinet may:
- (a) Issue other administrative regulations necessary for the proper administration of this chapter;
 - (b) Administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet, and the process shall extend to all parts of the Commonwealth. Service of process in all proceedings brought before or initiated by the cabinet may be made by certified mail, or in the same manner as other process in civil cases, as the cabinet directs;
 - (c) Establish by promulgation of administrative regulation under KRS Chapter 13A reasonable application fees for certificates of need;
 - (d) Establish a mechanism for issuing advisory opinions to prospective applicants for certificates of need regarding the requirements of a certificate of need; and

- (e) Establish a mechanism for biennial review of projects for compliance with the terms of the certificate of need.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 143, sec. 12, effective July 14, 2018. -- Amended 2000 Ky. Acts ch. 264, sec. 3, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 299, sec. 2, effective July 15, 1996; and ch. 371, sec. 40, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 512, Part 7, sec. 26, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 493, sec. 1, effective July 13, 1990; and ch. 499, sec. 3, effective July 13, 1990. --Amended 1988 Ky. Acts ch. 210, sec. 9, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 347, sec. 6, effective July 15, 1982. -- Created 1980 Ky. Acts ch. 135, sec. 7, effective July 15, 1980.