

216B.086 Revocation of certificate of need -- Hearings -- Prohibition against ex parte contacts.

- (1) The cabinet may 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 of the cabinet; however, for projects involving long-term care beds, the cabinet may revoke any certificate granted which is not implemented within twenty-four (24) months or within any six (6) month reporting interval during which there is not satisfactory progress in meeting the project timetable and shall revoke any certificate granted which is not implemented within thirty-six (36) months except for those projects specified as an exception pursuant to Executive Order 96-129 in which case those projects shall be implemented according to the intervals and timetable set forth in this section, as of the effective date of Medicaid funding in the biennial budget for those projects. The administrative regulation for projects involving long-term care beds shall be based on project completion in twenty-four (24) months and shall specify criteria for measuring implementation of project objectives at six (6) month reporting intervals. If, at any six (6) month reporting period, the certificate holder is able to show good cause as to why a project failed to meet its timetables, an extension of six (6) months may be granted to meet that particular timetable. The burden of proof shall be on the certificate holder. An extension may be granted beyond a total of thirty-six (36) months, only if the applicant requests that the cabinet grant an additional six (6) month extension beyond the initial thirty-six (36) month completion period and shows good cause. For purposes of this section, there shall be deemed to be "good cause" if the project can be completed within the additional six (6) month period. In no case shall an extension be granted beyond a total of forty-two (42) months. The holder of the certificate of need shall file with the cabinet the name and business address of all owners, investors, and stockholders in the project whose ownership interest is greater than ten percent (10%). All reports submitted by the certificate holder under this subsection shall be considered a public record in accordance with the Kentucky Open Records Law, KRS 61.870 to 61.884.
- (2) The cabinet shall give notice to the holder of the certificate of its initial decision to revoke the certificate of need or portion thereof. The cabinet's initial decision to revoke a certificate of need or portion thereof shall become final after thirty (30) days unless a hearing is requested. The secretary shall give notice to the holder of the certificate of a decision which has become final under the provisions of this subsection.
- (3) The holder of the certificate of need to be revoked may request in writing a public hearing in respect to an initial decision by the cabinet to revoke a certificate of need within thirty (30) days of the date of notice of the initial decision. Failure to request a hearing shall constitute a waiver of any right to reconsideration or judicial appeal of a final cabinet decision to revoke a certificate of need.
- (4) The hearing shall be before a person designated by the secretary to be the hearing officer. The hearing shall be no later than thirty (30) days after the request for the

hearing is filed.

- (5) If a hearing is requested, the secretary shall set a date, time, and place for a public hearing. Reasonable notice of the hearing shall be given to all affected persons in accordance with administrative regulations promulgated by the cabinet.
- (6) At the hearing, any party to the proceedings shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the revocation of the certificate of need and may conduct reasonable cross-examination under oath of persons who testify. A full and complete record shall be maintained of the hearing, and all testimony shall be recorded but not be transcribed unless the cabinet's final decision is appealed pursuant to this chapter.
- (7) After the issuance of an initial decision to revoke a certificate of need and before a final decision is made, no person shall have ex parte contacts with employees of the cabinet regarding the revocation. If an ex parte contact occurs, it shall be promptly made a part of the record.
- (8) If a hearing is requested after notice of the cabinet's initial decision to revoke a certificate of need, the cabinet shall make a final decision within thirty (30) days after the hearing. Any final decision revoking a certificate of need shall be made by the cabinet in writing. The cabinet shall notify the parties to the proceedings of the final decision.
- (9) Any final decision of the cabinet to revoke a certificate of need shall be based solely on the record established with regard to the revocation.
- (10) Except as provided in subsection (3) of this section, reconsideration pursuant to KRS 216B.090 or judicial appeal pursuant to KRS 216B.115 shall be available with regard to a final decision of the cabinet to revoke a certificate of need.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 593, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 371, sec. 51, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 249, sec. 3, effective July 15, 1994; and ch. 512, Part 7, sec. 37, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 499, sec. 8, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 210, sec. 21, effective July 15, 1988. -- Created 1982 Ky. Acts ch. 347, sec. 17, effective July 15, 1982.