

PRIVATE OFFICE/CLINIC CON AND LICENSURE EXEMPTION

- The private office or clinic of a practitioner of the healing arts is exempt from Certificate of Need and licensure pursuant to KRS 216B.020 (2)(a).
- 900 KAR 6:130 specifies the requirements to qualify for the private office/clinic exemption. The requirements are summarized as follows:
 - The practice claiming the exemption is 100% owned by the individual physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts or group of practitioners of the healing arts. [Note: Each owner shall be practitioner of the healing arts. For example, a physical therapist assistant or occupational therapy assistant are not “practitioners”.]
 - The practice claiming the exemption provides services coded as evaluation and management 51% of the time, rather than equipment and services covered by the State Health Plan. [Example: An orthopedic surgeon’s office/clinic offering MRI services must spend 51% of the time treating patients managed by the practice. This practice could not spend more than 49% of the time doing MRIs.]
 - Services or equipment covered by the State Health Plan which are offered at the office or clinic shall:
 - primarily (51% of the time) be provided to patients whose medical conditions are being treated or managed by the practice; [Example: An orthopedic surgeon’s office/clinic offering MRI services could not spend more than 49% of the time performing MRIs; and of the time spent performing MRIs, no more than 49% of the time spent can be for MRIs for patients outside the practice.]
 - be related to the professional services offered by the practitioner(s) claiming the exemption; and [Example: MRI services provided in a clinic owned by an LCSW would not meet the exemption.]
 - not exceed the major medical capital expenditure minimum established annually by 900 KAR 6:030 . [Effective 9/17/14, the major medical capital expenditure minimum is \$2, 913,541.]
 - The KY licensed practitioner(s) claiming the exemption shall be practicing in KY and shall be responsible for all decisions regarding the care and treatment provided to patients. [Example: A clinic solely owned by a physical therapist which employs a speech pathologist or some other practitioner of the healing arts would not qualify for the private office exemption because the PT’s scope of practice would not allow the PT to be responsible for all decisions regarding the care and treatment of the patient receiving speech pathology or other non-PT services.]
 - All patients are outpatient and are not maintained overnight at the office or clinic.

Note: All requirements of 900 KAR 6:130 have not been summarized. Please refer to the regulation for specifics regarding radiology practices, Qualified Academic Medical Centers, and physician-owned ambulatory surgical centers.

CERTIFICATE OF NEED APPROVAL/ LICENSURE OF REHABILITATION AGENCY

- KRS 216B does not prohibit a private practitioner from electing to seek CON approval and licensure to establish a rehabilitation agency.
- Rehabilitation agency CON applications are granted nonsubstantive review status since the State Health Plan does not contain review criteria for rehab agencies.
- Nonsubstantive review batching of rehabilitation agency CON applications. Currently rehabilitation agency CON applications are batched 2 times a year with the next batching cycle beginning with a letter of intent due by 12/29/14. [Note that CON regulations regarding batching cycles and the CON application process (900 KAR 6:060 and 6:065) are currently in the process of revision. If the proposed revisions are approved, effective in late January 2015 nonsubstantive review applications will be batched monthly instead of having to wait for the appropriate semi-annual batching cycle.]

900 KAR 6:130. Certificate of Need criteria for physician exemption.

RELATES TO: KRS 216B.010, 216B.015, 216B.020, 216B.040, 216B.095, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 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 requirements for physician exemption criteria necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Entity" means any legally recognized business entity in which an individual or group may practice its profession including a professional limited liability company, professional service corporation, partnership, or sole proprietor.

(3) "Evaluation and Management codes" means those codes recognized by the American Medical Association as procedures involving evaluation of patients and management of patient care in the Current Procedure Terminology® references.

(4) "Office" or "clinic" means the physical location at which health care services are provided by a physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts.

(5) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the Certificate of Need and will become the licensee of the proposed health service or facility.

(6) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(7) "Practitioner of the healing arts" means a person licensed by the appropriate state agency to practice a healing art as defined in KRS 311.271(2)(a).

(8) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.

(9) "Qualified academic medical center" means:

(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or

(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person referenced in paragraph (a) or (b) of this subsection.

Section 2. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from the Certificate of Need requirements.

Section 3. Physician exemption from Certificate of Need. (1) An office or clinic that would otherwise be required to obtain a Certificate of Need shall be exempt from Certificate of Need pursuant to KRS 216B.020(2) if:

(a) The practice claiming the exemption is 100 percent owned in an organizational form recognized by the Commonwealth as one (1) in which the listed professions can be practiced by the individual physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts or group of physicians, dentists, or advanced practice registered nurses, licensed clinical social workers, speech therapists, occupational therapists, physical therapists, psychologists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

(b) The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

(c) Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

(d) A physician or physicians licensed to practice and practicing in Kentucky within the practice and claiming the exemption are responsible for all decisions regarding the care and treatment provided to patients;

(e) Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

(f) Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

(g) Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

(h) Nothing in this section shall limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

1. Provisions of a Certificate of Need advisory opinion issued by the Office of Health Policy specifically with respect to that office or clinic;

2. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

3. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(2) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

(a) Compliance with subsection (1)(a), (d), (e), and (f) of this section;

(b) The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

(c) The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(3) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

(a) The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

(b)1. The office was established and in operation prior to January 31, 2006;

2. The office does not provide any services or equipment covered by the State Health Plan; or

3. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located. (39 Ky.R. 365; 811; 985; eff. 11-9-2012.)

Certificate of Need Application Process for Rehabilitation Agency

Certificate of need (CON) approval is required to establish a rehabilitation agency. CONs are obtained through the Office of Health Policy (OHP).

CON Application process:

1. To apply for a CON, review the "Batching Cycle/Timetable" on OHP's website found under "Reference Materials" at <http://www.chfs.ky.gov/ohp/con/> to determine when the next review cycle for rehabilitation agency CONs begin. [Note: Currently rehab agency CON applications are batched twice per year with the next batching cycle beginning with letter of intent due on 12/29/2014. 900 KAR 6:060 and 900 KAR 6:065, regulations regarding timetable for submission of CON and the CON application process are currently proposed for revision. If the proposed revisions are approved, nonsubstantive review applications shall be batched monthly. This change could be effective in late January 2015.]
2. File a Letter of Intent by the "Deadline for Filing Letter of Intent" on the Batching Cycle/Timetable. Go to <http://www.chfs.ky.gov/ohp/con/> and look under "Forms and Applications" for **Form 1: Letter of Intent**. This form can be submitted electronically or by mail.
3. File the Certificate of Need application, **Form 2A: Application for substantive review and regulatory non-substantive review excluding ambulances**, by the "Deadline for Filing Application" on the Batching Cycle/Timetable. Form 2A can be found at <http://www.chfs.ky.gov/ohp/con/> under "Forms and Applications." An original and one copy of Form 2A shall be filed with OHP.

The Batching Cycle/Timetable lists each step in the CON process from start to finish. Please review the dates on the timetable to ensure that all deadlines are met.

Additional links:

- OHP website: <http://www.chfs.ky.gov/ohp/>
- 900 KAR 20:190, Licensure regulation for Rehabilitation Agency: <http://www.lrc.state.ky.us/kar/902/020/190.htm>
- OHP's CON Online Search tool (enables you to see CON applications filed since April 2011): <http://www.chfs.ky.gov/ohp/con/CON+Online+Search+Tool.htm>

If you have questions about applying for a CON, please contact Michele Bushong in the Office of Health Policy at (502) 564-9592 or Michele.bushong@ky.gov.

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF HEALTH POLICY
CERTIFICATE OF NEED

Request for Advisory Opinion

REQUESTER (NAME, ADDRESS, AND TELEPHONE NUMBER):

NAME AND ADDRESS OF FACILITY INVOLVED: EXISTING _____ PROPOSED _____

TYPE OF LICENSE: (IF NOT LICENSED, PLEASE CHECK THE APPROPRIATE PROPOSED CATEGORY
UNDER WHICH THE PROPOSED HEALTH FACILITY/SERVICE WOULD OPERATE)

- | | | |
|--|---|---|
| <input type="checkbox"/> Hospital (Acute) | <input type="checkbox"/> Health Maintenance Organization | <input type="checkbox"/> Mobile Health Service |
| <input type="checkbox"/> Hospital (Comp. Phy. Rehab) | <input type="checkbox"/> Day Health Care Program | <input type="checkbox"/> Psychiatric Residential Treatment Facility |
| <input type="checkbox"/> Hospital (Psych) | <input type="checkbox"/> Ambulatory Care Clinic | <input type="checkbox"/> Special Health Clinic |
| <input type="checkbox"/> Nursing Facility | <input type="checkbox"/> Hospice | <input type="checkbox"/> Private Practices of Physicians, Dentists, or
Practitioners of the Healing Arts |
| <input type="checkbox"/> Skilled Nursing Facility | <input type="checkbox"/> Home Health Agency | |
| <input type="checkbox"/> Personal Care Facility | <input type="checkbox"/> Intermediate Care Facility for IID | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Nursing Home Facility | <input type="checkbox"/> Ambulatory Surgical Center | |
| <input type="checkbox"/> Intermediate Care Facility | <input type="checkbox"/> Ambulance Service | |
| <input type="checkbox"/> Chemical Dependency
Service & Facility | <input type="checkbox"/> Rehabilitation Agency | |

Please be advised that this form is used only to request an advisory opinion on certificate of need requirements. In the following sections, answer every question as completely as possible. Complete information will result in a prompt consideration. If you need assistance, please contact the Office of Health Policy at 502/564-9589.

DESCRIPTION OF PROJECT (i.e. project description, type of service, equipment, etc.)

Please provide the following information. When additional space is required please attach separate sheets.

1. Summarize the proposal. In your description, indicate whether the proposal is for a new service, or a change or expansion of an existing service.

2. What specific services will be provided and by whom? Will these services be provided directly or through a contract?

3. Where will the proposed services be provided? (i.e. patients' homes, nursing homes, hospitals, etc.) Will any hospital inpatients be treated?

4. Who will bill for services? Will the patient be billed directly for these services? If not, please explain.

5. Will any major medical equipment be acquired or leased which exceeds the major medical equipment expenditure minimum found at 900 KAR 6:030? If so, please describe the type of equipment and the purchase price or fair market value.

6. Please indicate the ownership of the proposed project:

Physician	_____	For Profit Corporation	_____
Non-Profit Corporation	_____	Partnership – Limited	_____
Limited Liability Corporation	_____	Partnership – General	_____
Limited Liability Partnership	_____	Sole Proprietorship	_____
Governmental	_____	Professional Service Corp	_____
Other	_____		

If "other", please explain:

7. Please provide the estimated cost of this project: