

## CERTIFICATE OF NEED MODERNIZATION

The Certificate of Need (CON) program has been in place for decades and has worked well in Kentucky to assure access to care and safety for patients. The program is intentionally dynamic, changing as the health care needs of the Commonwealth change, and goes through a rigorous re-examination each year as a part of Kentucky's State Health Plan. Hospitals have planned expansions and additional services based on the law and have relied on the stability CON provides to deliver services to their communities. Kentucky's hospitals and health systems recommend the following common-sense proposals.

### REFORM THE CON APPLICATION AND APPEALS PROCESS

KHA supports improving the CON process to reduce administrative burden, time, and bureaucracy so that health care providers can meet community needs in a timely manner.

- Delete batching cycles to allow providers to file applications at any time to meet community needs.
- Expedite appeals by permitting an expedited process to assert jurisdictional and statutory challenges so that defective applications can be disposed of at an earlier phase of an administrative hearing process. Similar to a motion to dismiss in judicial proceedings, an expedited jurisdictional challenge process would allow a party to file written objections early in the administrative hearing process to address an application's failure to meet criteria or other statutory requirements. This allows improper applications to be dismissed earlier, saving all parties time, money, and resources. Conversely, an application that survives such jurisdictional and statutory challenges can proceed promptly to the substantive criteria of the CON application.
- The expedited (nonsubstantive) CON review process grants a presumption of need to the applicant and requires challengers to show, by clear and convincing evidence, that the application is not needed. This process should be improved by establishing a more focused review of these applications by allowing the parties to challenge nonsubstantive applications based only on the statutory criteria of "need, accessibility, and quality." This more focused review allows for a more efficient administrative hearing process, and closely comports with the underlying policy goals of the CON Program. Other statutory criteria, such as interrelationships, linkages, costs, economic feasibility, and resource availability, could be considered as a matter of discretion by a hearing officer.
- Streamline administrative processes for completion of hearings and final decisions within a prompt time after filing an application.

### PROVIDE FLEXIBILITY FOR EXISTING KENTUCKY HOSPITALS TO IMPROVE PATIENT SERVICE

As models of care, the practice of medicine, and technology change, CON needs to allow for reasonable adjustments to empower Kentucky hospitals to better serve their communities. Kentucky's hospitals recommend:

- Adult Psychiatric Beds – existing acute care hospitals should qualify for expedited (non-substantive) CON review to add 20% or 25 adult (age 21-64) psychiatric beds (whichever is less) through bed conversion, if there is no freestanding psychiatric hospital in the county.

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- Medical Psychiatric Beds - Existing acute care hospitals should qualify for expedited (non-substantive) CON review to convert existing acute care beds to adult medical psychiatric beds (beds to treat patients with both a medical and psychiatric diagnosis).
- Geriatric Psychiatric Beds –The existing criteria allowing acute care and critical access hospitals to convert acute beds to geriatric psychiatric beds for the treatment of patients aged 65+ should be moved to expedited CON review.
- Expedited review should apply for existing Kentucky hospitals with accredited cancer centers to acquire megavoltage radiation therapy and PET equipment to support their existing cancer treatment programs.
- Hospitals that operate emergency departments treat all patients regardless of ability to pay and must have ready access to advanced imaging equipment to support their community. Allow Kentucky hospitals which are subject to EMTALA to qualify for expedited review to acquire MRI equipment, and allow existing Kentucky hospitals to replace worn equipment without requiring a CON.
- Allow CON approved services to be provided at both locations on a split campus in the same county without an additional CON. The main hospital, in obtaining a CON, has already shown a need for the service and has qualified physicians and staff in place to easily provide services at the second location in the same county.
- Allow rural emergency hospitals to convert back to an acute care hospital without the need for a new CON.
- The need for more ambulance service continues and the flexibilities established in RS 2021 HB 777 should be maintained by eliminating the July 1, 2026, sunset date on ambulance CON changes.

## RETAIN FORMAL REVIEW

There are a few services that should continue under formal review, as they are currently. These services are subject to cherry picking that could leave many patients without access to care; or, they require certain minimum numbers of procedures to ensure competence and quality in delivery of the service. These include:

- Building new hospitals/adding new hospital beds
- Neo-natal Intensive Care Units (NICUs)
- Ambulatory Surgical Centers (ASCs)
- Open Heart Surgery and Cardiac Catheterization
- Organ Transplantation
- Megavoltage Radiation Therapy and Positron Emission Tomography (cancer treatment)
- Magnetic Resonance Imaging

## ESTABLISH FORMAL REVIEW

The KHA Board, on advice from hospital obstetricians, respectfully requests that free-standing birthing centers be placed in the State Health Plan because of the patient health and safety risks inherent in these facilities.

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