

AN ACT relating to abortion facilities.

WHEREAS, abortions carry a risk of serious complications such as infection, incomplete abortion, cervical injury, uterine perforation, hemorrhage, allergic reactions, anesthesia-related complications, and more; and

WHEREAS, the Commonwealth has a compelling interest in protecting the health and welfare of all its citizens; and

WHEREAS, since approximately 3,187 abortions were performed in 2015 in the Commonwealth, there is a compelling need to have the safest facilities possible available to all women; and

WHEREAS, the Commonwealth's compelling interest in ensuring that women receive the highest standard of safety and medical care for all procedures does not contravene prior Supreme Court jurisprudence or women's right to bodily autonomy; and

WHEREAS, abortion facilities in the Commonwealth are presently allowed to perform surgical procedures but are not held to the same standards as ambulatory surgical centers within the Commonwealth; and

WHEREAS, the health and safety of women who seek abortion services, regardless of whether those services involve any surgical procedures, will be best advanced and protected by requiring abortion facilities to meet the same high standards as ambulatory surgical centers within the Commonwealth;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 216B.020 is amended to read as follows:

- (1) The provisions of this chapter that relate to the issuance of a certificate of need shall not apply to ~~abortion facilities as defined in KRS 216B.015;~~ any hospital which does not charge its patients for hospital services and does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government; assisted living residences; family care homes; state veterans'

nursing homes; services provided on a contractual basis in a rural primary-care hospital as provided under KRS 216.380; community mental health centers for services as defined in KRS Chapter 210; primary care centers; rural health clinics; private duty nursing services licensed as nursing pools; group homes; licensed residential crisis stabilization units, which may be part of a licensed psychiatric hospital; licensed free-standing residential substance use disorder treatment programs with sixteen (16) or fewer beds, but not including Levels I and II psychiatric residential treatment facilities or licensed psychiatric inpatient beds; outpatient behavioral health treatment, but not including partial hospitalization programs; end stage renal disease dialysis facilities, freestanding or hospital based; swing beds; special clinics, including but not limited to wellness, weight loss, family planning, disability determination, speech and hearing, counseling, pulmonary care, and other clinics which only provide diagnostic services with equipment not exceeding the major medical equipment cost threshold and for which there are no review criteria in the state health plan; nonclinically related expenditures; nursing home beds that shall be exclusively limited to on-campus residents of a certified continuing care retirement community; home health services provided by a continuing care retirement community to its on-campus residents; the relocation of hospital administrative or outpatient services into medical office buildings which are on or contiguous to the premises of the hospital; residential hospice facilities established by licensed hospice programs; or the following health services provided on site in an existing health facility when the cost is less than six hundred thousand dollars (\$600,000) and the services are in place by December 30, 1991: psychiatric care where chemical dependency services are provided, level one (1) and level two (2) of neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are in place as of July 15, 1990. The provisions of this section shall not apply to nursing homes, personal care homes,

intermediate care facilities, and family care homes; or nonconforming ambulance services as defined by administrative regulation. These listed facilities or services shall be subject to licensure, when applicable.

- (2) Nothing in this chapter shall be construed to authorize the licensure, supervision, regulation, or control in any manner of:
- (a) Private offices and clinics of physicians, dentists, and other practitioners of the healing arts, except any physician's office that meets the criteria set forth in KRS 216B.015(5) or that meets the definition of an ambulatory surgical center as set out in KRS 216B.015;
 - (b) Office buildings built by or on behalf of a health facility for the exclusive use of physicians, dentists, and other practitioners of the healing arts; unless the physician's office meets the criteria set forth in KRS 216B.015(5), or unless the physician's office is also an abortion facility as defined in KRS 216B.015, except no capital expenditure or expenses relating to any such building shall be chargeable to or reimbursable as a cost for providing inpatient services offered by a health facility;
 - (c) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees, if the facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four (24) hours;
 - (d) Establishments, such as motels, hotels, and boarding houses, which provide domiciliary and auxiliary commercial services, but do not provide any health related services and boarding houses which are operated by persons contracting with the United States Veterans Administration for boarding services;
 - (e) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer

or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination and recognized by that church or denomination; and

- (f) On-duty police and fire department personnel assisting in emergency situations by providing first aid or transportation when regular emergency units licensed to provide first aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.
- (3) An existing facility licensed as skilled nursing, intermediate care, or nursing home shall notify the cabinet of its intent to change to a nursing facility as defined in Public Law 100-203. A certificate of need shall not be required for conversion of skilled nursing, intermediate care, or nursing home to the nursing facility licensure category.
- (4) Notwithstanding any other provision of law to the contrary, dual-license acute care beds licensed as of December 31, 1995, and those with a licensure application filed and in process prior to February 10, 1996, may be converted to nursing facility beds by December 31, 1996, without applying for a certificate of need. Any dual-license acute care beds not converted to nursing facility beds by December 31, 1996, shall, as of January 1, 1997, be converted to licensed acute care beds.
- (5) Notwithstanding any other provision of law to the contrary, no dual-license acute care beds or acute care nursing home beds that have been converted to nursing facility beds pursuant to the provisions of subsection (3) of this section may be certified as Medicaid eligible after December 31, 1995, without the written authorization of the secretary.
- (6) Notwithstanding any other provision of law to the contrary, total dual-license acute care beds shall be limited to those licensed as of December 31, 1995, and those with a licensure application filed and in process prior to February 10, 1996. No acute care hospital may obtain a new dual license for acute care beds unless the hospital

had a licensure application filed and in process prior to February 10, 1996.

- (7) Ambulance services owned and operated by a city government, which propose to provide services in coterminous cities outside of the ambulance service's designated geographic service area, shall not be required to obtain a certificate of need if the governing body of the city in which the ambulance services are to be provided enters into an agreement with the ambulance service to provide services in the city.
- (8) Notwithstanding any other provision of law, a continuing care retirement community's nursing home beds shall not be certified as Medicaid eligible unless a certificate of need has been issued authorizing applications for Medicaid certification. The provisions of subsection (3) of this section notwithstanding, a continuing care retirement community shall not change the level of care licensure status of its beds without first obtaining a certificate of need.

➔Section 2. KRS 216B.0431 is amended to read as follows:

- (1) *As used in this section, "abortion facility" has the same meaning as in KRS 216B.015.*
- (2) *An abortion facility that has been licensed to perform abortions in the Commonwealth for a minimum of five (5) years prior to the effective date to this Act shall:*
 - (a) *Be exempt from certificate of need requirements, provided there is no lapse or revocation of its license; and*
 - (b) *No later than January 1, 2017, meet licensure standards equivalent to those required for licensed ambulatory surgical centers.*
- (3) *An abortion facility that performs abortions in the Commonwealth, has been licensed to perform abortions in the Commonwealth for less than five (5) years on the effective date of this Act, or that applies for initial licensure on or after the effective date of this Act shall comply with licensure standards and certificate of need requirements equivalent to those required for licensed ambulatory surgical*

centers in the Commonwealth, unless granted an extension by the secretary.

(4) The cabinet shall, no later than September 1, 1998, and subject to the provisions of KRS Chapter 13A, promulgate administrative regulations providing licensure standards and procedures for abortion facilities. The cabinet shall begin enforcing the administrative regulations on March 1, 1999.

~~(5)(2)~~ Any person operating an abortion facility for which a license is required under this chapter may apply for the license prior to March 1, 1999.

~~(6)(3)~~ Each abortion facility shall report monthly to the cabinet the information required by the cabinet by administrative regulation for each abortion performed in the facility.

~~(7)(4)~~ Licensed acute-care hospitals shall be exempt from the provisions of this section, except for any reporting requirements issued by the cabinet.

➔Section 3. KRS 216B.0435 is amended to read as follows:

(1) Each abortion facility shall enter into a written agreement with a licensed acute-care hospital capable of treating patients with unforeseen complications related to an abortion facility procedure by which agreement the hospital agrees to accept and treat these patients.

(2) If unforeseen complications arise prior to or during an abortion facility procedure, the patient shall be transferred to the licensed acute-care hospital with which the abortion facility has a written agreement as provided under subsection (1) of this section or to the hospital selected by the patient, if the patient so chooses.

(3) Each abortion facility shall enter into a written agreement with a licensed local ambulance service for the transport of any emergency patient within the scope of subsection (1) of this section to the licensed acute-care hospital.

(4) The written agreements of an abortion facility with an acute-care hospital and with a local ambulance service shall be filed by the abortion facility with the cabinet.

(5) No later than January 1, 2017, unless granted an extension by the secretary, an

abortion facility shall be required to have a health care practitioner on staff who has admitting privileges at an acute care hospital within fifty (50) miles of the abortion facility.

(6) As used in this section, "abortion facility" has the same meaning as in KRS 216B.015.

➔Section 4. KRS 216B.990 is amended to read as follows:

- (1) Any person who, in willful violation of this chapter, operates a health facility or abortion facility without first obtaining a license or continues to operate a health facility or abortion facility after a final decision suspending or revoking a license shall be fined not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation.
- (2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars (\$500) for each violation.
- (3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (4) Any health facility which willfully violates KRS 216B.250 shall be fined one hundred dollars (\$100) per day for failure to post required notices and one hundred dollars (\$100) per instance for willfully failing to provide an itemized statement within the required time frames.
- (5) In addition to the civil penalties established under KRS 216B.306(1) and (4), any person who advertises, solicits boarders, or operates a boarding home without first obtaining a registration as required by KRS 216B.305 and any person who aids or abets the operation of a boarding home that is not registered shall be imprisoned for

no more than twelve (12) months.

- (6) Any person or entity establishing, managing, or operating an abortion facility or conducting the business of an abortion facility which otherwise violates any provision of this chapter or any administrative regulation promulgated thereunder regarding abortion facilities shall be subject to revocation or suspension of the license of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion facilities or any administrative regulation related thereto by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious disregard for the statute or administrative regulation, either by persons acting individually or in concert with others, shall constitute a violation and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of the violation shall be in any county of the state in which the violation, or any portion thereof, occurred.
- (7) Any hospital acting by or through its agents or employees that violates any provision of KRS 216B.150 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation.
- (8) An abortion facility as defined in KRS 216B.015 that violates subsection (5) of Section 3 of this Act shall be punished by a fine not to exceed one thousand dollars (\$1,000) for each offense. Each day of continuing violation shall be considered a separate offense.**