**CABINET FOR HEALTH AND FAMILY SERVICES**
OFFICE OF INSPECTOR GENERAL

**Andy Beshear**
Governor

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**Steven Stack, MD**
Secretary

**Tricia Steward**
Inspector General

December 16, 2025

Craig Self, System Vice President
600 Mary Street
Evansville, IN 47747

**RE: CON #030-03-6093(1)**
**Deaconess Emergency Care Center - Owensboro**
**Owensboro, Daviess County**
**Establish a freestanding emergency department (FSED)**
**Capital Expenditure: $9,745,043.00**

Dear Craig Self:

Enclosed is a copy of the **FINAL ORDER GRANTING MOTION FOR SUMMARY JUDGMENT** on the above-referenced certificate of need. The Office of Administrative Hearings, Health Services Division in the Office of Attorney General ("Office of Administrative Hearings") disapproves the issuance of a Certificate of Need for Deaconess Emergency Care Center - Owensboro, CON #030-03-6093(1),

In accordance with KRS 216B.085(4), the decision of the Office of Administrative Hearings shall become final for purposes of judicial appeal unless a reconsideration hearing is requested. This letter serves as notice of the Office of Administrative Hearings decision.

In accordance with KRS 216B.090, any party of the proceedings may, for good cause shown, request in writing a hearing for purposes of reconsideration of an Office of Administrative Hearings decision. The request for this public hearing must present significant, relevant information not previously available for consideration by the Office of Administrative Hearings, or demonstrate significant changes in the factors or circumstances relied upon by the Office of Administrative Hearings in reaching its decision, or demonstrate that the Office of Administrative Hearings has materially failed to follow its adopted procedures in reaching its decision, or state that a public hearing pursuant to KRS 216B.085 was not conducted prior to a decision to deny a Certificate of Need.

This reconsideration request shall be filed in writing with the Office of Inspector General, Division of Certificate of Need within fifteen (15) days of the date of notice of this decision. If the request for reconsideration is granted by the Office of Administrative Hearings, the public hearing will be held within thirty (30) days after the decision to grant the request for reconsideration.

In accordance with KRS 216B.115, any party to the proceedings may appeal a decision of the Office of Administrative Hearings by filing a petition for review in the Franklin Circuit Court within thirty (30) days after notice of the final decision unless a request for reconsideration has been filed, in which case the petition shall be filed within fifteen (15) days of the Office of Administrative Hearing's decision not to reconsider or notice of its decision on reconsideration.

Contact our office at (502) 564-9592 if you have any questions concerning this matter.

Sincerely,

Tricia Steward
Inspector General

cc: Holly Turner Curry, Counsel for Deaconess Emergency Care Center- Owensboro
Carole D. Christian and Michael D. Baker, Counsel for Owensboro Health Regional Hospital

**COMMONWEALTH OF KENTUCKY**
**CABINET FOR HEALTH AND FAMILY SERVICES**
**OFFICE OF INSPECTOR GENERAL**
**Division of Certificate of Need**
**Administrative Hearing No. CON 23-034**

IN RE: **DEACONESS EMERGENCY CARE CENTER - OWENSBORO**
**CON #030-03-6093(1)**
*Application to Establish a Freestanding Emergency Department*

# FINAL ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

## INTRODUCTION

Methodist Health, Inc., d/b/a Deaconess Henderson Hospital (Deaconess) seeks a Certificate of Need to establish a freestanding emergency department (FSED) in Owensboro, Kentucky. The CON application was filed on March 29, 2023, and initially placed on public notice on July 20, 2023, in accordance with the Cabinet's CON process. Owensboro Health, Inc., d/b/a Owensboro Health Regional Hospital (OHRH) is an affected party pursuant to KRS 216B.015(3) and KRS 216B.085(1). It opposes the issuance of the CON. The Honorable Holly Curry represents Deaconess; the Honorable Carole Christian and the Honorable Michael Baker represent OHRH.

## PROCEDURAL BACKGROUND

Deaconess requested nonsubstantive review of its application pursuant to KRS 216B.095 and 900 KAR 6:075. Simply put, nonsubstantive review is an expedited process for certain, generally minor, changes to facilities or services as designated by statute or regulation. *See* KRS 216B.015(18) and KRS 216B.095. The facilities or services are presumed to be needed and there is a presumption that they are consistent with the State Health Plan (SHP), which sets forth criteria to be used as part of the application review process. *See* KRS 216B.015(28) and KRS 216B.040.

The process differs from the formal review process in that the presumption of need must be rebutted by the affected party and by the heightened standard of clear and convincing evidence.

In April of 2023, Deaconess responded to the Division of Certificate of Need's request for additional information with regard to cost, economic feasibility and resources availability for the project. That same month, OHRH requested that the Division deny nonsubstantive review and dismiss the application because it is not in compliance with applicable licensing requirements. The Division responded by citing to 900 KAR 6:075, Section 2(3)(a), which requires it to grant nonsubstantive review status to an application when a certificate of need is required and the proposal involves the establishment or expansion of a health facility or service and there is no applicable SHP component.[1] There are no FSED criteria in the SHP. The application was deemed complete and given nonsubstantive review status by the Cabinet by letter dated July 6, 2023.

After OHRH moved for summary judgment based on the licensure issues, Deaconess deferred its application. Later, OHRH renewed its licensure argument when the time approached for the application to be placed on its second public notice. The Division advised that the issue could be dealt with at the administrative hearing level and OHRH again filed a motion for summary judgment. Deaconess again deferred its application.[2] On December 21, 2023, the application was placed on public notice for the third time. The Motion for Summary Judgment that is the subject of this Final Order was filed on that same date.

[1] The Cabinet for Health and Family Services is vested with authority for both CON and the licensure of health facilities. KRS 216B.042 requires the Cabinet to administer licensing functions, including the establishment of standards and procedures to ensure safe, adequate and effective health facilities and services. The licensure functions are administered by the Office of Inspector General, Division of Health Care. The Division of CON is also housed within the Office of Inspector General.

[2] An applicant is allowed to defer an application a maximum of two times. 900 KAR 6:065, Section 6(1).

## FACTUAL BACKGROUND

Deaconess Henderson Hospital is a 192-bed acute hospital located in Henderson, Kentucky, which is in Henderson County. It proposes to establish an FSED in Owensboro, which is in neighboring Daviess County. The proposal primarily seeks to serve patients residing in Daviess, Henderson, Hancock, McLean, and other surrounding counties. Deaconess proposes to renovate an existing 13,000 square foot facility located at 701 Kentucky Parkway in Owensboro. The estimated capital cost is $9,745,043.00. (Application).

FSEDs in Kentucky are authorized by and regulated pursuant to 902 KAR 20:016, Section 7, which specifically addresses off-campus, Kentucky hospital-owned FSEDs. In accord with the regulation, a licensed Kentucky hospital may provide off-campus FSED services. To qualify to be "off-campus," the FSED must be:

> (a) Off the campus of the parent hospital that owns the FSED; and
> (b) At least thirty-five (35) miles from an existing hospital that is:
> 1. Licensed pursuant to this administrative regulation; and
> 2. Designated as a sole community hospital pursuant to 42 C.F.R. 412.92.

902 KAR 20:016, Section 7(1). The regulation also requires FSED applicants to obtain a CON, unless they are grandfathered in under Section 7(2) of the regulation; Deaconess was not.

The proposed FSED would be operated under Deaconess Henderson Hospital's license (License number 100173). In its application, Deaconess commits that the FSED "will operate in a manner consistent with 902 KAR 20:016 Section 4(8), which governs the operation of hospital-based emergency services and, specifically Section 7, which governs off-campus, Kentucky hospital-owned FSEDs." (Application).

OHRH is located at 1201 Pleasant Valley Road in Owensboro, only 3.61 straight miles from the proposed location. The driving distance from OHRH to the proposed location is 5.1 miles. OHRH is an acute care hospital licensed in accord with the above-cited regulation. It has been

designated by the Centers for Medicare and Medicaid Services as a sole community hospital pursuant to 42 C.F.R. 412.92. (Appendix A to Affected Parties Motion for Summary Judgment).

## ANALYSIS

The parties have fully briefed the Motion for Summary Judgment. OHRH argues that the application is not eligible for nonsubstantive review and that it cannot be approved anyway because it is in direct violation of the FSED licensing regulation. Deaconess argues that it is entitled to nonsubstantive review and distinguishes between the CON and licensure process.

The application qualifies for nonsubstantive review status. In accord with KRS 216B.095(3), the expedited process is allowed when an applicant seeks:

> (a) To change the location of a proposed health facility;
> (b) To replace or relocate a licensed health facility, if there is no substantial change in health services or substantial change in bed capacity;
> (c) To replace or repair worn equipment if the worn equipment has been used by the applicant in a health facility for five (5) years or more;
> (d) For cost escalations; or
> **(e) In other circumstances the cabinet by administrative regulation may prescribe.**

(Emphasis added). Pursuant to 900 KAR 6:075, Section 3(a), the Department "shall" grant nonsubstantive review status if the proposal "involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan." There is no criterion in the SHP for the establishment of an FSED. Nonsubstantive review status was properly granted.

Nonsubstantive review does not require consideration of all the same regulatory criteria as does an application subject to formal review. Instead,

> [i]f an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan. [3]

[3] 900 KAR 6:075, Section 2(8).

The presumption of need must be rebutted by clear and convincing evidence presented by the affected party; if such evidence exists, the application must be disapproved.[4]

Need and accessibility are addressed in KRS 216B.040(2)(a), which establishes the criteria for the issuance and denial of CONs. The presumption of need, and the evidence offered by an affected party seeking to rebut that presumption, must relate to and be viewed in the context of the proposed service area designated in an application. To meet the need and accessibility criteria, a proposal "shall meet an identified need in a defined geographic area and be accessible to all residents of the area." [5]

Thus, the proposed FSED must be deemed capable of serving a need in the service area. Here, it is impossible for Deaconess to serve a need in the area as it cannot meet even the threshold requirements to qualify as an FSED. The applicable (and only) regulation directly addressing FSEDs clearly and specifically prohibits the establishment of an FSED within 35 miles from an existing, licensed hospital that has been designated as a sole community hospital.[6] OHRH is precisely such a hospital and is located a mere five miles away from the proposed location. The presumption of need afforded to nonsubstantive applicants has been refuted in this case because the proposed FSED cannot be licensed, cannot be implemented, and cannot serve a need in the proposed service area.

Deaconess argues that there is a distinction between the CON and licensure processes. Both processes are governed by KRS Chapter 216B's "Licensure and Regulation of Health Facilities and Services." The CON process is operated by the Division of Certificate of Need in accord with

[4] 900 KAR 6:075, Section 2(9); 900 KAR 6:075, Section 2(11)(b).
[5] KRS 216B.040(2)(a)2b.
[6] 902 KAR 20:016, Section 7(1).

900 KAR Chapter 006, while the majority of the licensure process is operated by the Division of Health Care in accord with 902 KAR Chapter 020. The Cabinet for Health and Family Services has full jurisdiction over both functions, and both Divisions operate under the umbrella of the Cabinet's Office of Inspector General. Deaconess asks that this matter be considered strictly on the CON regulation and without consideration given to the licensure requirements.

The two are inextricable. The FSED regulation is encompassed within 900 KAR 20:016, the regulation governing the operations and services of hospitals. It requires that a CON be obtained for the proposed FSED. FSEDs in Kentucky can only be established by a licensed hospital and they operate under the license of that hospital. The SHP, an instrumental part of the CON process, defines hospitals, in part, as facilities that are licensed by the Cabinet's Office of Inspector General pursuant to 902 KAR 20:016. The Deaconess application expressly includes a commitment to abide by the requirements of 902 KAR 20:016, Section 7, the FSED regulation whose basic requirements it so clearly fails to meet. In an operational context, it is practical to separate the internal functions of the CON and the Health Care Divisions, but the Cabinet bears responsibility for both. The FSED regulation cannot be simply ignored in assessing need when it is not possible for a project to come to fruition and serve a need.

Deaconess cites to dicta in another FSED nonsubstantive review administrative decision to argue that certificate of need decisions need not relate to licensing regulations; *In re: Med Center Health FSED and Urgent Care, Case No. HSAHB CON 24-003.* The Hearing Officer in that case did note the distinction between CON and licensing functions but also held that the proposal did meet licensure criteria. The hearing officer ended up denying the application, and the applicant appealed to the Franklin Circuit Court. The Court reversed the hearing officer and reiterated the requirements for nonsubstantive review; the intermingling of CON and licensure was neither in

issue nor relevant.[7] Regardless, the affected party appealed the Court's ruling to the Kentucky Court of Appeals, where it awaits resolution.[8] The undersigned gives the cited dicta no weight in this appeal.

Deaconess also contends that a "temporary" inability of a CON applicant to implement a proposal is not cause for disapproval of the proposal. This argument is unconvincing as the examples cited by Deaconess do not involve proposals which blatantly or even arguably are prohibited under the applicable licensure regulations.

It must be recognized that the specific requirements in the FSED regulation regarding federally-designated sole community hospitals and distancing avoid duplication of services. The Kentucky General Assembly's stated intent in enacting the CON laws was to create an efficient system of health care delivery by preventing the proliferation of unnecessary health-care facilities and services.[9] KRS 216B.101 states, in part;

> [I]t is the purpose of this chapter to fully authorize and empower the Cabinet for Health and Family Services to perform any certificate-of-need function and other statutory functions necessary to improve the quality and increase access to health-care facilities, services, and providers, and to create a cost-efficient health-care delivery system for the citizens of the Commonwealth.

Advancement of this proposal does not serve the goals of the CON statutory scheme regarding efficiency and costly duplication of services.

OHRH has provided clear and convincing evidence that the proposed FSED cannot legally be implemented and cannot serve a need in the proposed service area. It would be an exercise in futility to green light a CON when it cannot meet threshold licensure requirements and cannot

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[7] *Bowling Green-Warren County Community Hospital Corporation v. Com. Of Ky, Cabinet for Health and Family Services et al.*, Civil Action No. 24-CI-00214.
[8] *Greenview Hospital, Inc. d/b/a Tristar Greenview Regional Hospital v. Com. of Ky, Cabinet for Health and Family Services*, No. 2024-CA-1418.
[9] KRS 216B.010.

serve the area. Should the relevant FSED regulatory requirements change, there is nothing to prevent Deaconess from reapplying for a CON at that time.

## ORDER

The Affected Party's Motion for Summary Judgment is GRANTED. The Application of Methodist Health, Inc., d/b/a Deaconess Henderson Hospital to establish a freestanding emergency department in Owensboro, Daviess County, Kentucky (CON #030-03-6093(1)) is DENIED.

Pursuant to KRS 216B.090(1), any party to this proceeding may file a request for reconsideration with the Cabinet for Health and Family Services, Office of Health Policy, within 15 days from the date of notice of this decision.

Pursuant to KRS 216B.115, any of the parties to this proceeding may file an appeal to the Franklin Circuit Court within 30 days from the date of notice of this decision or within 15 days from the date of notice of a decision to deny reconsideration or a decision on reconsideration.

**ENTERED AND ORDERED** this 16th day of December, 2025.

Administrative Law Judge

*Distribution by Office of Inspector General.*