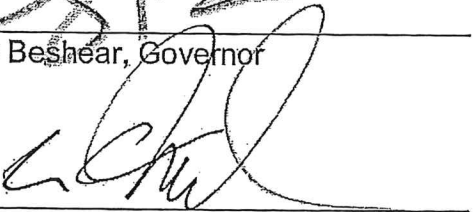


STATEMENT OF EMERGENCY
922 KAR 2:400E

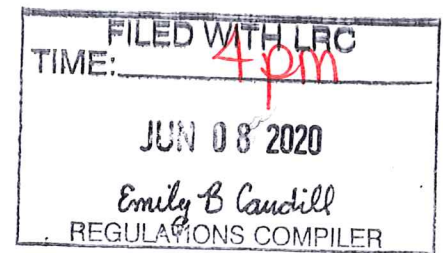
- (1) This emergency administrative regulation is necessary in order to ensure that licensed child care centers and certified family child care homes are operating under Centers for Disease Control and Prevention and public health guidelines to prevent the spread of the Novel Coronavirus Disease (COVID-19) as agencies reopen in the midst of the pandemic.
- (2) This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. and 4., as the administrative regulation is necessary in order to address imminent threats to public health, safety, and welfare as child care agencies are reopened in the midst of the COVID-19 pandemic and necessary in order to protect human health and welfare. Child care agencies are permitted to reopen in June 2020, and this emergency administrative regulation is needed immediately to ensure public health standards are implemented in agencies choosing to reopen.
- (3) This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these additional health and safety standards are in direct response to the declared public health emergency caused by COVID-19 and are deemed to be temporary.



Andy Beshear, Governor



Eric C. Friedlander, Secretary
Cabinet for Health and Family Services



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Community Based Services

3 Division of Child Care

4 (New Emergency Administrative Regulation)

5 922 KAR 2:400E. Enhanced requirements for certified and licensed child care as a
6 result of a declared state of emergency.

7 RELATES TO: KRS. 13A.190, 194A.050(1), 199.011(4), 199.894(5), 199.896(2), 45
8 C.F.R. 98.43(a)(2)(i)

9 STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8982(1)(f)

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the
11 Secretary of the Cabinet for Health and Family Services to promulgate administrative
12 regulations necessary to operate programs and fulfill the responsibilities vested in the
13 cabinet, qualify for the receipt of federal funds, and cooperate with other state and
14 federal agencies for the proper administration of the cabinet and its programs. KRS
15 199.896(2) and KRS 199.8982(1)(f) authorize the Cabinet for Health and Family
16 Services to promulgate administrative regulations and standards for child care centers
17 and family child care homes. This administrative regulation establishes additional health
18 and safety standards for certified family child care homes and licensed child care
19 centers due to the COVID-19 pandemic and declared state of emergency to prevent the
20 spread of disease in child caring homes and facilities.

1 Section 1. Definitions. (1) "Child" is defined by KRS 199.011(4).

2 (2) "Child care" means care of a child in a center or home that regularly provides full
3 or part-time care, day or night, and includes developmentally appropriate play and
4 learning activities.

5 (3) "Child care center" is defined by KRS 199.894(3).

6 (4) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).

7 (5) "Director" means an individual:

8 (a) Who meets the education and training requirements as specified in 922 KAR
9 2:090, Section 10;

10 (b) Whose primary full-time job responsibilities are to ensure compliance with 922
11 KAR 2:090, 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and

12 (c) Who is responsible for directing the program and managing the staff at a child
13 care center.

14 (6) "Family child care home" is defined by KRS 199.894(5).

15 (7) "School-age" means a child who meets the age requirements of KRS 158.030 or
16 who attends kindergarten, elementary, or secondary education.

17 Section 2. Reopening Protocol. (1) The Commonwealth of Kentucky shall reopen;

18 (a) Family child care homes on Monday, June 8, 2020;

19 (b) All other child care centers on Monday, June 15, 2020; and

20 (c) If a child care provider chooses to delay opening, the provider shall communicate
21 this to the Division of Regulated Child Care.

22 (2) When a child care provider reopens:

23 (a) The director shall update the staff roster in the Kentucky National Background

1 Check Program pursuant to 922 KAR 2:280 and the cabinet-designated database
2 maintained pursuant to 922 KAR 2:240 to confirm all staffing records are current for
3 inspection purposes; and

4 (b) If there is a new director, the program shall contact the Division of Regulated
5 Child Care immediately to file director change paperwork in accordance with 922 KAR
6 2:090.

7 Section 3. Social Distancing Requirements for Child Care Programs. (1) A child
8 care center shall have a maximum group size of ten (10) children per group.

9 (2) A certified family child care home shall have the maximum group size established
10 in 922 KAR 2:100.

11 (3) Each child shall remain in the same group of ten (10) throughout the day without
12 interacting with another group.

13 (4) For an operating child care center, the staff-to-child ratio for children under the
14 age of twenty-four (24) months shall remain the same as established in 922 KAR 2:120.

15 (5) A child care provider may use a temporary wall to divide classroom space in order
16 to comply with the maximum group size of ten (10) children requirement established in
17 subsection (1) of this section. A temporary wall:

18 (a) Shall be at least six (6) feet tall;

19 (b) Shall be stable;

20 (c) Shall not be classroom furniture rearranged to divide classroom space;

21 (d) Shall not divide classroom space in a manner that results in less than thirty-five
22 (35) square feet of space per child;

23 (e) Shall not create a traffic pattern that would cause noncompliance with health and

- 1 safety requirements during a medical state of emergency;
- 2 (f) May create a classroom that does not have its own bathroom, as long as the
3 classroom still has access to a bathroom.
- 4 (6) Individuals approved to be inside the child care center or family child care home
5 shall include:
- 6 (a) Facility staff;
- 7 (b) A person with legal authority to enter the facility, including cabinet staff and first
8 responders;
- 9 (c) A necessary utility worker;
- 10 (d) A professional providing medical or therapeutic services for children with special
11 needs;
- 12 (e) A child enrolled in the facility;
- 13 (f) A parent or legal guardian of a child enrolled in the program; and
- 14 (g) A family member who lives in the home of a family child care home.
- 15 (7) A child care provider shall:
- 16 (a) Reduce the number of staff each classroom of children interact with each day;
- 17 (b) Create a schedule in which the same staff work with the same children each day
18 as able;
- 19 (c) Stagger playground time between classroom groups so as to separate one group
20 of children from another;
- 21 (d) Utilize a centralized drop-off and pick-up location to eliminate unnecessary traffic
22 of parents and guardians to the classrooms;
- 23 (e) Require parents and guardians exercise social distancing of no less than six (6)

- 1 feet during drop-off and pick-up; and
- 2 (f) Modify traffic flow to minimize contact between children and staff to the greatest
3 extent possible.
- 4 (8) A child care provider may:
- 5 (a) Use virtual classroom observations for practicum students; and
- 6 (b) Use virtual tours for prospective families, with permission of the families whose
7 children may appear in the video.
- 8 (9) A child care provider shall not:
- 9 (a) Provide access to visitors or students conducting classroom observations;
- 10 (b) Hold center-wide family events;
- 11 (c) Permit field trips;
- 12 (d) Allow high-contact sports on the playground;
- 13 (e) Utilize family style dining at this time. Staff members shall prepare plates and
14 pass them out to individual children;
- 15 (f) Offer transportation to children upon reopening. When the public school system
16 resumes classes, child care providers may model their transportation policy from the
17 Kentucky Department of Education's recommendation to the public school system; and
- 18 (g) Permit staff to congregate in common areas and shall require they observe social
19 distancing policies whenever possible.
- 20 Section 4. Business Practices. (1) To the greatest extent possible, a child care
21 provider shall:
- 22 (a) Conduct business practices by telephone or internet;
- 23 (b) Use digital documents instead of paper documents;

- 1 (c) Communicate with parents and vendors by telephone and digital communication;
- 2 (d) Utilize digital billing and invoices; and
- 3 (e) Discourage employees from sharing phones, computers, and office supplies if
- 4 duplicate materials are available.

5 Section 5. Cleaning and Sanitizing Requirements for Child Care Providers. (1) A
6 child care provider shall:

7 (a) Utilize the cleaning and sanitizing procedures outlined in the cabinet-approved
8 orientation training that is required by 922 KAR 2:090 and 922 KAR 2:100;

9 (b) Create and post a cleaning and sanitizing plan specific to the individual child care
10 center or family child care home and outline the additional cleaning and sanitizing
11 requirements from the Centers for Disease Control and Prevention for child care during
12 a pandemic;

13 (c) Eliminate "lost and found" bins; and

14 (d) Prohibit the use of communal water fountains.

15 (2) Toys children have placed in their mouths or that have been contaminated by
16 other bodily fluids shall be set aside in a separate container for soiled toys until they are
17 cleaned and sanitized by a person wearing gloves.

18 (3) Machine washable toys shall not be used.

19 (4) Groups of infants and toddlers shall not use shared toys unless they are cleaned
20 and sanitized before being shared between children.

21 (5) Bedding (blankets, sheets, pillows, sleeping bags) shall be:

22 (a) Able to be washed;

23 (b) Separated and stored in individual labeled bins without touching another child's

1 bedding; and

2 (c) Washed, at least at the end of each week.

3 (6) Children and staff shall:

4 (a) Meet the handwashing requirements established in 922 KAR 2:100, Section 13(4)
5 and (5), in a certified family child care home and 922 KAR 2:120, Section 3(4) and (5),
6 in a licensed child care center, respectively; and

7 (b) Wash their hands with liquid soap and warm running water or utilize hand
8 sanitizer or hand-sanitizing wipes prior to center or home departure.

9 (7) The child care center or family child care home shall provide liquid soap, hand-
10 sanitizer (as appropriate), handwashing programs, tissues, and wastebaskets in
11 convenient locations.

12 Section 6. Screening and Illness Requirements. (1) Children and adults shall be
13 screened for fever and contagious symptoms upon entry into the child care center or
14 family child care home each day and shall not be allowed to enter if displaying a
15 contagious fever or symptom of COVID-19.

16 (2) A contagious fever shall be considered a fever of 100.4 degrees Fahrenheit or
17 higher in accordance with recommendations from the Centers for Disease Control and
18 Prevention.

19 (3) Staff who demonstrate symptoms of COVID-19 shall be tested for the illness.

20 (4) A child or adult who tests positive for COVID-19 shall follow the
21 recommendations of the local health department on when to return to child care.

22 (5) A child care provider shall follow the recommendations of the local health
23 department on whether the program must temporarily close due to an outbreak of

1 COVID-19.

2 (6) If a child demonstrates a fever or other contagious symptom, the child shall be
3 removed from the classroom setting immediately and placed in a safe, low-traffic area
4 until the parent or guardian arrives to pick up the child. The provider shall require the
5 parent or guardian to pick up the child within one hour of being contacted.

6 (7) A child care provider shall notify enrolled families and staff when a diagnosed
7 case of COVID-19 is identified in the center or home, while still protecting the privacy of
8 the individual who was diagnosed.

9 Section 7. Personal Protective Equipment (PPE) Requirements. (1) Each adult,
10 including parents and guardians at drop-off and pick-up, shall wear a face mask while
11 inside a child care center or family child care home:

12 (a) Unless doing so would represent a serious risk to their health or safety and they
13 are able to present a medical statement stating this;

14 (b) Except during planned staff breaks and lunch away from children in care and
15 other staff; and

16 (c) Except for staff working with infant or toddler groups who choose to wear a face
17 shield instead.

18 (2) A provider shall make masks available to parents, guardians, and other adults
19 permitted into the facility.

20 (3) If an adult refuses to wear a mask, or face shield as permitted by subsection
21 (1)(c) of this section, the facility may refuse those individuals the right to enter the
22 facility. A provider shall establish a policy as to whether a parent or guardian is allowed
23 to enter the facility if an adult refuses to adhere to the facility's policies regarding the

1 guidelines of the Centers for Disease Control and Prevention.

2 (4) A child who is five (5) years of age or younger shall not wear a face mask due to
3 increased risk of suffocation and strangulation. School-age children may wear a face
4 mask if temperament and developmental ability permits.

5 (5) Staff shall wear gloves when preparing meals and serving bottles. Gloves shall
6 be changed between bottle feedings.

7 (6) A provider shall ensure that gloves are available to staff engaging in high-touch
8 activities to the greatest extent practicable, provided that wearing gloves does not
9 create additional health hazards for that activity.

10 (7) A provider shall have at least a one week supply of the required cleaning supplies
11 and PPE on-site prior to reopening the child care center or family child care home.
12 Child Care Aware staff members shall screen facilities to ensure supplies are on-site
13 prior to opening.

14 Section 8. Training Requirements. (1) All child care staff, directors, owners, and
15 operators shall complete a new, mandatory training on cleaning, sanitizing, health
16 procedures, and mandatory reporting prior to the date of reopening. The new training
17 shall be available on June 1, 2020, and shall be a free, online course.

18 (2) All new staff hired shall take the mandatory training on cleaning, sanitizing, health
19 procedures, and mandatory reporting within ninety (90) days of their hire date.

20 (3) A child care provider shall not be penalized if staff did not complete the training
21 hours required by 922 KAR 2:090 or 922 KAR 2:100 during the child care closure.

22 Section 9. Safety and Background Check Requirements. (1) Staff with expired
23 tuberculosis skin tests and newly hired staff shall be given an extension not to exceed

1 120 days after the date established for reopening to be tested.

2 (2) Annual visits from the Division of Regulated Child Care shall begin after child care
3 centers and family child care homes reopen.

4 (3) New background checks for staff who were employed at the time of the child care
5 closure on Friday, March 20, 2020, shall not be required due to the rapback feature of
6 the Kentucky National Background Check Program.

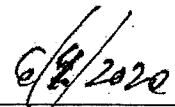
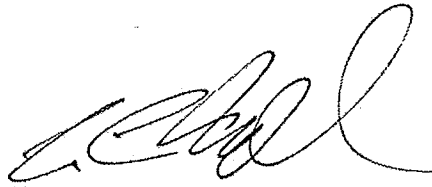
7 (4) Staff with a completed fingerprint-based background check via the Kentucky
8 National Background Check Program shall return to the classroom and may be left
9 alone with children in accordance with 922 KAR 2:280.

10 (5) New staff shall undergo name-based background checks in accordance with 922
11 KAR 2:280 and shall not be left alone with children until fingerprint-based background
12 checks are able to be conducted.

13 (6) A provider shall ensure staff are informed that they may identify and communicate
14 potential improvements or concerns in order to reduce potential risk of virus exposure in
15 the workplace.

922 KAR 2:400E

APPROVED:



Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation: 922 KAR 2:400E
Agency Contact: Laura Begin
Phone Number: (502) 564-3703
Email: Laura.Begin@ky.gov

Contact Person: Donna Little
Phone Number: (502) 564-6746
Email: CHFSregs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

Kentucky Governor Andy Beshear announced on March 16, 2020, that all child care centers would close by the end of business on March 20, 2020, due to the declared state of emergency caused by the COVID-19 pandemic. On May 21, 2020, Governor Beshear announced that a portion of childcare centers will be allowed to reopen on June 8, 2020, with the rest being allowed to reopen on June 15, 2020, with certain health and safety requirements in place to prevent the spread of COVID-19 within facilities and homes.

This administrative regulation contains requirements to ensure the health and safety of staff and families in child care centers and family child care homes who choose to reopen during the COVID-19 pandemic.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary in order to address imminent threats to public health, safety, and welfare as child care agencies are reopened in the midst of the COVID-19 pandemic. Child care agencies are permitted to reopen in June 2020, and this emergency administrative regulation is needed immediately to ensure public health standards are implemented in agencies choosing to reopen.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing health and safety standards for licensed child care centers and certified family child care homes. These additional health and safety standards are necessary to prevent the spread of the COVID-19 virus in child care facilities and homes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing health and safety standards for child care centers and family child care homes.

(2) If this is an amendment to an existing administrative regulation, provide a brief

summary of:

(a) How the amendment will change this existing administrative regulation:
This is a new, temporary administrative regulation.

(b) The necessity of the amendment to this administrative regulation:
This is a new, temporary administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes:
This is a new, temporary administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes:
This is a new, temporary administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

As of May 2020, there were 1,910 licensed child care centers and 234 certified family child care homes in Kentucky. The Department for Community Based Services, Division of Child Care, and the Office of the Inspector General, Division of Regulated Child Care, will be impacted as the child care regulating and monitoring agencies, respectively.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Certified family child care homes and licensed child care centers who choose to reopen during the COVID-19 pandemic will be required to meet the additional health and safety requirements contained in this administrative regulation to prevent the spread of the virus within child care facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no additional cost to the Division of Child Care or the Division of Regulated Child Care, but the limit of ten children per classroom group will be an expense to licensed child care centers. This requirement is consistent with the recommended group size established in Centers for Disease Control and Prevention (CDC) guidance at this time. This administrative regulation allows for the establishment of temporary walls to ensure groups are separated in a manner that complies with this administrative regulation. Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding has been distributed to cover the cost of fixed expenditures during the closure and to assist with the purchase of personal protective equipment and cleaning supplies needed for reopening.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Entities complying with the requirements of this administrative regulation will reduce the risk of spreading the COVID-19 virus within their facilities and homes, consistent with CDC guidelines.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis:

The amendment to this administrative regulation will not result in any ongoing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the implementation of this administrative regulation. Federal CARES Act funding was secured and has been distributed to child care providers to cover the cost of fixed expenditures during the closure and to assist with the purchase of personal protective equipment and cleaning supplies needed for reopening.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no increase in fees or funding required as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish any fees, or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied as all licensed child care centers and certified family child care homes who choose to open during the COVID-19 pandemic will be regulated by this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 922 KAR 2:400E

Agency Contact: Laura Begin

Phone Number: (502) 564-3703

Email: Laura.Begin@ky.gov

1. Federal statute or regulation constituting the federal mandate.
42 U.S.C. 9857-9858q

2. State compliance standards.
KRS 194A.050(1), 199.896(2), 199.8982(1)(f)

3. Minimum or uniform standards contained in the federal mandate.
42 U.S.C. 9857-9858q contains requirements for the administrative body receiving Child Care and Development Block Grant funds and gives states the maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the state.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation is more stringent than federal mandates as it contains temporary health and safety requirements for child care agencies reopening during the COVID-19 pandemic, consistent with CDC guidelines. The federal rule does give states flexibility in setting standards specific to state needs.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation contains different requirements than federal requirements due to the declared state of emergency and nature of the COVID-19 virus.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 922 KAR 2:400E
Agency Contact: Laura Begin
Phone Number: (502) 564-3703
Email: Laura.Begin@ky.gov

Contact Person: Donna Little
Phone Number: (502) 564-6746
Email: CHFSregs@ky.gov

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Cabinet for Health and Family Services (Division of Child Care and Division of Regulated Child Care) is impacted by this administrative regulation. A local government or a school district reopening a licensed child care center, in whole or in part, will be impacted.

- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
42 U.S.C. 9857-9858q, KRS 194A.050(1), 199.896(2), 199.8982(1)(f)

- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will generate no revenue.

- (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will generate no revenue.

- (c) How much will it cost to administer this program for the first year?

There will be no additional costs to administer this program.

- (d) How much will it cost to administer this program for subsequent years?

There will be no additional costs to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Expenditures (+/-): Other Explanation: