

Andy Beshear
Governor

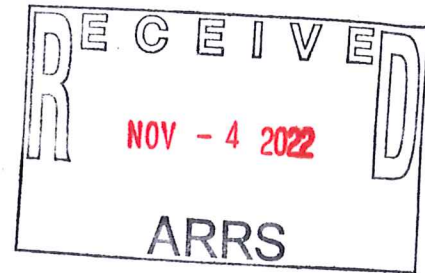


Jamie Link
Secretary, Education and
Labor Cabinet

Jason E. Glass, Ed.D.
Commissioner of Education and Chief Learner

KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov



November 4, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: **16 KAR 9:110**, Expedited route to certification.

Dear Co-Chairs:

After further consideration of the issues raised by 16 KAR 9:110, the Education Professional Standards Board proposes the attached agency amendment to 16 KAR 9:110.

Sincerely,

Cassie L. Trueblood
Policy Advisor and Special Counsel

AGENCY AMENDMENT

EDUCATION AND LABOR CABINET Education Professional Standards Board (As Amended at October 11, 2022 ARRS Meeting)

16 KAR 9:110. Expedited Route to Certification.

Page 3

Section 3(1)(a)

Line 7

After "(a) Engagement with", insert "multiple student".

Delete "diverse".

After "populations", insert a period.

Delete "of students that include:".

Page 3

Section 3(1)(a)1.

Line 8

After "1.", insert the following:

Multiple student populations may include:

a.

Page 3

Section 3(1)(a)2.-5.

Lines 10-13

Renumber subparagraphs "2." through "5." as clauses "b." through "e.".

Page 3

Section 3(1)(a)5. (now renumbered as Section 3(1)(a)1.e.)

Line 13

After "and secondary grade levels;", insert the following:

2. A candidate shall engage with all student populations listed in subparagraph 1 of this paragraph that are represented in the student enrollment for the district where the candidate is completing the residency; and

3. An Option 9 provider may offer opportunities to engage with multiple student populations outside of the district where the candidate is completing the residency;



KENTUCKY PUBLIC PENSIONS AUTHORITY

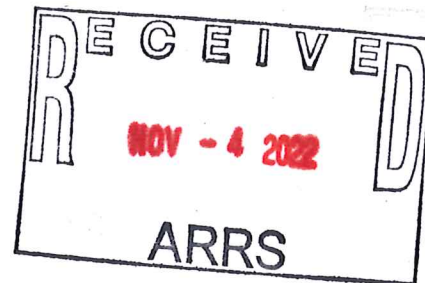
David L. Eager, Executive Director

1260 Louisville Road • Frankfort, Kentucky 40601
kyret.ky.gov • Phone: 502-696-8800 • Fax: 502-696-8822



Kentucky Public
Pensions Authority

November 2, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: 105 KAR 1:415 and E. Reimbursement of hospital and medical insurance premiums from Medicare eligible retired members reemployed with a participating employer.

Dear Co-Chairs West and Hale:

After further consideration of issues raised with the definitions of "MEM" in 105 KAR 1:415 and E, the Kentucky Public Pensions Authority realized the definition did not fully capture the group of individuals that it should, therefore, KPPA proposes the attached agency amendment to 105 KAR 1:415 and E.

Sincerely,

Jessica Beaubien

Jessica Beaubien, Policy Specialist
Kentucky Public Pensions Authority
1270 Louisville Road
Frankfort, KY 40601

**AGENCY AMENDMENT
For Emergency and Ordinary**

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amended After Comments)**

105 KAR 1:415 and E. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

Page 3

Section 1(7)(b)1.

Line 9

After "1. The spouse is also a", delete "retired".

Page 3

Section 1(7)(b)3.

Line 14

After "3. The", insert "spouse's".

Delete the following:

premium required to provide the spouse with

Line 15

After "plan coverage is", insert "provided by".

Delete the following:

fully or partially paid based on

After "the", delete "Medicare eligible".

Line 16

After "retired member's benefits", insert "pursuant to".

Delete "as provided in".

After "KRS 61.702", insert "(2)".

Delete "(4)".

After "and 78.5536", insert "(2)".

Delete "(4)".



KENTUCKY PUBLIC PENSIONS AUTHORITY

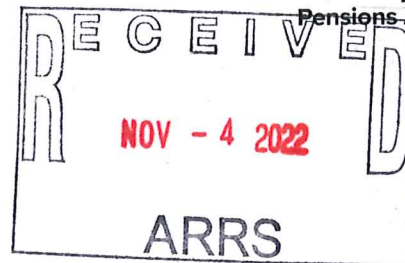
David L. Eager, Executive Director

1260 Louisville Road • Frankfort, Kentucky 40601
kyret.ky.gov • Phone: 502-696-8800 • Fax: 502-696-8822



Kentucky Public
Pensions Authority

November 2, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: Amendment to **105 KAR 1:415**. Reimbursement of hospital and medical insurance premiums form Medicare eligible retired members reemployed with a participating employer.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 105 KAR 1:415, the Kentucky Public Pensions Authority proposes the attached amendment to 105 KAR 1:415.

Sincerely,

Jessica Beaubien

Jessica Beaubien, Policy Specialist
Kentucky Public Pensions Authority
1270 Louisville Road
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amended After Comments)**

105 KAR 1:415. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

RELATES TO: KRS 16.505, 61.505, 61.510, 61.701, 61.702, 78.510, 78.5536, 26 U.S.C. 105, 106, 42 U.S.C. 1395y(b)

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, ~~[16.505 to 16.652,]~~ and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some spouses and dependents. This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a ~~[regular full-time]~~ position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009~~[March 1, 2017]~~ through September 30, 2022.

Section 1. Definitions.

~~(1) [Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation.]~~

~~(2) Prior to April 1, 2021,~~ "Agency" means:

~~(A) Prior to April 1, 2021,~~ the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; ~~and~~

~~(b) Beginning [Effective]~~ April 1, 2021, ~~["agency" means]~~ the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

~~(2) [(3)]~~ "Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.

~~(3) [(4)]~~ "Complete" means all required sections of a form are filled out, the form has been fully executed by the recipient or the recipient's legal representative, and all supporting documentation required by the form is included with the form.

~~(4) [(5)]~~ "Eligible spouse and dependents" means spouses and dependent children of MEMs who are eligible to receive all or a portion of their premiums paid for by the Boards in accordance with KRS 61.702 and 78.5536.

~~(5) "Employee" is defined by KRS 61.510(5) and 78.510(6).~~

~~(6) "Employer" is defined by KRS 16.505(3), 61.510(6), and 78.510(7).~~

~~(7) [(6)]~~ "File" means a form or document has been received at the retirement office by mail, fax, secure email, in-person delivery, or via Self Service on the Web site maintained by the agency (if available).

~~(8) [(7)]~~ "KEHP" means the Kentucky Employees' Health Plan as established in 101 KAR 2:210.

~~(9)~~ "MEM" means:

~~(a)~~ A Medicare eligible member who is retired and reemployed in a ~~[regular full-time]~~ position;

1. With a participating employer that[which] offers or offered the member a hospital and medical insurance benefit; or

2. By a participating employer which is or was prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and

(b) A Medicare eligible member who is retired and whose spouse meets the following criteria:

1. The spouse is also a retired member.[i]

2. The spouse is reemployed with a participating employer that[which] offers the spouse a hospital and medical insurance benefit, or by a participating employer that[which] is prevented from offering a hospital and medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952.

3. The premium required to provide the spouse with hospital and medical insurance plan coverage is fully or partially paid based on the Medicare eligible retired member's benefits as provided in KRS 61.702(4) and 78.5536(4).

(10)[(8)] "Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).

(11) "Month" is defined by KRS 16.505(34), 61.510(35), and 78.510(32).

(12) "Monthly contribution rate" means:

(a) The amount determined by the boards as the maximum contribution the systems will pay toward the premium of a retired member who began participating in the systems on or before June 30, 2003; or

(b) For a retired member who began participating in the system on or after July 1, 2003, the amount per month earned by the retired member based on years of service as provided in KRS 61.702(4)(e) and 78.5536(4)(e).

(13)[(9)] "Premium" means the monthly dollar amount required to provide hospital and medical insurance plan coverage for a recipient, spouse of a retired member, or dependent child.

(14)[(10)] "Provide", when used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or makes a form or document available to a person by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).

(15) "Recipient" is defined by KRS 16.505(26), 61.510(27), and 78.510(26).

(16) "Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).

(17) "Retirement allowance" is defined by KRS 16.505(12), 61.510(16), and 78.510(16).

(18) "Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).

(19) "Participating" is defined by KRS 16.505(33), 61.510(34), and 78.510(31).

(20) "Service" is defined by KRS 16.505(6), 61.510(9), and 78.510(9).

(21)[(11)] "Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

Section 2. Group Hospital and Medical Insurance Plans Established for MEMs. Beginning October 1, 2022, a KEHP group hospital and medical insurance plan shall be[is] available for MEMs and the eligible spouses and dependents of MEMs in accordance with KRS 61.702, 78.5536 and 42 U.S.C. 1395y(b).

Section 3. Eligibility for Reimbursement.

(1) A MEM who was informed by the agency that he or she was not eligible for group hospital and medical insurance plan coverage through the systems, and who paid premiums for a group hospital and medical insurance plan for himself or herself as well as his or her eligible spouse and dependents[dependent(s)] may request reimbursement for those premiums paid during the time period from January 1, 2009[March 1, 2017] to September 30, 2022 as described in Section 4 of this administrative regulation.

(a) MEMs shall[are] not be eligible for reimbursement for any portion of premiums paid for themselves, spouses, and dependents on or after October 1, 2022, except as indicated in paragraph

(b) of this subsection.

(b) For calendar year 2022 only, MEMs and eligible spouses and dependents of MEMs already enrolled in a hospital and medical insurance plan other than a KEHP group hospital and medical insurance plan may choose to remain on that plan through December 31, 2022 and have his or her reimbursement eligibility period extended to December 31, 2022.

(2) Payment of premiums for a group hospital and medical insurance plan for MEMs and eligible spouses and dependents of MEMs identified in subsection (1) of this section shall be reimbursed upon submission of documentation as described in Section 4 of this administrative regulation if all or a portion of the MEM, MEM's eligible spouse's or dependent's group hospital and medical insurance coverage would have been paid for by the Boards pursuant to KRS 61.702 and 78.5536.

(3) A MEM shall not be eligible for reimbursement of premiums paid by or on behalf of the MEM or his or her eligible spouse or dependent if:

(a) The MEM was not notified by the agency that he or she was ineligible for group hospital and medical insurance plan coverage through the agency; ~~and~~ and

(b) The MEM voluntarily chose to purchase or enroll in a hospital and medical insurance plan not offered by the agency.

Section 4. Request for Reimbursement.

(1) The agency shall provide the Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, to eligible MEMs.

(2) A MEM may request reimbursement for himself or herself, and any eligible spouse and dependents~~or dependent(s)~~ by filing Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, which shall include all premiums for the entire time period for which the MEM is requesting reimbursement.

(a) MEMs may begin filing Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, on August 1, 2022.

(b) MEMs shall only file one (1) Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, for each entity that provided hospital and medical insurance coverage for the MEM and his or her eligible spouses and dependents.

(c) Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement shall only be filed once MEMs and MEM's eligible spouse or dependents are no longer paying premiums eligible for reimbursement.

(3)

(a) In order to receive the applicable reimbursement, MEMs ~~shall~~must file the completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, with one (1) or more of the following proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. The employer certification of health insurance for medical reimbursement section of Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, completed by an employer to certify premiums paid by the MEM;

2. The insurance agent certification of health insurance for medical reimbursement section of Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, completed by an insurance agency or company to certify the premiums paid by or on behalf of the MEM;

3. A signed statement from the MEM's employer listing dates of hospital and medical insurance coverage amount of premiums deducted from wages and the cost of the single coverage; or

4. A signed statement or invoice from the MEM's insurance company listing the dates and cost of single hospital and medical insurance coverage, along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b) If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

(4)

(a) A completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, ~~shall~~must be filed no later than June 30, 2023.

(b) MEMs and eligible spouses or dependents of MEMs for whom a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, is not on file on or before June 30, 2023 shall[are] not be eligible for reimbursement, except as provided by subsection (5) of this section.

(5)

(a) If a MEM submits a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, by the deadline indicated in subsection (4) of this section that is not complete, then the MEM shall have until December 31, 2023 to file a completed Form 6260, including any documentation or proof of payments for the time period the MEM is requesting reimbursement that were missing from the initial incomplete Form 6260.

(b) MEMs and eligible spouses or dependents of MEMs for whom a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, is not on file on or before December 31, 2023 shall[are] not be eligible for reimbursement.

(6)

(a) If a MEM is deceased, the executor, administrator, or other representative of the MEM's estate may request reimbursement for the MEM, and any eligible spouse or dependents, by filing a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, and all other required documentation at the retirement office in compliance with this section.

(b) The executor, administrator, or other representative of the MEM's estate shall also file an order appointing the executor, administrator, or other representative of the MEM's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court.

(7) If the last day to file a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, under this section is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the completed Form 6260 is on file by the end of the next business day.

Section 5. Funding. Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as provided in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems, including MEMs. Fund assets shall also be dedicated for use toward eligible spouses and dependents of MEMs health benefits as provided in KRS 61.702 and 78.5536. Fund assets shall be used to reimburse eligible MEMs and eligible spouses and dependents of the MEM.

Section 6. Authorized Payments.

(1) The agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between January 1, 2009~~[March 1, 2017]~~ and September 30, 2022, except as provided in subsection (2) of this section:

(a) That are included on a timely-submitted, completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, in compliance with Section 4 of this administrative regulation; and

(b) Where documented proof of payment of premiums was filed in compliance with Section 4 of this administrative regulation.

(2) In the case of MEMs who choose to remain on their current hospital and medical insurance plan through December 31, 2022 in accordance with paragraph (1)(b) of Section 3 of this administrative regulation, the agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between January 1, 2009~~[March 1, 2017]~~ and December 31, 2022:

(a) That are included on a timely-submitted, completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, in compliance with Section 4 of this administrative regulation; and

(b) Where documented proof of payment of premiums was filed in compliance with Section 4 of this administrative regulation.

(3) The amount the MEM or the estate of the MEM shall receive for each month of premium reimbursements authorized by subsection (1) or (2) of this section shall be the lesser of:

(a) The monthly contribution rate in effect during the calendar year in which the premiums authorized for reimbursement were paid by the MEM or the spouse of the MEM had the MEM been eligible to enroll in the non-Medicare eligible group hospital and medical insurance plan established in accordance with KRS 61.702 and 78.5536~~;~~ or

(b) The premiums paid by the MEM or the spouse of the MEM for hospital and medical insurance coverage for the MEM and his or her eligible spouse and dependents.

(4)

(a) The applicable monthly contribution rate referenced in paragraph (3)(a) of this section shall be based on the MEM's hazardous and nonhazardous service.

(b) The applicable monthly contribution rate referenced in paragraph (3)(a) of this section shall not include the tobacco usage fee for the non-Medicare eligible group hospital and medical insurance plan.

(5)

(a) If a MEM or an estate of a MEM receives a payment from the agency that does not qualify for reimbursement in accordance with this administrative regulation, the MEM shall return the payment to the agency at the retirement office.

(b) If the MEM or an estate of a MEM fails to return the payment, the agency may withhold payment from the MEM's monthly retirement allowance payment or take other action to collect on the payment received in error.

Section 7. Incorporation~~Incorporated~~ by Reference.

(1) Form 6260, "Medicare Secondary Payer Application for Medical Insurance Reimbursement", ~~November~~~~September~~ 2022~~May 2022~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.NonAdvocacy@kyret.ky.gov.

CHANGES TO MATERIAL INCORPORATED BY REFERENCE:

Form 6260

Page 1

Upper right corner, insert "11/2022". Delete "09/2022".

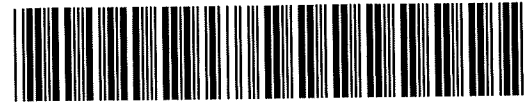
Page 2

After the "Spouse Information" section and before the "Dependent Child Information" section, insert the following:

Eligible recipients, as outlined on the previous page, may only be reimbursed for premiums paid up to the allowable maximum for dependent children who meet the definition of a "dependent child" in KRS 16.505(17) and 78.510(49), and who are eligible to have contributions paid on their behalf pursuant to KRS 61.702 and 78.5526. "Dependent child" is defined in KRS 16.505(17) and 78.510(49) in relevant part as "a child in the womb and a

natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22).” Note: Stepchildren and grandchildren must be legally adopted in order to qualify as a “dependent child” under these statutes.

Delete the paragraph beginning with “Only dependents who meet” and ending with “per this statute.”



Medicare Secondary Payer Application for Medical Insurance Reimbursement

Applicant Information

Please provide your Member ID or Social Security Number in the Applicant ID box below.

Applicant Name:		Applicant ID:	
Address:	City:	State:	Zip Code:
Is this a new address? <input type="radio"/> Yes <input type="radio"/> No	Phone:	Email:	
Requested Dates for Reimbursement:			

Kentucky Public Pensions Authority Medical Reimbursement

In accordance with the provisions of 105 KAR 1:415 and 105 KAR 1:415E, medical reimbursement is available to a retired member of the County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System, if the recipient meets the following requirements:

- Eligible for Medicare;
- Reemployed with a participating employer that offered health insurance to the retired member or was prevented from offering health insurance to the retired member by state law;
- Enrolled in a health insurance plan;
- Your health insurance plan was terminated through KPPA due to the Medicare Secondary Payer Act (MSPA) during the time period of January 2009 through December 2022.

Nonhazardous and hazardous retirees will be reimbursed the cost of the single contribution up to the allowable maximum.

In addition to being reimbursed for the cost of a single contribution up to the allowable maximum, hazardous duty retirees also may be eligible to be reimbursed for contributions for health insurance for dependents up to the allowable maximum. If you are a hazardous duty retiree and have a spouse or health insurance dependent(s) you MUST submit the appropriate documentation in order to receive reimbursement. The appropriate documentation is as follows:

- **Child age 17 and under:** If your dependent child is under the age of 17, a legible photocopy of the birth certificate or a valid court order showing the name of the hazardous duty retiree as a parent will be required if not on file with KPPA.
- **Child age 18-22:** If your dependent child is between the ages of 18 and 22, You MUST complete pages 2 and 3. A legible photocopy of the birth certificate or a valid court order showing the name of the hazardous duty retiree as a parent will be required if not on file with KPPA.
- **Spouse:** You MUST complete pages 2 and 3. A legible photocopy of the marriage certificate or a legible photocopy of the top half of the front page of the retiree's most recent federal tax return (Form 1040) will be required if not on file with KPPA.

Complete this section if you are a General Assembly Retiree, Hazardous Duty Retiree, Surviving Spouse Beneficiary receiving General Assembly, Hazardous Duty, or duty related benefits under the Fred Capps Memorial Act and electing to cover a spouse and/or dependent child on health insurance.

If you are a recipient as outlined above, you must complete this page and the following page in order to receive reimbursement for your spouse and/or dependent child(ren) between the ages of 18 and 22.

Spouse Information

Spouse Name:		Social Security Number:
Spouse Date of Birth:	Dates of Medical Coverage:	

Eligible recipients, as outlined on the previous page, may only be reimbursed for premiums paid up to the allowable maximum for dependent children who meet the definition of a "dependent child" in KRS 16.505(17) and 78.510(49), and who are eligible to have contributions paid on their behalf pursuant to KRS 61.702 and 78.5526. "Dependent child" is defined in KRS 16.505(17) and 78.510(49) in relevant part as "a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22). **Note: Stepchildren and grandchildren must be legally adopted in order to qualify as a "dependent child" under these statutes.**

Dependent Child Information (Age 18-22 Dependent Information Only)

Dependent Child Name:		Social Security Number:	
Dependent Child Date of Birth:	Relationship to Member: <input type="checkbox"/> Natural Child <input type="checkbox"/> Adopted Child		
Address:	City:	State:	Zip Code:
Is this dependent child married or has this dependent child been married previously?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, date of marriage:			
Is this dependent child age 18 or older?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is this dependent child a full-time student?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, dates of full-time student status:			
Dates of Medical Coverage:			

Dependent Child Name:		Social Security Number:	
Dependent Child Date of Birth:	Relationship to Member: <input type="checkbox"/> Natural Child <input type="checkbox"/> Adopted Child		
Address:	City:	State:	Zip Code:
Is this dependent child married or has this dependent child been married previously?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, date of marriage:			
Is this dependent child age 18 or older?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is this dependent child a full-time student?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, dates of full-time student status:			
Dates of Medical Coverage:			

Dependent Child Name:		Social Security Number:	
Dependent Child Date of Birth:	Relationship to Member: <input type="checkbox"/> Natural Child <input type="checkbox"/> Adopted Child		
Address:	City:	State:	Zip Code:
Is this dependent child married or has this dependent child been married previously?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, date of marriage:			
Is this dependent child age 18 or older?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is this dependent child a full-time student?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, dates of full-time student status:			
Dates of Medical Coverage:			

I certify that the person(s) designated above is the retiree's spouse and/or dependent child* as defined by law as, "a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22). I understand and agree that I will be responsible for and shall be required to repay any reimbursements for the person(s) designated above if the said person is not a spouse or dependent child* as defined by KRS 16.505(17) and 78.510(49). I acknowledge that I have full understanding that any person who provides a false statement, report, or representation, including to a governmental entity such as KPPA, is subject to the penalty of perjury in accordance with KRS 523.010, et seq. I further acknowledge that if I knowingly submit or cause to be submitted a false or fraudulent claim for the payment or receipt of benefits, including reimbursements, I may be liable not only to repay the reimbursements I was not entitled to receive, but also liable for civil payments, legal fees, and costs.

*KRS 16.505(17) and 78.510(49)

Reimbursement requests may be paid upon submission of this completed form and all required documentation. I acknowledge that the completed form and all required documentation must be on file with the KPPA office by June 30, 2023. I acknowledge that if I do not have this completed form and all required documentation on file with the KPPA office by June 30, 2023, I may not be eligible for reimbursement.

I certify that all information provided is correct. I understand that I will not be reimbursed for medical insurance premiums for any period during which I was not eligible for reimbursement. I further understand that if I do receive reimbursement for premium which were not eligible, the Kentucky Public Pensions Authority may recover those payments from my future retirement allowances. I also understand that the Public Pensions Authority may contact the insurance company or employer directly to verify the coverage and amount of premium.

I wish to be reimbursed for my medical insurance premiums. I hereby authorize the release of all pertinent medical insurance information to the Kentucky Public Pensions Authority for this purpose.

Applicant Signature: _____

Date: _____

Reimbursement Documentation

An eligible recipient must submit to the retirement office a Medicare Secondary Payer Application for Medical Insurance Reimbursement (this form).

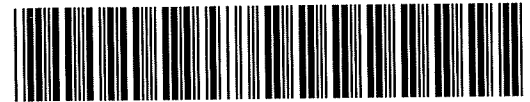
If the plan holder received insurance coverage through an employer, the employer should complete page 5 or the following documentation may be submitted as verification of coverage and premiums:

- A statement from the eligible recipient's employer listing dates of health insurance coverage, amount of premiums deducted from wages and the cost of the single coverage.
- If any of the above documentation is not sufficient, KPPA may request other documentation which the retirement system determines is sufficient to prove payment for hospital and medical insurance.

If the plan holder received insurance coverage through an Insurance Agent or Company, complete page 7 or the following documentation may be submitted as verification of coverage and premiums:

- A copy of the invoice from the insurance company and copy of the receipt for payment or a statement from the insurance company listing the cost of single coverage; and one of the following:
 - A copy of a bank statement showing deductions for hospital and medical insurance if the statement clearly indicates payment to a company that provides hospital and medical insurance; or
 - A copy of a bank statement showing deductions to an insurance company along with a statement from the insurance company listing dates and amounts of premiums.

If any of the above documentation is not sufficient, KPPA may request other documentation which the retirement system determines is sufficient to prove payment for hospital and medical insurance.



Employer Certification of Health Insurance for Medical Reimbursement

The following sections are to be completed by Personnel and/or Benefits Administrator. All questions must be answered in order for this form to be valid.

Employee's Name:		Employee's Social Security Number:	
Relation to Retiree:		If the spouse is the plan holder, does the employer pay any or all of the cost of the member's insurance coverage? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Medical Insurance Policy Information			
Company Name:		Policy Number:	
Company Address:		Company Phone:	
City:	State:	Zip Code:	Monthly Insurance Premium:

Please list the individuals covered under this policy:							
Name	Social Security Number	Relationship	Date of Birth	Gender	Tobacco Usage*	Insurance Effective Date	Insurance Termination Date

*"Tobacco" means all tobacco products including, but not limited to, cigarettes, pipes, chewing tobacco, snuff, dip, cigars, and any other tobacco products regardless of the method of use.

When are premiums paid? ☐ In Advance ☐ In Arrears

Insurance Effective Date	Insurance Termination Date	Level of Coverage	Premium Owed	Cost of Single Coverage	Amount Paid by Employee	Date Paid

Employer Name: _____

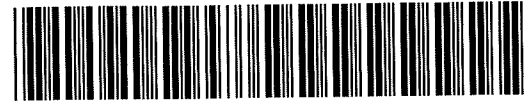
Employer Address: _____ City: _____ State: _____ Zip Code: _____

I certify that all the information completed on this form is true and accurate. I understand that there is penalty under Kentucky Law (KRS 523.100) for falsification of records.

Position Title: _____ Telephone Number: _____

Signature of Authorized Representative: _____ Date: _____

Return to: Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, KY 40601-6124
Please call 1-800-928-4646 with questions.



Insurance Agent Certification of Health Insurance for Medical Reimbursement

This following sections are to be completed by Agent or Authorized Representative of Insurance Company. All questions must be answered in order for this form to be valid.

Policy holder Name:

Policy holder Social Security Number:

Relation to Retiree:

Please list the individuals covered under this policy:

Name	Social Security Number	Relationship	Date of Birth	Gender	Tobacco Usage*	Insurance Effective Date	Insurance Termination Date

*"Tobacco" means all tobacco products including, but not limited to, cigarettes, pipes, chewing tobacco, snuff, dip, cigars, and any other tobacco products regardless of the method of use.

When are premiums paid? ☐ In Advance ☐ In Arrears

Insurance Effective Date	Insurance Termination Date	Level of Coverage	Premium Owed	Cost of Single Coverage	Amount Paid by Employee	Date Paid

Insurance Company/Agency Name: _____

Insurance Company/Agency Address: _____

City: _____ State: _____ Zip Code: _____

I certify that all the information completed on this form is true and accurate. I understand that there is penalty under Kentucky Law (KRS 523.100) for falsification of records.

Position Title: _____ Telephone Number: _____

Signature of Authorized Representative/Agent: _____ Date: _____

Return to: Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, KY 40601-6124
Please call 1-800-928-4646 with questions.

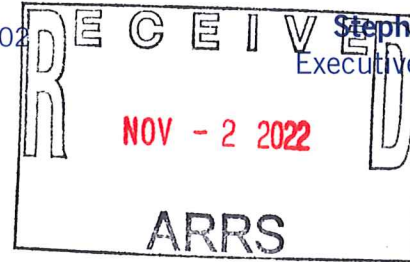


KENTUCKY BOARD OF PHYSICAL THERAPY

Andy Beshear
Governor

312 Whittington Parkway, Suite 102
Louisville, KY 40222-4925
Phone (502) 429-7140
Fax (502) 429-7142
<http://pt.ky.gov>

Stephen Curley
Executive Director



November 2, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Room 083, Capitol Annex Building
702 Capital Avenue
Frankfort, Kentucky 40601

RE: **201 KAR 22:053**. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 22:053, the Kentucky Board of Physical Therapy proposes the attached amendment to 201 KAR 22:053.

Sincerely,

Stephen Curley, Executive Director
Kentucky Board of Physical Therapy

TEAM
KENTUCKYTM

An Equal Opportunity Employer M/F/D

Final, 10-17-2022

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS

Board of Physical Therapy

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS **216B.015**, 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13), 367.4082

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(12) requires the Board of Physical Therapy to ~~promulgate/establish~~~~promulgate~~ by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

Section 1. Code of Ethical Standards.

(1) A physical therapist and a physical therapist assistant shall:

(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise, and experience;

(c) Ensure that all personnel involved in the delivery of physical therapy services are identified to the patient by name and title;

(d) Report to the board any reasonably suspected violation of KRS Chapter 327, KRS 367.4082, or 201 KAR Chapter 22 by a credential holder or applicant within thirty (30) days;

(e) Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days;~~and~~

(f) Comply with the provisions of KRS 367.4082;~~and~~[-]

~~(g) Cooperate with any board investigations.~~

(2) ~~A~~~~[A]~~ Physical therapist and ~~a~~~~[a]~~ physical therapist assistant shall not:

(a) Verbally or physically abuse a client;~~or~~

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing; ~~or~~

(c) Engage in sexual misconduct or sexual harassment with a patient:

1. While that person is a patient or client of the physical therapist or physical therapist assistant; or

2. While that person is a patient of a health ~~care~~~~facility~~ defined by KRS 216B.015 where the physical therapist or physical therapist assistant provides physical therapy services; ~~or~~~~and~~~~[-]~~

~~(d) Lie, deceive, or mislead the board, its staff, investigators, or agents.~~

(3) A physical therapist or physical therapist assistant shall be solely responsible in regard to a relationship with a patient. A patient's initiation of a personal or sexual relationship shall not justify, excuse, or provide a defense for a violation of this section.~~[-]~~~~[-]~~

(4) Consensual sexual relationships established prior to the initial evaluation will not be subject to portions of this administrative regulation.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

- (b) Determine the need for physical therapy evaluation and treatment;
- (c) Make a recommendation regarding a person's ability to return to work or physical activity;
- and
- (d) Provide physical therapy services;
- (2) Evaluate each patient prior to initiation of treatment;
- (3) Upon receipt of a patient under an active plan of care from another physical therapist:
 - (a) Complete an evaluation in compliance with subsection (2) of this section and Section 5(2)(a)-(d) of this administrative regulation;
 - (b) Ensure the evaluation and plan of care from the other physical therapist is current and appropriate;
 - (c) Retain the evaluation and plan of care from the other physical therapist in the medical record; and
 - (d) Comply with reassessment requirements based on the date of the most recent evaluation;
- (4) Reassess each patient in accordance with the following:
 - (a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;
 - (b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:
 - 1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or
 - 2. A school system.
 - a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year; and
 - b. During this grace period treatment may continue based upon the previous reassessment or evaluation;
 - (c) Reassessing each patient not otherwise noted every thirty (30) days following the last evaluation or subsequent reassessment; and~~and~~
 - (d) Reassessing a patient whose medical condition has changed;
- (5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;
- (6) Be responsible for the physical therapy record of each patient;
- (7) Be responsible for the plan of care until the patient is received by another physical therapist pursuant to subsection (3) of this section;
- (8) Provide services that meet or exceed the generally accepted practice of the profession;
- (9) Explain the plan of care to the patient and to others designated by the patient;
- (10) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those; and
- (11) Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:
 - (a) For services provided by the physical therapist;
 - (b) For equipment rental or purchase; or
 - (c) For other services the physical therapist may recommend for the patient.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

- (1) Provide services only under the supervision and direction of a physical therapist;
- (2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;
- (3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not to determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of care established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(4) of this administrative regulation, and inform the supervising physical therapist.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

(1)(a) At all times, including all work locations in all jurisdictions, be limited to supervising not more than four (4) physical therapist assistants or supportive personnel; and

(b) Abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section except that a maximum of seven (7) work days in a sixty (60) consecutive day period shall not constitute a violation of this standard;

(2) Provide direct supervision when supervising supportive personnel as defined by 201 KAR 22:001, Section 1 ~~(25)~~~~(23)~~, effective September 1, 2013;

(3) Not delegate procedures or techniques to the physical therapist assistant that are outside his or her scope of training, education, or expertise;

(4) Not delegate procedures or techniques to supportive personnel that are outside his or her scope of training, education, or expertise;~~[-]~~

(a) Scope of training and competency for supportive personnel shall be documented and verified at least annually;~~and[-]~~

(b) Documentation of training and competency shall be immediately available for review; and

(5) Be responsible for:

(a) Interpreting any referral;

(b) Conducting the physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Ensuring that if supportive personnel provide direct patient care that there is direct supervision as defined by 201 KAR 22:001, Section 1(6), effective September 1, 2013 by a physical therapist or physical therapist assistant;

(g) Ensuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Ensuring that a physical therapist assistant student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;

(i) Establishing discharge planning for patients who require continued physical therapy; and

(j) Directing and being accountable for services rendered by physical therapist students or physical therapist assistant students, including documentation requirements in Section 5 of this administrative regulation.

Section 5. Standards for Documentation.

(1) The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall include an evaluation and, as required, ongoing documentation and reassessment.

(2) An evaluation in the physical therapy record consists of a written or typed report signed and dated by the physical therapist who is performing the evaluation or who is supervising the physical therapist student performing the evaluation. The evaluation shall include:

- (a) Pertinent medical and social history;
- (b) Appropriate subjective and objective information;
- (c) An assessment, which may indicate problems, interpretations, and a diagnosis identifying the nature and extent of the patient's impairment; and

(d) The plan of care, which includes the:

- 1. Treatment; and
- 2. Measurable goals, including anticipated time frame of achievement.

(3) Ongoing documentation in the physical therapy record shall:

- (a) Be completed at least weekly or, if treatment is less than weekly, at each patient visit;
- (b) Be written or typed, signed, and dated:
 - 1. By the physical therapist or physical therapist assistant rendering treatment;
 - 2. By the supervising physical therapist or physical therapist assistant if treatment was rendered by a physical therapist student or physical therapist assistant student; or
 - 3. By the physical therapist student or physical therapist assistant student rendering treatment if countersigned and dated by the supervising physical therapist; **and**

(c) Include:

- 1. The treatment rendered since the last evaluation, ongoing documentation, or reassessment;
- 2. The patient's response to treatment; and
- 3. Appropriate subjective and objective information.

(4) The reassessment included in the physical therapy record for the revision or reaffirmation of the existing plan of care, or the establishment of a new plan of care shall be written or typed, signed, and dated by a physical therapist.

(a) The reassessment shall:

~~(a)] be in compliance with Section 2(4) of this administrative regulation.[-; and]~~

(b) A reassessment shall include:

- 1. Subjective, objective, and medical information acquired by the physical therapist, physical therapist student, physical therapist assistant, or physical therapist assistant student;
- 2. An assessment in compliance with subsection (2)(c) of this section completed by the physical therapist or physical therapist student; and
- 3. A plan of care in compliance with subsection (2)(d) of this section completed by the physical therapist or physical therapist student.

(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical therapist assistant: "PTA";

(c) If written by supportive personnel:

1. a. "PT Aide"; ~~[-;]~~ or

b. "Physical Therapy Aide"; ~~[-;]~~ or

2. "PT Tech"; and

(d) If written by a student:

1. a. "Physical Therapist Student"; ~~or~~ ~~[-;]~~

b. "PT Student"; ~~or~~ ~~[-;]~~

2. a. "Physical Therapist Assistant Student"; ~~[-;]~~ or

b. "PTA Student".

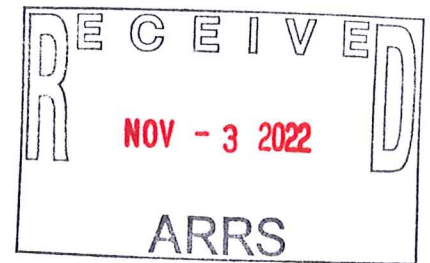
Section 6. Appointment of Fees. Unless prohibited by law, all members of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

CONTACT PERSON: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 429-7140 and Fax (502) 429-7142, Stephen.Curley@ky.gov.



COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
transportation.ky.gov

Andy Beshear
GOVERNOR



Jim Gray
SECRETARY

November 3, 2022

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601

Dear Ms. Caudill:

After discussions with the Administrative Regulation Review Subcommittee staff of the issues raised by 600 KAR 4:010, the Cabinet proposes the attached agency amendment to 600 KAR 4:010.

Sincerely,

Jon Johnson

Jon Johnson, Assistant General Counsel
Kentucky Transportation Cabinet
Office of Legal Services
200 Mero Street, 6th Floor
Frankfort, KY 40622
(502) 564-7650
jon.johnson@ky.gov

Agency Amendment

**Transportation Cabinet
Office for Civil Rights and Small Business Development**

600 KAR 4:010. Certification of disadvantaged business enterprises.

Page 2

Section 1(1)

Line 1

After "Airport", insert "Concession"

Delete "Concessionaire"

Page 3

Section 1(17)

Line 13

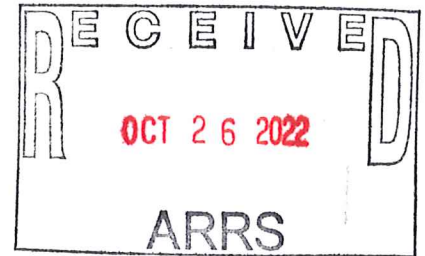
After "by", insert "49"

Delete "40"



COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
transportation.ky.gov

Andy Beshear
GOVERNOR



Jim Gray
SECRETARY

October 26, 2022

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
083, Capitol Annex
702 Capital Avenue
Frankfort, KY 40601

RE: 603 KAR 5:350. Off-highway vehicles, safety, and routes.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 603 KAR 5:350, the Transportation Cabinet proposes the attached suggested amendment to 603 KAR 5:350.

Sincerely,

Jon Johnson

Jon Johnson
Assistant General Counsel
Kentucky Transportation Cabinet
Office of Legal Services
200 Mero Street, 6th Floor
Frankfort, KY 40622
(502) 564-7650
jon.johnson@ky.gov

Staff-suggested Amendment

**Final Version 10/26/2022
TRANSPORTATION CABINET
Department of Highways
Division of Planning**

603 KAR 5:350. Off-highway vehicles, safety, and routes.

Pages 1 and 2

Section 1(2)

Lines 20 through 1

After "(2)", delete the following:

"Business district" is defined by KRS 189.390(10(a).

(3)

Re-number subsequent subsections accordingly.

Page 2

Section 1(6)

Lines 4 through 5

After "(6)", delete the following:

"Regional authority" is defined by KRS 189.281(1)(c).

(7)

Andy Beshear
Governor

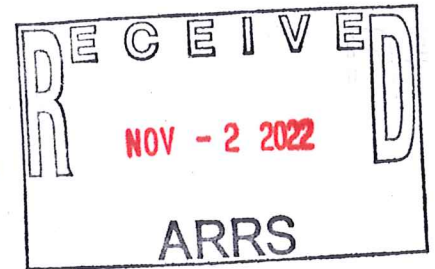


Jamie Link
Secretary, Education and
Labor Cabinet

Jason E. Glass, Ed.D.
Commissioner of Education and Chief Learner

KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov



October 24, 2022

Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort, KY 40601

Re: **702 KAR 7:125**, Pupil attendance

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 702 KAR 7:125, the Kentucky Board of Education proposes the attached amendment to 702 KAR 7:125.

Sincerely,

Todd G. Allen
General Counsel

attachment

Staff-suggested Amendment

**Final Version 10/24/2022
EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education**

702 KAR 7:125. Pupil attendance.

Page 12

Section 12(15)

Line 21

After "parent, guardian", insert "L".

Page 14

Section 12(27)

Line 2

After "parent, guardian", insert "L"

Page 15

Section 16

Line 11

After "Transfer Records.", delete "(1)".

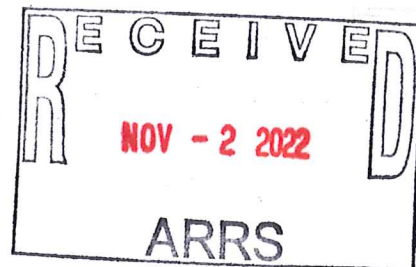
Andy Beshear
Governor



Jamie Link
Secretary, Education and
Labor Cabinet

Jason E. Glass, Ed.D.
Commissioner of Education and Chief Learner

KENTUCKY DEPARTMENT OF EDUCATION
300 Sower Boulevard • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov



October 31, 2022

Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort, KY 40601

Re: **704 KAR 3:535**. Full-time enrolled online, virtual and remote learning programs

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 704 KAR 3:535, the Kentucky Board of Education proposes the attached suggested substitute.

Sincerely,

Todd G. Allen
General Counsel

attachment

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS)

704 KAR 3:535. Full-time enrolled online, virtual[,] and remote learning programs.

RELATES TO: KRS 156.070, 156.160, 158.4416, 158.6451, 160.345, 160.380[, ~~160.345, 158.6451, 158.4416~~]

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education **to have** management and control of programs operated in the common schools. KRS 156.160 **requires [authorizes]** the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of online, virtual and remote learning programs in school districts for grades Kindergarten through grade 12.

Section 1. Definitions. (1) **"Asynchronous learning" means forms of education, instruction, and learning that do not require interaction with others to occur at the same time through a variety of strategies and tools. ["Full-Time Enrolled Online, Virtual and Remote Learning Program" is defined as a public school district program that enrolls K-12 students on a full-time basis, where teachers and students are not in the same physical location and all or most of the instruction is provided online through a combination of synchronous and asynchronous learning strategies. A full-time enrolled online, virtual and remote learning program shall not be classified as an alternative education program as set forth in 704 KAR 19:002.]**

(2) "Child with a disability" is defined by 707 KAR 1:002, Section 1(9).

(3) **"Full-Time Enrolled Online, Virtual and Remote Learning Program" means [is defined as] a public school district program that enrolls K-12 students on a full-time basis, where teachers and students are not in the same physical location and all or most of the instruction is provided online through a combination of synchronous and asynchronous learning strategies. A full-time enrolled online, virtual and remote learning program shall not be classified as an alternative education program as set forth in 704 KAR 19:002.**

(4) "Individual education program" or "IEP" is defined by 707 KAR 1:002, Section 1(34).

(5)[(4)] "Individual learning plan" or "ILP" is defined by 704 KAR 19:002, Section 1(6).

(6) **"Synchronous learning" means forms of education, instruction, and learning that occur at the same time through a variety of strategies and tools.**

(7) **"Virtual and Performance-Based" means course setup and attendance verification pursuant to [per] 702 KAR 7:125, (1)(4)(g) and[;] 704 KAR 3:305(7). Performance-Based virtual students included in the exception set forth at 702 KAR 7:125(1)(4)(g) shall not be covered by this administrative regulation.**

~~(8)~~~~(5)~~ "Voluntary placement" means the placement of a student in an online, virtual and remote learning program at the request of the parent or emancipated student and with the approval of the school district to:

- (a) Ensure the health and safety of the individual student including the social, emotional, and mental health needs of the learner; and
- (b) Meet the educational needs of the student.

~~[(6) "Virtual Performance-Based" means course setup and attendance verification per 702 KAR 7:125, (1)(4)(g); 704 KAR 3:305(7). Performance-Based virtual students included in the exception set forth at 702 KAR 7:125(1)(4)(g) shall not be covered by this administrative regulation.]~~

~~[(7) "Synchronous learning" means forms of education, instruction, and learning that occur at the same time through a variety of strategies and tools.]~~

~~(8) "Asynchronous learning" means forms of education, instruction, and learning that do not require interaction with others to occur at the same time through a variety of strategies and tools.]~~

Section 2. Program Requirements. (1) For any full-time enrolled online, virtual and remote program it operates, school districts shall ensure that:

(a) All of the education services and requirements as a physical school to fully support the academic, social, emotional, and mental health needs of the learner are provided;~~;~~

(b) The online, virtual and remote learning program meets the requirements set forth in 704 KAR 3:305;

(c) The online, virtual and remote learning program is aligned to the academic and curricular requirements of the district; ~~and;~~

(d) A student enrolled in a full-time enrolled online, virtual and remote learning program shall be eligible to participate in one (1) or more types of programs to address student learning needs, which shall include credit acceleration, credit accumulation, and an innovative path to graduation.

(2) Each local board of education shall adopt and annually review policies and procedures for the operation of each full-time enrolled online, virtual and remote learning program within the district. Locally-adopted policies and procedures shall include ~~[the]~~:

(a) ~~The~~ purpose of the program, including the ways the program supports the district's postsecondary readiness goals for students;

(b) Locally defined eligibility criteria, as appropriate;

(c) Procedures for enrolling students in the program, including procedures to ensure voluntary placement;

(d) Procedures for transitioning students out of the program;

(e) Procedures for the development and implementation of student ILPs as required by 704 KAR 3:305; and

(f) Implementation of an application and on-boarding process to ensure students and families understand the expectations for students in a full-time enrolled online, virtual~~;~~ and remote learning program and a determination of candidacy.

~~(3)~~~~(g)~~ Only students with determined appropriate digital access and support beyond the school campus shall be candidates for enrollment in the virtual school, program, or academy. The

district shall ensure all students enrolled in a virtual school, program, or academy have appropriate digital access to fully participate in and access the online, virtual~~[,]~~ and remote learning program.

(4) [(3)] Full-time enrolled online, virtual and remote learning program curriculum shall be aligned with the Kentucky Academic Standards established in 704 KAR 3:303, 704 KAR Chapter 8, and the student learning goals in the ILP.

(5) [(4)] Each student enrolled in a full-time enrolled online, virtual and remote learning program shall be subject to the minimum graduation requirements established in 704 KAR 3:305 and any additional local district graduation requirements.

(6) [(5)] Each student enrolled in a full-time enrolled online, virtual and remote learning program shall participate in the state-required assessment program and be included in the state accountability system as set forth in 703 KAR Chapter 5.

(7) [(6)] A full-time enrolled online, virtual and remote learning program shall be subject to all applicable requirements of 703 KAR 5:225 and Kentucky's Consolidated State Plan implementing the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act of 2015, or its successor.

(8) [(7)] Each student participating in a full-time enrolled online, virtual and remote learning program shall be eligible to access extracurricular activities and programs as allowed by local district and school council policies and by 702 KAR 7:065.

(9) [(8)] Each student enrolled in a full-time enrolled online, virtual and remote learning program shall have access to instructional and support resources and services available to other students in the district, which shall include instructional materials, tutoring, intervention, and counseling services, in furtherance of each student's educational program as determined through the development of the ILP.

(10) [(9)] The school district shall document each student enrolled in a full-time enrolled online, virtual~~[,]~~ and remote learning program as non-transported in the state student information system for transportation funding purposes.

Section 3. Placement of Students. (1) Enrollment of any student in a full-time enrolled online, virtual and remote learning program shall be a voluntary placement.

(2) A student entering an online, virtual and remote learning program shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation.

(3) Voluntary placement of a child with a disability in a full-time enrolled online, virtual~~[,]~~ and remote learning program shall be made through the Admissions and Release Committee (ARC) pursuant to 707 KAR 1:320. The ARC shall document the student's voluntary placement in the full-time enrolled online, virtual, and remote learning program in the ARC Conference Summary.

(a) The voluntary placement decisions for a student who has been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

(b) **The** district shall fully implement any accommodation required by 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended and any IEP for a child with a disability in a full-time enrolled online, virtual and remote learning program. The district shall ensure the Section 504 Team and Admissions and Release Committee (ARC) was involved in determining how all

special education, related services, and accommodations shall be implemented for a child with a disability in the full-time enrolled online, virtual and remote learning program.

Section 4. Costs and Expenditures. ~~[(4)]~~ Each district shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each full-time enrolled online, virtual and remote learning program operating in the district.

Section 5. Data. (1) Each district shall utilize the student information system to enter data regarding each student in a full-time enrolled online, virtual and remote learning program.

(2) Data collected shall include demographic, programmatic, or other data fields contained in the student information system or required by the department to track and report student enrollment, educational programming, achievement, and transition to and from enrollment in the full-time enrolled online, virtual and remote learning programs.

Section 6. Personnel. (1) Full-time enrolled online, virtual and remote learning program teachers and administrators shall be subject to the teacher certification requirements established in KRS 161.020, and shall comply with the classified and certified assignment restrictions established in KRS 160.380(3).

(2) The district shall ensure a system of high-quality professional learning on the high-quality instructional resources and on evidence-based instructional practices for virtual learning.

Section 7. Class Size. ~~[(4)]~~ Full-time enrolled online, virtual and remote learning programs shall meet the requirements set forth in KRS 157.360 and 702 KAR 3:190 for maximum class sizes and exemptions thereto.

Section 8. Student Attendance. (1) Students in a full-time enrolled online, virtual~~[,]~~ and remote learning program authorized by this regulation shall be counted in attendance.

(2) Attendance for students in a full-time enrolled online, virtual~~[,]~~ and remote learning program authorized by this regulation shall be collected as follows:

(a) Attendance shall be recorded at the course level for virtual middle and high school students by certified teachers;

(b) Attendance shall be recorded at least two ~~(2)~~ times each school day for virtual elementary school students with checks three ~~(3)~~ hours apart by certified teachers;

(c) Attendance for each course shall be recorded in the student information system attendance tables;

(d) Courses shall not be set up as virtual ~~and~~ performance-based;

(e) Attendance clerks or other assigned district personnel shall reconcile attendance for each course ~~or~~ period to ensure proper codes are entered for absent students. Attendance event absence codes shall be entered at the office level (for example, doctor [i.e. Dr.] excuses ~~or~~ parent excuses); and

(f) District online, virtual~~[,]~~ and remote learning program attendance records shall be subject to audit by the Kentucky Department of Education.

(3) Students in a full-time enrolled online, virtual and remote learning program shall be subject to the compulsory attendance laws set forth in KRS 159.150 and 159.180. School districts

operating a full-time enrolled online, virtual and remote learning program shall develop and implement policies to address attendance absences, which shall include:

- (a) The attendance status of students with an internet outage;
- (b) The process to return students to in-person instruction for truancy violations; and
- (c) The district process for actions it shall take pursuant to KRS Chapter 159 for truant students.

Section 9. Curriculum, Content, and Instruction. (1) The full-time enrolled online, virtual and remote learning program shall provide instruction aligned to the grade-level expectations established in the Kentucky Academic Standards at 704 KAR 3:303 and 704 KAR Chapter 8, including the selection, vetting, and implementation of high-quality instructional resources aligned to the Kentucky Academic Standards and grade-level appropriate assignments. Districts shall maintain evidence of having systemic formative assessment processes in place to:

(a) Accurately measure student progress on grade-level standards for students enrolled in a full-time enrolled online, virtual and remote learning program; and

(b) Support students enrolled in the full-time enrolled online, virtual and remote learning program needing accelerated learning on grade-level standards within universal instruction as well as those students who need more targeted interventions and supports.

(2) The full-time enrolled online, virtual and remote learning program shall implement synchronous learning strategies and digital platforms for two-way visual and verbal interactions. Additionally, the full-time enrolled online, virtual and remote learning program shall utilize a learning management system (LMS) or other digital platforms that allows teachers to monitor student's progress, interactions and engagement with the teacher, and other students online for the review of student work and completion of assignments through both synchronous and asynchronous interactions.

(3) Students in a full-time enrolled online, virtual and remote learning program shall be assigned a schedule that aligns with the standard day of in-person students. Virtual student schedules shall adhere to the standard day and hour requirements set forth at KRS 158.070.

(4) The full-time enrolled online, virtual and remote learning program shall ensure attainment of the declarations and goals set forth by KRS 158.6451.

(5) Students in the full-time enrolled online, virtual and remote learning program shall receive access to the essential workplace ethics programs, including characteristics critical to success in the workplace, as established in KRS 158.1413.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

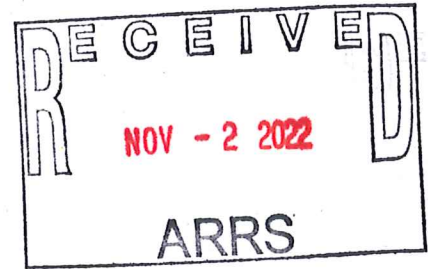
Andy Beshear
Governor



Jamie Link
Secretary, Education and
Labor Cabinet

Jason E. Glass, Ed.D.
Commissioner of Education and Chief Learner

KENTUCKY DEPARTMENT OF EDUCATION
300 Sower Boulevard • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov



October 26, 2022

Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort, KY 40601

Re: 705 KAR 4:041, Work-based learning program standards

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 705 KAR 4:041, the Kentucky Board of Education proposes the attached suggested substitute.

Sincerely,

Todd G. Allen
General Counsel

attachment

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS)

705 KAR 4:041. Work-based learning program standards.

RELATES TO: KRS ~~[156.029(7),]~~ 156.802, 158.810(4)

STATUTORY AUTHORITY: KRS ~~[156.029(7),]~~ 156.070(1), 156.802(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) provides that the Kentucky Board of Education shall have the management and control of the common schools~~[and 156.029(7) require the Kentucky Board of Education to promulgate administrative regulations managing schools and programs and governing the Department of Education]~~. KRS 156.802(5) requires the board to establish program standards for secondary area career and technical education and technology centers. This administrative regulation establishes program standards for work-based learning in state-operated area technology centers and local school districts.

Section 1. Definitions. (1) "Apprentice" means a worker at least sixteen (16) years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation.

(2) "Career and technical education" is defined by KRS 158.810(4).

(3) "Career pathway completer" means a ~~[is defined as]~~ student who has completed a minimum of four (4) credits within a Kentucky Department of Education approved career pathway.

(4)~~[(2)]~~ "Cooperative education" means ~~[is]~~ a form of work-based learning~~[means an educational program]~~ consisting of in-school instruction combined with program related on-the-job paid work experience in a business or industrial establishment.

(5) "Entrepreneurship" means education that allows individual students to develop a deeper understanding of economic principles and to apply classroom learning by organizing and operating a business enterprise.

(6) "Internship" means ~~[is]~~ a type of work-based learning that provides work experience in a particular occupation, often leading to course credit and compensation.

(7) "Journey person certificate" means ~~[is]~~ the culmination of an apprenticeship that leads to a nationally recognized and portable credential.

(8) "Mentoring" means ~~[is]~~ a form of work-based learning that involves business and community volunteers developing one-to-one relationships with students to build an understanding of careers and work ethics that goes beyond the formal obligations of a teaching and supervisory role.

(9) "Registered apprenticeship program" means ~~[is]~~ a program validated by the United States Department of Labor and combines paid on-the-job training and classroom instruction under the supervision of an experienced industry professional.

(10) "Registered youth apprenticeship" means ~~[is]~~ a program that combines academic and technical classroom instruction with work experience through a United States Department of Labor registered apprenticeship program.

(11) "Registered youth pre-apprenticeship" means [is] a program or set of strategies designed to prepare students for entry into United States Department of Labor registered apprenticeship programs.

(12) "Related technical instruction" means [is] the classroom component of a registered apprenticeship, which requires 144 hours for every 2,000 hours of the apprenticeship.

(13) "School-based enterprise" means [is] a simulated or actual business conducted within the school setting.

(14) "Service learning" means [is] a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility, and strengthen communities.

(15) "Shadowing" means [is] a form of work-based learning that allows students to learn through observation by spending time with an individual from a chosen occupation.

(16) "State apprenticeship agency" means [is] the state agency and staff responsible for registered apprenticeship activity, which acts on behalf of the United States Department of Labor.

(17)[(3)] "Work-based learning" means an effective teaching approach used to engage students in real-life occupational experiences[;] that incorporates structured, work-based learning activities into the curriculum and allows a student to apply knowledge and skills learned in class and connect these learning experiences in the workplace.

Section 2. Cooperative education shall meet the minimum requirements established in this section.

(1) To participate in cooperative education, a student shall be at least sixteen (16) years of age.

(a) A student who is under eighteen (18) shall secure a verification of age issued by the local superintendent of schools.

(b) A student who is between age eighteen (18) to twenty-one (21) shall have a certificate of age on file with the employer.

(2) A student shall have:

(a) Successfully completed the basic career and technical skill prerequisites required by the preparatory program the student is pursuing; and

(b) Gained sufficient knowledge and skills necessary for success in a cooperative education program.

(3) A student shall be:

(a) Enrolled in a course included within the student's chosen career pathway within the same academic year; or

(b) A career pathway completer[completed] by the conclusion of the student's junior year; or

(c) Enrolled in an approved registered youth or pre-apprenticeship program.

~~[(4) The cooperative education program shall be an integral part of the school's program of studies and be described in the school catalog.]~~

~~[(4)][(5)] A student may receive academic credit on an hour-for-hour[-]basis equivalent to a Carnegie Unit only for work experience directly related to the student's individual learning plan (ILP) and approvable under the minimum requirements for high school graduation, 704 KAR 3:305.~~

~~[(5)][(6)] A student shall receive a salary for the work experience phase of instruction in accordance with local, state, and federal minimum wage requirements.~~

~~(6)~~~~(7)~~ The school shall arrange and coordinate with the employer for on-the-job training. A training agreement by the school, student, parent ~~(if the student is a minor)~~, and employer shall be placed on file with the school. This agreement shall be monitored and evaluated by the certified program area teacher.

~~(8)~~ A student shall be excused from school attendance only for the purpose of participating in an approved cooperative education program activity.]

~~(7)~~~~(9)~~ The program shall include an evaluation component to assess the effectiveness of the program in assisting students in the achievement of their educational and career goals.

~~(8)~~~~(10)~~ The student shall spend a minimum of ten (10) clock hours per week in a salaried position which provides work experience directly related to the student's career goals as identified in their ~~his~~ individual learning plan (ILP).

~~(9)~~~~(11)~~ The school shall provide work site supervision of the student by a certified or classified staff member~~teacher-coordinator~~ on a regular basis throughout the period of time a student is participating in the cooperative education program.

Section 3. Other types of work-based learning opportunities for secondary students may include service learning, mentoring, shadowing, entrepreneurship, school-based enterprises, internships, and registered youth or pre-apprenticeships.~~[Definitions of each type of work-based learning shall be located in the Kentucky Work-Based Learning Manual. Local districts and state-operated area technology centers shall have the responsibility of coordinating work-based learning programs and shall comply with the Kentucky Work-Based Learning Manual.]~~

Section 4. Local districts and state-operated area technology centers shall have the responsibility of coordinating work-based learning programs and shall comply with the Kentucky Work-Based Learning Manual.

(1) Work-based learning programs shall be an integral part of the school's program of studies and be described in the school's scheduling resources.

(2) A student participating in an approved work-based learning activity shall be counted in attendance as provided in 702 KAR 7:125, Section 1(4)(a).

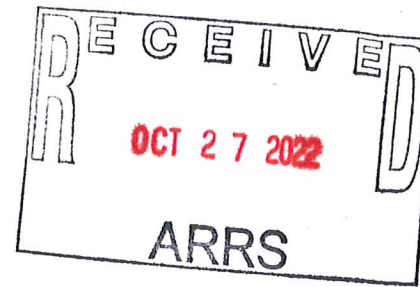
Section 5. Incorporation by Reference. (1) "Kentucky Work-Based Learning Manual", August 2022~~March 2015~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Career and Technical Education, 5th~~20th~~ Floor, Capital Plaza Tower, 300 Sower Boulevard~~500 Mero Street~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at: <http://education.ky.gov/CTE/cter/Pages/WBL.aspx>.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.



EDUCATION AND LABOR CABINET



Andy Beshear
Governor

Department of Workers' Claims

Scott Wilhoit

Commissioner

500 Mero Street, 3rd Floor
Frankfort, Kentucky 40601
Telephone: (502) 564-5550

Jamie Link
Secretary

October 27, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
702 Capitol Avenue
Frankfort Kentucky 40601

Re: **803 KAR 25:089**. Workers' compensation medical fee schedule for physicians.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of a technical omission in 803 KAR 25:089, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:089.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Workers' Claims Legal Division
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

SUGGESTED SUBSTITUTE – ORDINARY VERSION

Final Version: 10/27/2022 11:44 AM

EDUCATION AND LABOR CABINET

Department of Workers' Claims

803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges, and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. ~~[Pursuant to]~~ KRS 342.035 **requires** a schedule of fees ~~[is]~~ to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions.

(1) "Medical fee schedule" means the 2022 Kentucky Workers' Compensation Schedule of Fees for Physicians~~[2020 Kentucky Workers' Compensation Schedule of Fees for Physicians]~~.

(2) "Physician" is defined by KRS 342.0011(32).

Section 2. Services Covered.

(1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation.

(1) The appropriate fee for a procedure or item covered by the medical fee schedule shall be the Maximum Allowable Reimbursement (MAR) listed in the 2022~~[2020]~~ Kentucky Workers' Compensation Schedule of Fees for Physicians for those procedures or items for which a specific monetary amount is listed.

(2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary Amount.~~[:]~~ The appropriate fee for a procedure or item for which ~~a~~~~[no]~~ specific monetary amount is **not** listed shall be determined and calculated in accordance with numerical paragraph six (6) of the General Instructions of the medical fee schedule unless more specific Ground Rules are applicable to that service or item, in which case the fee shall be calculated in accordance with the applicable Ground Rules.

(3) The resulting fee shall **not be more than**~~[be]~~ the maximum fee allowed for the service provided.

Section 4.

(1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to **comply with**~~[be subject to]~~ this administrative regulation if it treats a patient who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

Section 5. Incorporation by Reference.

(1) "2022 Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2022 Edition~~[2020 Kentucky Workers' Compensation Schedule of Fees for Physicians, July 1, 2020 Edition]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from or through [https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician Fee Schedule](https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician_Fee_Schedule).

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0682, email dale.hamblin@ky.gov.



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

November 3, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601



Re: 900 KAR 10:120, KHBE Eligibility and Enrollment in a Qualified Health PLAN, SHOP, and SHOP Formal resolution Process.

Dear Regulations Compiler:

After discussions with various stakeholders of the issues raised by 900 KAR 10:120, the Department for Medicaid Services proposes the attached agency amendment to 900 KAR 10:120.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

Agency Amendment

**Cabinet for Health and Family Services
Office of Health Data and Analytics
Division of Health Benefit Exchange**

**900 KAR 10:120. KHBE Eligibility and Enrollment in a Qualified Health Plan SHOP, and
SHOP Formal Resolution Process**

Page 1

RELATES TO

Line 7

After "304.17A-245," insert "25 USC 1603(13)."

Line 9

After "42 C.F.R. 435.320", insert "435.603(e)".

Page 1

Section 1(1)

Line 22

After "enroll in a", insert "Qualified Health Plan or".

After "through the", insert "Kentucky Benefit Health Exchange or".

Page 2

Section 1(2)

Line 8

After "applicant", insert ": (a)".

Capitalize "may".

After "during a year;", insert "and (b)".

Delete "however, the applicant".

Line 9

Capitalize "shall".

After "enrollment or", insert "Special Enrollment Periods or".

Page 3

Section 2(1)

Line 19

After "eligible for", insert the following:

Advanced Payments of the Premium Tax Credit or

Page 4

Section 2(2)(b)

Line 8

After "percent of the", insert the following:
Federal Poverty Level or

Page 4
Section 2(4)
Line 17

After "APTC if", insert the following:
the U.S. Department of Health and Human Services or

Page 5
Section 3(1)
Line 23

After "eligible for", insert the following:
Cost Sharing Reductions or

Page 7
Section 5
Line 23

After "issuer.", insert the following:
(6) A qualified individual may enroll in a Stand-Alone Dental Plan (SADP) outside the QHP Enrollment without an SEP. If the SADP is selected:
(a) On or before the 15th of month, the effective date will be the first day of the following month.
(b) After the 15th of the month, the effective date will be the first day of the second following month.

Page 9
Section 6(2)(h)2.
Line 7

After "2. Had", insert the following:
minimum essential coverage or
After "one (1)", insert "or".
Delete "of".

Page 9
Section 6(2)(l)1.
Line 17

After "individual", insert the following:
Health Reimbursement Arrangement or

Page 9

Section 6(2)(l)2.

Line 18

After "provided a", insert the following:
Qualified Small Employer Health Reimbursement Arrangement or

Page 10

Section 6(2)(r)2.

Line 14

After "Medicaid or", insert the following:
the Kentucky Children's Health Insurance Program or

Page 11

Section 6(2)(u)

Line 1

After "co-insurance", insert comma.
After "deductible amount", insert comma.

Page 11

Section 6(2)(v)1.b.

Line 8

After "timeframe; and", delete "either".

Page 11

Section 6(2)(v)2.

Line 9

After "2.", insert "Either".

Page 11

Section 6(3)

Line 20

After "loss of", insert "MEC".
Delete the following:
minimum essential coverage

Page 12

Section 6(3)(d)

Line 4

After "eligibility for", insert "MEC".
Delete the following:
minimum essential coverage

Page 12

Section 6(4)

Line 5

After "Loss of", insert "MEC".

Delete the following:

minimum essential coverage

Page 12

Section 6(5)

Line 7

After "Loss of", insert "MEC".

Delete the following:

minimum essential coverage

Page 15

Section 6(17)

Line 18

After "another one", insert "(1)".

Line 20

After "set at zero", insert "(0)".

Page 16

Section 6(20)(a)

Line 8

After "zero", insert "(0)".

Page 16

Section 6(20)(b)

Line 9

After "zero", insert "(0)".

Page 16

Section 7(4)(b)1.

Line 21

After "Having had", insert "MEC".

Delete "minimum essential coverage".

Page 17

Section 7(6)(b)1.

Line 13

After "Having", insert "MEC".

Delete "minimum essential coverage".

Page 17

Section 7(7)

Line 17

After "loss of", insert "MEC".

Delete "minimum essential coverage".

Page 21

Section 9(2)(a)

Line 1

After "income", insert the following:

, as defined by 42 C.F.R. 435.603(e) and

After "155.320(c)(1)", insert comma.

Page 23

Section 9(10)

Line 3

After "QHP when the redetermination", insert "was made".

Page 23

Section 11(1)

Line 15

After "an Indian", insert the following:

, as defined by 25 U.S.C. 1603(13).

Page 24

Section 13(1)

Line 5

After "obtained other", insert "MEC".

Delete "minimum essential coverage".

Page 24

Section 13(2)(a)1.

Line 14

After "for other", insert "MEC".

Delete "minimum essential coverage".

Page 25

Section 13(4)(b)

Line 7

After "premium", insert "and:".

Delete semicolon.



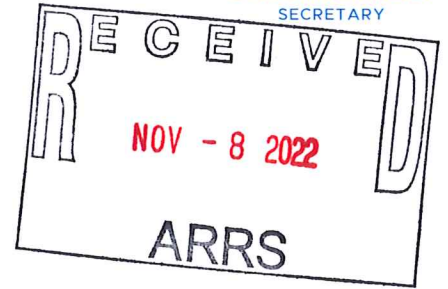
Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

November 7, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: 907 KAR 1:008. Ambulatory surgical center services and reimbursement.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 1:008, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 1:008.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services, at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Fiscal Management (Amended After Comments)

907 KAR 1:008. Ambulatory surgical center services and reimbursement.

RELATES TO: KRS 205.520(3), 205.560(2), 42 C.F.R. 416.164,~~[—and]~~ 416.166, **416.172, 416.173[447.271]**, Part 441 Subpart E, ~~[or] F, 447.271~~

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)~~], EO-2004-726]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~ The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program **pursuant to KRS 194A.030(2)**. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions and method for establishing payment for an ambulatory surgical center.

Section 1. Scope of Coverage. The Medicaid Program shall cover medically necessary, medically appropriate services rendered by a participating ambulatory surgical center (ASC) licensed by its respective state and certified for Medicare participation.

Section 2. Basis for Reimbursement.

(1) Beginning with the effective date of this **administrative regulation**, the Department for Medicaid Services shall **determine the ASC rates by:**

(a) Utilizing[utilize] the most recent January 1[, 2022,] ASC Fee Schedule as published by the Centers for Medicare and Medicaid Services (CMS) at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/11_Addenda_Updates.html in accordance with 42 C.F.R. 416.173; and

(b) Adjusting them as follows[to determine the ASC rates, subject to the following adjustments and updating procedures]:

1.[(a)] Reimbursement for a procedure shall be the rate specific to that procedure as assigned by CMS, adjusted by the wage index utilized by CMS for the Cincinnati, OH, Core-Based Statistical Area, or its equivalent, in accordance with 42 C.F.R. 416.172(c).

2.[(b)] Procedure codes that are considered a packaged service by CMS with a Medicare rate of \$0 shall be reimbursed at a rate of \$0.

3.[(c)] Medicaid covered procedures not included on the Medicare fee schedule shall be reimbursed at forty-five (45) percent of billed charges.

4.[(d)] Bilateral procedures shall be reimbursed at one hundred and fifty (150) percent of the rate established in subparagraphs 1 and 2 of this paragraph[billed charges].

5.a.[(e)] Reimbursement shall follow applicable Medicare rules for multiple endoscopy discounting and multiple procedure discounting as established in:

(i) 42 C.F.R. Part 416; and

(ii) The Medicare Claims Processing Manual, Chapter 14, as published by the Centers for Medicare and Medicaid Services (CMS) at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs> in accordance with 42 C.F.R. 416.173.

~~**b. If, in the event that**~~ both discounts apply to a single claim, the multiple endoscopy discount shall be applied first.

~~**[(f) Effective January 1, 2023, and each January 1 thereafter, the ASC fee schedule utilized for payment purposes shall be updated to reflect the latest January 1 Medicare ASC fee schedule published by CMS, inclusive of any applicable correction notices.]**~~

~~(2) Ambulatory surgical center coverage provisions shall be as established in 42 C.F.R. **Part** 416, Subpart F, including 42 C.F.R. 416.164 and 416.166.~~

~~**(3) Reimbursements shall be limited to the lesser of billed charges or the amount established pursuant to subsection (1) of this section.**~~ [1996 Medicare ambulatory surgical center group rates for the federal Cincinnati, Ohio – Kentucky region to reimburse for an ambulatory surgical center service. The following chart establishes the ambulatory surgical center reimbursement rate for each corresponding surgical group:]

Ambulatory Surgical Center Group	Reimbursement Rate
Group 1	[\$307.38]
Group 2	[\$412.79]
Group 3	[\$471.90]
Group 4	[\$582.25]
Group 5	[\$664.02]
Group 6	[\$775.59]
Group 7	[\$921.15]
Group 8	[\$911.55]

~~[(2)] Reimbursement for a procedure shall be the surgical group rate specific to that procedure as assigned by the Centers for Medicare and Medicaid Services.]~~

~~[(3)] Reimbursement for a procedure which does not have a surgical group rate shall be forty-five (45) percent of charges.]~~

~~[(4)] Ambulatory surgical center group surgical and covered provisions are established in the Ambulatory Surgical Centers Manual.]~~

Section 3. Reproductive Services.

~~(1) A reproductive service shall be reimbursable **if[when]** performed in compliance with this administrative regulation and 42 C.F.R. Part 441, Subpart E or F, as relevant.[:]~~

~~(2) The appropriate certification form or forms shall be completed and signed by the physician, **MAP-235, MAP-250, or MAP-251**. A copy of the completed form and an operative report shall accompany each claim submitted for payment.~~

~~(3) If a sterilization is performed in conjunction with another surgical procedure and federal **requirements[regulations]** governing payment for the sterilization **in 42 C.F.R. Part 441, Subpart F** have not been met, the department shall only make payment for the covered non-sterilization procedure.~~

~~(4) Claims for unilateral or laparoscopic surgical procedures that could result in sterilization shall be submitted with documentation verifying that the recipient was not sterilized as a result of the performed procedure.~~

Section 4. Documentation Requirements.

~~(1) All services reimbursed by the department shall be:~~

~~(a) Medically necessary;~~

~~(b) Medically appropriate; and~~

~~(c) Related to the diagnosis or treatment of:~~

~~1. Illness;~~

~~2. Injury;~~

~~3. Impairment; or~~

~~4. Maternity care.~~

~~(2) Documentation in recipient medical records shall support necessity and substantiate the level of service billed.~~

- (3) Medical necessity shall be determined in accordance with 907 KAR 3:130.
- (4) The department shall have the authority to audit any:
 - (a) Claim;
 - (b) Medical record; or
 - (c) Documentation associated with any claim or medical record.

Section 5. Federal Approval and Federal Financial Participation. The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage and reimbursement; and
 - (2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.~~[Incorporation by Reference. (1) "The Ambulatory Surgical Centers Manual", October 2002 edition, Department for Medicaid Services, is incorporated by reference.]~~
- ~~[(2)] [It may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

Section 6. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to this administrative regulation.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Certification Form for Induced Abortion or Induced Miscarriage", MAP-235, February 2000;**
- (b) "Consent for Sterilization", MAP-250, April 2022; and**
- (c) "Hysterectomy Consent Form", MAP-251, October 2010.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/ascs.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

**CERTIFICATION FORM FOR INDUCED ABORTION
OR INDUCED MISCARRIAGE**

I, _____, certify that on the basis of
(Physician's Name)

my professional judgment, the life of _____
(Patient's Name)

_____ of _____
(MAID #) (Patient's Address)
(Please check appropriate box)

Suffered from a _____ physical disorder, _____ physical injury, and/or _____ physical illness
that placed her in danger of death if the fetus were carried to term. I further certify that
the following procedure(s) were medically necessary to induce an abortion or
miscarriage.

(Please indicate date and the procedure that was performed)

Physician's Signature

Name of Physician

License Number

Date

CONSENT FOR STERILIZATION

NOTICE: YOUR DECISION AT ANY TIME NOT TO BE STERILIZED WILL NOT RESULT IN THE WITHDRAWAL OR WITHHOLDING OF ANY BENEFITS PROVIDED BY PROGRAMS OR PROJECTS RECEIVING FEDERAL FUNDS.

■ CONSENT TO STERILIZATION ■

I have asked for and received information about sterilization from _____ . When I first asked

Doctor or Clinic

for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment. I will not lose any help or benefits from programs receiving Federal funds, such as Temporary Assistance for Needy Families (TANF) or Medicaid that I am now getting or for which I may become eligible.

I UNDERSTAND THAT THE STERILIZATION MUST BE CONSIDERED PERMANENT AND NOT REVERSIBLE. I HAVE DECIDED THAT I DO NOT WANT TO BECOME PREGNANT, BEAR CHILDREN OR FATHER CHILDREN.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and chosen to be sterilized.

I understand that I will be sterilized by an operation known as a _____ . The discomforts, risks

Specify Type of Operation

and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least 30 days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by federally funded programs.

I am at least 21 years of age and was born on: _____ *Date*

I, _____ , hereby consent of my own free will to be sterilized by _____

Doctor or Clinic

by a method called _____ . My *Specify Type of Operation*

consent expires 180 days from the date of my signature below.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health and Human Services, or Employees of programs or projects funded by the Department but only for determining if Federal laws were observed.

I have received a copy of this form.

Signature

Date

You are requested to supply the following information, but it is not required: (*Ethnicity and Race Designation*) (please check)
Ethnicity: _____ *Race (mark one or more):* _____

- | | |
|---|--|
| <input type="checkbox"/> Hispanic or Latino | <input type="checkbox"/> American Indian or Alaska Native |
| <input type="checkbox"/> Not Hispanic or Latino | <input type="checkbox"/> Asian |
| | <input type="checkbox"/> Black or African American |
| | <input type="checkbox"/> Native Hawaiian or Other Pacific Islander |
| | <input type="checkbox"/> White |

■ INTERPRETER'S STATEMENT ■

If an interpreter is provided to assist the individual to be sterilized:

I have translated the information and advice presented orally to the individual to be sterilized by the person obtaining this consent. I have also read him/her the consent form in _____

language and explained its contents to him/her. To the best of my knowledge and belief he/she understood this explanation.

Interpreter's Signature

Date

■ STATEMENT OF PERSON OBTAINING CONSENT ■

Before _____ signed the

Name of Individual

consent form, I explained to him/her the nature of sterilization operation _____ , the fact that it is

Specify Type of Operation

intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent. I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequences of the procedure.

Signature of Person Obtaining Consent

Date

Facility

Address

■ PHYSICIAN'S STATEMENT ■

Shortly before I performed a sterilization operation upon

_____ on _____

Name of Individual

Date of Sterilization

I explained to him/her the nature of the sterilization operation _____ , the fact that it is

Specify Type of Operation

intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

(**Instructions for use of alternative final paragraph:** Use the first paragraph below except in the case of premature delivery or emergency abdominal surgery where the sterilization is performed less than 30 days after the date of the individual's signature on the consent form. In those cases, the second paragraph below must be used. Cross out the paragraph which is not used.)

(1) At least 30 days have passed between the date of the individual's signature on this consent form and the date the sterilization was performed.

(2) This sterilization was performed less than 30 days but more than 72 hours after the date of the individual's signature on this consent form because of the following circumstances (check applicable box and fill in information requested):

☐ Premature delivery

Individual's expected date of delivery: _____

☐ Emergency abdominal surgery (*describe circumstances*): _____

Physician's Signature

Date

PAPERWORK REDUCTION ACT STATEMENT

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays the currently valid OMB control number. Public reporting burden for this collection of information will vary; however, we estimate an average of one hour per response, including for reviewing instructions, gathering and maintaining the necessary data, and disclosing the information. Send any comment regarding the burden estimate or any other aspect of this collection of information to the OS Reports Clearance Officer, ASBTF/Budget Room 503 HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

Respondents should be informed that the collection of information requested on this form is authorized by 42 CFR part 50, subpart B, relating to the sterilization of persons in federally assisted public health programs. The purpose of requesting this information is to ensure that individuals requesting sterilization receive information regarding the risks, benefits and consequences, and to assure the voluntary and informed consent of all persons undergoing sterilization procedures in federally assisted public health programs. Although not required, respondents are requested to supply information on their race and ethnicity. Failure to provide the other information requested on this consent form, and to sign this consent form, may result in an inability to receive sterilization procedures funded through federally assisted public health programs.

All information as to personal facts and circumstances obtained through this form will be held confidential, and not disclosed without the individual's consent, pursuant to any applicable confidentiality regulations. [43 FR 52165, Nov. 8, 1978, as amended at 58 FR 33343, June 17, 1993; 68 FR 12308, Mar. 14, 2003]

HYSTERECTOMY CONSENT FORM

Medicaid Recipient Name _____ Medicaid ID # _____

Physician's Name _____ Date of Hysterectomy _____

>>>>COMPLETE ONLY ONE OF THE REMAINING SECTIONS & COMPLETE ALL BLANKS IN SECTION<<<<

SECTION A: COMPLETE THIS SECTION FOR RECIPIENT WHO ACKNOWLEDGES RECEIPT PRIOR TO HYSTERECTOMY

I HAVE BEEN INFORMED ORALLY AND IN WRITING THAT A HYSTERECTOMY WILL RENDER ME PERMANENTLY INCAPABLE OF REPRODUCING.

PATIENT'S SIGNATURE _____ DATE _____

WITNESS' SIGNATURE _____ DATE _____

SECTION B: COMPLETE THIS SECTION WHEN ANY OF THE EXCEPTIONS LISTED BELOW IS APPLICABLE. CHECK ONLY ONE SELECTION.

I certify that before I performed the hysterectomy procedure on the recipient listed below:

1 ☐ I informed her that this operation would make her permanently incapable of reproducing. (**This certification for retroactively eligible recipient only** – a copy of the Medicaid card which covers the date of the hysterectomy, or a copy of the retroactive approval notice, must accompany this form before the reimbursement can be made.)

2 ☐ She was already sterile due to _____
CAUSE OF STERILITY

3 ☐ She had a hysterectomy performed because of a life-threatening situation due to _____
DESCRIBE EMERGENCY SITUATION

And the information concerning sterility could not be given prior to the hysterectomy. Life-threatening should indicate that the patient is unable to respond to the information pertaining to the acknowledgement agreement.

PHYSICIAN'S SIGNATURE _____ DATE _____

SECTION C: COMPLETE THIS SECTION FOR MENTALLY-INCOMPETENT RECIPIENT ONLY

I acknowledge receipt of information, both orally and in writing, prior to the hysterectomy's being performed, that if a hysterectomy is performed on the above recipient, it will render her permanently incapable of reproducing.

WITNESS' SIGNATURE _____ DATE _____ PATIENT REPRESENTATIVE SIGNATURE _____ DATE _____

PHYSICIAN'S STATEMENT

I affirm that the hysterectomy I performed on the above recipient was medically necessary due to _____

REASON FOR HYSTERECTOMY

And was not done for sterilization purposes, and that to the best of my knowledge the individual on whom the hysterectomy was performed is mentally incompetent. Before I performed the hysterectomy on her I counseled her representative, orally and in writing that the hysterectomy would render that individual permanently incapable of reproducing; and the individual's representative has signed a written acknowledgement of receipt of the foregoing information.

PHYSICIAN'S SIGNATURE _____ DATE _____



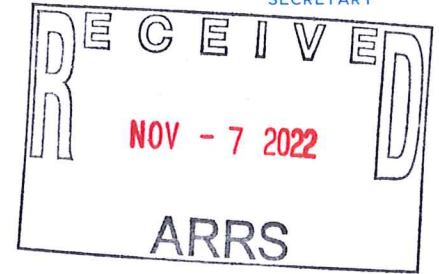
Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

November 7, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: 907 KAR 4:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 4:020, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 4:020.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE – To Ordinary Version

Final Version: 11/4/2022 9:34 AM

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

907 KAR 4:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

RELATES TO: KRS 205.510 - 205.647, 205.6481 - 205.6497, ~~[211.461 - 211.466,]~~ 304.5-040, 304.17A-005(8), (14), 42 C.F.R. 432, 433, 435, 436, 440.230, 457, 42 U.S.C. 1396, 1396a, 1397aa-jj, 9902

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3) 205.6485, 42 U.S.C. 1397aa-jj

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(2) requires the Cabinet for Health and Family Services, Department for Medicaid Services, to administer Title XIX of the Federal Social Security Act, 42 U.S.C. 1396 **through[to]** 1396v. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 205.6485 **requires[authorizes]** the cabinet to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to children of the commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP eligibility criteria, covered services, application requirements, grievance and appeal rights for recipients, and the requirements for providers who wish to participate with the commonwealth to provide health care coverage to KCHIP members through an expansion of the Title XIX Medicaid Program.

Section 1. Definitions.

- (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.
- (2) "Child" means an individual under the age of nineteen (19) years.
- (3) "Creditable coverage" is defined by KRS 304.17A-005(8)(a)1 **through[-]** 3 and 5 **through[-]** 10.
- (4) "Department" means the Department for Medicaid Services or its designee.
- (5) "Excepted benefits" is defined by KRS 304.17A-005(14).
- (6) "Health insurance" is defined by KRS 304.5-040.
- (7) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa **through[to]** jj.

Section 2. Eligibility Criteria.

- (1) A child shall be eligible for KCHIP if the child:
 - (a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;
 - (b) Is a noncitizen~~[an alien]~~ who meets the requirement established in 907 KAR 20:005;
 - (c) Meets the technical requirements of 907 KAR 20:005;
 - (d) Provides to the department the information required in Section 4 of this administrative regulation;
 - (e) Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2;
 - (f) Meets the relative responsibility requirements established in 907 KAR 20:040;
 - (g) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

(h) Is an optional targeted low-income child as defined **by[~~in~~]** 42 U.S.C. 1397jj(b) who:

1. Has family income that does not exceed 213[459] percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2);~~and~~

2. Does not have creditable coverage and may be covered by excepted benefits; and

3.

a. If an eligibility determination indicates that an individual's income exceeds 213 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as **established[described]** pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

b. If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.

(2) Eligibility for KCHIP shall be determined by the department. Upon receipt of eligibility information **established[defined]** in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397aa **through[~~to~~]** jj.

Section 3. Covered Services.

(1) Health services shall be considered medically necessary in accordance with:

(a) 907 KAR 3:130; and

(b) 42 C.F.R. 440.230.

(2) Amount and duration of benefits covered by KCHIP shall be as established in Title 907 KAR.

(3) A medical service shall be covered through KCHIP Phase II if an individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(4) Preventive and remedial public health services shall be provided to KCHIP Phase II members in accordance with 907 KAR 1:360.

(5) KCHIP Phase II shall be the payor of last resort.

Section 4. KCHIP Application Requirements. The following information shall be required from a child or responsible party for KCHIP enrollment:

(1) A child's demographics that shall include:

(a) Name;

(b) Address;

(c) Sex;

(d) Date of birth;

(e) Race; and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a recipient[~~child~~] for whom information is being submitted;

(3) An employer type and address, if any;

(4) Frequency of income;

(5) Name and address of a health insurance provider who currently provides creditable coverage;

(6) Creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(7) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(8) Name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(9) Signature, date, and telephone number of a person submitting the information for a child.

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP shall meet the requirements of:

- (1) 907 KAR 1:671; and
- (2) 907 KAR 1:672.

Section 6. Grievance, Hearing, and Appeal Rights.

(1) If dissatisfied with an action taken by the department as to the application of Sections 1 through 5 of this administrative regulation, a child, the child's parent, or the child's guardian shall be entitled to a grievance, hearing, or appeal with the department, to be conducted in accordance with:

- (a) 907 KAR 1:560, if pertaining to initial eligibility; or
- (b) 907 KAR 1:563, if pertaining to a covered service.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's parent, or the child's guardian shall be in accordance with[;]

- ~~[(a)] [KRS 211.461 through 211.466; and]~~
- ~~[(b)] 907 KAR 17:010.~~

(3) A KCHIP Phase II eligible child or a responsible party shall be informed in writing of the right to and procedures for due process by the cabinet:

- (a) At the time information to obtain KCHIP Phase II approval is submitted;
- (b) If there is a change in eligibility status; or
- (c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following on a continuing basis:

- (1) Access to services;
- (2) Continuity of care;
- (3) Health outcomes; and
- (4) Services arranged or provided as established in 907 KAR Chapter 17.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

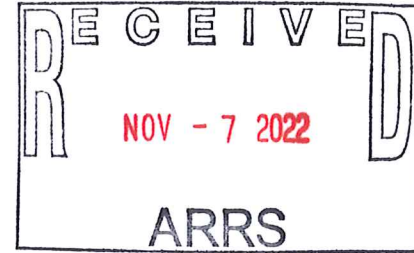


Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

Eric Friedlander
SECRETARY



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 4:030, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 4:030.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Krista Quarles
Policy Specialist
Office of Legislative and Regulatory Affairs
Cabinet for Health and Family Services

SUGGESTED SUBSTITUTE – ORDINARY ONLY

Final Version: 11/4/2022 10:37 AM

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

RELATES TO: KRS 205.6481 – 205.6497, 211.461 – 211.466, 281.010(25), 304.5-040, 304.17A-005(8), (14), 42 C.F.R. 435.403, 440.230, Part 457, 42 U.S.C. 1396, 1397aa, **9902(2)**

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1397aa
NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.6485 authorizes the cabinet, by administrative regulations, to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to participant children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, grievance and appeal rights, and the requirements for delivery of health services for providers who wish to participate with the Commonwealth to provide health care coverage for KCHIP Phase III members through the provision of a separate health insurance program under Title XXI.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) ~~["Child" means an individual under the age of nineteen (19) years.]~~

~~[(3)]~~ "Creditable coverage" is defined by KRS 304.17A-005(8)(a)1 ~~through[-] 3 and 5 through[-] 10.~~

~~[(3)][(4)]~~ "Department" means the Department for Medicaid Services or its designee.

~~[(4)][(5)]~~ "Excepted benefits" is defined by KRS 304.17A-005(14).

~~[(5)][(6)]~~ "Health insurance" is defined by KRS 304.5-040.

~~[(6)][(7)]~~ "KCHIP" means the Kentucky Children's Health Insurance Program in accordance with 42 U.S.C. 1397aa through 42 U.S.C. 1397jj.

Section 2. Eligibility Criteria. (1) An individual shall be eligible for KCHIP Phase III if the individual is a pregnant person who:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an immigrant who is lawfully present;

(c) Is not an inmate of a public institution or a patient in an institution for mental diseases;

(d) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

(e)1. Has family income that does not exceed 213 percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).~~[(7)]~~ A five (5) percent income disregard ~~shall be[is]~~ available consistent with the following:

a. If an eligibility determination indicates that an individual's income exceeds 213 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5)

percent of the federal poverty level toward the eligibility determination for the individual as **established/described** pursuant to 42 U.S.C. 1396a(e)(14)(I)(i); and

b. If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard;

2. Does not have creditable coverage and may be covered by excepted benefits;

3. Provides to the department the information required in Section 4(4) of this administrative regulation; and

4. Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2. ~~[- and]~~

~~(2)(f)~~ A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at least two (2) and shall include the pregnant person and any unborn children of the pregnant person. Other members of the household shall be calculated and included consistent with KAR Title 907. [A child shall be eligible for KCHIP Phase III if the child:]

~~[(a)] [Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;]~~

~~[(b)] [Is an alien who meets the requirements established in 907 KAR 20:005;]~~

~~[(c)] [Is not an inmate of a public institution or a patient in an institution for mental diseases;]~~

~~[(d)] [Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and]~~

~~[(e)] [Is a targeted low-income child as defined in 42 U.S.C. 1397jj(b) who:]~~

~~[1.] [Has family income that does not exceed 213 percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2);]~~

~~[2.] [Does not have creditable coverage and may be covered by excepted benefits;]~~

~~[3.] [Provides to the department the information required in Section 4(4) of this administrative regulation;]~~

~~[4.] [Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2; and]~~

~~[5.] [Meets the relative responsibility requirements established in 907 KAR 20:040.]~~

~~(3)(2)~~ (a) Eligibility for KCHIP Phase III shall be determined by the department.

(b) Upon receipt of the eligibility information established in subsection (1) of this section, the department shall determine if a participant[~~child~~] is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397bb.

Section 3. Covered Services. (1) Health services shall be considered as medically necessary in accordance with:

(a) 907 KAR 3:130; and

(b) 42 C.F.R. 440.230.

~~(2)[Covered services shall exclude:]~~

~~[(a)] [EPSDT special services as established in 907 KAR 11:034, Section 7;]~~

~~[(b)] [Human service transportation delivery as defined by KRS 281.010(25) and as required by 603 KAR 7:080; and]~~

~~[(c)] [Locally authorized medical transportation as established in 907 KAR 1:060, Section 4.]~~

~~(3)~~ The amount and duration of benefits covered by KCHIP Phase III shall be as established in Title 907 KAR[~~excluding the services identified in subsection (2) of this section~~].

~~(3)(4)~~ A medical service shall be covered through KCHIP Phase III if the individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

~~(4)(5)~~ Preventive and remedial public health services shall be provided to KCHIP Phase III members in accordance with 907 KAR 1:360.

~~(5)(6)~~ KCHIP Phase III shall be the payor of last resort.

Section 4. KCHIP Phase III Approval Process. The following information shall be required from a participant[child] or responsible party for KCHIP Phase III enrollment:

- (1) A participant's[child's] demographics that shall include:
 - (a) Name;
 - (b) Address;
 - (c) Sex;
 - (d) Date of birth;
 - (e) Race; and
 - (f) Social Security number;
- (2) Monthly gross earned income, if any, of a parent and a participant[child], for whom information is being submitted, an employer type and address, if any, and frequency of income;
- (3) The name and address of a health insurance provider who currently provides creditable coverage;
- (4) The creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;
- (5) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;
- (6) The name and age of a participant[child] or disabled adult for whom care is purchased in order for a parent or responsible person to work; and
- (7) The signature, date, and telephone number of the person submitting the information for a participant[child].

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP Phase III shall meet the requirements established in:

- (1) 907 KAR 1:671; and
- (2) 907 KAR 1:672.

Section 6. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with an action taken by the cabinet, the participant[child], the participant's[child's] parent, or the participant's[child's] guardian shall be entitled to a complaint, grievance, or appeal with the cabinet to be conducted in accordance with:

- (a) 907 KAR 1:560; or
 - (b) 907 KAR 1:563.
- (2) If a service is provided by a managed care organization, a dispute resolution between a provider and a participant[child], the participant's[child's] parent, or the participant's[child's] guardian shall be in accordance with:
- (a) KRS 211.461 through 211.466; and
 - (b) 907 KAR 17:010.
- (3) A KCHIP Phase III eligible participant[child] or a responsible party shall be informed in writing of the right to and procedures for due process by the cabinet:
- (a) At the time information to obtain KCHIP Phase III approval is submitted;
 - (b) If there is a change in eligibility status; or
 - (c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following on a continuing basis:

- (1) Access to services;
- (2) Continuity of care;
- (3) Health outcomes; and
- (4) Services arranged or provided as established in 907 KAR Chapter 17.



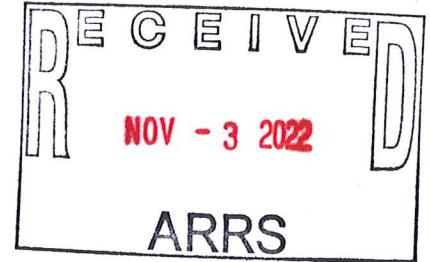
Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

November 3, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: 910 KAR 1:090

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 910 KAR 1:090, the Cabinet for Health and Family Services proposes the attached amendments to 910 KAR 1:090.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

Attachments

SUGGESTED SUBSTITUTE

Final Version: 10/27/2022 9:57 AM

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Aging and Disability Services

910 KAR 1:090. Personal care attendant program and assistance services.

RELATES TO: KRS 12.290, Chapter 13B, **171.530**, 205.455(4), 205.8451(3), 205.900 - 205.925

STATUTORY AUTHORITY: KRS 194A.050(1), 205.910, 205.920

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.910 requires the Cabinet for Health and Family Services to establish **by administrative regulation**, an eligibility standard for personal care assistance services **that[which]** takes into consideration the unique economic and social needs of severely physically disabled adults. KRS 205.920 authorizes the cabinet to promulgate administrative regulations to implement provisions concerning personal care assistance services. This administrative regulation establishes the personal care attendant program.

Section 1. Definitions. (1) "Administrative support personnel" means staff designated within a contract agency who offer technical assistance to, and monitor the activities of, the qualified agency.

(2) "Approved plan" means an agreement between the department and a contract agency to administer the personal care attendant program.

(3) "Assessment" means the collection and evaluation of information:

(a) About a person's situation and functioning;

(b) To determine the applicant's or participant's service level; and

(c) To develop a plan of care utilizing a holistic, **person-centered**~~[person-centered]~~ approach by the evaluation team.

(4) "Attendant" means a person who provides personal care assistance services.

(5) "Contract agency" means the agency with which the cabinet has contracted to administer the personal care attendant program.

(6) "Department" means the Department for Aging and Independent Living or its designee.

(7) "Evaluation team" is defined by KRS 205.900(2).

(8) "Evaluation team's **findings and** recommendations" means the official response of the evaluation team signed by all three (3) team members.

(9) "Immediate family member" ~~is defined by KRS 205.8451(3)[means a legal guardian, parent, step parent, foster parent, adoptive parent, sibling, grandparent, child, or spouse].~~

(10) "Income eligibility standard" means a formula to determine an applicant's income eligibility for the personal care attendant program pursuant to KRS 205.910(1).

(11) "Natural supports" means a non-paid person or persons or community resource, that can provide, or has historically provided, assistance to the participant or due to the familial relationship, **and** would be expected to provide assistance.

(12) "Participant" means a person accepted into the personal care attendant program and who has met the eligibility requirements of a severely physically disabled adult.

(13) "PCAP" means personal care attendant program.

(14) "Personal care assistance services" is defined by KRS 205.900(3).

(15)~~(14)~~ "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(16)[(15)] "Qualified agency or organization" is defined by KRS 205.900(4).

(17)[(16)] "Reassessment" means reevaluation of the situation and functioning of a client.

(18)[(17)] "Service area" means those counties listed in an approved plan of the qualified agency or organization.

(19)[(18)] "Severely physically disabled adult" is defined by KRS 205.900(6).

(20)[(19)] "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).

(21)[(20)] "Work agreement" means an agreement of time and tasks developed by the participant as the employer for the attendant as the employee.

Section 2. Eligibility. (1) To be eligible for participation in the personal care attendant program, an applicant shall:

(a) Be a severely physically disabled adult who:

1. Meets the qualifications required by KRS 205.905(1); and
2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;

(b) Agree to obtain an initial assessment for eligibility and a ~~reassessment~~[re-assessment] at least **biennially**[**annually**] by an evaluation team in accordance with KRS 205.905(2)(b)1 and 2;

(c) Be able to reside or reside in a non-institutional setting;

(d) Work with a program coordinator in establishing a work agreement between the participant and attendant;

(e) Be responsible for attendant payroll reports and computing required employer tax statements;

(f) Have **an** immediate family **member** or natural supports to meet the individual's needs if a paid attendant is not available; and

(g) Not be receiving the same services obtainable from any federal, state, or combination of federal and state funded programs. If the individual's needs cannot be met with the funding received from any of those programs, the individual may be eligible to receive personal care attendant program services above and beyond what the other programs provide.

(2) An applicant shall be accepted for service if:

(a) The evaluation team determines that the applicant is eligible to participate in the program in accordance with this section;

(b) The department agrees that the determination **is** in accordance with this section; and

(c) Funds are available.

(3) An applicant shall be income eligible if they are eligible for:

(a) Supplemental Security Income; or

(b) Medicaid.

(4) If an applicant's gross annual income is less than 200 percent of the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services, the applicant shall be income eligible.

(5) If an applicant is not eligible pursuant to subsections (3) or (4) of this section, the income eligibility standard shall be determined by a program coordinator using the PCAP-05 Income Eligibility form as follows:

(a) The program coordinator shall determine the adjusted gross income by deducting:

1. The cost of unreimbursed extraordinary medical expenses, and impairment-related expenses as recorded on the PCAP-05;

2. An amount adjusted for family size based on 200 percent of the official poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services; and
 3. Dependent care expenses.
- (b) If the adjusted gross income is less than 200 percent of the annual federal poverty guidelines, the applicant shall be income eligible.
- (c) If the adjusted gross income is more than 200 percent of the annual federal poverty guidelines, the following shall be used to determine the applicant's contribution to cost of care:
1. From the adjusted gross income subtract a current annual standard deduction for one (1) as determined by the Internal Revenue Service;
 2. Divide the remaining income by two (2) to allow for the unique economic and social needs of the severely disabled adult;
 3. Divide the final income by fifty-two (52) weeks; and
 4. Calculate the estimated cost of personal care services by multiplying the estimated number of hours of personal care assistance services per week times the cost per hour of service.
- (d) 1. If the resulting monetary amount in **paragraph (c)[subparagraph]**~~paragraph (c)]~~3. of this subsection is less than the estimated cost of services calculated in **paragraph (c)[subparagraph]**~~paragraph (c)]~~4. of this subsection, the qualified agency shall provide the full subsidy.
2. If the resulting monetary amount in **paragraph (c)[subparagraph]**~~paragraph (c)]~~3. of this subsection is more than the estimated cost of services calculated in **paragraph (c)[subparagraph]**~~paragraph (c)]~~4. of this subsection, the participant shall pay the difference between the cost of services and the qualified agency's maximum hourly rate.
- (6) The income eligibility criteria **established[set-out]** in subsections (3) through (5) of this section shall be applied to a current participant at the time of the participant's next reassessment.

Section 3. Application and Evaluation. (1) A referral to the personal care attendant program may be made by:

- (a) The applicant;
 - (b) Family, with applicant knowledge;
 - (c) Another person, with applicant knowledge; or
 - (d) Agency, with applicant knowledge.
- (2) If an opening for services is available, a program coordinator shall:
- (a) Visit and assist an applicant in the completion of a PCAP-01 Application for Services; and
 - (b) Complete and have all evaluation team members sign a PCAP-04 Evaluation Team Findings and Recommendations.
- (3) A qualified agency shall:
- (a) Report an evaluation team's findings and recommendations to the contract agency for final review of the applicant or participant; and
 - (b) Notify the applicant or participant if the **evaluation team's** findings and recommendations are accepted by the contract agency.
- (4) A contract agency shall:
- (a) Review **[recommendations-of]** the evaluation **team's findings and recommendations[team]** and notify the qualified agency in writing of the final determination within ten (10) business days of receipt of the recommendations; and
 - (b) Notify the applicant or participant in writing within twenty (20) business days of receipt of the **evaluation team's findings and** recommendations in accordance with KRS 205.905(3):

1. Whether the evaluation team's findings and recommendations ~~[of the evaluation team]~~ are accepted or not accepted; and
2. The reasons for the contract agency's decision.

Section 4. Waiting List. (1) If the personal care attendant program is at capacity, an eligible applicant shall be placed on a [department] ~~[an]~~ [approved] waiting list entered into the state data system and, as a vacancy occurs, be accepted for services in priority order based on the following categories:

- (a) Emergency situation because of an imminent danger to self or at risk of institutionalization;
 - (b) Urgent situation because there are no community supports; or
 - (c) Stable because there is a currently reasonable support system.
- (2) Every effort shall be used to provide referrals to other services if personal care assistance services are not available.

Section 5. Relocation. (1) If an eligible participant receiving personal care assistance services relocates to another service area to complete a training or educational course, the participant shall remain a client of the service area of origin, if the:

- (a) Participant considers the personal care attendant program service area of origin to be his or her place of residence; and
 - (b) Participant's purpose for relocation is to complete a course of education or training to increase employment skills.
- (2) The receiving service area shall provide courtesy monitoring to coordinate the aspects of program requirements.
- (3) The service area of origin shall retain responsibility for:
- (a) Payment of a subsidy, if the participant meets eligibility for the duration of the educational or training course; and
 - (b) Monthly programmatic and financial reports.
- (4) The receiving service area shall forward a copy of reports to the service area of origin by the fifth (5th) of the following month.
- (5) If a participant moves from one service area of origin to another for any reason other than relocation for a training or educational course, the participant's program funding shall be transferred to the receiving service area.
- (6) If a participant's personal care assistance services terminate, the program funding shall return to the service area of origin.

Section 6. Suspension of Services. (1) Suspension of services shall occur for the following reasons:

- (a) Condition improved – on reassessment a participant is determined to need less than fourteen (14) hours of care per week;
- (b) Condition worsened - on reassessment a participant is determined to need more hours of care than the program can provide and to be in danger if left alone due to lack of other caregivers;
- (c) Participant's behavior clearly presents a danger to the program coordinator or attendant;
- (d) Participant does not submit required employer taxes to the qualified agency;
- (e) Participant moves from Kentucky;
- ~~[(f)] [Participant moves into an area of Kentucky where no services are contracted, unless the closest qualified agency determines that it remains feasible to provide services to the relocation area;]~~
- ~~[(f)]~~ ~~[(g)]~~ Participant fails to hire an attendant;
- ~~[(g)]~~ ~~[(h)]~~ Participant dies;
- ~~[(h)]~~ ~~[(i)]~~ Participant chooses to:

1. Give up personal care assistance services; and
2. Be admitted to a long-term care facility; or
- (1) Participant requests suspension of services.
- (2) Services may be suspended if **~~there is~~*[either of the following occurs]***:
 - (a) A non-return of an overpayment of services; or
 - (b) An intentional deception to obtain services.
- (3) Suspension of services shall occur if there are any substantiated deceptive practices of paying for services that are:
 - (a) Not actually provided; or
 - (b) Duplicative services obtained through another program or agency at the same time.

Section 7. Participant Responsibilities. A participant shall:

- (1) Meet the eligibility requirements to receive a subsidy **~~established~~*[set-out]*** in Section 2(1) of this administrative regulation;
- (2) Select an attendant for personal care assistance services including screening and interviewing the attendant for employment;
- (3) Instruct the attendant on specific personal care assistance services;
- (4) Evaluate the attendant's personal care assistance services;
- (5) Discuss and come to a written agreement with each attendant about:
 - (a) Services that shall be provided; and
 - (b) The terms of employment, including:
 1. Time;
 2. Hours;
 3. Duties; and
 4. Responsibilities;
- (6) Keep records and report to the qualified agency attendant hours worked for payment to the attendant;
- (7) Be responsible for all requirements of being an employer, including:
 - (a) Employee payroll;
 - (b) Withholdings;
 - (c) Actual payment of required withholdings;
 - (d) Taxes appropriate to being an employer; and
 - (e) Issuing the employee a W-2 as required by the Internal Revenue Service;
- (8) Negotiate for room and board for an attendant as **~~established~~*[specified]*** in Section 9(4)(a) of this administrative regulation; and
- (9) Coordinate with a program coordinator the aspects of program requirements.

Section 8. Attendant Responsibilities. (1) An attendant shall:

- (a) Enter into and comply with the written agreement for terms of work required by Section 7(5) of this administrative regulation;
- (b) Perform personal care assistance services and other tasks that may include:
 1. Turning;
 2. Repositioning;
 3. Transferring;
 4. Assistance with oxygen;
 5. Hygiene;
 6. Grooming;

7. Washing hair;
 8. Skin care;
 9. Shopping;
 10. Transportation;
 11. Chores;
 12. Light correspondence;
 13. Equipment cleaning; and
 14. Emergency procedures, if necessary;
- (c) Perform tasks consistent with the work agreement as instructed by the participant;
- (d) Report to work as scheduled;
- (e) Maintain the privacy and confidentiality of the participant;
- (f) If unable to report for work as scheduled, notify the participant at least six (6) hours in advance unless an emergency arises;
- (g) Maintain a list of emergency numbers;
- (h) ~~Participate in~~Attend attendant training provided by the participant related to his or her specific care needs and, if applicable, training related to dementia care, **established[specified]** by 910 KAR 4:010;
- (i) Keep a daily record of hours worked and services rendered;
- (j) Submit to the participant documents and material necessary to comply with the formal payment process;
- (k) Meet with the participant and program coordinator for monitoring and coordinating the aspects of the program;
- (l) Disclose misdemeanor or felony convictions to the applicant or participant through a law enforcement agency;
- (m) Authorize a qualified agency to obtain a criminal background check from the Kentucky National Background Check Program as defined in 906 KAR 1:190~~[Kentucky nurse aide registry, central registry, Adult Protective Services caregiver misconduct registry, and criminal background checks as specified in Section 11(6) of this administrative regulation];~~ and
- (n) Notify the program coordinator of conditions **that[which]** seriously threaten the health,~~[or]~~safety, or welfare of the participant or attendant.
- (2) An individual shall not be hired as an attendant if the individual:
- (a) Has not submitted to the background checks **established[specified]** in subsection (1)(m) of this section;
 - ~~[(b)]~~ ~~[Is on any of the following registries:]~~
 - ~~[1.] [Kentucky nurse aide registry;]~~
 - ~~[2.] [Adult Protective Services caregiver misconduct registry; or]~~
 - ~~[3.] [Central registry;]~~
 - ~~(b)~~~~[(c)]~~ Has pled guilty or been convicted of committing:
 1. A felony crime related to theft or drugs; or
 2. A misdemeanor or felony crime related to sexual or violent offenses, including assault; or
 - ~~(c)~~~~[(d)]~~ Is not able to understand and carry out a participant's instructions.

Section 9. Attendant Payment. (1) The amount of attendant payment shall be in compliance with **paragraphs (a) through (d) of this subsection.**~~[the following:]~~

(a) The maximum hourly subsidized rate for direct personal care assistance services shall be eleven (11) dollars per hour~~[no more than ten (10) percent over the current minimum wage rate established by KRS 337.275]~~.

(b) If the hourly subsidized rate established in paragraph (a) of this subsection is insufficient to obtain direct personal care assistance services in a specific Kentucky service area, a provider may request a higher rate by mailing a written request and justification of the need for a higher rate to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Minimum hours for direct personal care assistance services per week shall be fourteen (14).

(d) Maximum hours for direct personal care assistance services per week shall be forty (40).

(2) In an extreme situation that results in a temporary increased need for services, such as the illness of the participant, or illness or death of a caregiver, a temporary waiver of maximum hours and the resulting cost may be granted by the contract agency.

(3) A special night rate may be negotiated:

(a) If a participant does not:

1. Require an attendant during the day; or
2. Need direct personal care assistance services from this attendant; or

(b) To provide for caregiver respite service.

(4)(a) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate, if necessary, with a potential attendant on room and board for personal care assistance services.

(b) A live-in attendant shall not be excluded from employment as a part-time attendant.

(c) Maximum payment under this arrangement shall be for forty (40) hours of personal care assistance services per week, and overtime shall not be provided or paid.

Section 10. Program Coordinator Qualifications and Responsibilities. (1) A program coordinator shall meet at least one (1) of the following minimum qualifying requirements:

(a) A bachelor's degree with two (2) years experience working in the disability community; or

(b) Completion of fifty-four (54) semester hours of college with four (4) years working in the disability community.

(2) The department may waive the education requirements required by subsection (1) of this section based on consideration of work experience involving:

(a) Interviewing to select an employment candidate;

(b) More than five (5) years of experience working with the disability community;

(c) Administrative work involving:

1. The review of assessment criteria;
2. Monitoring program compliance;
3. Training program participants, employees, and staff regarding program requirements; or

(d) Determination of eligibility for human services programs.

(3) If employed, a program coordinator shall complete the following hours of training:

(a) Within thirty (30) working days of hire:

1. Complete a minimum of sixteen (16) hours of orientation program training; and
2. Shadow an experienced program coordinator for one (1) to two (2) days;

(b) Within the first six (6) months of employment, complete a minimum of fourteen (14) hours of initial program coordination training; and

(c) Complete follow-up quarterly trainings with the department and contract agency.

(4) A program coordinator shall:

- (a) Collaborate with the evaluation team to determine if an applicant is eligible to participate in the personal care attendant program in accordance with Section 2 of this administrative regulation;
 - (b) Complete the application process required by Section 3(2)(a) of this administrative regulation;
 - (c) Maintain a waiting list of eligible applicants who are unable to be funded for program participation until an opening occurs; and
 - (d) Perform the assessments required in Section 12(2) of this administrative ~~regulation~~**[regulations]**.
- (5) A program coordinator or program coordinator's designee shall:
- (a) Identify severely physically disabled adults who may be eligible for participation in the personal care attendant program;
 - (b) Prescreen an applicant for eligibility to participate in the personal care attendant program;
 - (c) Assist a participant in learning how to conduct an interview and screen a prospective attendant;
 - (d) Assist in or arrange for the training of the attendant, if necessary;
 - (e) Review with the participant the results of an assessment or reassessment signed by an evaluation team;
 - (f) Assist the participant in completing and updating a PCAP-06 Plan of Care;
 - (g) Assist the participant in developing a work agreement between the participant and attendant;
 - (h) Obtain a PCAP-02 Authorization for Release of Confidential Information from the participant;
 - (i) Monitor the program with each participant on a quarterly basis, including:
 - 1. A face-to-face visit with the participant during at least two (2) of the quarters; and
 - 2. Making verbal contact with the participant in the quarters that a face-to-face visit is not made;
 - (j) Assist the participant in finding a back-up attendant for:
 - 1. An emergency; or
 - 2. The regular attendant's time off;
 - (k) Assist in the recruitment and referral of an attendant, if requested;
 - (l) Submit monthly activity reports to a qualified agency as ~~established~~**[specified]** in Section 15(2) of this administrative regulation by the fifth (5th) of the following month; and
 - (m) Assure that the participant:
 - 1. Enters into agreement to pay employee taxes with a PCAP-03 Employer Tax Agreement; and
 - 2. Receives training in recordkeeping and tax responsibilities related to services.

Section 11. Qualified Agency Responsibilities. A qualified agency shall:

- (1) Employ or contract with an evaluation team pursuant to KRS 205.905(2);
 - (2) Provide monthly programmatic and financial reports on an attendant per participant to the contract agency by the fifth (5th) of the following month;
 - (3) Develop a procedure for:
 - (a) Payment of a subsidy; and
 - (b) Establishment of appropriate fiscal control within the qualified agency;
 - (4) Employ or contract for the services of a program coordinator;
 - (5) ~~Supervise~~**[Oversee]** the training requirements for a program coordinator as ~~established~~**[specified]** in Section 10(3) of this administrative regulation;
 - (6) Obtain a criminal background check from the Kentucky National Background Check Program as defined in 906 KAR 1:190~~[the following]~~ on a potential attendant~~;~~**[;]**
- ~~[(a)] [The results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency, if the potential attendant resided or worked outside of Kentucky during the year prior to employment;]~~

~~[(b)] [Within thirty (30) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and]~~

~~[(c)] [Prior to employment, the results of a nurse aide registry check as described in 906 KAR 1:100;]~~

(7) Report **the** evaluation **team's[team]** findings and recommendations to a contract agency as **established[specified]** in Section 3(3) of this administrative regulation;

(8) Maintain participant records as required by Section 15(1) of this administrative regulation; and

(9) Provide accessibility to services through proper evaluation of applicants who are deaf or hard-of-hearing by utilizing an interpreter service in accordance with KRS 12.290.

Section 12. Evaluation Team Members and Responsibilities. (1) An evaluation team:

(a) Shall consist of a program coordinator; and

(b) May consist of:

1. An occupational or physical therapist;
2. A registered nurse;
3. A director or executive director of the qualified agency;
4. A fiscal officer of the qualified agency;
5. A mental health provider;
6. An in-home services coordinator; or
7. Another entity involved in the participant's care.

(2) The program coordinator of the evaluation team shall complete:

(a) An applicant's initial assessment to establish eligibility pursuant to KRS 205.905(2)(b)1; and

(b) A participant's reassessment, at least **biennially[annually]** for continuing services pursuant to KRS 205.905(2)(b)2~~[-or more frequently if changes occur in the participant's situation]~~.

Section 13. Contract Agency Responsibilities. The contract agency shall:

(1) **Have a process in place to conduct prescreening of referrals to ensure they meet the program and financial requirements;**

(2) Implement a personal care attendant program according to an approved plan;

~~(3)[(2)]~~ Assume fiscal accountability for state funds designated for the program;

~~(4)[(3)]~~ Provide necessary administrative support personnel within a contract agency office;

~~(5)[(4)]~~ Provide an appeals procedure and hearing process in compliance with:

(a) KRS Chapter 13B; and

(b) KRS 205.915;

~~(6)[(5)]~~ Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with cabinet financial audit requirements;

~~(7)[(6)]~~ Provide, in conjunction with a qualified agency, a procedure for attendant payment;

~~(8)[(7)]~~ Review **the evaluation team's findings and** recommendations ~~[of an evaluation team]~~ and notify a participant and qualified agency as **established[specified]** in Section 3(4) of this administrative regulation;

~~(9)[(8)]~~ Submit monthly program reports along with the submission of financial invoices to the department as **established[specified]** in Section 15(3) of this administrative regulation; and

~~(10)[(9)]~~ Maintain files and records for cabinet audit, including participant records and statistical reports in accordance with **725 KAR 1:061[Kentucky Department for Libraries and Archives Records Retention Schedule]**.

Section 14. Department Responsibilities. The department shall:

(1) Provide a format for the approved plan for the personal care attendant program;

- (2) Review proposed plans submitted by a contract agency to administer the personal care attendant program;
- (3) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program that shall include one (1) of the following outcomes:
 - (a) Approve the plan as submitted;
 - (b) Require the contract agency to revise the plan; or
 - (c) Reject the plan;
- (4) Monitor the contract agency at least annually;
- (5) Develop and revise program and fiscal requirements;
- (6) Allocate available funding;
- (7) Advocate for program expansion; and
- (8) Provide technical assistance.

Section 15. Reporting and Recording. (1) An individual record for each participant shall be maintained by the qualified agency and shall include:

- (a) The forms ***incorporated by reference[specified]*** in Section 17 of this administrative regulation;
 - (b) A chronological record of contacts with:
 - 1. The participant;
 - 2. The family;
 - 3. The physician; and
 - 4. Others involved in care with quarterly monitoring reports; and
 - (c) An assessment record of eligibility.
- (2) A program coordinator shall:
- (a) Submit completed reports for monthly activities to a qualified agency by a designated date in the contract; and
 - (b) Forward a copy to the contract agency.
- ~~[(3) A contract agency shall make a copy of reports on monthly activities available to the department.]~~***

Section 16. Appeals. An applicant or participant may request an informal dispute resolution or an appeal.~~[:]~~

- (1) A recipient may request an informal dispute resolution.
- (2) A dispute resolution shall be limited to:
 - (a) The denial, reduction, or termination of a:
 - 1. Personal care attendant program plan; or
 - 2. Personal care attendant program plan amendment;
 - (b) The reduction of personal care attendant program funding as requested in the plan; or
 - (c) The reduction or termination of personal care attendant program grant program funding, unless due to state budget cuts.
- (3) A request for an informal dispute resolution shall:
 - (a) Be submitted to the department's PCAP program coordinator within thirty (30) days following the notification by the personal care attendant program grant program coordinator of a decision in subsection (2) of this section; and
 - (b) Contain the***[following information]:***
 - 1. Name, address, and telephone number of the recipient;
 - 2. Decision being disputed;

3. Justification for the dispute;
 4. Documentation supporting the dispute; and
 5. Signature of person requesting the dispute resolution.
- (4) The dispute resolution shall be heard by:
- (a) Three (3) members of the council, one (1) of whom shall be the chairman or the chairman's designee;
 - (b) One (1) member of the review team; and
 - (c) The personal care attendant program grant program coordinator.
- (5) The recipient shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of the grant.
- (6) The dispute resolution team shall inform a recipient, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.
- (7) A recipient dissatisfied with the result of the dispute resolution may request an appeal. **An appeal shall be made:[]**
- (a) ~~[(1)]~~ In accordance with:
1. ~~[(a)]~~ KRS Chapter 13B; and
 2. ~~[(b)]~~ KRS 205.915; and
- (b) ~~[(2)]~~ Within thirty (30) days of any decision by the:
1. ~~[(a)]~~ Cabinet;
 2. ~~[(b)]~~ Contract agency; or
 3. ~~[(c)]~~ Qualified agency.

Section 17. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "PCAP-01 Application for Services", edition 4/2018;
- (b) "PCAP-02 Authorization for Release of Confidential Information", edition 4/2018;
- (c) "PCAP-03 Employer Tax Agreement", edition 4/2018;
- (d) "PCAP-04 Evaluation Team Findings and Recommendations", edition 4/2018;
- (e) "PCAP-05 Income Eligibility", edition 4/2018; and
- (f) "PCAP-06 Plan of Care", edition 4/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dail/Pages/default.aspx>. 910 KAR 1:090

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.



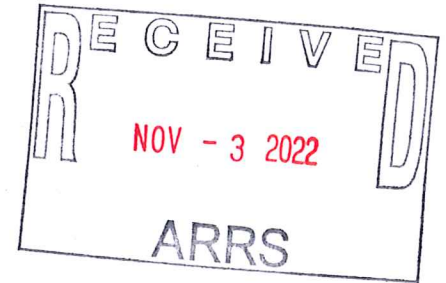
Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

November 2, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 921 KAR 2:006 LRC suggested amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 2:006, the Department for Community Based Services proposes the attached LRC suggested amendment. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Krista Quarles

Policy Specialist
Office of Legislative and Regulatory Affairs

Final, 10-21-2022

Suggested Amendment

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support**

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP).

Page 1

RELATES TO

Line 7

After "403.720", insert "(2)".

Delete "(1)".

Line 9

After "22 U.S.C. 7102", insert "(11)".

Delete "(8)".

Page 3

Section 1(6)

Line 10

After "KRS 403.720", insert "(2)".

Delete "(1)".

Page 8

Section 1(15)

Line 13

After "22 U.S.C. 7102", insert "(11)".

Delete "(8)".

Page 9

Section 3(1)

Lines 11-12

After "child", delete the following:

, pursuant to Section 1(5) of this administrative regulation,

Page 10

Section 5(2)(b)

Lines 20-21

After "qualified immigrant", delete the following:

, pursuant to Section 1(12) of this administrative regulation,

Page 25

Section 13(1)

Line 1

After "assistance", delete the following:

pursuant to Section 1(1) of this administrative regulation,

Page 32

Section 15(7)

Line 16

After "limitations pursuant to Section", insert "16".
Delete "21".

Page 33

Section 16(2)(a)

Line 5

After "plan pursuant to Section", insert "19".
Delete "18".

Page 34

Section 16(2)(e)2.a.(iii)

Line 13

After "KW-202, ", insert "KTAP".



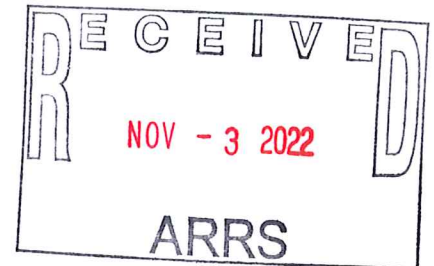
Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

November 2, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: **921 KAR 2:016** agency amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 2:016, the Department for Community Based Services proposes the attached agency amendment. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Krista Quarles

Policy Specialist
Office of Legislative and Regulatory Affairs

Agency Amendment

**Cabinet for Health and Family Services
Department for Community Based Services
Division of Family Support**

921 KAR 2:016

Page 6

Section 2(1)(d)2.a.

Line 10

After "2.a.", reinsert "Sixteen (16) through eighteen".

Delete "Eighteen".



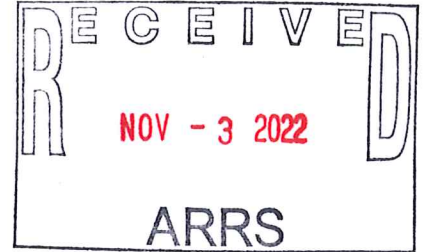
Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

November 2, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: **921 KAR 2:016** LRC suggested substitute

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 2:016, the Department for Community Based Services proposes the attached LRC suggested substitute. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Krista Quarles

Policy Specialist
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support**

921 KAR 2:016. Standards ~~off[for]~~ need and amount for the Kentucky Transitional Assistance Program (KTAP)[(K-TAP)].

RELATES TO: KRS 205.200, 205.210, 205.2001, 205.211, 45 C.F.R. ~~[233.20(a)(13),]~~ Parts 260-265, 400.66(d), 8 U.S.C. 1183a, 10 U.S.C. 1059, 20 U.S.C. 1088(b)(1), 2302(3), (13), 25 U.S.C. ~~[459, 1261,]~~ 1401, 5501, 26 U.S.C. 6409, 29 U.S.C. 723(a)(5), 3241(a)(2)[2801, 2931(a)(2)], 34 U.S.C. 20102(c), 38 U.S.C. 1833, 42 U.S.C. 415(i), 1395w-141[7(xviii), (D)(4)], 1381-1384, 1771, 1775, 3001, 4950-5084, 8621, Pub. L. 92-254[10602(e)]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.210(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (KTAP)[(K-TAP)], the block grant program funded by 42 U.S.C. 601 to 619. This administrative regulation establishes/sets forth the standards of need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions.

- (1) "Assistance" is defined by 45 C.F.R. 260.31.
- (2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 6[44].
- (3) "Change in a circumstance" means a change in income or dependent care expense affecting the ongoing KTAP[K-TAP] payment that includes:
 - (a) Beginning or ending employment;
 - (b) Change in an employer or obtaining additional employment;
 - (c) Increase or decrease in the number of work hours;
 - (d) Increase or decrease in the rate of pay;
 - (e) Increase or decrease in the dependent care expense due to a change in:
 1. Provider;
 2. Number of hours of care;
 3. Number of individuals for whom care is given; or
 4. Amount charged; or
 - (f) Change in farm cropping arrangement or type of self-employment activity.
- (4) "Claimant" means the individual responsible for the repayment of an overpayment.
- (5) "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.
- (6) "Deduction" means an amount subtracted from gross income to determine countable income.
- (7) "Electronic benefit transfer" or "EBT" means a computer-based electronic benefit transfer system in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal or automated transfer machine.
- (8) ["Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.]

[(9)] "Excluded income" means income that is received but not counted in the gross income test.

(9)[(40)] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(10)[(44)] "Full-time school attendance" means a workload of at least:

- (a) The number of hours required by the individual program for participation in:
 - 1. An adult basic education program;
 - 2. A general educational development program; or
 - 3. A literacy program;
- (b) The number of hours required by the individual program for participation in a college or university; or
- (c) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(11)[(42)] "Gross income limitation standard" means 185 percent of the assistance standard, as **established/set forth** in Section 9 of this administrative regulation.

(12)[(43)] "Kentucky Transitional Assistance Program" or "KTAP"[~~"K-TAP"~~] means the program established in 921 KAR 2:006~~[a money payment program for a child who is deprived of parental support or care pursuant to 921 KAR 2:006, Section 1].~~

(13)[(44)] "Kentucky Works Program" or "[KWP]" means the program established in 921 KAR 2:370~~[a program]~~ that assists a:

- (a) Recipient of KTAP~~[K-TAP]~~ in obtaining education, training, experience, and employment~~[necessary to leave public assistance]; or~~
- (b) Former KTAP~~[K-TAP]~~ recipient with job retention services~~[service].~~

(14)[(45)] "Lump sum income" means income that does not:

- (a) Occur on a regular basis; or
- (b) Represent accumulated monthly income received in a single sum.

(15)[(46)] ~~["Minor" means a person who is under the age of eighteen (18).]~~

(17)[(47)] "Minor parent" means an individual who:

- (a) Has not attained eighteen (18) years of age;
- (b) Is not married or is married and not living with the spouse; and
- (c) Has a minor child in the applicant's or recipient's care.

(16)[(48)] "Part-time employment" means employment of:

- (a) Less than thirty (30) hours per week; or
- (b) Less than 130 hours per month.

(17)[(49)] "Part-time school attendance" means a workload that is less than full-time school attendance as determined by the educational institution.

(18)[(20)] "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement, causing a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(19)[(21)] "Recoupment" means recovery of an overpayment of an assistance payment.

(20)[(22)] "Sanctioned individual" means a person who is required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(21)[(23)] "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

(22)[(24)] "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1384 to the aged, blind, or persons with a disability~~[and disabled].~~

(23)[(25)] "Unavailable" means that the income is not accessible to the KTAP~~[K-TAP]~~ benefit group for use toward basic food, clothing, shelter, or~~[and]~~ utilities.

(24)[(26)] "Workforce Innovation and Opportunity~~[Investment]~~ Act" or "WIOA"~~["WIA"]~~ means a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment~~[, as established by 29 U.S.C. 2804].~~

(25)[(27)] "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility.

- (1) A benefit group shall include:
 - (a) A dependent child;
 - (b) A child's parent living in the home with the dependent child who is:
 1. Eligible for KTAP~~[K-TAP]~~; or
 2. Ineligible for KTAP~~[K-TAP]~~ due to benefit time limitations pursuant to 921 KAR 2:006, Section 16~~[24]~~;
 - (c) An eligible sibling living in the home with a dependent child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or
 - (d) An eligible child who is:
 1. In full-time school attendance or part-time school attendance; and
 2.
 - a. Eighteen~~[Sixteen (16) through eighteen]~~ (18) years of age; or
 - b. A minor parent.
- (2) If the KTAP~~[K-TAP]~~ benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.
- (3) If a dependent child's parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.
- (4) A~~[An incapacitated or unemployed]~~ natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

Section 3. Resource Limitations.

- (1) A liquid asset shall be considered a countable resource if it is:
 - (a) Available to the benefit group; and
 - (b) Owned in whole or in part by:
 1. An applicant or recipient;
 2. A sanctioned or penalized individual; or
 3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.
- (2) The total amount of resources reserved by a benefit group shall not be in excess of \$10,000~~[\$2,000]~~ in liquid assets, excluding an asset listed in subsection (3) of this section.
- (3) Excluded resources.
 - (a) Resources from the following individuals shall be excluded from consideration:
 1. A recipient of SSI or the state supplementation program living in the home;
 2. A child excluded from the KTAP~~[K-TAP]~~ grant; or
 3. An individual not receiving assistance but living in the home including:
 - a. The stepparent;
 - b. The parent or legal guardian of a minor parent;
 - c. The spouse of a nonresponsible specified relative; or
 - d. The spouse of a minor dependent child.
 - (b) The following resources shall not be included in the [\$2,000-]resource limit established in subsection (2) of this section:
 1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;
 2. Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;
 3. An excluded income payment, pursuant to Section 5 of this administrative regulation;
 4. Principal and accrued interest of an irrevocable trust during a period of unavailability;
 5. Prepaid burial funds;
 6. Cash surrender value of all burial insurance policies per family member;
 7. Principal of a verified loan;
 8. Up to \$12,000 to Aleutians and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

9. A payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran's survivor;

10.

a. Any federal tax refund or advance payment of a refundable federal tax credit for a period of twelve (12) months from receipt in accordance with 26 U.S.C. 6409; or

b. ~~An~~~~[After December 31, 2012,]~~ earned income tax credit payment in the month of receipt and the following month;

11. A payment received from the Radiation Exposure Compensation Trust Fund;

12. A nonrecurring lump sum SSI retroactive payment that is made to a KTAP~~[K-TAP]~~ recipient who is not ongoing eligible for SSI, in the month paid and the next following month;

13. Up to a total of \$15,000~~[\$5,000]~~ in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section;~~and]~~

14. A payment received from the National Tobacco Growers Settlement Trust;

15. Savings in a 529 college savings plan account;

16. Savings in an ABLE account, pursuant to KRS 205.200(13)(4); and

17. A payment received from the Transitional Compensation for Abused Dependents Program, 10 U.S.C. 1059.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. The transfer was made expressly for the purpose of qualifying for assistance; and

2. The amount of the transfer, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d)

1. If the amount of excess transferred resources does not exceed \$2,500~~[\$500]~~, the period of ineligibility shall be one (1) month.

2. The period of ineligibility shall be increased one (1) month for every \$2,500~~[\$500]~~ increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a)

1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the KTAP~~[K-TAP]~~ applicant or recipient, unless the other owner is a recipient of SSI.

2. If the other owner receives SSI, the:

a. Balance shall be divided evenly by the number of owners; and

b. KTAP~~[K-TAP]~~ applicant or recipient's share shall be considered available.

(b) For a bank account that requires more than one (1) signature for withdrawal, the KTAP~~[K-TAP]~~ applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership shall be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:

1. A written statement regarding ownership, who may deposit and withdraw;
2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and
3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)

(a) To be considered an exempt resource, the individual development account shall have been:

1. Established on or after May 1, 1997; and
2. Funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that shall include:
 - a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;
 - b. Fees, books, supplies, and equipment required for a course of instruction at an eligible educational institution; and
 - c. An eligible educational institution that shall be an:
 - (i) Institution pursuant to 20 U.S.C. 1088(b)(1); or
 - (ii) Area vocational education school pursuant to 20 U.S.C. 2302(3) or (13);
2. First home purchase that includes:
 - a. Costs of acquiring, constructing, or reconstructing a residence; and
 - b. Usual or reasonable settlement, financing, or other closing costs;
3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:
 - a. Include capital, plant, equipment, working capital, and inventory expenses;
 - b. Be approved by a financial institution; and
 - c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. An applicant may use the assistance of an experienced entrepreneurial advisor if needed; or
4. Other purpose allowed by a federal regulation or clarification.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.

(d) To be considered an exempt resource, an individual development account shall be matched by funds from a:

1. Nonprofit organization; or
2. State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4. Income Limitations. In determining eligibility for KTAP~~[K-TAP]~~, the following shall apply:

(1) Gross income test:

(a) The total gross non-KTAP~~[K-TAP]~~ income shall not exceed the gross income limitation standard and shall include:

1. Income of the benefit group;
2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2:015;
3. Income of a sanctioned or penalized individual; and
4. An amount deemed available from:
 - a. The parent of a minor parent living in the home with the benefit group;
 - b. A stepparent living in the home; or
 - c. An immigrant's~~[alien's]~~ sponsor and sponsor's spouse if living with the sponsor;

(b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible.

(2) Benefit calculation:

(a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of this administrative regulation, the benefit group shall be ineligible; and

(c) Amount of assistance shall be determined prospectively.

(3) Ineligibility period:

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of this section due to receipt of lump sum income;

(b) The ineligibility period shall be:

1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount; and

(c) The ineligibility period shall be recalculated if:

1. The standard of need pursuant to Section 9 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the KTAP[~~K-TAP~~] household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5. Excluded Income and Deductions.

(1) Gross non-KTAP[~~K-TAP~~] income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:

(a) By the:

1. Benefit group;

2. Sanctioned or penalized individual;

3. Natural parent;

4. Spouse of a dependent child;

5. Parent of a minor parent living in the home with the benefit group; or

6. Stepparent living in the home; and

(b) Pursuant to subsections (2) to (4) of this section.

(2) Gross income test. An income listed in this subsection shall be excluded:

(a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to Section 7 of this administrative regulation;

(b) A deduction applicable to an immigrant[~~alien~~] sponsor's income, pursuant to Section 8 of this administrative regulation;

(c) A deduction applicable to self-employment income;

(d) Allowances, earnings, and payments received under WIOA[~~WIA~~] programs in accordance with 29 U.S.C. **3241(a)(2)**[~~2931(a)(2)~~];

(e) Value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;
 4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and
 5. The monthly Supplemental Nutrition Assistance Program (SNAP) allotment;
- (f) Reimbursement for transportation in performance of an employment duty, if identifiable;
 - (g) The value of Kentucky Works Program supportive services payment pursuant to 921 KAR 2:017;
 - (h) Nonemergency medical transportation payment;
 - (i) Payment from complementary program if no duplication exists between the other assistance and the assistance provided by KTAP[the K-TAP program];
 - (j) Educational grant, loan, scholarship, ~~[and]~~ work study income, or other type of financial assistance for education pursuant to KRS 205.200(8);
 - (k) Highway relocation assistance;
 - (l) Urban renewal assistance;
 - (m) Federal disaster assistance and state disaster grant;
 - (n) Home produce utilized for household consumption;
 - (o) Housing subsidy received from federal, state or local governments;
 - (p) Funds distributed to a member of certain Native American[~~Indian~~] tribes by the federal government pursuant to 25 U.S.C. ~~[459, 1261 and]~~ 1401, 5501, and Pub. L. 92-254;
 - (q) Funds distributed per capita to or held in trust for a member of a Native American[~~an Indian~~] tribe by the federal government pursuant to 25 U.S.C. ~~[459, 1261, and]~~ 1401, 5501, and Pub. L. 92-254;
 - (r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as a:
 1. Senior health aide; or
 2. Member of the:
 - a. Service Corps of Retired Executives; or
 - b. Active Corps of Executives;
 - (s) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater including:
 1. Volunteers in Service to America (VISTA);
 2. Foster Grandparents;
 3. Retired and Senior Volunteer Program; or
 4. Senior Companion;
 - (t) Payment from the cabinet for:
 1. Child foster care; or
 2. Adult foster care;
 - (u) Energy assistance payment made under:
 1. The Low Income Home Energy Assistance Program (LIHEAP) pursuant to 42 U.S.C. 8621; or
 2. Other energy assistance payment made to an energy provider or provided in-kind;
 - (v) The first fifty (50) dollars of child support payment;
 - (w) Earnings of an individual attending school who is age nineteen (19) or under;
 - (x) Earnings of a dependent child under eighteen (18) who is a high school graduate;
 - (y) Nonrecurring monetary gifts totaling 100[~~thirty (30)~~] dollars or less per month per individual;
 - (z) The principal of a verified loan;
 - (aa) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
 - (bb) Income of an individual receiving SSI, including monthly SSI benefits and any retrospective SSI benefits;
 - (cc) The essential person's portion of the SSI check;
 - (dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015;
 - (ee)
 1. Any federal tax refund or advance payment of a refundable federal tax credit; or
 2. ~~The~~[After December 31, 2012, the] advance payment or refund of earned income tax credit;

- (ff) Payment made directly to a third party on behalf of the applicant or recipient by a non-responsible~~[nonresponsible]~~ person;
 - (gg) Interest and dividend income unless derived from a corporate business;
 - (hh) In-kind income;
 - (ii) Income of a technically ineligible child;
 - (jj) Payment made from the Agent Orange Settlement Fund;
 - (kk) KTAP~~[K-TAP]~~ payment including back payment;
 - (ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:006, Section 6~~[44]~~;
 - (mm) Payment made from the Radiation Exposure Compensation Trust Fund;
 - (nn) Up to \$2,000 per year of income received by individual Native Americans~~[Indians]~~ denied from a lease or other use of individually-owned trust or restricted lands;
 - (oo) Payment made to an individual because of the individual's status as a victim of Nazi persecution;
 - (pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
 - (qq) A payment received from the National Tobacco Growers Settlement Trust;
 - (rr) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34[42] U.S.C. 20102(c)[10602(e)];
 - (ss) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;
 - (tt) A payment made to children of Vietnam veterans and certain other veterans, pursuant to 38 U.S.C. 1833;
 - (uu) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141[Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 7(xviii) and (D)(4)];
 - (vv) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);~~[-and]~~
 - (ww) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); and
 - (xx) A payment received from the Transitional Compensation for Abused Dependents Program, 10 U.S.C. 1059.
- (3) Benefit calculation. Excluded income pursuant to subsection (2) of this section and an applicable deduction listed in this subsection shall be applied as follows:
- (a) Work expense standard deduction of 175~~[ninety (90)]~~ dollars for full-time and part-time employment;
 - (b) If the caregiver is not the parent, legal guardian, or a member of the benefit group, the dependent care disregard shall:
 - 1. Be allowed as a work expense for:
 - a. An able-~~[]~~bodied child age thirteen (13) or over and not under court supervision;
 - b. An incapacitated adult living in the home and receiving KTAP~~[K-TAP]~~;
 - c. A KTAP~~[K-TAP]~~ case that is otherwise ineligible for KTAP~~[K-TAP]~~ without the benefit of the disregard for child care, at the option of the recipient; or
 - d. The month of application for KTAP~~[K-TAP]~~ benefits; and
 - 2. Not exceed:
 - a. \$175 per month per individual for full-time employment;
 - b. \$150 per month per individual for part-time employment; or
 - c. \$200 per month per individual for child under age two (2);
 - (c) Child support payment received and retained until notification of eligibility for KTAP~~[K-TAP]~~ is received;
 - (d) Child support payment assigned and actually forwarded or paid to the cabinet;
 - (e) For six (6) months, the first fifty (50) percent~~[First thirty (30) dollars and one third (1/3) of the remainder]~~ of earned income not already deducted for each member of the benefit group;~~[]~~
 - (f) [calculated as follows:]

~~[1.] [The one third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months;]~~

~~[2.] [The thirty (30) dollar portion of this deduction shall be applied concurrently with the one third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and]~~

~~[3.] Until an[the] individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and~~

~~(g)[(f)] For new employment, or increased wages, acquired after approval and reported timely, a two (2)[one (1)] time only disregard per employed adult member of the benefit group, the amount of six (6)[two (2)] full calendar months earnings calculated as follows:~~

~~1. The six (6)[two (2)] months earnings disregard shall be consecutive, and at the option of the recipient; and~~

~~2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the six (6)[two (2)] months earnings disregard.~~

~~(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:~~

~~(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or~~

~~(b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:~~

~~1. The benefit group has been directly affected by a natural disaster;~~

~~2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or~~

~~3. The responsible relative in the case and the member employed, if different, is out of town for the entire ten (10) day report period.~~

Section 6. Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative regulation, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7. Income and Resources of an Individual Not Included in the Benefit Group.

(1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent; and

(d) A parent of a minor parent.

(2) The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:

(a) The first 175[~~ninety (90)~~] dollars of the gross earned income; and

(b)

1. An amount equal to the KTAP[~~K-TAP~~] standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:

a. The support of the individual; and

b. A person living in the home if:

(i) The needs of the person are not included in the KTAP[~~K-TAP~~] eligibility determination; and

(ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;

2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or

3. Payment for alimony or child support to a person not living in the home by the individual.

(3) A resource shall not be considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs solely to the:

- (a) Stepparent;
- (b) Spouse of a minor dependent child;
- (c) Spouse of a specified relative other than a parent; or
- (d) Parent of a minor parent.

Section 8. Immigrant[Alien] Sponsor Income and Resources.

(1)

(a) For the purpose of this section, the immigrant's[alien's] sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.

(b) This subsection and subsections (2) through (6) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.

(2) The gross non-KTAP[K-TAP] income and resources of an immigrant's[alien's] sponsor shall be deemed available to the immigrant[alien], subject to a deduction established[set forth] in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more immigrants[aliens], the income and resources shall be prorated among the sponsored immigrants[aliens].

(4) If adequate information on the sponsor or sponsor's spouse is not provided, a sponsored immigrant[alien] shall be ineligible for a month.

(5) If an immigrant[alien] is sponsored by an agency or organization, that has executed an affidavit of support, the immigrant[alien] shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

- (a) Is no longer in existence; or
- (b) Does not have the financial ability to meet the immigrant's[alien's] needs.

(6) The provisions of this subsection shall not apply to an immigrant[alien] pursuant to subsection (5) or (7) of this section.

(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;
2. An amount equal to the KTAP[K-TAP] standard of need for the appropriate family size pursuant to Section 9 of this administrative regulation of:
 - a. The sponsor; and
 - b. Other person living in the household:
 - (i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; and
 - (ii) Whose needs are not considered in making a determination of eligibility for KTAP[K-TAP];
3. An amount paid by the sponsor to a non-household[nonhousehold] member who is or may be claimed as a dependent in determining the sponsor's federal personal tax liability;
4. Actual payment of alimony or child support paid to a non-household[nonhousehold] member; and
5. Income of a sponsor receiving SSI or KTAP[K-TAP].

(b) Resources deemed available to the immigrant[alien] shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a KTAP[K-TAP] applicant in this state, less \$9,500[\$1,500].

(7)

(a) For a sponsored immigrant[alien] who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an immigrant's[alien's] sponsor and sponsor's spouse shall be deemed available to the immigrant[alien].

(b) The sponsor's obligation shall be available until the:

1. Immigrant:
 - a. Becomes a United States citizen;
 - b. Is credited with forty (40) quarters of work; or
 - c. Ceases to hold the status of an immigrant[alien] lawfully admitted for permanent residence; or
2. Sponsor dies.

- (c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S.C. 1183a.
- (8)
- (a) The actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the date of determination, if an:
1. Amount less than the amount in the sponsorship agreement is made available to the immigrant; and
 2. Immigrant[Alien] is determined indigent.
- (b) An immigrant[alien] shall be determined indigent if:
1. The amount of the sponsor's income and resources given to the immigrant[alien] is less than the amount in the agreement; and
 2. Without KTAP[K-TAP] assistance and after consideration of the immigrant's[alien's] own income, cash, food, housing or assistance provided by an individual including the sponsor, the immigrant[alien] is unable to obtain food and shelter.
- (9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:
- (a) Immigrant or immigrant's child[Alien or alien's child] has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:
1. Spouse or parent; or
 2. Spouse or parent's family living with the immigrant[alien] or immigrant's[alien's] child and the spouse or parent allows the cruelty or battery; or
- (b) Immigrant[Alien] is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States, and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:
1. Spouse; or
 2. Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 9. Payment Maximum.

- (1) The KTAP[K-TAP] payment maximum includes an amount for food, clothing, shelter, and utilities.

(2)

- (a) Countable income, pursuant to Section 10 of this administrative regulation, shall be subtracted in determining eligibility for and the amount of the KTAP[K-TAP] assistance payment as follows:

Number of Eligible Persons	PaymentMaximum	Standard ofNeed
1 person	<u>\$372</u> [\$186]	<u>\$481</u> [\$401]
2 persons	<u>\$450</u> [\$225]	<u>\$552</u> [\$460]
3 persons	<u>\$524</u> [\$262]	<u>\$631</u> [\$526]
4 persons	<u>\$656</u> [\$328]	<u>\$710</u> [\$592]
5 persons	<u>\$766</u> [\$383]	<u>\$790</u> [\$658]
6 persons	<u>\$864</u> [\$432]	<u>\$869</u> [\$724]
7 or morepersons	<u>\$964</u> [\$482]	<u>\$948</u> [\$790]

- (b) The gross income limit shall be as follows for the appropriate family size:

Number ofEligible Persons	MaximumGross Income Limits
1 Person	<u>\$890</u> [\$742]
2 Persons	<u>\$1,021</u> [\$851]
3 Persons	<u>\$1,169</u> [\$974]
4 Persons	<u>\$1,315</u> [\$1,096]
5 Persons	<u>\$1,462</u> [\$1,218]
6 Persons	<u>\$1,608</u> [\$1,340]
7 or more Persons	<u>\$1,754</u> [\$1,462]

- (3) Since the payment maximum does not meet full need, ~~[effective July 1, 1989,]~~ a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)

(a) The assistance payment shall be the lesser amount of either:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or
2. The payment maximum pursuant to subsection (2)(a) of this section.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

(5) If a benefit group's assistance payment equals zero (0), the benefit group shall be ineligible for KTAP[K-TAP].

(6) To the extent funds are available, the payment maximum, gross income limit, and standard of need shall be the amount established in this section in addition to cost of living adjustments determined by the Social Security Administration that have taken place beginning in 2023 pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>.

Section 10. Best Estimate.

(1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.

(2) The following method shall be used to calculate a best estimate:

(a) For a case with earned income, other than self-employment earned income, a monthly amount shall be determined as follows:

1. Cents shall:

- a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and
- b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months[month] shall be used.

3. A monthly amount shall be determined by:

- a. Adding gross income from each pay period;
- b. Dividing by the total number of pay periods considered;
- c. Converting the pay period figure to a monthly figure by multiplying a:
 - (i) Weekly amount by four and one-third (4 1/3);
 - (ii) Biweekly amount by two and one-sixth (2 1/6); or
 - (iii) Semi-monthly[Semimonthly] amount by two (2); and
- d. Rounding to the nearest dollar.

4. If income has recently begun, and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

- a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or
- b.
 - (i) Multiplying the daily rate by the estimated number of days to be worked in the pay period; and
 - (ii) Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and rounding to the nearest dollar.

(b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;
2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
3. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(c) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
3. Profit shall be determined by:

- a. Rounding the total gross income to the nearest dollar;
 - b. Rounding the total amount of allowable expenses to the nearest dollar;
 - c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and
 - d. Subtracting the rounded monthly expense from the rounded monthly income.
- (3) The best estimate shall be recalculated:
- (a) At six (6) month intervals for a case with earned, unearned, or self-employment income;
 - (b) If the agency becomes aware of a change in a circumstance; or
 - (c) To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9 of this administrative regulation.

Section 11. KTAP[K-TAP] Recoupment. The following provisions shall apply for recoupment of a KTAP[K-TAP] overpayment.

- (1) Necessary action will be taken promptly to correct and recoup an overpayment.
- (2) An overpayment shall be recovered:
 - (a) From an adult claimant, whether currently receiving KTAP[K-TAP] benefits:
 - 1. After notice and an opportunity for a fair hearing pursuant to 921 KAR 2:055 is given;
 - 2. After administrative and judicial remedies have been exhausted or abandoned; and
 - 3. Including assistance paid:
 - a. Pending the hearing decision; or
 - b. Due to cabinet error; and
 - (b) Through:
 - 1. Repayment by the claimant to the cabinet;
 - 2. Reduction of future KTAP[K-TAP] benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9 of this administrative regulation;
 - 3. Civil action in the court of appropriate jurisdiction; or
 - 4. If the cabinet becomes aware of expunged electronic benefits transfer (EBT) payments, reduction of the overpayment balance by an amount equal to the expunged benefits.
- (3) In a case that has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment to a current recipient.

Section 12. ~~[Aid to Families with Dependent Children Recoupment.]~~

- ~~[(1)] [The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1982, pursuant to 45 C.F.R. 233.20(a)(13).]~~
- ~~[(2)] [An Aid to Families with Dependent Children overpayment shall be recovered from an adult or child member of the benefit group:]~~
 - ~~[(a)] [Pursuant to 45 C.F.R. 233.20(a)(13); and]~~
 - ~~[(b)] [In accordance with the recoupment process specified in Section 11 of this administrative regulation.]~~

~~[Section 13.]~~ Avoiding an Overpayment.

- (1) A KTAP[K-TAP] recipient may voluntarily:
 - (a) Return a benefit payment; or
 - (b) Give permission to the cabinet to use EBT benefits by completing and returning a written statement ***[requesting a written statement]*** requesting this option to avoid an overpayment if the case:
 - 1. Is totally ineligible for the month the payment is issued; and
 - 2. Has not been reduced for recoupment of a previous overpayment.
- (2) If a payment is voluntarily returned, the cabinet shall determine whether the recipient is due a refund as described in Section 13[~~14~~] of this administrative regulation.

Section 13.~~[Section 14.]~~ Refund. A recipient shall be due a refund in the following situations:

- (1) An amount in excess of the actual overpayment is recouped;
- (2) An overpayment and an underpayment is offset and a balance is owed to the recipient; or
- (3) A KTAP~~[K-TAP]~~ payment that is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the KTAP ~~payment~~~~[K-TAP check]~~ was intended to cover, leaving a balance owed to the recipient.

Section 14.~~[Section 15.]~~ Correction of Underpayments. The following provisions shall apply to a KTAP~~[K-TAP]~~ payment:

- (1) An underpayment shall be promptly corrected to:
 - (a) A current KTAP~~[K-TAP]~~ recipient; or
 - (b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.
- (2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.
- (3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:
 - (a) Month the payment is paid; or
 - (b) Next following month.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.



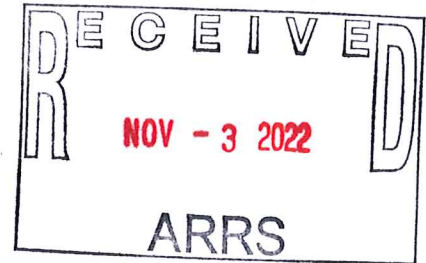
Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

November 2, 2022



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 922 KAR 1:300 LRC suggested amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 1:300, the Department for Community Based Services proposes the attached LRC suggested amendment. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Krista Quarles

Policy Specialist
Office of Legislative and Regulatory Affairs

Staff-suggested Amendment

**Final Version 11/2/2022
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency**

922 KAR 1:300. Standards for child-caring facilities.

Page 4

Section 1(21)

Line 6

After "is defined", insert "by".
Delete "at".

Page 5

Section 1(31)

Lines 2-3

Delete the following:

"Qualified professional in the area of intellectual disabilities" is defined by KRS
202B.010(12).
(32)

Renumber subsequent subsections accordingly.

Page 14

Section 3(6)(f)2.b.

Line 7

After "922 KAR 1:320", insert " ".
Delete " ,".

Page 15

Section 3(6)(k)

Line 6

After "staff member", insert " ".
Delete "; and".

Page 15

Section 3(6)(n)1.

Line 22

After "regulation;", insert "and".

Page 18

Section 4(3)(b)

Line 14

After "ventilated;", insert "and".

Page 27

Section 5(2)(a)2.

Line 6

After "events", insert ":",

Delete ":",

Page 34

Section 6(6)(c)

Line 4

After "case record;", delete "and".

Page 34

Section 6(6)(d)

Line 6

After "child-caring policy", insert ":", and.

Delete ":",

Page 45

Section 7(7)(a)1.a.

Line 6

After "ethnic origin", insert ":",

Page 46

Section 7(7)(h)3.

Line 21

After "child-caring facility;", insert "and".

Page 46

Section 7(7)(i)

Line 23

After "cabinet", insert ":",

Delete ":",

Page 50

Section 8(3)(a)3.d.

Line 2

After "are needed", insert "L".

Delete ".".

Page 50

Section 8(3)(a)5.f.

Line 13

After "support", insert "L".

Delete ".".

Page 50

Section 8(3)(a)10.

Line 21

After "time, not", delete "to".

Page 51

Section 8(3)(c)

Line 18

After "every five", insert "(5)".