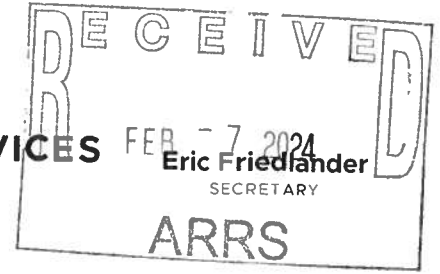




Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

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February 7, 2024

Senate Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
Administrative Regulation Review Subcommittee
Legislative Research Commission
Capitol Annex, Room 083
Frankfort, KY 40601

Re: 900 KAR 5:020. State Health Plan for facilities and services.

Dear Senator West and Representative Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 900 KAR 5:020 and incorporated material, the Office of Inspector General proposes the attached agency amendment. If you have any questions, please feel free to contact Valerie Moore at ValerieK.Moore@ky.gov.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

cc: Emily Caudill, Administrative Regulations Compiler

**Agency Amendment
Cabinet for Health and Family Services
Office of Inspector General**

900 KAR 5:020. State Health Plan for facilities and services. (Amended After Comments)

Page 1

Section 2(1)

Line 19

After, "Update to the State Health Plan", insert "February 2024"

Delete "July 2023"

Material Incorporated by Reference

The amendments in this Agency Amendment are based upon the clean version of the Amended After Comments version (filed on 7/13/2023) of 900 KAR 5:020.

Title page

Header

Insert "February 2024"

Delete "July 2023"

Title

After "State Health Plan", insert "February 2024"

Delete "July 2023"

Table of Contents

Page ii

Section V.

A.

Correct typo from "AMULANCE" to "AMBULANCE"

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Level II PRTF

3. e.

After "state custody;", insert "and".

3. f.

Delete subsection f. in its entirety.

Re-number subsection "g." to subsection "f."

Delete subsection 4 in its entirety.

Delete subsection 5 in its entirety.

Re-number subsections respectively.

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Level II PRTF

For newly renumbered 12., insert the following:

Applications for Level II PRTFs shall be subject to nonsubstantive review in accordance with 900 KAR 6:075, Section 2(3)(j).

Delete the following:

Priority shall be given to applicants that demonstrate the capacity to provide or have access to a full array of other community-based services, and applicants that demonstrate the adoption of system of care principles and the wraparound process that includes family driven and youth guided programming and treatment.

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B. Home Health Agency

Review Criteria.

After “4.”, insert the following:

Notwithstanding criteria 1 and 2, an application by a licensed Kentucky acute care hospital, critical access hospital, or nursing facility proposing to establish a home health service with a service area no larger than the county in which the facility is located and contiguous counties proposing to service exclusively patients discharged from its facility shall be consistent with this plan if the facility documents, in the last twelve (12) months, the inability to obtain timely discharge for patients who reside in the county of the facility or a contiguous county and who require home health services at the time of discharge.

5.

In newly inserted “5.”, after “nursing facility proposing to”, delete “establish or”.

After “at the time of discharge”, insert the following:

and no existing, licensed home health agency is available and willing to accept the referral. The hospital or nursing facility shall document its efforts to find a home health agency

After “900 KAR Section 6:075, Section 2(3)(i).”, insert the following:

A license issued under this section shall contain the limitation set forth herein.

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IV. Diagnostic and Therapeutic Equipment and Procedures

A. Cardiac Catheterization Service

Review Criteria 4.b.

After “*Catheterization*,”, insert the following:

or other verifiable data presented by the applicant if the *Claims Data Report* shows a lesser number than was actually performed due to the practice of combining claims,

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V. Miscellaneous Services

B. Ambulatory Surgical Center

Review Criteria 5.

After “conditions that are met:”, insert the following:

- a. The applicant is a legal entity that is 100% owned by physicians and optometrists and whose owners include at least one of the following:
 - (i) A Kentucky-licensed and board certified ophthalmologist;
 - (ii) An ophthalmology group, 100% owned by Kentucky-licensed and board certified ophthalmologists; or
 - (iii) An ophthalmologist-optometrist group, 100% owned by Kentucky-licensed and board certified ophthalmologists and Kentucky-licensed and surgically credentialled optometrists.
- b. Additionally, at least one of the applicant's owners must be:
 - (i) A residency-trained corneal specialist and a residency-trained retinal specialist; or
 - (ii) An ophthalmology group or an ophthalmologist-optometrist group with at least one residency-trained corneal specialist and a residency-trained retinal specialist.
- c. The proposed ASC is located in the county where the private office of at least one of the owners of the ASC is currently located;
- d. The applicant and its owners may establish multiple ASCs if each ASC meets the conditions herein but shall file a separate application for each ASC;
- e. The applicant documents that the proposed ASC shall be accredited within twelve (12) months of licensure by the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF), Accreditation Association for Ambulatory Health Care (AAAH), American Osteopath Association/Healthcare Facilities Accreditation Program (AOA/HFAP), The Joint Commission (TJC), or another accreditation organization approved by the Centers for Medicare and Medicaid Services; and
- f. The applicant certifies it will comply with all applicable federal laws prohibiting kickbacks and fee-splitting, including the federal Stark Law.

Delete existing criteria 5. a. through f. in its entirety.