

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Women's Health
(Amendment)

902 KAR 4:110. Abortion information.

RELATES TO: KRS 194A.030, 211.090, 211.180, 311.720, 311.725

STATUTORY AUTHORITY: KRS 194A.050, 311.725

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the cabinet to adopt ~~[such]~~ administrative regulations necessary to protect and maintain the health, welfare, and personal dignity~~[,]~~ of the citizens of the Commonwealth. KRS 311.725 requires the secretary of the cabinet to publish printed materials to inform the pregnant woman who is seeking an abortion ~~[concerning]~~ the probable anatomical and physiological characteristics of the embryo or fetus at appropriate gestational increments, ~~the~~ ~~Materials to inform the pregnant woman concerning]~~ public and private agencies and services to assist her through pregnancy, child-birth, and while the child is a dependent, ~~[and]~~ the support obligations of the father of the child who is born alive, and the potential ability to reverse the effects of prescription drugs intended to induce abortion [will be published]. This administrative regulation establishes the requirements for obtaining that information and incorporates by reference the publications required by KRS 311.725(2).

Section 1. Definitions. (1) "Cabinet" is defined by KAR 311.720(3)~~[means Cabinet for Health Services].~~

(2) "Department" means Department for Public Health.

Section 2. Informational Materials. (1) The cabinet shall develop and publish the materials identified in this subsection, which shall~~[to]~~ be offered to pregnant women seeking an abortion at least twenty-four (24) hours in advance of the abortion. ~~[The materials are:]~~

(a) The "Information About Fetal Development" shall provide the information required by KRS 311.725(2)(b)~~[pamphlet shall provide the following information:~~

- ~~1. Probable anatomical and physiological characteristics of the embryo or fetus;~~
- ~~2. Photographs depicting the embryo or fetus; and~~
- ~~3. A scale or explanation to aid in determining the actual size of the fetus].~~

(b) The "Available Resources for Pregnant Women" shall provide the information required by KRS 311.725(2)(a).

(c) The "Abortion Pill Reversal" shall provide the information required by KRS 311.725(2)(c)~~[provides the following information:~~

- ~~1. A list of available public and private agencies with toll free numbers to assist women both during and after pregnancy;~~
- ~~2. A description of the services offered by the agencies; and~~
- ~~3. A description and toll free number of the Division of Child Support which shall provide information on the support obligations of a father of a child who is born alive].~~

(2) The cabinet shall make available the requested number of materials.

(3) For a paper copy of a publication, the department shall charge the hospital, physician, medical facility, or entity requesting the materials ~~[shall be charged]~~ a fee of:

- (a) One (1) dollar for a copy of "Available Resources for Pregnant Women"; ~~[or]~~
- (b) Three (3) dollars for a copy of "Information About Fetal Development"; and
- (c) One (1) dollar for a copy of "Abortion Pill Reversal".

(4) The fee shall be paid by check made payable to the Kentucky State Treasurer.

(5) A free electronic copy of each publication shall be available from the department's Web site.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Abortion Pill Reversal", October 2019;~~["Information About Development" dated January 1999; and]~~

(b) "Available Resources for Pregnant Women", 2/2020; and

(c) "Information About Fetal Development", 2/8/2020~~[dated January 1999].~~

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

STEPHEN J. STACK, MD, MBA

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 16, 2020

FILED WITH LRC: June 22, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 28, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 21, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2020. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates published materials regarding resources for pregnant women and fetal development that are to be offered to a woman seeking an abortion.

(b) The necessity of this administrative regulation: KRS 311.725 requires all women seeking an abortion to be notified twenty-four (24) hours before the procedure that the cabinet has published materials regarding available resources and fetal development.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates the materials required under KRS 311.725.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all women seeking an abortion are aware of the resources available to them prior to the procedure, have knowledge of fetal development, and make an informed decision prior to the procedure.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates the informational material regarding the abortion pill reversal procedures, and makes other changes necessary to comply with KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: Senate Bill 50 from the 2019 legislative session amended KRS 311.725 to require the cabinet to publish materials regarding the potential ability to reverse the effects of a prescription drug intended to induce abortion.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation incorporates the informational materials required by KRS 311.725.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will help to ensure women seeking an abortion are able to make an informed decision prior to the procedure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any woman seeking an abortion and the physician who performs the abortion. On average there are 2,616 abortions performed each year. The Division of Women's Health within the Department for Public Health, who publishes the materials, will also be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Providers who perform abortions will need to be aware of this new material and ensure it is offered to the woman seeking abortion at least twenty-four (24) hours before the procedure is performed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There would be minimal costs to providers who request copies of the materials. The materials are also available at no cost from the Department's Web site.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers who perform abortions will ensure women are able to make an informed decision regarding the procedure.

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

(a) Initially: There is no initial costs to the cabinet to develop the required materials. The incorporated resource materials are available electronically.

(b) On a continuing basis: There are no ongoing costs to the cabinet to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The incorporated material is available electronically. However, if printed materials are requested, there would be a cost associated with providing these materials in hard copy format as required by KRS 311.725(7).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does include the costs associated with requesting printed materials as required by KRS 311.725(7). The costs to the regulated entity would depend on the type and number of materials requested.

(9) TIERING: Is tiering applied? Tiering is not applied. The provisions of this administrative regulation are applied equally to all impacted entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Women's Health within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 311.725.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated by this administrative regulation would depend on the type and number of incorporated materials requested. It is estimated providing the published materials in hard copy format could generate \$13,000 in the first year. However, the materials are available electronically at no charge to the requester.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The continued revenue for providing the published materials in hard copy format could equal \$13,000. However, the materials are available electronically at no charge to the requester.

(c) How much will it cost to administer this program for the first year? The total costs for printing the materials could be approximately \$16,000 in the first year.

(d) How much will it cost to administer this program for subsequent years? The continued costs associated with printing the published materials is approximately \$16,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: