

STATEMENT OF EMERGENCY
902 KAR 8:160E

This emergency administrative regulation is being promulgated to establish the process for a local health department to conduct an assessment of the local public health priorities, as required by Ky. Acts Ch. 21, Section 3. This process includes an assessment of the prevailing health of the local community served by the local health department, a description of the data used in the local needs assessment, including the identification of health inequities, and the evaluation of the evidence-based and promising practice measures implemented to address the local health needs. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to implement the provisions of House Bill 129, Section 3(2) which requires the promulgation of administrative regulations within sixty (60) days to establish the process to demonstrate that the local health priorities are funded and implemented. House Bill 129 contained an emergency clause and became effective March 17, 2020. The Department for Public Health is delayed in meeting the sixty (60) day timeline for promulgating the required administrative regulation due to the declared public health emergency in response to the COVID-19 outbreak and the department response efforts. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Emergency Amendment)

902 KAR 8:160E. Local health department operations requirements.

RELATES TO: KRS 211.1751(1), [~~211.170, 211.180,~~] 212.230, 212.240, 212.245, 212.890, 258.005

STATUTORY AUTHORITY: KRS 194A.050(1), 211.170, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law. KRS 211.170(1) and (3) require the cabinet[~~Cabinet for Health Services~~] to establish policies and standards of operation for the local health departments of Kentucky. This administrative regulation establishes minimum administrative and operational requirements for Kentucky's local health departments.

Section 1. Definitions. (1) "Agency" is defined by KRS 211.1751(1).

(2) "Animal control officer" is defined by KRS 258.005(7).

(3) "Board" means the statutorily mandated governing body for local health departments in Kentucky.

(4)[(3)] "Public health department director[~~or~~]" means the administrative officer of the agency.

Section 2. Policies and Procedures. Internal policies and procedures for operations established by an agency shall comply with procedures and policies developed by the cabinet, in accordance with KRS 211.170(1), (2), (3), (4), and (6).

Section 3. Conflict of Interests. (1) An agency employee shall avoid situations that are or appear to be a conflict of interest.

(2) An agency employee shall not:

(a) Sell, recommend, or promote a specific brand of product or equipment which is subject to inspection or evaluation by an agency or its employees;

(b) Recommend or express to the public a preference for health-related professional services or products of an individual or firm;

(c) Be engaged in a business or have financial interests which affect the employee's professional relationship with the agency or cabinet or impair the effectiveness of the employee;

(d) Enter into a contract with or hold an additional full-time or part-time position in another agency unless approved by the cabinet in writing;

(e) Be an owner or part owner of a business that contracts with or is regulated by the agency without prior review by the cabinet; or

(f) Accept appointment or be employed as an animal control officer~~[a dog warden]~~.

(3) An agency employee shall not conduct the following services for the employee, the employee's spouse, parent, child, brother or sister or the spouse of either of them, grandparent, grandchild, mother or father-in-law, daughter or son-in-law:

(a) Determine eligibility for an agency service;

(b) Issue women, infants, and children food instruments or prescribe food packages; or

(c) Conduct an inspection or monitor compliance with the agency's medical or environmental standards and administrative regulations.

(4) An employee or former employee shall not receive severance pay in cash, benefits, goods, or services.

Section 4. Employee Tuition Assistance. (1) A public health department director may approve a tuition assistance agreement to specify the terms and conditions~~[payment of tuition]~~ for a regular full-time or ~~[designated]~~ part-time 100 hour ~~[400-hour]~~ employee to attend a course of study provided by a college or university, correspondence school, vocational school, or other training institution, if the coursework is related to:

(a) The work of the agency; and

(b) The employee's current position; or

(c) An agency position to which the employee can reasonably aspire.

(2) The public health department director may approve tuition assistance from the agency budget for a nonrelated course if:

(a) The course is a requirement for a degree or certification program; and

(b) The degree is determined to be necessary to the function and purpose of the agency.

(3) The board may approve a tuition assistance request to be used by a public health department director for the director's course of study.

(4) Restricted funds used for payment of tuition assistance shall receive prior written approval from the funding authority.

(5) An employee approved to receive tuition assistance shall repay to the agency the tuition paid on the employee's behalf if the employee:

(a) Fails to provide the agency, or board, evidence of satisfactory completion of the training within thirty (30) working days after scheduled completion; or

(b) Receives a grade of:

1. Less than "C" in an undergraduate course;
2. Less than "B" in a graduate course;
3. "F" in a pass/fail course;
4. "U" in a satisfactory/unsatisfactory course;
5. "I" for incomplete; or
6. Fails to complete the training, regardless of cause, without prior approval of the public health department director or board.

(6) The employee shall maintain paid full-time or part-time 100 hour~~[400-hour]~~ work status for the agency while taking courses.

(7) An employee shall continue employment with the agency for a period of at least one (1) month employment for each semester hour or equivalent of tuition paid by the agency, after course completion, unless directed by the agency to undertake the course work.

(8) The employee shall repay the agency for educational assistance funds expended on the employee's behalf if the employee resigns, retires, or is dismissed for cause prior to completion of the continued employment provisions of subsection (7) of this section.

(9) The repayment shall be:

(a) Prorated according to the portion of the continued employment provisions of subsection (7) of this section the employee has fulfilled; and

(b) Repaid within six (6) months following resignation, retirement, or dismissal.

(10) The employee may use accumulated annual leave or compensatory time as necessary to attend classes if requested by the employee.

(11)~~[(9)]~~ The maximum allowable course hours an employee may take in a semester shall be determined by the public health department director as provided in their internal control manual.

(12)~~[(40)]~~ If approved, tuition assistance shall be granted for:

- (a) Tuition and routine registration fees;
- (b) Laboratory and examination fees; and
- (c) Required textbooks.

(13)~~[(44)]~~ Tuition assistance shall not be granted for:

- (a) Late registration;
- (b) Graduation fees;
- (c) Parking or transportation;
- (d) Records or transcripts;
- (e) Supplies;
- (f) Assessments; or
- (g) Courses taken prior to approval by the agency.

(14)~~[(42)]~~ Tuition and fees shall be paid directly to the college or training institution or reimbursed to the employee.

(15)~~[(43)]~~ An agency shall maintain records, subject to audit, to ensure the proper administration of the employee tuition assistance program.

Section 5. Educational Leave Program. (1) The public health department director may approve educational leave for a regular full-time or ~~[designated]~~ part-time 100 hour~~[400-hour]~~ employee.

(2) Educational leave may be approved on a full-time or part-time basis with or without pay as determined by the public health department director~~[for periods not to exceed two (2) years (fifty-two (52) continuous pay periods)].~~

(3) Educational leave shall be for the purpose of coursework or training related to the current or future duties and responsibilities of the employee.

- (4) Payment for educational leave shall come from the agency budget.
- (5) Restricted funds used for payment of educational leave shall receive prior written approval from the funding authority.
- (6) Educational leave payment shall not be granted for:
 - (a) Late registration fees;
 - (b) Graduation fees;
 - (c) Parking or transportation;
 - (d) Records or transcripts;
 - (e) Supplies;
 - (f) Assessments; or
 - (g) Courses taken prior to approval by the agency.
- (7) To participate in educational leave with pay, the employee shall:
 - (a) Be a regular full-time or [~~designated~~] part-time 100 hour[~~hours~~] employee;
 - (b) Enroll in an area of study with a clear and direct relationship to the work of the agency;
 - (c) Be formally accepted by the educational institution; and
 - (d) Be approved for educational leave by the agency.
- (8) An agency approving an employee for educational leave with pay shall:
 - (a) Place the employee on full-time or part-time educational leave at the employee's regular rate of pay; and
 - (b) Restore the employee to the position the employee formerly held, to a position of like status and pay, or promote the employee to a higher position upon the employee's successful completion of educational leave; or
 - (c) Cancel the employee's educational leave and restore the employee to the same or like position if the academic standing of the employee falls below the requirement of Section 4(5) of this administrative regulation.
- (9) An employee on full-time leave with pay shall be a full-time student as defined by the institution in which the employee is enrolled.
- (10) After satisfactorily completing the educational leave the employee shall:
 - (a) Continue employment with the agency:
 1. At least one (1) day for each full day of leave used if tuition and other fees are not paid by the agency; or
 2. At least one and one-half (1 1/2) days for each full day of leave used if tuition and other fees are paid by the agency; or
 - (b) If the employee terminates employment with the agency, repay the agency at the rate of 100 percent of the employee's daily pay or an average of the employee's daily pay during leave, multiplied by the number of obligated days remaining; and
 - (c) Forfeit all leave rights if the employee accepts public or institutional financial assistance other than that provided by the agency, unless the agency has granted prior approval.
- (11) An agency directing an employee to be placed on full-time or part-time educational leave shall:
 - (a) Pay the following:
 1. The employee's regular rate of pay;
 2. Tuition and routine registration fees;
 3. Required textbooks and course supplies;
 4. Laboratory and examination fees;
 5. Dormitory or housing costs; and
 6. Transportation costs to and from the school once per semester;

(b) Restore the employee to the position the employee formerly held, to a position of like status and pay, or promote the employee to a higher position, if qualified, following completion of educational leave; and

(c) Cancel the employee's educational leave and restore the employee to the same or like position if the academic standing of the employee falls below the requirement of Section 4(5) of this administrative regulation.

(12) An employee approved for educational leave without pay shall not incur any service obligation to the agency.

(13) An agency shall maintain an educational leave file on each employee requesting or receiving educational leave.

Section 6. Employment of Relatives. (1) Except as provided in subsections (3) and (4) of this section, an agency shall not employ an individual that is immediately related to the public health department director or to an immediate supervisor.

(2) An individual immediately related to the public health department director or immediate supervisor shall include:

- (a) Spouse;
- (b) Parent;
- (c) Child;
- (d) Brother or sister or the spouse of either of them;
- (e) Grandparent;
- (f) Grandchild;
- (g) Mother- or father in-law; or
- (h) Daughter- or son-in-law.

(3) If a current employee is in a supervisory relationship with an immediate relative, the employee shall be transferred to another site within the agency with the same job duties, or assigned a different supervisor.

(4) The cabinet may approve the employment of an immediate relative in a case determined to be in the public interest and approved by the board.

Section 7. Agency Facility Ownership. (1) An agency shall not pay rent to the fiscal court if the facility is owned by the fiscal court and was constructed with state funds, agency funds, or local public health tax appropriations.

(2) The agency shall be permitted to remain in the facility owned by the fiscal court rent free~~[rent free]~~ for a minimum of twenty (20) years or for the useful life of the facility, whichever is longer.

Section 8. Capital Construction Requirements. (1) An agency requesting state capital construction funds from the cabinet for new construction, building expansion or renovation shall:

- (a) Submit a letter of request for the project to the cabinet and if requested, submit one (1) copy of the plans and specifications for the project to the cabinet for review and approval;
- (b) Submit one (1) copy of the plans and specifications, if appropriate, to the Department of Housing, Buildings, and Construction to assure compliance with building and safety codes;
- (c) Provide written assurance to the cabinet that the facility will be constructed in accordance with approved plans and specifications;
- (d) Provide written assurance to the cabinet that a cost overrun or financial commitment above the state grant will be paid by the agency;
- (e) Submit architectural and contractor agreements or contracts to the cabinet for review prior to implementation;

(f) Provide written assurance to the cabinet that the agency will be allowed to use the facility for a minimum of twenty (20) years rent free or for the useful life of the facility, whichever is longer;

(g) Provide written documentation to the cabinet that the board has approved the awarding of the architectural and contractor agreements;

(h) Provide quarterly progress reports to the cabinet on the status of the project;

(i) Submit a closing report upon completion or close-out of the project; and

(j) Maintain a comprehensive construction file for the useful life of the building which includes:

1. Documents and correspondence relative to the project;

2. Written contracts or agreements; and

3. Progress reports, and financial transactions.

(2) An agency's facilities, whether owned or leased by the agency, shall comply with applicable state and local building, fire and safety codes, and ordinances.

(3) Prior to construction or modification of an x-ray room, the plans and specifications for the construction or modification shall be evaluated by a qualified expert. The Radiation Health [~~and Toxic Agents~~] Branch of the department shall be contacted regarding compliance requirements.

Section 9. Agency Insurance Requirements. (1) An agency shall maintain current replacement value insurance on:

(a) A building owned by the agency or board; and

(b) On the contents of both owned and leased facilities.

(2) An agency shall maintain:

(a) Public officials' liability insurance for board members;

(b) General liability insurance for agency staff; and

(c) Fiduciary bonding on staff and board members who handle public funds.

(3) Contracted providers shall attest to current liability coverage under the terms of their contract with the agency.

(4) Contractors of capital construction projects shall:

(a) Post bid and performance bonds; and

(b) Carry appropriate liability insurance at levels approved by the board, to cover their contracted responsibilities.

Section 10. Identification of local needs. (1) A local needs assessment that describes the prevailing health status and health needs of the population within the local health department's jurisdiction shall be conducted at least once every five (5) years.

(2) The local needs assessment shall be submitted to the Department for Public Health.

(3) The local needs assessment shall include:

(a) A statement of the health status of the community;

(b) A description of the process used to determine the health status of the community, including stakeholder involvement throughout the local needs assessment;

(c) A summary of the data used to determine the health status of the community, including:

1. Quantitative data;

2. Qualitative data;

3. Community demographic data; and

4. Identification of health inequities; and

(d) An annual evaluation of the progress of evidence-based and promising practice strategies implemented to address the health status of the community. ~~Quality Assurance.~~ (1) An

~~agency shall establish a process approved by the cabinet to assure/improve the quality of services provided.~~

~~(2) The quality assurance/improvement process shall include:~~

~~(a) An assessment of public health services provided by the agency;~~

~~(b) A review of agency records;~~

~~(c) Needs assessment data (satisfaction surveys, community assessment tools etc...) which address the community, patient, and provider perspectives; and~~

~~(d) A review of administrative data and outcomes based on a cabinet approved community plan.~~

~~(3) The findings, interventions implemented, and recommendations to assure continued improvement shall be provided to the board and cabinet].~~

Section 11. Days and Hours of Operation. (1) An agency shall post the hours of operation near the main entrance to the agency. The posting shall be plainly visible from the outside.

(2) Except in an emergency situation, an agency shall publicize in advance if the agency is to be closed during regular working hours. The notice shall:

(a) Be prominently displayed at the main entrance to the agency;

(b) Indicate where and how staff may be reached; and

(c) Indicate when offices are expected to reopen.

Section 12. Grievance Policies. (1) An agency shall establish an internal grievance procedure to assure the timely and equitable resolution of a complaint alleging discrimination, unfair, or inappropriate treatment of a member of the public.

(2) An agency grievance procedure shall:

(a) Protect the rights of the complainant;

(b) Meet due process requirements;

(c) Assure compliance with applicable federal laws and administrative regulations governing equal opportunity;

(d) Designate an employee to coordinate the grievance process; and

(e) Provide for methods of accepting written, verbal, or anonymous complaints.

(3) A complaint shall be filed within sixty (60) days of the alleged incident.

(4) An agency shall conduct an investigation of the complaint to afford interested or affected parties an opportunity to submit evidence or testimony relevant to the complaint.

(5) A written description of the investigation and a description of the resolution shall be issued and a copy forwarded to the complainant and the agency director no later than forty-five (45) calendar days after receipt of the complaint.

(6) An agency shall maintain files and records relating to complaints filed.

(7) The complainant dissatisfied with the resolution may request reconsideration, within thirty (30) calendar days, by the public health department director or the board.

(8) The complaint shall continue through the agency's grievance process even if the complainant is pursuing other state or federal remedies, unless otherwise advised by legal counsel.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 1, 2020

FILED WITH LRC: July 10, 2020 at 3 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum administrative and operational requirements for Kentucky's local health departments.

(b) The necessity of this administrative regulation: KRS 211.170 authorizes the cabinet to establish policies governing the activities and practices of local health departments and establish standards of operation in accordance with KRS 212.120.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines operational requirements for local health departments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all local health departments are operating in a consistent manner throughout the Commonwealth.

(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 establishes the process for a community health assessment to identify the health needs of the community. In addition, the amendment to this administrative regulation adds the provision that an employee of a local health department who received financial educational assistance must repay expended funds if the employee fails to complete the continued employment requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will ensure all local health departments are identifying their local health priorities in a consistent manner.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation outlines the community health assessment process used to identify local health priorities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure all local health departments are following a consistent process to identify local health priorities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect sixty-one (61) local health departments. (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: All local health departments will need to complete a community health assessment in compliance with this administrative regulation and the authorizing statutes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is difficult to determine what the costs of compliance will be for local health departments. Some local health departments may have increased costs associated with funding local health priorities, while others may have decreased costs by eliminating unnecessary programs and services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By completing a community health assessment and implementing programs and services

necessary to address the local health needs, local health departments will be ensuring the health needs of the community are met.

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

(a) Initially: The oversight of the local health department operations is an ongoing program. There will be no initial costs.

(b) On a continuing basis: There will be an increase in program costs on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Local health departments are funded by a mix of state general fund dollars, federal funding, local tax funding, and local environmental fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? (Explain why or why not.) Tiering is not applied as this amendment affects all regulated entities equally.

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? Local health departments, district health departments, Local Health Budget Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 211.170(1), (3), (6), and Ky Acts ch 21.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? It is estimated the changes in service delivery for local health departments may result in an \$8,476,000 increase in costs this first year.

(d) How much will it cost to administer this program for subsequent years? The ongoing costs associated with this program is \$35,118,000.

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: