

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:081. Operations and services; home health agencies.

RELATES TO: KRS Chapter 13B, 209.032, 216.935, 216.937, 216.9375, 216B.010-216B.130, 216B.990, 311.840(3), 314.011(8), 314.042(8), 319A.010(3), [~~320.210(2)~~], 327.010(2), 334A.020(3), 45 C.F.R. Part 160, 164, 42 U.S.C. 1320d-1320d-8

STATUTORY AUTHORITY: KRS 216B.042(1), 216.9375(11)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216.9375(11)(a) requires the cabinet to promulgate administrative regulations to implement, monitor, and enforce compliance with dementia-specific training requirements for home health aides. This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by home health agencies.

Section 1. Definitions. (1) "Coordination agreement" means an agreement to coordinate health care services within the service area of the agency.

(2) "Home health agency" is defined by KRS 216.935~~(4)~~~~[(2)]~~. (3) "Home health aide" is defined by KRS 216.935~~(3)~~~~[(1)]~~.

(4) "Home health aide services" is defined by KRS 216.935(5).

(5) "Medical social worker" means an individual who:

(a) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work;

(b) Has at least one (1) year of social work experience in a health care setting; and

(c) Is licensed by the Kentucky Board of Social Work.

~~(6)~~~~[(5)]~~ "Occupational therapist" is defined by KRS 319A.010(3).

~~(7)~~~~[(6)]~~ "Physical therapist" is defined by KRS 327.010(2).

~~(8)~~~~[(7)]~~ "Qualified medical social worker" means an individual who:

(a) Has a master's degree from a school of social work accredited by the Council on Social Work Education;

(b) Has social work experience in a hospital, outpatient clinic, medical rehabilitation, medical care, or mental health program; and

(c) Is licensed by the Kentucky Board of Social Work.

~~(9)~~~~[(8)]~~ "Speech-language pathologist" is defined by KRS 334A.020(3).

Section 2. Scope. A home health agency shall provide part-time or intermittent health and health related services to a patient in his or her place of residence, either singly or in combination as required by a plan of care prescribed by a licensed physician, advanced practice registered nurse, or physician assistant.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for:

(a) The operation of the home health agency; and

(b) Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the service.

(2) The licensee shall establish policies for the administration and operation of the service. The policies shall include the following:

(a) Acceptance of patients. The policy shall assure that the acceptance of patients is based on medical, nursing, and social information provided by the:

1. Physician, advanced practice registered nurse, or physician assistant responsible for the patient's care;

2. Institutional personnel; and

3. Staff of the home health agency.

(b) Establishment and review of the plan of care. The policy shall assure that services and items provided are specified under a plan of care:

1. Established, signed, and reviewed by the physician, advanced practice registered nurse, or physician assistant who is responsible for the care of the patient; and

2. Developed by the physician, advanced practice registered nurse, or physician assistant and appropriate professional staff acting within the limits of his or her statutory scope of practice.

(3) Home health services shall be available to the total population regardless of age, sex, and ethnic background.

(4)(a) The status of each patient and the plan of care shall be reviewed at such intervals as the severity of the patient's illness requires but no less frequently than every two (2) months, with a maximum of sixty (60) days, by home health agency staff and the physician, advanced practice registered nurse, or physician assistant.

(b) Verbal authorization to change the plan of care shall be:

1. Put in writing, signed, and dated with the date of receipt by the registered nurse or other appropriate professional staff responsible for furnishing or supervising the order services; and

2. Signed by the physician, advanced practice registered nurse, or physician assistant within thirty (30) days after the verbal order is issued.

(5) Clinical records.

(a) The home health agency shall maintain a clinical record for each patient that:

1. Covers the services the agency provides directly and those provided through arrangements with another agency; and

2. Contains pertinent past and current medical, nursing, and social information, including the plan of care.

(b) Ownership.

1. Medical records shall be the property of the home health agency.

2. The original medical record shall not be removed except by court order.

3. Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(c) Confidentiality and Security: Use and Disclosure.

1. The agency shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The home health agency may use and disclose clinical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. An agency may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(6) Original drug orders and changes in orders. The following shall be signed by the physician or other prescribing practitioner acting within the statutory scope of his or her license and incorporated in the patient record maintained by the agency:

(a) The original drug order; and

(b) Changes in orders for the administration of drugs subject to federal and state controlled substance acts, and other legend drugs.

(7) Verbal authorization for an original order for drugs or a change order shall be reviewed and signed by the same prescribing practitioner within thirty (30) days after the order is issued.

(8) Evaluation.

(a) The agency shall have procedures that provide for a systematic evaluation of the agency's program at least once every two (2) years.

(b) The agency staff shall conduct the evaluation.

(c) The program evaluation shall include measures to determine whether the policies established are followed, including:

1. A review of patient records on a sample basis to determine that services are being used appropriately and the extent to which the needs of the patients the agency serves are being met both quantitatively and qualitatively; and

2. A mechanism for reviewing overall management aspects of the agency's services to assure economy and efficiency of operations.

(9) Planning. Each agency shall develop and annually review a long range plan which includes:

(a) Assessment of needs for services in the service area of the agency;

(b) Identification of agency's role in meeting those needs;

(c) Staff expansion for a two (2) year period;

(d) Establishment of goals and objectives; and

(e) Coordination of volunteer services, community education, and community development activities if these services are provided by the agency.

(10) Subdivision operating as home health agency.

(a) If a subdivision of an agency, including the home care department of a hospital or the nursing division of a health department, applies for a license, the subdivision shall:

1. Be licensed as a home health agency; and

2. Maintain records of the subdivision's activities, ensuring that expenditures attributable to the services provided are identifiable.

(b) The parent organization shall determine who:

1. Signs each coordination agreement and other official documents; and

2. Receives and disburses funds.

Section 4. Personnel; Supervision and Training. (1) Personnel policies. The agency shall have written policies available to staff concerning qualifications, responsibilities, and conditions of employment for each type of personnel (including whether licensure is required by state law). The policies shall cover:

(a) Wage scales, hours of work, vacation, and sick leave;

(b) A plan for a preemployment medical examination and follow-up medical examination no less than every three (3) years thereafter for agency staff who serve patients in their place of residence;

(c) Annual tuberculin screening conducted pursuant to 902 KAR 20:205;

(d) Plans for orientation and for on-the-job training;

(e) Annual evaluation of employee performance;

(f) Job descriptions for each category of health personnel which are specific to the type of activity each may carry out;

(g) Pre-employment abuse registry checks conducted pursuant to KRS 216.937 and KRS 209.032; and

(h) Pre-employment criminal background checks in which the agency shall not employ an individual in a position that involves providing direct services if the individual has been convicted of a:

1. Felony offense related to:

a. Theft;

b. Abuse, possession, or sale of illegal drugs;

c. Abuse, neglect, or exploitation of a child or an adult; or

d. A sexual crime; or

2. Misdemeanor offense related to abuse, neglect, or exploitation of an adult.

(2) Agency supervision. The home health agency shall designate a physician, ~~or~~ registered nurse, or physician assistant to supervise the agency's performance in providing home health services in accordance with the:

(a) Orders of the physician, advanced practice registered nurse, or physician assistant responsible for the care of the patient; and

(b) Plan of care established by the physician, advanced practice registered nurse, or physician assistant.

(3) Supervision of therapy services.

(a) If the services of aides or other personnel providing supplementary services are utilized in providing home health services, the staff shall be trained and supervised by a qualified practitioner responsible for the delivery or supervision of services within the practitioner's scope of licensure.

(b) If supervision is less than full-time, the supervision shall:

1. Be provided on a planned basis; and

2. Assure adequate review of each individual plan of care and progress.

(4) Supervision of home health aides.

(a) A registered nurse shall provide direct supervision as described in this subsection and be readily available at other times by telephone.

(b) The supervisor shall evaluate the home health aide closely to ensure the aide's competence in providing care, including the aide's ability to:

1. Carry out assigned duties;

2. Relate well to the patient; and

3. Work effectively as a member of a team of health workers.

(c) If the patient receives skilled nursing care or another skilled service, the registered nurse or a qualified practitioner responsible for the delivery or supervision of services within the practitioner's scope of licensure shall make a supervisory visit to the patient's residence at least every two (2) weeks when the aide is:

1. Present to observe and assist; or

2. Absent to assess relationships and determine whether goals are being met.

(d) If home health aide services are provided to a patient who is not receiving skilled nursing care or another skilled service, the registered nurse shall make a supervisory visit to the patient's residence at least every sixty (60) days and the supervisory visit shall occur while the home health aide is providing patient care.

(5) Training of home health aides.

(a) The home health agency shall ensure that each home health aide successfully completes an aide training and competency evaluation program, including training in:

1.[(a)] Methods of assisting patients to achieve maximum self-reliance;

2.[(b)] Principles of nutrition and meal preparation;

3.[(c)] The aging process and the emotional problems of illness;

4.[(d)] Procedures for maintaining a clean, healthful, and pleasant environment;

5.[(e)] Awareness of changes in the patient's condition that should be reported;

6.[(f)] Work of the agency and the health team; and

7.[(g)] Ethics, confidentiality, and recordkeeping.

(b)1. In addition to the training and competency evaluation program required by paragraph (a) of this subsection and within ninety (90) days from the most recent effective date of this administrative regulation, a home health aide who provides care to a patient that exhibits symptoms of Alzheimer's disease or other dementia shall complete at least six (6) hours of initial training and three (3) hours of annual training in dementia care pursuant to the requirements established by KRS 216.9375(3).

2. In accordance with KRS 216.9375(2), a home health aide shall successfully complete the initial training in dementia care prior to providing services to a patient that exhibits symptoms of Alzheimer's disease or other dementia.

3. Pursuant to KRS 216.9375(6), a home health aide who has a lapse of twenty-four (24) months or more providing care to a patient that exhibits symptoms of Alzheimer's disease or other dementia shall complete the six (6) hours of initial training within sixty (60) days of resuming the delivery of care to a patient that exhibits symptoms of Alzheimer's disease or other dementia.

(c) A home health agency shall:

1. Obtain cabinet approval of the agency's dementia care training curriculum in accordance with the process established by 910 KAR 4:010;

2. Provide a certificate of completion pursuant to KRS 216.9375(4) to each home health aide who successfully completes the initial and annual dementia care training; and

3. Maintain documentation of successful completion of dementia care training for each home health aide in accordance with KRS 216.9375(5).

(d) The cabinet shall impose fines in accordance with KRS 216.9375(9) and (10).

(e) A home health agency's appeal of any decision regarding a fine shall be conducted in accordance with KRS Chapter 13B.

Section 5. Provision of Services. (1) The home health agency shall provide:

(a) Part-time or intermittent skilled nursing services; and

(b) Other services for restoring, maintaining, and promoting health or rehabilitation with minimum disruption of daily living, including:

1. At least one (1) other therapeutic service (physical, speech, or occupational therapy);

2. Medical social services; or

3. Home health aide services.

(2) Services shall be available five (5) days a week with back-up arrangements for weekend and emergency services.

(3) In addition to the services described in subsection (1) of this section, the agency may provide:

(a) Medical supplies; or

(b) Equipment services.

(4) The following conditions shall be met for the provision of therapeutic and medical social services:

(a) Physical, speech, or occupational therapy. An agency that provides or arranges for physical, speech, or occupational therapy directly or under a contractual arrangement shall provide

the service in accordance with a physician, advanced practice registered nurse, or physician assistant's [physician's] written order by or under the supervision of a therapist defined by Section 1(6), (7), or (9)~~(5), (6), or (8)~~ of this administrative regulation.

(b) Respiratory therapy. An agency that provides or arranges for respiratory therapy directly or under a contractual arrangement shall provide the service in accordance with a physician, advanced practice registered nurse, or physician assistant's [physician's] written order by or under the supervision of a licensed nurse with experience and training in the field of respiratory therapy.

(c) Medical social services. An agency that provides or arranges for medical social services directly or under a contractual arrangement shall provide the service in accordance with a physician, advanced practice registered nurse, or physician assistant's [physician's] written order by a medical social worker or a qualified medical social worker as defined by Section 1(5) or (8)~~(4) or (7)~~ of this administrative regulation.

(5) Home health aide services. A visit by a home health aide for the provision of personal care and other related health services shall be:

(a) Ordered by a physician, advanced practice registered nurse, or physician assistant; and

(b) Included in a plan of care approved by the physician, advanced practice registered nurse, or physician assistant.

(6) Services arranged with another provider. A home health agency that makes arrangements for the provision of home health services by another agency shall establish a written agreement that:

(a) Identifies each service provided under the agreement;

(b) Ensures that the services shall be provided within the scope and limitations set forth in the plan of care;

(c) Allows for services to be altered only upon the specific order of the initiating home health agency as the result of a change made by the physician, advanced practice registered nurse, or physician assistant in the patient's plan of care;

(d) Describes how the contracted personnel shall be supervised;

(e) Requires contract personnel to record progress notes and observations in the home health agency records for purposes of planning and evaluating patient care;

(f) Assures that the contract agency's staff and services meet the requirements established in this administrative regulation for personnel qualifications, functions, supervision, orientation, and training; and

(g) Specifies the period of time the written agreement shall be in effect and how frequently the agreement shall be reviewed.

(7) Service agreements with other health care facilities. A home health agency shall establish a coordination agreement defined by Section 1(1) of this administrative regulation with health care providers in the agency's service area including hospitals and long-term care facilities.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2021

FILED WITH LRC: August 25, 2021 at 11:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, 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 virtually 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 November 30, 2021. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of home health agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing standards for home health agencies licensed by the Cabinet for Health and Family Services, Office of Inspector General.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed home health agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment seeks to align this administrative regulation's training requirements for home health aides with the dementia-specific training requirements established by KRS 216.9375, a new law created by the passage of SB 61 from the 2021 session of the Kentucky General Assembly. In addition, this amendment seeks to align this administrative regulation with the 2021 passage of SB 154 to allow advanced practice registered nurses and physician assistants to supervise home health services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 216.9375(11)(a), a new law created by SB 61 that requires the cabinet to promulgate administrative regulations to implement, monitor, and enforce compliance with dementia-specific training requirements for home health aides. This amendment is also necessary to comply with the passage of SB 154 which expanded the class of practitioners authorized to supervise home health services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 by establishing licensure standards for home

health agencies. This amendment also conforms to the content of KRS 216.9375 by aligning the training requirements for home health aides with the new dementia-specific training requirements created by SB 61. This amendment further conforms to the content of SB 154 by expanding the class of practitioners authorized to supervise home health services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing standards for licensed home health agencies, including dementia-specific training for home health aides.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects licensed home health agencies. There are currently ninety-three (93) home health agencies licensed by the cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with this amendment, home health agencies will be required to ensure that each home health aide who provides care to a patient that exhibits symptoms of Alzheimer's disease or other dementia completes at least six (6) hours of initial and three (3) hours of annual training in dementia care pursuant to the requirements established by KRS 216.9375(3). Additionally, home health agencies may use advanced practice registered nurses and physician assistants in lieu of physicians to supervise home health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The actions identified by (4)(a) are in addition to existing requirements. However, the six (6) hours of initial dementia-specific training and three (3) hours of annual training for home health aides who provide care to patients with Alzheimer's disease or other dementia is not anticipated to result in a significant cost impact to home health agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By aligning the home health aide training requirements in this administrative regulation with the dementia-specific training requirements of SB 61, this amendment is intended to improve the quality of care provided to individuals with Alzheimer's disease and other dementia as well as help retain workers. In addition, expanding the class of practitioners authorized to supervise home health services will better meet the needs of Kentuckians.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce 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: No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all home health agencies regulated by it.

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 licensed home health agencies and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042(1) and 216.9375.

(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? Although KRS 216.9375(9) authorizes the cabinet to impose a fine of \$500 for each day that a home health agency fails to demonstrate compliance with the requirements for dementia care training, the cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(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 cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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: