

906 KAR 1:180. Operation and services; personal services agencies.

RELATES TO: KRS Chapter 13B, 209.030(2), (3), 216.710-216.716, 216B.015, 620.030(1)
STATUTORY AUTHORITY: KRS 216.712(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.712(4) requires the cabinet Secretary to promulgate administrative regulations to implement KRS 216.712 through 216.716, which require that personal service agencies be certified by the Cabinet for Health and Family Services. This administrative regulation establishes standards for the certification of personal services agencies.

Section 1. Definitions. (1) "Adverse action" means action taken by the cabinet's Office of Inspector General (OIG) to deny or revoke the certification of a personal services agency.

(2) "Cabinet" is defined by KRS 216.710(1).

(3) "Certification" means that a person, business entity, corporation, or association, either for-profit or not-for-profit, has been issued a certificate by the Office of Inspector General to operate a personal services agency.

(4) "Client" is defined by KRS 216.710(2).

(5) "Designated representative" is defined by KRS 216.710(5).

(6) "Direct service" is defined by KRS 216.710(6).

(7) "Employee" means an individual who is:

(a) Directly employed by a personal services agency;

(b) An agent of a personal services agency;

(c) an independent contractor who has a contractual arrangement with a personal services agency to provide personal services; or

(d) Referred by another person or other agency that has an ownership or financial interest that is realized from the delivery of personal services rendered by the individual for whom the referral is made.

(8) "Facilitate the self-administration of medication" means the client or the client's guardian, healthcare surrogate as defined by KRS 311.621(15), or attorney-in-fact as appointed by a durable power of attorney authorizing the attorney-in-fact to make health care decisions for the client, has executed a written consent designating the persons or entities authorized to prepare or direct the client's medications and authorizing the personal services agency to facilitate the self-administration of medication which shall be limited as follows:

(a) A client's medication shall:

1. Be prepared or directed in accordance with KRS 216.710(7)(a)2 by:

a. The client's designated representative; or

b. A licensed health-care professional who is not an owner, manager, or employee of the personal services agency;

2. Except for ointments, be preset in a medication organizer or be a single dose unit; and

3. Include the client's name on the medication organizer or container in which the single dose unit is stored;

(b) A personal services agency direct care staff person may:

1. Remind a client when to take medications and observe to ensure that the client takes the medication as directed;

2. Hand the client's medication to the client. If the client is unable to open the medication, the staff person may open the unit dose or medication organizer, remove the medication from a medication organizer, and close the medication organizer for the client;

3. Assist a client in consuming oral medication, including tablets, capsules, or liquid medication, by:

- a. Placing the dose in a container and placing the container to the mouth of the client;
- b. Placing the medication in the client's hand or mouth; or
- c. Following the written instructions of the client's designated representative or licensed health care professional for how to enable the client to take his or her medication; or
- 4. Steady or guide a client's hand while applying ointments; and
- (c) Facilitating the self-administration of medication shall not include:
 - 1. Instilling eye, ear, or nasal drops;
 - 2. Mixing, compounding, converting, or calculating medication doses;
 - 3. The preparation of syringes for injection or the administration of medications by any injectable route;
 - 4. Administration of medications through intermittent positive pressure breathing machines or a nebulizer;
 - 5. Administration of medications by way of a tube inserted in a cavity of the body;
 - 6. Administration of parenteral preparations;
 - 7. Administration of irrigations or debriding agents used in the treatment of a skin condition;
- or
- 8. Administration of rectal, urethral, or vaginal preparations.
- (9) "Parent personal services agency" is defined by KRS 216.710(9).
- (10) "Personal services" is defined by KRS 216.710(7).
- (11) "Personal services agency" is defined by KRS 216.710(8).
- (12) "Provisional certification" means that the Office of Inspector General (OIG) has issued a ninety (90) day preliminary certificate to operate a personal services agency to a person, business entity, corporation, or association, either for-profit or not-for-profit, which:
 - (a) Has three (3) or fewer employees when the initial application is filed; and
 - (b) Indicated on the application that it intends to hire additional employees within ninety (90) calendar days of the date of the application.
- (13) "Significant financial interest" means lawful, direct or indirect ownership of a personal services agency or health care facility licensed pursuant to KRS Chapter 216B in an amount equal to or greater than twenty-five (25) percent total ownership of the personal services agency or health care facility.

Section 2. Certification of Personal Services Agencies. (1) To operate a personal services agency, a person or entity shall obtain certification from the Office of Inspector General.

(2) If an out-of-state personal services agency operates a branch office in Kentucky, the out-of-state agency shall be required to obtain separate certificates for each of its branch offices in Kentucky.

(3) A branch office of a parent personal services agency shall be owned and controlled by the parent personal services agency.

(4) A "health facility" or a "health service" as defined by KRS 216B.015 or a health-care practitioner licensed, certified, or regulated by local, state, or federal statutes or administrative regulations shall not be required to obtain certification to provide personal services pursuant to KRS 216.710(7)(b)9.

Section 3. Initial Application, Provisional Certification, and Approval. (1) No person, entity, corporation, or association shall provide personal services prior to obtaining certification.

(2) An applicant for initial certification, including provisional certification, shall submit to the OIG:

- (a) An initial application fee of \$500 made payable to the Kentucky State Treasurer;
- (b) A completed Application for Certification to Operate a Personal Services Agency, OIG -

1180, November 2009; and

(c) Documentation required by Section 3.A if applicable, and Section 6 of the application.

(3) Approval of initial certification shall be contingent on:

(a) Submission of the initial application fee of \$500;

(b) The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(4)(a) Approval of provisional certification shall be contingent on:

1. Submission of the initial application fee of \$500;

2. The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

3. Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(b) A personal services agency operating under provisional certification shall, no later than fourteen (14) calendar days prior to expiration of the provisional certificate, submit employee information required by Section 6, paragraph 2 of the Application for Certification to Operate a Personal Services Agency, OIG - 1180 for each employee hired by the agency after submission of the application for initial certification.

(c) If a personal services agency operates under provisional certification prior to approval of initial certification, the initial certification period shall expire one (1) year from the date of the provisional certificate.

Section 4. Annual Recertification. (1) At least sixty (60) calendar days prior to expiration of certification, the personal services agency shall submit to the OIG:

(a) An annual recertification fee of \$350 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009; and

(c) Documentation required by Section 6 of the application.

(2) Approval of recertification shall be contingent on:

(a) Submission of the annual recertification fee of \$350;

(b) The applicant's demonstration of continued compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of documentation required by Section 6 of the application.

Section 5. Change of Status. (1) Within thirty (30) calendar days after a change in an ownership interest of more than twenty-five (25) percent of a personal services agency, the following shall be submitted to the OIG:

(a) An Application for Certification to Operate a Personal Services Agency, OIG - 1180;

(b) Documentation required by Section 3.A if applicable, and Section 6 of the application;

(c) A fee of \$350 made payable to the Kentucky State Treasurer; and

(d) A bill of sale or comparable document which includes:

1. The name and signature of the new owner or corporation;

2. The name and signature of the buyer and the seller; and

3. The effective date of the transaction.

(2) Following a change of ownership reported in accordance with subsection (1) of this sec-

tion, certification shall be effective for a period of one (1) year from the date the change of ownership is approved by the OIG.

(3) A personal services agency shall notify the OIG in writing within thirty (30) calendar days after the effective date of:

- (a) A change of name;
- (b) A change in the location of the parent personal services agency or a branch office;
- (c) The opening of a new branch office in Kentucky; or
- (d) The closing of the parent personal services agency or an existing branch office within the state.

Section 6. Staff Requirements. (1)(a) A personal services agency shall employ an individual to act as the personal services agency's manager.

(b) The manager shall be responsible for the organization and daily operation of the personal services agency.

(c) The manager shall designate in writing one (1) or more individuals to act on behalf of, or to perform any or all of the manager's responsibilities during the time in which the manager is unavailable to perform daily managerial duties for at least three (3) consecutive business days.

(2) Prior to acting as a personal services agency's manager, or prior to providing direct services to a client, an applicant for employment in a personal services agency shall submit to, and have completed a:

(a) Criminal record check conducted by the Justice and Public Safety Cabinet, Administrative Office of the Courts, or a company that conducts a search of criminal record information maintained by the Justice and Public Safety Cabinet or Administrative Office of the Courts;

(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100;

(c) Substance abuse test; and

(d)1. A tuberculosis (TB) risk assessment performed and reported by a physician, advanced practice registered nurse, physician's assistant, or registered nurse.

2. If the TB risk assessment indicates that the applicant for employment is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the individual shall submit to the following for purposes of employment:

a. Follow-up tuberculin skin test (TST); or

b. Blood assay for *M. tuberculosis* (BAMT).

3. An individual who has a positive TST result or a positive BAMT result:

a. Shall have a medical evaluation for possible active TB and receive a chest x-ray; and

b. Shall not provide direct services to a client until evidence is provided to the personal services agency documenting that the individual is free of active TB as verified through a health professional's statement, signed by a physician, advanced practice registered nurse, physician's assistant, or registered nurse.

(3) A personal services agency may, at its discretion, request that its manager or an employee who provides direct services to a client submit to any of the following background checks after the date of initial hire:

(a) Criminal record check conducted by the Justice and Public Safety Cabinet, Administrative Office of the Courts, or a company that conducts a search of criminal record information maintained by the Justice and Public Safety Cabinet or Administrative Office of the Courts;

(b) Check of the nurse aide and home health aide abuse registry; or

(c) Substance abuse test.

(4) A personal services agency shall not employ or retain an individual to serve as a manager or provide direct services to a client if the individual:

(a) Has been convicted of a crime defined by KRS 216.710(3) as verified through a criminal record check conducted pursuant to subsection (2)(a) or (3)(a) of this section;

(b) Appears on the nurse aide and home health aide abuse registry as verified through a check of the nurse aide and home health aide abuse registry conducted pursuant to subsection (2)(b) or (3)(b) of this section;

(c) Tests positive for the presence of an illegal drug as verified through a substance abuse test conducted pursuant to subsection (2)(c) or subsection (3)(c) of this section; or

(d) Fails to provide upon initial employment pursuant to subsection (2)(d) or annually pursuant to subsection (5) of this section:

1. A copy of the results of a health professional's statement documenting that the individual is free of active tuberculosis;

2. Documentation of a negative TST; or

3. Documentation of a negative BAMT.

(5)(a) A personal services agency shall require its manager and each employee who provides direct services to a client to submit annually to a Tuberculosis risk assessment performed and reported by a physician, advanced practice registered nurse, physician's assistant, or registered nurse.

(b) If a determination is made from the annual tuberculosis risk assessment that the employee is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the employee shall submit to a follow-up TST or BAMT.

(c) An employee who has a positive TST result or a newly positive BAMT shall have a medical evaluation for possible active TB and receive a chest x-ray.

(d) If the annual tuberculosis screening reveals that the employee is recently infected, the employee shall not provide direct services to a client until evidence is provided documenting that the employee is free of active tuberculosis as verified through a health professional's statement signed by a physician, advanced practice registered nurse, physician's assistant, or a registered nurse.

(6) A personal services agency shall maintain documentation of the following in employee records:

(a) The results of each criminal record check conducted pursuant to subsection (2)(a) of this section;

(b) The results of each check of the nurse aide and home health aide abuse registry conducted pursuant to subsection (2)(b) of this section;

(c) The results of the substance abuse test conducted pursuant to subsection (2)(c) of this section; and

(d) Documentation from a health professional that the employee is free of active TB and, if applicable, documentation of a follow-up TST or BAMT, chest x-ray, or medical evaluation.

(7) A personal services agency shall:

(a) Maintain employee records for a period of at least five (5) years; and

(b) Ensure that the records of current employees are:

1. Maintained on the premises of the agency; or

2. Accessible via a central computer file.

(8) A personal services agency or agency employee shall not be, or shall not apply to be a client's:

(a) Guardian;

(b) Power of attorney;

(c) Conservator;

(d) Limited conservator;

(e) Limited guardian;

- (f) Standby guardian; or
- (g) Testamentary guardian.

Section 7. Staff training and Competency. (1) Prior to providing direct services to a client, each employee shall receive training from the personal services agency regarding the following:

(a) Procedures for reporting abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3), or child abuse or neglect pursuant to KRS 620.030(1);

(b) Procedures for facilitating the self-administration of medications if personal services agency staff facilitate the self-administration of medication; and

(c) Effective communication techniques tailored to individual client needs.

(2)(a) A personal services agency shall evaluate the competency of each employee who will provide direct services to a client.

(b) The agency's evaluation to determine competency shall pertain to each personal services task the agency chooses to have the employee perform.

(3)(a) An employee's evaluation and a determination by the personal services agency that the employee is competent to perform a personal services task shall occur before the employee performs the task for a client without direct agency supervision.

(b) The content of the employee's training and evaluation shall:

1. Be documented and maintained in the employee's record, which shall be retained for a period of at least five (5) years; and

2. Include the date and the signature of the:

a. Person who conducted the training and evaluation; and

b. Employee who received the training and evaluation.

Section 8. Service Agreement. (1) Each personal services agency shall provide a written service agreement to the client or the client's designated representative that includes the following:

(a) The charge for each service provided by the personal services agency;

(b) The personal services agency's policy for notifying the client or client's designated representative of any change in the charge for services. Notice of an increase in the charge for services shall be given to a participating client or client's designated representative at least thirty (30) calendar days in advance of the effective date of the increase;

(c) The hours the personal services agency's office is open for business;

(d) The procedure for contacting the personal services agency's manager or the manager's designee;

(e) The procedure and telephone number to call for the purpose of filing a grievance with the personal services agency as described in Section 10 of this administrative regulation;

(f) An explanation of whether the personal services agency:

1. Directly employs the individual who will be providing personal services to the client;

2. Provides bonded protection for the client; and

3. Pays workers compensation or other benefits for the individual who will be providing personal services to the client;

(g) Name of the personal services agency's owner, including anyone with a significant financial interest in the agency;

(h) The procedure for changing or terminating a client's service plan; and

(i) A statement of client rights, which shall include the following:

1. The client has the right to have the client's property treated with respect;

2. The client has the right to request a change in his or her service plan, including the tem-

porary suspension, permanent termination, temporary addition, or permanent addition of a service;

3. The client has the right to file a grievance as described in Section 10 of this administrative regulation regarding services, employee conduct, or the lack of respect for property and not be subject to discrimination or reprisal for filing the grievance; and

4. The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(2) A personal services agency shall report to the cabinet an incident of suspected:

(a) Abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3); or

(b) Child abuse or neglect pursuant to KRS 620.030(1).

Section 9. Service Plan. (1) A personal services agency's manager or the manager's designee shall prepare a service plan. The initial service plan shall:

(a) Be in writing, dated, and signed by the:

1. Individual who prepared it; and

2. Client or client's designated representative;

(b) List the types and schedule of services to be provided to the client; and

(c) Identify the charge per service or charge per hour, whichever method the agency uses to bill clients.

(2) If a client or the client's designated representative requests a change in the type of service, duration of the service, or an increase or decrease in the number of visits, the personal services agency manager or manager's designee shall document on the client's service plan the:

(a) Requested change;

(b) Name of the person who requested the change; and

(c) Date the request was made.

(3) A personal services agency shall provide a copy of the service plan to the client within ten (10) calendar days of the date that The agency begins providing initial services.

Section 10. Client Grievances. (1) A personal services agency shall investigate a grievance made by a client or the client's designated representative alleging:

(a) An issue with a service that is furnished;

(b) Failure to furnish a service listed in the service plan;

(c) Failure to provide thirty (30) day advance notice of an increase in the amount the agency charges for its services;

(d) Inappropriate conduct of an employee while the individual is providing services to the client; or

(e) A violation of the client's rights.

(2)(a) A personal services agency shall:

1. Document how the agency investigated each grievance; and

2. Maintain on file for a period of at least five (5) years a written record documenting the outcome of the agency's investigation, including any action taken by the agency.

(b) Upon completing an investigation of a grievance, the personal services agency shall document that it notified the individual who reported the grievance of the outcome of the investigation and any action the agency plans to take as a result.

Section 11. Complaint Investigations. (1) The OIG shall investigate a:

(a) Report of any business that provides personal services without receiving certification;

(b) Report of any business that markets its services as a personal services agency without

receiving certification;

(c) Complaint against a certified personal services agency in which the agency is alleged to be in noncompliance with the requirements of this administrative regulation or KRS 216.712;

(d) Complaint against a certified personal services agency in which an agency employee is alleged to have abused or neglected a client, or misappropriated a client's property; or

(e) Complaint against a certified personal services agency in which an agency employee is alleged to have provided services to a client that exceed the scope of personal services.

(2)(a) A certified personal services agency or a business that is the subject of a complaint investigation shall not deny access to a representative of the OIG, after proper identification, to make an inspection for determining compliance with the requirements of this administrative regulation or KRS 216.712.

(b) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the OIG to enter the agency or deny access to records related to an inspection or investigation shall result in revocation of a personal services agency's certification.

Section 12. Request for Additional Information and Plans of Correction. (1) (a) The OIG shall notify an applicant or certified personal services agency in writing after:

1. Receipt of an incomplete or illegible application for initial certification or recertification;

2. Receipt of an application for initial certification or recertification in which additional information is needed by the OIG to verify that the applicant or personal services agency is in compliance with the requirements of this administrative regulation and KRS 216.712; or

3. Completion of a complaint investigation pursuant to Section 11 of this administrative regulation.

(b) The OIG's written notification specified in paragraph (a) of this subsection shall request that the applicant or certified personal services agency submit the following within ten (10) calendar days of the date of the notice:

1. Additional information needed by the OIG to deem an initial or recertification application as complete or legible;

2. Additional information needed by the OIG to make a determination of compliance with the requirements of this administrative regulation and KRS 216.712; or

3. A written plan of correction if the OIG has found upon completion of a complaint investigation that the certified personal services agency is in violation of this administrative regulation or KRS 216.712. A plan of correction shall:

a. Be signed by the personal services agency's owner or manager;

b. Specify the date by which the agency intends to have corrected the violation;

c. Identify the specific measures the agency intends to use to correct the violation; and

d. Identify the specific measures the agency plans to use to ensure the violation will not recur.

(c) The OIG shall review additional information or a written plan of correction submitted pursuant to paragraph (b) of this subsection and notify the applicant or certified personal services agency in writing of the decision to:

1. Approve or not approve an application;

2. Accept or not accept a plan of correction; or

3. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712.

(d) If the OIG determines that a plan of correction is not acceptable and makes a written request for an amended plan of correction, the certified personal services agency shall submit the amended plan of correction within ten (10) calendar days of the date of the OIG's written request. The OIG shall review an amended plan of correction and notify the personal services

agency in writing of the decision to:

1. Accept the amended plan of correction;
 2. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712; or
 3. Require the agency to submit an acceptable plan of correction.
- (e) A certified personal services agency that fails to submit an acceptable plan of correction or acceptable amended plan of correction shall have its certification revoked.
- (2) The OIG may impose fines in accordance with KRS 216.714(1) or (2).

Section 13. Denial and Revocation. (1) Initial certification shall be denied if an applicant:

(a) Has a significant financial interest in the entity applying for certification and held a significant financial interest in a personal services agency or health facility licensed pursuant to KRS Chapter 216B in which the agency's certification or facility's licensure was revoked during the three (3) years immediately preceding the filing of the application;

(b) Knowingly misrepresents or submits false information on the application; or

(c) Submits an application which fails to validate the entity's compliance with the requirements of this administrative regulation and KRS 216.712.

(2) Certification shall be revoked if a personal services agency:

(a) Fails to apply for annual recertification pursuant to Section 4(1) of this administrative regulation;

(b) Knowingly misrepresents or submits false information on the application at the time of annual recertification;

(c) Submits an application for annual recertification which fails to validate the agency's compliance with the requirements of this administrative regulation and KRS 216.712;

(d) Fails to comply with the background check and employment requirements of Section 6(2), (4), and (5) of this administrative regulation;

(e) Knowingly retains an employee who is:

1. Found by the cabinet to have abused or misappropriated a client's property; or

2. Convicted of, or pleads guilty, to a crime as defined by KRS 216.710(3);

(f) Fails to submit an acceptable plan of correction or acceptable amended plan of correction pursuant to Section 12(1)(b)3 or (d) of this administrative regulation;

(g) Interferes with a cabinet representative's ability to perform an official duty; or

(h) Provides services that are beyond the scope of personal services as defined by KRS 216.710(7).

(3) Written notice of adverse action shall be provided at least thirty (30) calendar days prior to the effective date of the denial or revocation.

(4) The adverse action notice shall:

(a) Explain the reason for the denial or revocation of certification;

(b) Specify that the personal services agency shall cease operation prior to the effective date of the adverse action;

(c) Advise the personal services agency of the right to request an appeal prior to the effective date of the adverse action;

(d) Specify that denial or revocation shall be stayed if an appeal is requested; and

(e) Require the agency to surrender the certificate of operation to OIG when the denial or revocation becomes effective.

Section 14. Closure of a Personal Services Agency. If a personal services agency closes voluntarily or as the result of adverse action, the agency shall relinquish to the OIG its certificate to operate as a personal services agency immediately after the effective date of the clo-

sure.

Section 15. Appeals. (1) A personal services agency that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action shall be afforded a hearing in accordance with KRS Chapter 13B.

(2) If a hearing officer's final order does not uphold revocation of certification, the personal services agency may resume providing personal services.

Section 16. Incorporation by Reference. (1) "OIG - 1180, Application for Certification to Operate a Personal Services Agency", edition November 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (36 Ky.R. 1403; 2103-M; 2197; eff. 6-4-2010; TAm eff. 3-11-2011; Crt eff. 1-11-2019.)