

**TECHNICAL AMENDMENT**  
**August 18, 2019**

**908 KAR 1:370. Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities.**

RELATES TO: KRS 13B.050, 13B.125, 17.500, 209.030, 214.181, 214.625, 216B.020(2), 222.003, 222.005, 222.231, 222.271, 222.441, 222.462, 222.990, 309.080, 309.0831, 309.130, 311.571, 311.840(3), 314.011, 319.050, 319.056, 319.064, 335.080, 335.100, 335.300, 335.500, 422.317, 439.3401, 620.030, 42 C.F.R. Part 2, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 222.231(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative regulations to establish requirements and standards for treatment programs, including licensing fees, application, procedures for renewal and revocation, procedures for program evaluation, and minimum operating, training, and maintenance of patient records standards. This administrative regulation establishes licensing procedures, fees, responsibilities of the governing authority, quality assurance and utilization review, policies and procedures, staff qualifications and training, client rights, client records, assessment, treatment planning, and adverse action procedures for outpatient and residential alcohol and other drug treatment entities.

Section 1. Definitions. (1) "Agency" is defined by KRS 222.005(2).

(2) "Adverse action" means action taken by the cabinet to deny, suspend, or revoke an alcohol and other drug treatment entity's license to operate.

(3) "Alcohol and other drug treatment entity" or "AODE" means a nonhospital-based agency owned by an individual or entity that provides one (1) or more of the following services or operates one (1) or more of the following programs:

(a) Outpatient treatment services;

(b) Intensive outpatient services;

(c) Partial hospitalization;

(d) Withdrawal management services, including medication-assisted treatment;

(e) A non-physician owned facility that employs or has an affiliation with a physician or advanced practice registered nurse who provides office-based opiate treatment services to fifty (50) percent or more of the facility's patients;

(f) A narcotic treatment program (NTP) utilizing methadone, buprenorphine, or other FDA-approved drug formulations;

(g) A residential treatment program;

(h) A family residential program;

(j) A residential transitional living program; or

(i) An adolescent residential program.

(4) "Cabinet" is defined by KRS 222.005(4).

(5) "Case management" means a collaborative process of assessment, planning, facilitation, care coordination, evaluation, and advocacy for options and services to meet a client's and his or her family's needs through communication and available resources to promote quality, cost-effective outcomes.

(6) "Co-occurring disorder" means concurrent substance use disorder and mental health disorder and shall not carry implication as to:

(a) Which disorder is primary and which secondary;

- (b) Which disorder occurred first; or
- (c) Whether one disorder caused the other.

(7) "Outpatient service" means an organized nonresidential service in which addiction and mental health treatment personnel provide professionally directed evaluation and treatment for substance-related, addictive, and mental disorders.

(8) "Residential" means a setting that provides twenty-four (24) hour structure and support in which addiction and mental health treatment personnel provide organized and intensive individual and group therapeutic activities to strengthen a client's recovery skills.

(9) "Significant financial interest" means lawful ownership of an AODE, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the AODE.

Section 2. Licensure Application and Fees. (1) Unless exempt in accordance with subsection (2) of this section, any person, organization, corporation, community mental health center, or driving under the influence program planning to operate an outpatient or residential AODE shall submit the following to the cabinet:

(a) A completed Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) and any required documentation;

(b) A licensure fee of \$500; and

(c) A fee of eighty (80) dollars per outpatient AODE extension site that is:

1. Separate from the outpatient parent facility; and

2. Not located in a school or other community-based setting that is not operated by the outpatient AODE.

(2) The following settings shall be exempt from licensure as an AODE:

(a) A program or activity of a voluntary self-help organization or community group exempt in accordance with KRS 222.003(1) or (2);

(b) A licensed chemical dependency treatment service exempt in accordance with KRS 222.231(1);

(c) A department, agency, or institution of the federal government exempt in accordance with KRS 222.231(1);

(d) A federally certified rural health clinic or a federally qualified health center that provides services to patients with behavioral health or psychiatric conditions, including substance use disorder;

(e) The private office or clinic of a practitioner in accordance with KRS 216B.020(2);

(f) A licensed psychiatric residential treatment facility that provides outpatient behavioral health services to individuals who are age twenty-one (21) or younger and have been diagnosed with substance use disorder; or

(g) A residential crisis stabilization unit licensed in accordance with 902 KAR 20:440.

(3) An outpatient or residential AODE program shall not admit clients until the program has obtained a license from the cabinet to operate the specific modality or modalities of treatment referenced on its application.

(4) An entity shall be subject to penalties in accordance with KRS 222.990(2) if the program operates a private facility without obtaining licensure as required by KRS 222.231(1).

(5) Once licensed, an outpatient or residential AODE shall submit a completed Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) accompanied by the same licensure fee identified in subsection (1)(b) and (c) of this section to the cabinet annually for license renewal.

(6) Extension site locations shall not be allowed for the following levels of care:

(a) A residential AODE program that operates in accordance with this administrative regula-

tion and 902 KAR 1:372;

(b) A non-physician owned facility that provides office-based opiate treatment services in accordance with this administrative regulation and 902 KAR 1:374, Section 6; or

(c) An NTP that operates in accordance with this administrative regulation and 902 KAR 1:374, Section 7.

Section 3. Licenses and Authority to Enter Upon Premises. (1) A license shall be conspicuously posted in a public area of the outpatient or residential AODE at all times.

(2) If more than one (1) AODE operates at the same location, each AODE shall maintain a separate organizational identity by:

(a) Conspicuously posting a sign in a public area showing the name of the AODE;

(b) Using a separate logo or letterhead on written materials;

(c) Maintaining client records in a separate and secure cabinet; and

(d) Providing treatment services separate from another AODE located at the same location.

(3) A survey visit or complaint investigation by cabinet staff shall be unannounced.

(4) An outpatient or residential AODE shall be subject to an annual survey visit.

(5) Nothing in this administrative regulation shall prevent the cabinet from:

(a) Conducting an investigation related to a complaint; or

(b) Making an on-site survey of an AODE more often if the cabinet deems necessary.

(6) For an outpatient AODE program operating an NTP, unannounced monitoring visits may occur in conjunction with the Center for Substance Abuse Treatment (CSAT) and the Drug Enforcement Administration (DEA).

(7) (a) A representative of the cabinet shall have access to the AODE during business hours.

(b) An applicant for licensure or a current licensee shall not deny access to a representative of the cabinet, after proper identification, to make an inspection for determining compliance with the licensure requirements under:

1. 908 KAR 1:370;

2. 908 KAR 1:372; or

3. 908 KAR 1:374.

(c)1. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet to enter the AODE, or deny access to records relevant to the inspection shall result in disciplinary action, including denial, revocation, modification, or suspension of the AODE's license.

2. Denial, revocation, modification, or suspension of an AODE's license shall be subject to appeal in accordance with KRS 222.231(6).

(d) An inspection of an AODE shall be conducted as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 908 KAR 1:370, 908 KAR 1:372 or 908 KAR 1:374, and KRS Chapter 222; and

3. The inspection, if based on a complaint or a follow-up visit, shall not be limited in scope to the basis of the complaint or the implementation of a plan of correction.

Section 4. Change of Status. (1) Name change.

(a) An outpatient or residential AODE shall:

1. Notify the cabinet in writing within ten (10) calendar days of the effective date of a change in the facility's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) The cabinet shall issue a new license for the remainder of the licensure period unless

the AODE is under investigation that may result in a negative licensure action in accordance with Section 20 of this administrative regulation.

(2) Change of location. An AODE shall not change the location where a program is operated, including a change in an outpatient extension site's location, until an Application for Licensure to Operate an Alcohol or Drug Treatment (AODE) accompanied by a processing fee of eighty (80) dollars is filed with the cabinet.

(3) Change of ownership.

(a) The new owner of an AODE shall submit to the cabinet an Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) accompanied by a fee of \$500 within ten (10) calendar days of the effective date of the ownership change.

(b) A change of ownership shall be deemed to occur if more than twenty-five (25) percent of an existing AODE or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(c) An individual, shareholder, or legal entity shall not acquire a significant financial interest in an AODE if that individual, shareholder, or legal entity previously held a significant financial interest in a licensed facility that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm within the preceding seven (7) years.

(4) Voluntary closure. If an outpatient or residential AODE voluntarily ceases to operate, the AODE shall notify the cabinet in writing within ten (10) calendar days of closure.

Section 5. Violations. (1) The cabinet shall notify an outpatient or residential AODE in writing of a regulatory violation identified during an inspection.

(2) The outpatient or residential AODE shall submit to the cabinet, within ten (10) calendar days of the notice, a written plan for the correction of the regulatory violation.

(3) The plan of correction shall be signed by the AODE's administrator, the licensee, or a person designated by the licensee and shall specify:

(a) The date by which the violation shall be corrected;

(b) The specific measures utilized to correct the violation; and

(c) The specific measures utilized to ensure the violation will not recur.

(4) The cabinet shall review the plan of correction and notify the AODE in writing of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 222.231(6).

(5) The notice specified in subsection (4)(b) of this section shall:

(a) State the specific reasons the plan is unacceptable; and

(b) Require an amended plan of correction within ten (10) calendar days of receipt of the notice by the AODE.

(6) The cabinet shall review the amended plan of correction and notify the AODE in writing of the decision to:

(a) Accept the plan;

(b) Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 222.231(6); or

(c) Require the AODE to submit an acceptable plan of correction.

(7) An AODE that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 222.231(6).

Section 6. Governing Authority. (1) An outpatient or residential AODE shall have a governing authority that shall be legally responsible for the management, operation, and financial viability of the AODE.

(2) The governing authority shall:

(a) Establish the AODE's mission and purpose;

(b) Ensure that the AODE is operating in accordance with its mission and in the case of a non-profit, the purpose for which it was granted tax-exemption;

(c) Appoint an administrator who shall:

1. Be principally responsible for the day-to-day operation of the AODE; and

2. Ensure that information is provided in response to a request by the cabinet for data collected in accordance with KRS 222.462(2)(b);

(d) Establish a client fee schedule;

(e) Ensure that the client fee schedule is posted in a public area of the outpatient or residential AODE;

(f) Maintain financial records regarding the assessment and payment of client fees;

(g) Oversee the implementation of policies and procedures, and ensure that they are available to all personnel and maintained electronically or in hard copy at the AODE's administrative office; and

~~(h)~~(f) Ensure that an AODE's policies and procedures are reviewed every two (2) years and revised as needed.

Section 7. Quality Assurance and Utilization Review. (1) An outpatient or residential AODE shall have a quality assurance and utilization review program designed to:

(a) Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

(b) Provide an effective mechanism for review and evaluation of the service needs of clients.

(2) An outpatient or residential AODE shall have a utilization review team that shall:

(a) Be made up of a representative sample of the AODE's clinical staff responsible for providing services;

(b) Assess the appropriateness and clinical necessity of client admissions;

(c) Evaluate the need for continuing services immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

1. Discharge;

2. Transfer; or

3. Referral to another service provider, if appropriate; and

(d) Submit a written record of findings related to inappropriate patterns of service accompanied by recommended action for correcting a problem to the administrator or other individual with overall responsibility for the program's treatment services.

Section 8. Co-occurring Services. (1) An outpatient or residential AODE shall:

(a) Screen for co-occurring disorders; and

(b) Treat or refer a client in need of co-occurring services.

(2) An outpatient or residential AODE that provides substance use disorder treatment to clients diagnosed with a co-occurring disorder shall have clearly written policies and procedures that:

(a) Govern the integrated treatment of substance use and mental health treatment, which shall include screening, assessment, diagnosis, and service provision;

- (b) Allow for the use of psychiatric medication when indicated;
- (c) Include developing and maintaining affiliation agreements, case consultation, and a referral mechanism to mental health treatment services in order to facilitate the provision of integrated treatment services; and
- (d) Include the qualifications of clinical staff responsible for screening, assessing, diagnosing, and treating clients with co-occurring disorders as follows:
  1. Only licensed individuals whose scope of practice allows them to render a diagnosis for both mental health disorder and substance use disorder may assess and diagnose clients with co-occurring disorders; and
  2. The AODE shall ensure that clinical supervision is provided by staff possessing clinical credentials necessary to provide clinical supervision to any staff person who renders treatment and services to clients diagnosed with co-occurring disorders.

Section 9. Implementation of Policies and Procedures. (1) An outpatient or residential AODE shall have written policies and procedures to:

- (a) Establish a system for responding to an:
  1. Accident or injury that requires hospitalization or results in death; or
  2. Incident that involves fire damage, a natural disaster, or threat to security that substantially interrupts the delivery of services;
- (b) Document the accident, injury, or incident in an incident file maintained electronically or in hard copy at the AODE's administrative office; and
- (c) Report an incident, injury, or accident to the:
  1. AODE's administrator;
  2. Parent or guardian of a client under the age of eighteen (18); and
  3. Cabinet for Health and Family Services if the report is required by:
    - a. KRS 620.030 in the case of suspected child dependency, abuse, or neglect; or
    - b. KRS 209.030 in the case of suspected adult abuse, neglect, or exploitation.

(2) An outpatient or residential AODE shall have a written emergency plan for responding to a disaster at the facility, including safety procedures in the event of a fire, severe weather, or other threatening situation as follows:

- (a) The emergency plan shall be conspicuously posted in a public area of each AODE;
- (b) A copy of the emergency plan shall be provided to all personnel;
- (c) The AODE shall provide training for all personnel on how to:
  1. Report a fire;
  2. Extinguish a small fire; and
  3. Evacuate a building; and
- (d) The AODE shall maintain a written record of practiced fire drills.

(3)(a) An outpatient or residential AODE shall have written policies and procedures that:

1. Establish a system to effectively respond to problems associated with domestic violence among clients served in the AODE; and
2. Include the requirements established in paragraphs (b), (c), and (d) of this section.

- (b) The AODE shall provide training for clinical staff on the dynamics of domestic violence, including:
  1. The effect of domestic violence on adult and child victims;
  2. Legal remedies for protection;
  3. Safety and risk issues;
  4. Available community services;
  5. Victim services; and
  6. Applicable reporting requirements.

(c) The AODE shall assess a client with a history of domestic violence for current safety risks.

(d) The AODE shall implement measures to reduce safety risks to:

1. A client with a history of domestic violence;
2. Other clients; and
3. Staff.

(4) An outpatient or residential AODE shall have written policies and procedures that include:

(a) A written description of each program, including philosophy, mission statement, goals, objectives, and staffing;

(b) Admission, readmission, discharge, and transfer criteria; and

(c) Procedures for making a referral within the AODE or to another service provider, if appropriate.

(5) An outpatient or residential AODE shall have written policies and procedures for implementation of a language access plan to:

(a) Address reasonable accommodation for communication access services for a client who:

1. Has a visual impairment;
2. Is deaf or hard of hearing;
3. Is unable to comprehend or communicate due to a language barrier; or
4. Has a different linguistic background;

(b) Provide for appropriate auxiliary aids and services, including assistive listening devices, realtime captioning, or sign language interpreters, if needed;

(c) Ensure that programs and activities provided through electronic and information technology are accessible to a client with a disability; and

(d) Allow for language assistance services, including oral language assistance or written translation for a client with a different linguistic background.

(6) An outpatient or residential AODE shall have a written personnel policy that includes a:

(a) Job description and qualifications for each personnel category, including duties and reporting supervisor;

(b) Description of the duties and supervision of volunteers and student interns; and

(c) Written plan that describes a coordinated program for staff education, including:

1. Orientation of personnel to the policies and objectives of the organization;
2. On-the-job training, if necessary; and
3. Orientation and basic education about the prevalence of trauma, including training that:
  - a. Covers the dynamics of retraumatization;

b. Helps create a trauma-informed environment to ensure that all staff are knowledgeable in evidence-based practices that avoid institutional processes that may retraumatize a client with a history of trauma; and

c. Assists in the implementation of trauma-informed practices across domains and standards, which may include:

- (i) Admissions;
- (ii) Environmental standards;
- (iii) Screening and assessment processes;
- (iv) Referrals to other services;
- (v) Treatment planning;
- (vi) Confidentiality;
- (vii) Ethics;
- (viii) Overdose prevention; and
- (ix) Discharge.

(7) An outpatient or residential AODE shall have written policies and procedures governing client grievances, including:

- (a) Identification of an AODE ombudsman;
- (b) A process for filing a written client grievance;
- (c) An appeals process with time frames for filing and responding to a grievance in writing;
- (d) Protection of a client from interference, coercion, discrimination, or reprisal; and
- (e) Conspicuous posting of the grievance procedures in a public area to inform a client of:
  1. His or her right to file a grievance;
  2. The process for filing a grievance; and
  3. The address and telephone number of the AODE's and cabinet's ombudsman.

(8) If alcohol or drug testing is conducted as part of assessment, treatment, or discharge, an outpatient or residential AODE shall have written policies and procedures that outline the screening process and the indications for testing positive.

(9)(a) An AODE shall have a written policy to address the:

1. Use and misuse of alcohol or illegal drugs; and
2. Misuse of prescription drugs.

(b) The policy shall apply to all clients and their visitors while on the campus of the program.

(10) An AODE that provides services to clients under age eighteen (18) shall have written policies and procedures to ensure that:

(a) Services and educational materials are developmentally appropriate; and

(b) The client's family is involved in his or her treatment to the extent possible and appropriate with the written consent of a client.

#### Section 10. Qualifications and Responsibilities of the Clinical Services Supervisor.

(1) A clinical services supervisor hired by an AODE shall complete:

(a) Twelve (12) hours of specialized training in clinical supervision within six (6) months from the date of assuming the position of supervisor;

(b) At least three (3) hours of training in clinical supervision annually; and

(c) At least ten (10) hours of training in alcohol and other drug abuse counseling annually.

(2) The clinical services supervisor:

(a) May provide supervision at more than one (1) AODE facility;

(b) Shall not supervise a spouse, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law;

(c) Shall be responsible for all treatment services provided by the AODE;

(d) Shall ensure that the client treatment plan required by Section 19 of this administrative regulation addresses both of the client's co-occurring disorders, if applicable; and

(e) Shall maintain documentation of each clinical supervisory session with each clinician under supervision, including the:

1. Date;

2. Length of the session; and

3. Content of the supervision.

(3) The clinical services supervisor shall be:

(a) A certified alcohol and drug counselor (CADC) as defined by KRS 309.080(2) with 4,000 hours of clinical work experience post certification;

(b) A licensed clinical alcohol and drug counselor (LCADC) as defined by KRS 309.080(4);

or

(c) An individual who meets the training requirements of subsection (4) of this section and is licensed or certified as one (1) of the following:

1. Physician licensed in Kentucky to practice medicine or osteopathy in accordance with



KRS 311.571, or a medical officer of the government of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Psychologist licensed and practicing in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning or a licensed psychological practitioner practicing in accordance with KRS 319.056;

5. Person currently authorized to use the title of "certified psychologist" under KRS 319.056(3) and has 6,000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology;

6. Psychological associate practicing in accordance with KRS 319.064 and has 6,000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology;

7. Clinical social worker licensed and practicing in accordance with KRS 335.100;

8. Social worker certified and practicing in accordance with KRS 335.080 and has 6,000 hours of postcertification clinical practice in psychiatric social work;

9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and 6,000 hours of clinical experience in psychiatric nursing;

10. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor's degree in nursing from an accredited college or university, who is certified as a psychiatric and mental health nurse by the American Nurses Association, and who has 6,000 hours of clinical experience in psychiatric nursing;

11. Marriage and family therapist licensed and practicing in accordance with KRS 335.300;

12. Professional clinical counselor licensed and practicing in accordance with KRS 335.500;

or

13. Licensed professional art therapist as defined by KRS 309.130(2).

(4) A clinical services supervisor who is a licensed or certified health care professional as described by subsection (3)(c) of this section shall:

1. Complete eighty (80) hours of training in alcohol and other drug abuse counseling within:

a. Four (4) years immediately prior to the date of assuming responsibility as a clinical services supervisor in the AODE; or

b. Two (2) years immediately after assuming responsibility as a clinical services supervisor in the AODE; and

2. Have 4,000 hours of work experience in the alcohol and other drug treatment field post degree.

Section 11. Qualifications and Responsibilities of Clinicians. (1) An outpatient or residential AODE shall hire clinicians who:

(a) Shall be responsible for conducting assessments and treatment planning;

(b) Shall be responsible for leading counseling sessions; and

(c) May be responsible for providing case management.

(2) A clinician shall complete a minimum of ten (10) hours of training in alcohol and other drug abuse counseling annually.

(3) In addition to the annual training required by subsection (2) of this section, a clinician who provides case management shall complete twelve (12) hours of specialized training in case management within six (6) months from the date of assuming responsibility for case management services.

- (4) A clinician shall be:
- (a) An LCADC as defined by KRS 309.080(4);
  - (b) A CADC as defined by KRS 309.080(2);
  - (c) An individual who meets the training requirements of subsection (5) of this section and is licensed or certified as one (1) of the following:
    1. Physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571, or a medical officer of the government of the United States while engaged in the performance of official duties;
    2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
    3. Psychologist licensed and practicing in accordance with KRS 319.050;
    4. Certified psychologist with autonomous functioning or a licensed psychological practitioner practicing in accordance with KRS 319.056;
    5. Person currently authorized to use the title of certified psychologist in accordance with KRS 319.056(3);
    6. Psychological associate practicing in accordance with KRS 319.064;
    7. Clinical social worker licensed and practicing in accordance with KRS 335.100;
    8. Social worker certified and practicing in accordance with KRS 335.080;
    9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;
    10. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with one (1) of the following combinations of education and work experience:
      - a. Bachelor of science in nursing from a four (4) year program from an accredited college or university and 2,000 hours of clinical work experience in the substance abuse or mental health field;
      - b. Diploma graduate in nursing from a three (3) year program and 4,000 hours of clinical work experience in the substance abuse or mental health field; or
      - c. Associate degree in nursing from a two (2) year program from an accredited college or university and 6,000 hours of clinical work experience in the substance abuse or mental health field;
    11. Advanced practice registered nurse as defined by KRS 314.011(7);
    12. Marriage and family therapist licensed and practicing in accordance with KRS 335.300;
    13. Professional clinical counselor licensed and practicing in accordance with KRS 335.500;
    14. Licensed professional art therapist as defined by KRS 309.130(2); or
    15. Physician assistant as defined by KRS 311.840(3); or
  - (d) An individual who has a bachelor's degree in any field from an accredited college or university and meets the following requirements:
    1. Works under the supervision of a clinical services supervisor;
    2. Receives at least four (4) hours of face-to-face clinical supervision monthly during at least two (2) supervisory meetings;
    3. Meets the training requirements of subsection (5) of this section;
    4. Has all treatment plans cosigned by the clinical services supervisor within ten (10) business days; and
    - 5.a. Obtains temporary certification as an alcohol and drug counselor (TCADC) from the Kentucky Board of Alcohol and Drug Counselors within two (2) months of the date of employment as a clinician, if the clinician's bachelor's degree is in an area other than the field of hu-

man services; or

b. Was employed as a clinician by an AODE prior to the effective date of this administrative regulation and has maintained continuous employment as a clinician.

(5) A clinician as described by subsection (4)(c) or (d) of this subsection shall complete eighty (80) hours of training in alcohol and other drug abuse counseling within:

(a) Four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE; or

(b) Two (2) years immediately after assuming responsibility as a clinician in the AODE.

Section 12. Qualifications and Responsibilities of Case Managers. (1) A case manager employed by an outpatient or residential AODE shall:

(a)1. Have a bachelor's degree from an accredited college or university; or

2. Be a CADC as defined by KRS 309.080(2);

(b) Successfully complete a department-approved case management training within six (6) months of employment as a case manager; and

(c) Successfully complete ten (10) hours of continuing education in alcohol and other drug-relevant training annually.

(2) Case management services shall be based on the:

(a) Goals established in the client's clinical assessment; and

(b) Development of an individualized person-centered treatment plan that identifies the case management activities that support implementation of the plan.

(3) A case manager shall not exceed a case load size of thirty (30) unique clients.

Section 13. Peer Support Specialists. A peer support specialist employed by an outpatient or residential AODE shall:

(1) Complete six (6) hours of training in the area of substance use disorder annually;

(2) Attest in writing to at least one (1) year of recovery; and

(3)(a) Be a registered alcohol and drug peer support specialist in accordance with KRS 309.0831; or

(b) Meet the requirements of:

1. 908 KAR 2:220;

2. 908 KAR 2:230; or

3. 908 KAR 2:240.

Section 14. Personnel records. A personnel record shall be kept at the outpatient or residential AODE's administrative office on each staff member and contain the following information:

(1) Name and address;

(2) Verification of all training and experience, including licensure, certification, registration, or renewals;

(3) Verification of submission to the background check requirements of Section 15 of this administrative regulation;

(4) Annual performance appraisals; and

(5) Employee incident reports.

Section 15. Background checks. (1) All staff of an outpatient or residential AODE who have job duties that involve providing services to a client, or who may have one-on-one contact with a client shall:

(a) Have a criminal record check performed upon initial hire through the Administrative Of-

office of the Courts or the Kentucky State Police; and

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500;
2. Criminal offense against a minor as specified in KRS 17.500; or
3. Felony offense related to neglect, physical abuse, sexual abuse, or exploitation of a child.

(2) An outpatient or residential AODE that provides services to clients under age eighteen (18) shall not employ as clinical personnel anyone listed on the central registry established by 922 KAR 1:470.

(a) If a central registry check has been submitted for an individual and is pending, the individual:

1. May be hired pending the results of the registry check; and
2. Shall not be left unsupervised with a client under eighteen (18) years of age.

(b) An employee shall be dismissed immediately if the results of the check show the individual is listed on the central registry.

(3) An outpatient or residential AODE shall perform annual criminal record checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.

Section 16. Client Rights. (1) An outpatient or residential AODE shall establish, implement, and conspicuously post written policies and procedures regarding the rights of clients.

(2) The notice of client rights shall include the address and telephone number of the:

(a) Cabinet's ombudsman; and

(b) AODE's ombudsman or personnel responsible for handling client grievances.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a treatment program.

(4) During an outpatient or residential AODE's intake procedures, a client shall sign a statement that specifies that the client has the right to:

(a) Give informed consent to receive a service, in which case:

1. An adult shall sign an informed consent to receive a service; or

2. A client under age eighteen (18) who suffers from substance use disorder or a parent, caregiver, or person who has custodial control of a client under age eighteen (18) shall sign an informed consent for the client to receive a service in accordance with KRS 222.441;

(b) Have input into his or her treatment plan and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation, or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a research study, with the exception of a client under age eighteen (18) whose parent or guardian shall give informed written consent;

(f) Confidentiality of information in accordance with the following:

1. A federally-assisted AODE in accordance with 908 KAR 1:320; or

2. A nonfederally-assisted AODE in accordance with KRS 222.271(1);

(g) Request a written statement of charges for services and be informed of the policy for the assessment and payment of client fees;

(h) Be informed of the rules of client conduct, including the consequences for using alcohol or other drugs, or other infractions that may result in:

1. Further assessment;

2. Modification of the treatment approach;

3. Transfer to a higher intensity level of treatment; or

4. Disciplinary action or discharge, after review and consideration of alternative interven-

tions, which shall be documented in the client's record with an explanation for any decision involving disciplinary action or discharge;

- (i) Be treated with consideration, respect, and personal dignity;
- (j) Review his or her client record in accordance with the AODE's policy; and
- (k) Receive one (1) free copy of his or her client record in accordance with KRS 422.317.

(5) The statement of client rights shall be:

- (a) Provided to the client;
- (b) Provided to the client's parent, guardian, or other legal representative, in addition to the client, and upon consent of the client, if the client is under the age of eighteen (18) or incapacitated; and

- (c) Read to the client or upon consent of the client, read to the client's parent, guardian, or other legal representative, if requested.

(6) A residential AODE providing twenty-four (24) hour care shall specify on the client rights statement that a client has the right to:

- (a) Vote in a political election, if age eighteen (18) or over;
- (b) Reasonable accommodations to afford privacy in bathing and toileting; and
- (c) Privileges in accordance with KRS 222.271(2).

(7) An outpatient AODE that operates an NTP shall specify on the client rights statement that a client has the right to:

- (a) Request a hearing, if the client is involuntarily discharged, so long as the hearing is requested within forty-eight (48) hours of receipt of written notice of discharge;

- (b) Continued treatment pending the outcome of the hearing; and

- (c) Representation at the hearing by an attorney or other person chosen by the client.

(8) If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record stating the reason for the restriction and the explanation given to the client.

Section 17. Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be signed and include the date the service was provided.

(3) All information regarding a client's human immunodeficiency virus status shall be kept confidential in accordance with KRS 214.181 and 214.625.

(4) Each client record shall contain:

- (a) An identification sheet, including:

- 1. Client's name, address, age, gender, and marital status;

- 2. Expected source of payment; and

- 3. Referral source;

- (b) Consent of appropriate family members or guardians for admission, evaluation, and treatment, if applicable;

- (c) Application for admission, including intake information;

- (d) A biopsychosocial assessment;

- (e) Health status questionnaire or a copy of the record of a physical health examination;

- (f) Consent form, fee agreement, and statement of client rights, each signed by the client;

- (g) Client's treatment plan;

- (h) Progress notes;

- (i) Aftercare plan;

- (j) Authorization for release of information, signed by the client; and

- (k) Discharge summary.

(5) Ownership.

- (a) Client records shall be the property of the AODE.
- (b) The original client record shall not be removed from the AODE except by court order or subpoena.
- (c) Copies of a client record or portions of the record may be used and disclosed in accordance with subsection (7) of this section.
- (6) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:
  - (a) Retained for six (6) years; or
  - (b) Three (3) years after the client reaches the age of majority under state law, if a minor, whichever is the longer.
- (7) Confidentiality and Security: Use and Disclosure.
  - (a) The AODE shall maintain the confidentiality and security of client 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, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.
  - (b) The AODE may use and disclose client records in accordance with:
    1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or
    2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.
  - (c) An AODE may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 18. Client Assessment. (1) Except in a residential transitional living program where counseling services are not provided on-site, a clinician operating within the clinician's professional scope of practice in an AODE shall complete a comprehensive biopsychosocial assessment of each client at the time of admission and document the following:

- (a) Medical status;
- (b) History of alcohol, tobacco, or other drug use, including any interventions;
- (c) Acute intoxication and withdrawal potential;
- (d) Pregnancy status and test results if completed;
- (e) Current or history of psychological problems or psychiatric disorders and treatment received, including:
  1. Previous psychiatric admissions;
  2. History of suicidal or homicidal ideation and attempts;
  3. Outpatient psychiatric treatment; and
  4. Psychotropic medications;
- (f) Any legal proceedings involving the client;
- (g) The client's family and relationships;
- (h) The client's current living situation and any housing needs;
- (i) Behavioral risk factors for human immunodeficiency virus (HIV) and Hepatitis, including the provision of information on HIV and AIDS to each client who shall also be offered testing for HIV infection;
- (j) Readiness to change;
- (k) Recreational interests;
- (l) Cultural, ethnic, and spiritual beliefs or practices; and
- (m) Employment and support, including assessment of the client's:

1. Employment status, current work or vocational skills, and potential for improving those skills or developing new ones;
2. Educational status and skills;
3. Aptitudes, interests, and motivation;
4. Physical abilities, impairments, or disabilities;
5. Relationships with co-workers and supervisors; and
6. Current and prior work or school related problems, including problems related to substance use disorder.

(2) To ensure that a client is placed in the appropriate treatment facility, the client shall be assessed for a level of care determination based upon the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

(3) Each biopsychosocial assessment shall be documented by the outpatient or residential AODE in the client record and include the following:

(a) The client's diagnosis as made by a clinician operating within the clinician's professional scope of practice, in accordance with the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) for alcohol, tobacco, and other drug use;

(b) Screening for other co-occurring disorders;

(c) The ASAM level of care determination; and

(d) Referral for a full diagnostic evaluation and treatment planning, if appropriate.

(4) If the biopsychosocial assessment indicates that a client should be referred to another treatment program or level of care, the outpatient or residential AODE shall coordinate the client's referral to another program.

(5) If transfer to another facility or level of care is indicated, the outpatient or residential AODE shall provide services that are responsive at the client's current level of care until the transfer is made.

(6) A residential AODE shall ensure that a full physical examination is completed within seventy-two (72) hours of admission and includes:

(a) Certification by the examining physician or appropriate health care practitioner that the level of care needed by the client is available through the facility; and

(b) The results of the following laboratory tests and evaluations, subject to the client's written consent:

1. Blood work for chronic, incurable, or communicable diseases or conditions as indicated by the client's medical history and the health care practitioner's evaluation;

2. Serologic tests for syphilis, smears, and cultures for gonorrhea and other sexually transmitted diseases, as medically indicated;

3. Routine urinalysis, including pregnancy testing if medically indicated or requested;

4. HIV antibody testing, as medically indicated, for which the residential AODE shall obtain a separate written consent and ensure that:

a. Each client receives HIV pre-test counseling and post-test counseling if the client elects to be tested; and

b. If HIV testing is performed, the residential AODE shall:

(i) Report positive results and maintain client confidentiality in accordance with KRS 214.645; and

(ii) Meet the registration and testing requirements of KRS 214.625(7);

5. Testing for Hepatitis A, Hepatitis B, and Hepatitis C, as medically indicated; and

6. Tuberculosis screening, testing, and treatment, as medically indicated.

Section 19. Client Treatment Planning. (1) An outpatient or residential AODE shall establish a treatment plan for each client that:

- (a) Is specific, measurable, and outcomes-focused;
- (b) Is based on the biopsychosocial assessment made of the client in accordance with Section 18 of this administrative regulation;
- (c) Is initiated upon the client's admission;
- (d) If applicable, includes pharmacological treatment modalities to manage opioid use disorder;
- (e) Is entered into the client's record within:
  1. Seventy-two (72) hours following the client's admission to a residential AODE program;
 and
  2. Thirty (30) days following the client's admission to an outpatient AODE program;
- (f) Is reviewed at least:
  1. Every two (2) weeks in a residential AODE program;
  2. Quarterly in an outpatient AODE program providing intensive outpatient services or partial hospitalization; and
  3. Every thirty (30) days for:
    - a. Outpatient treatment services;
    - b. Ambulatory withdrawal management services;
    - c. Office-based opiate treatment services; or
    - d. A narcotic treatment program;
- (g) Is rewritten every six (6) months; and
- (h) Is revised as necessary based on a change in treatment needs.
- (2) Each client shall be continually assessed by the outpatient or residential AODE using the most recent version of the ASAM criteria to assess level of care and needs.
- (3) Problems, strengths, and needs identified in the placement, assessment, and treatment planning shall be addressed:
  - (a) Directly by the outpatient or residential AODE; or
  - (b) Through referral to appropriate services.
- (4) An outpatient or residential AODE shall provide the following services in accordance with a client's treatment plan:
  - (a) Orders for medication, medical treatment, and other services, including the type and frequency of contact, if applicable;
  - (b) Treatment for substance use disorder, including a plan to:
    1. Reduce symptoms and severity; and
    2. Improve treatment outcomes;
  - (c) Integrated treatment of co-occurring disorders, either on-site or through the coordination of treatment services with an appropriate mental health facility, if applicable;
  - (d) Vocational and educational services if needed, either on-site or by referral to community resources;
  - (e) Opportunities for the client to voluntarily participate in support group meetings during treatment; and
  - (f) Family supports, recovery supports, spiritual, housing, and social support services as needed.
- (5) An outpatient or residential AODE shall document in the client's record:
  - (a) Evidence of client participation in the development and implementation of the treatment plan;
  - (b) The staff responsible for implementation of the treatment plan;
  - (c) Dated signatures of the client and participating multidisciplinary team members;
  - (d) Long-term and short-term goals with timeframes for achievement;
  - (e) The assessment measures for determining the effectiveness of, and client satisfaction



with, treatment or services including assessments of client adherence to and engagement with treatment and recovery support services;

- (f) The time intervals for review of the client's response to treatment or services;
- (g) Discharge plans; and
- (h) Transfer plans, if applicable.

(6) Practitioners in each of the services providing care to a client shall participate in the development of the treatment plan relative to the services the practitioner shall provide.

(7) The client and the client's family, with consent from the client, if considered appropriate, shall participate in the development of the client treatment plan, which shall include an after-care plan to prepare the client for life after leaving rehabilitation.

(8) If a physician or other clinician documents in the client's clinical record that the client's participation in the development of the client treatment plan is medically contraindicated, a member of the multidisciplinary team providing services to the client shall:

- (a) Review the client's treatment plan with the client prior to implementation; and
- (b) Inform the client's family or legal guardian of the treatment plan with consent of the client.

(9) If the family or legal guardian of a client does not agree to participate in the treatment planning, the outpatient or residential AODE shall document the:

- (a) Attempt to engage the family or legal guardian, with the client's consent, in the treatment planning process; and
- (b) Refusal to participate.

(10) The multidisciplinary team shall review the treatment plan and client treatment progress at least every thirty (30) days with the review and any revisions documented in the client's clinical record.

(11) Any revision of the treatment plan shall be based upon:

- (a) The client's response to the care provided;
- (b) The client's abilities and disabilities; and
- (c) Each team member's continuing reassessment of services rendered.

(12) Results of random drug and alcohol screening shall be incorporated into therapeutic interventions and the treatment planning process.

Section 20. Denial, Emergency Suspension, and Revocation. (1) The cabinet shall deny or revoke a license if it finds that:

(a) There has been substantial failure in accordance with KRS 222.231(6) by the AODE to comply with the provisions of:

- 1. KRS Chapter 222; or
- 2. AODE licensure administrative regulations under 908 KAR Chapter 1;

(b) The AODE fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 5(2) or (5)(b) of this administrative regulation;

(c) The AODE fails to comply with the annual renewal process;

(d) The AODE denies access to the cabinet in accordance with Section 3(7) of this administrative regulation;

(e) The AODE's certification as a driving under the influence program is denied, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed clients at risk of death or serious harm;

(f) An individual having a significant financial interest in the AODE has, within the seven (7) year period prior to the application date, had significant financial interest in a facility or service that was licensed or certified by the cabinet, and the license or certificate to operate was de-

nied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm;

(g) An individual having significant financial interest in the AODE has been:

1. Previously discontinued or disqualified from participation in any governmental assistance program due to fraud or abuse of the program; or

2. The subject of disciplinary action taken against the individual by a professional licensing board for misconduct related to endangering a patient or client; or

(h) The cabinet finds that the applicant misrepresented or submitted false information on the application.

(2) For an outpatient AODE that operates an NTP, the cabinet shall deny or revoke a license in accordance with subsection (1) of this section or if it finds that:

(a) Take-home doses inconsistent with the dosage allowed by 908 KAR 1:374 Section 7 were issued without specific CSAT, DEA, or State Narcotic Authority (SNA) approval prior to issuance of the take-home doses;

(b) Take-home doses were outside the allowable difference between the labeled dosage of the approved controlled substance and the actual dosage as determined by the United States Pharmacopeia error rate;

(c) More than five (5) percent of the medical and dosing records reviewed are out of compliance with the requirements of 908 KAR 1:374 Section 7;

(d) There are discrepancies in the inventory reconciliation greater than five (5) percent;

(e) Clients were issued doses prior to completion of the intake procedures, including physical exam, except under SNA-approved circumstances;

(f) There is evidence in the client's record that the physician is not in control of the client's treatment;

(g) There is a pattern of issuing doses to clients before obtaining a signed consent to treatment with controlled substances; or

(h) There is a pattern of failing to perform the drug screening required by 908 KAR 1:374, Section 7.

(3) The denial or revocation of an AODE's license shall be issued in accordance with KRS 222.231(6).

(4) In accordance with KRS 222.231(6), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee submits a written request for a hearing within the thirty (30) day period.

(5) If an AODE requests a hearing in accordance with the timeframe established by KRS 222.231(6) and subsection (4) of this section, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed in accordance with KRS 13B.050 and KRS 222.231(7).

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action in accordance with KRS 13B.125 to suspend an AODE's license if the cabinet has probable cause to believe that the continued operation of the AODE would constitute an immediate danger to the health, welfare, or safety of its clients.

(b) Notice of an emergency suspension shall identify the particular reasons for the action.

(c) If requested, an emergency hearing shall take place in accordance with the requirements of KRS 13B.125(3).

(d) The sole issue of the hearing shall be whether there is immediate danger.

(e) The decision shall be rendered in accordance with KRS 13B.125(4).

Section 21. Incorporation by Reference. (1) "Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE)", 12/2018 edition, is incorporated

by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (24 Ky.R. 2485; 25 Ky.R. 355; 26 Ky.R. 1826; eff. 4-12-2000; TAm eff. 4-27-2016; 45 Ky.R. 2500, 3195, 46 Ky.R. 441; eff. 8-19-2019; TAm eff. 8-19-2019.)