

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Aging and Physical Disabilities**  
**(Amendment)**

**910 KAR 1:190. Nutrition program for older persons.**

RELATES TO: KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), ~~205.460~~, 205.465, 209A.030, 310.005, 310.021, 310.031, 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(1), (2), 42 U.S.C. 3030e

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3030e authorizes grants to states under state plans, approved under 42 U.S.C. 3027, to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet as the state agency to administer the Older Americans Act, 42 U.S.C. 3001 to 3058ff, in Kentucky and authorizes the cabinet to promulgate administrative regulations necessary to comply with any requirement imposed or required by federal law. This administrative regulation establishes the standards of operation for the nutrition program for older persons.

Section 1. Definitions.

- (1) "Area Agencies on Aging and Independent Living" or "AAAIL" means an entity designated by the state to administer, at the local level, the programs funded by the department.
- (2) "Area plan" means the plan that:
  - (a) Is submitted by a district for the approval of the department; and
  - (b) Releases funds under contract for the delivery of services within the planning and service area.
- (3) "Central kitchen" means an institutional kitchen which is equipped and used for preparing food to be sent to meal sites for service.
- (4) "Certified nutritionist" is defined by KRS 310.005 and KRS 310.031.
- (5) "Community" means a county designated as urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.
- (6) "Congregate meal" means a meal provided to a qualified individual in a congregate or group setting.
- (7) "Congregate nutrition services" means the provision of meals and related nutrition services in a group setting to older individuals that include:
  - (a) Nutrition education;
  - (b) Nutrition assessment;
  - (c) Nutrition counseling;
  - (d) Nutrition screening;
  - (e) Malnutrition screening;
  - (f) ~~(e)~~ Opportunities for social engagement at senior centers or on field trips; and
  - (g) ~~(f)~~ Volunteer roles that contribute to overall health and well-being.
- (8) "Congregate setting" means a senior center or a restaurant.
- (9) "Cycle menu" means a menu planned for at least five (5) weeks and repeated with modification for seasonal menu items.
- (10) "Department" means the Department for Aging and Independent Living.
- (11) "Dietary reference intakes" means the nutritional requirements~~[-]~~

~~{(a)}~~ established by the Food and Nutrition Board of the Institute of Medicine of the National Academies; ~~{and}~~

~~{(b)}~~ ~~{Included in DAHL-NP-17.9.8, Meal Planning Nutrient Requirements.}~~

(12) "District" is defined by KRS 205.455(4).

(13) "District nutrition program" means the program approved by the department and administered in each of the fifteen (15) planning and service areas in Kentucky by the districts or other contract agencies.

(14) "Home delivered meal" means a meal provided to a qualified individual in his or her place of residence.

(15) "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are homebound, such as:

(a) Nutrition screening;

(b) Malnutrition screening;

~~{(c)}~~ ~~{(b)}~~ Nutrition education;

~~{(d)}~~ ~~{(c)}~~ Nutrition assessment; and

~~{(e)}~~ ~~{(d)}~~ Nutrition counseling.

(16) "Licensed dietitian" is defined by KRS 310.005(11).

(17) "Meal" means a portion of food that:

(a) Provides the equivalent of one-third (1/3) of the dietary reference intakes;

(b) Meets the requirements of the Dietary Guidelines for Americans; and

(c) Is served with optional condiments to complete the meal as approved by the licensed dietitian or certified nutritionist.

(18) "Modified atmosphere packaging" means the method of extending the shelf life of fresh food products where the atmospheric air inside a package is replaced with a protective gas mix that helps ensure the product stays fresh for as long as possible.

(19) "Modified Meal" means a meal that has an altered texture such as pureed, chopped, or thickened liquids to accommodate the needs of an individual with difficulty in chewing or swallowing.

~~{(20)}~~ ~~{(19)}~~ "Nontraditional meal" means a meal approved by the department that is cold, frozen, dried, canned, or modified atmosphere packaging.

~~{(21)}~~ ~~{(20)}~~ "Nutrition counseling" means individualized guidance:

(a) To an individual who is at nutritional risk because of the individual's health or nutritional history, dietary intake, chronic illness, or medications use, or to caregivers; and

(b) Provided one-on-one by a licensed dietitian to address options and methods for improving the individual's nutrition status.

~~{(22)}~~ ~~{(21)}~~ "Nutrition screening" means the identification of those at risk of poor nutrition in accordance with Section 9 of this administrative regulation.

~~{(23)}~~ ~~{(22)}~~ "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

~~{(24)}~~ ~~{(23)}~~ "Nutrition Services Incentive Program" or "NSIP" means federally provided incentives to encourage and reward effective performance by states in the efficient delivery of nutrition meals to older individuals.

~~{(25)}~~ ~~{(24)}~~ "OAA" means the Older Americans Act of 1965, as amended, with the relevant portions of the federal law for purposes of this program codified as 42 U.S.C. 3030a to 3030g-22.

~~{(26)}~~ ~~{(25)}~~ "Rural" means a community with less than 50,000 population living in a rural area as designated by the most current listing from the U.S. Census Bureau.

~~{(27)}~~ ~~{(26)}~~ "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity that specifies the yield and portion size adjusted for the requirements of the nutrition program for older persons.

~~(28)~~ ~~[(27)]~~ "State nutrition program for older persons" means the nutrition program administered by the department, consisting of:

- (a) Meals;
- (b) Nutrition screening and education; and
- (c) Nutrition assessment and counseling.

~~(29)~~ ~~[(28)]~~ "Target group" means:

- (a) Low-income individuals, including low-income minority older individuals;
- (b) Older individuals with limited English proficiency;
- (c) Older individuals residing in rural areas; or
- (d) Older individuals at risk for institutional placement.

~~(30)~~ ~~[(29)]~~ "Traditional meal" means a ready to eat hot meal.

~~(31)~~ ~~[(30)]~~ "Urban" means a community with 50,000 or more population living in an urbanized area as designated by the most current listing from the U.S. Census Bureau.

## Section 2. Eligibility.

(1) Except as provided in subsection (2) of this section, an individual shall be eligible for congregate meals and congregate nutrition services if the individual:

- (a) Is aged sixty (60) or older;
- (b) Is the spouse of an individual aged sixty (60) or older; or
- (c) Has a disability and resides at home with the eligible older individual.

(2) The AAAIL may, in accordance with 42 U.S.C. 3030g-21(2)(H), (I), provide a congregate meal to:

- (a) A volunteer providing services during meal hours; or
- (b) An individual under age sixty (60) who:
  - 1. Has a disability; and
  - 2. Resides in a housing facility primarily occupied by older individuals at which congregate nutrition services are provided.

(3) An individual shall be eligible for home-delivered meals and home-delivered nutrition services if the individual:

- (a)
  - 1. Is a person aged sixty (60) or over, or the spouse of a person aged sixty (60) or over;
  - 2. Is unable to attend a congregate site because of illness or an incapacitating disability; and
  - 3. Does not have a person in the home able to prepare a nutritious meal on a regular basis; or
- (b)
  - 1. Is under age sixty (60);
  - 2. Has a disability; and
  - 3. Resides with a homebound individual aged sixty (60) or over.

(4) Eligibility for the Homecare Program home-delivered meals shall be in accordance with 910 KAR 1:180.

## Section 3. District Nutrition Funding. The district nutrition program may include meals or nutrition services from the following funding sources:

- (1) Congregate or home delivered meals funded by the OAA;
- (2) Home delivered meals as specified in 910 KAR 1:180 funded by the State Homecare Program;
- (3) A congregate meal as specified in 910 KAR 1:160 funded by the State Adult Day and Alzheimer's Respite Program;
- (4) NSIP funding for expansion of meals served in the state; or
- (5) Other funds designated in the AAAIL's approved area plan, such as United Way or other local funding.

Section 4. Congregate Nutrition Services.

(1)

(a) Congregate meals shall be provided by a nutrition service provider who, five (5) or more days per week, in each rural or urban community within the nutrition service provider's service and planning area, provides at least one (1) hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide in a congregate setting.

(b) A waiver may be approved by the department for a rural area to serve less frequently if the budget does not sustain five (5) days per week, pursuant to 42 U.S.C. 3030e.

(2) The requirements established in this subsection shall apply to the transportation of meals to a congregate site.

(a)

1. Bulk foods shall be transported in a stainless steel pan or aluminum disposable pan in an insulated container.

2. Use of plastic shall be restricted to cold foods only.

(b)

1. Hot items shall be transported in a bulk container separated from cold products.

2. A container shall be preheated or prechilled before being loaded.

(3) The order of service shall be as established in this subsection.

(a) Congregate meals shall be served after packaging the home delivered meals.

(b) Nutritional site personnel shall check and record temperatures of congregate meals daily.

(c) Milk or other cold food items shall not be preset on a table prior to meal service.

(d) A table shall not be preset with eating or drinking utensils more than four (4) hours prior to meal service unless each item is individually wrapped.

(e) A preset table shall not be used for activities prior to meal service.

(f) After all participants have been served, volunteers or other staff may be served.

(4) If more meals were prepared than arrived guests at meal time, after guests have been served, left over full meals may be packaged for frozen meals to be used for emergency or weekend meals.

~~(5) [(g)]~~ Food items left over after packaging for emergency or weekend meals~~at the point of service~~ shall be:

~~(a) [1.]~~ Offered as seconds to a participant, if requested by the participant and after all have been served;

~~(b) [2.]~~ Donated to a local facility, such as a food bank or homeless shelter if overproduced; or

~~(c) [3.]~~ Discarded.

~~(6) [(4)]~~

(a) Only complete meals shall be claimed for payment.

(b) Omission of required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement.

(c) Refusal by a participant of specific meal components shall not render that meal incomplete.

~~(7) [(5)]~~

(a) A participant shall be allowed to carry out left over foods.

(b) Center staff shall assure that a participant is advised concerning the risks involved if foods are held at unsafe temperatures.

(c) Staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

~~(8) [(6)]~~ A participant shall have an opportunity to complete a satisfaction survey to evaluate meals and service at least annually.

(2) ~~((7))~~

(a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider or AAAIL and include at a minimum one (1) session per month at each nutrition site.

(b) The education program shall include a variety of teaching methods on the following topics:

1. Nutrition and its relevance to health promotion and disease prevention;
2. Consumer approaches to food safety and food purchasing;
3. Food fads and diets;
4. Physical activity; and
5. Activities to modify behavior and improve health literacy, including providing information and optimal nutrients.

(c) An annual nutrition education plan shall be developed by the AAAIL and the nutrition service providers.

(d) The plan shall include a minimum of one session each month at each nutrition site.

(e) The plan shall include a variety of topics using a wide range of teaching techniques.

(f) The plan shall include how educational materials shall be provided to home delivered meals clients at least monthly.

(g) The plan and educational materials shall be provided in the participants preferred language.

(h) The DAIL Senior Health and Wellness Newsletter may be utilized to meet the nutrition education requirements monthly.

#### Section 5. Home Delivered Nutrition Services.

(1) Home delivered meals shall be provided by a nutrition service provider who, five (5) or more days a week, in each rural or urban community within the nutrition service provider's service and planning area, provides at least one (1) home delivered hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide.

(2)

(a) Except as provided in paragraph (b) of this subsection, a meal shall be delivered only to an eligible person in the eligible person's home. The delivery driver shall leave the meal only if:

1. The delivery driver sees or hears the participant;
2. The delivery driver takes the meal to the door of a person residing in a multi family residence; or
3. The participant living in a single family home acknowledges the delivery through electronic means such as a video doorbell, or intercom.

(b) A meal may be left with a designee of the older person if the designee has been informed of the requirements of the nutrition program and provides assurance they have the ability ~~[has indicated a willingness]~~ to comply with the following~~[those]~~ requirements:~~[-]~~

1. Store cold foods in a manner that maintains cold food below forty-one (41) degrees Fahrenheit; and
2. Store hot foods in a manner that maintains the temperature above 135 degrees Fahrenheit; or
3. Store hot foods below forty-one (41) degrees Fahrenheit.

(c) For a traditional meal, an AAAIL shall train and monitor delivery staff to ensure that the meal participant or designee acknowledges delivery of the meal.

(3) Documentation for the provision of a non-traditional meal shall show:

(a) The participant has expressed a preference for the non-traditional meal or lives off an established route;

- (b) Proper storage and heating facilities are available in the home;
  - (c) The participant is able to prepare and consume the meal alone or with available assistance; and
  - (d) Cost is no more than a traditional meal.
- (4)
- (a) A provider of home delivered meals shall use methods of delivery that shall be delivered in a sanitary manner to prevent outside contamination and hold food at appropriate temperatures as specified in paragraph (b) of this subsection.
  - (b) Meals shall be delivered in accordance with the requirements established in this paragraph.
    1. Delivery routes shall be established by the nutrition service provider to minimize nutrient loss and to facilitate temperature retention.
    2. Meals shall be delivered within four (4) hours from the end of preparation to the final destination.
    3. Hot food shall be maintained at or above 135 degrees Fahrenheit.
    4. Cold food shall be maintained at or below forty-one (41) degrees Fahrenheit, and ice may be used if the food containers are constructed to prevent water seepage into the food.
    5.
      - a. Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route.
      - b. If the temperatures are not consistent with the requirements of subparagraphs 3. and 4. of this paragraph, the nutrition site personnel shall check and record the meal temperatures daily until the temperatures are consistent with those requirements.
    6. Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination.
    7.
      - a. Frozen meals shall be maintained in a frozen state during delivery.
      - b. If the meal has thawed to the extent that ice crystals are not contained in the meal or the temperature is above forty (40) degrees Fahrenheit, the meal shall not be refrozen for later use. The meal shall be either:
        - (i) Heated and consumed immediately; or
        - (ii) Discarded.
- (5) A participant shall have an opportunity to:
- (a) Complete a satisfaction survey developed by the nutrition service provider to evaluate meals and services at least annually; and
  - (b) Provide ongoing comments for preparation of menus.
- (6)
- (a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider and shall include a minimum of one (1) session each month for the home delivered meal participant.
  - (b) The program shall include nutrition training as specified in Section ~~4(9)(b)~~~~[4(8)(b)]~~ of this administrative regulation.
- (7) A nutrition service provider shall have a contingency plan in place to replace a meal if the meal:
- (a) Does not register the correct temperature on delivery; or
  - (b) Is not delivered.

#### Section 6. Emergency Meals.

- (1) Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special

need.

(2) An emergency meal shall:

(a) Be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these types of meals;

(b) Meet the nutritional requirements of this program;

(c) Follow a menu that has been:

1. Approved by a certified nutritionist or licensed dietitian;

2. Planned for a minimum of three (3) days; and

3. Delivered, reported and billed in the same month; and

(d) Use frozen meals only if the:

1. Participant is able to store, prepare, and consume the meal alone or with available assistance; and

2. Delivery system is arranged so that storage time after delivery is minimal.

(3) Water shall be provided, if necessary, to prepare a meal.

(4) The menu plan shall include some foods which require no cooking prior to consumption.

(5) One (1) dish meals may be used if the nutritional requirements of the Dietary Guidelines of Americans are met.

(6)

(a) Foods may be taken to the nutrition site.

(b) A participant may assist with packaging foods for distribution if the participant is a volunteer at the nutrition site.

(7) An emergency meal package shall be distributed to the eligible homebound client receiving home delivered meals.

(8) Emergency meals may be used for a congregate participant if the center is closed.

#### Section 7. Nutrition Services Incentive Program (NSIP).

(1) Additional funding received from the NSIP for the nutrition program shall be used exclusively to purchase food and shall not be used to pay for another nutrition-related service or for state or agency administrative costs.

(2) The department shall disburse NSIP monies to AAAILs based upon the AAAIL's proportion of the total number of eligible meals served in the state.

(3) The AAAIL shall:

(a) Expend NSIP monies within the fiscal year funds are allocated by the department;

(b) Use the NSIP funds to expand the total number of meals provided in the state;

(c) Not use the NSIP funds to reduce funds from any other grant or contract which the provider may be given;

(d) Maintain records to show the amount of cash received and how it was expended;

(e) Only use the NSIP funds to purchase:

1. Foods approved by the United States Department of Health and Human Services or other foods produced in the United States of America; or

2. Meals if the cost of the meal is quoted as a unit of service cost which includes both food and labor. Ready to serve meals may be purchased on a unit of service cost basis if each meal contains food equivalent in value to the current rate of reimbursement; and

(f) Serve meals through a nutrition service provider under the jurisdiction, control, management, and audit authority of the department and AAAIL and to eligible individuals as described in Section 2 of this administrative regulation.

(4) Financial records kept by the nutrition service provider shall show:

(a) Meals provided are bid without regard to NSIP reimbursement;

(b) NSIP funds are used as a revenue source for expansion of meals served in the state;

- (c) The unit of service cost of a meal is not reduced in anticipation of future NSIP reimbursement but is stated as a true cost in both bidding and reporting procedures; and
  - (d) Monthly financial reports reflect NSIP expenditures.
- (5) NSIP funding shall not be used for the following situations:
- (a) Meals served to individuals, guests, or staff less than sixty (60) years of age;
  - (b) Meals served to a person who is paying a set fee for the meal;
  - (c) Meals that are served to consumers that meet income eligibility criteria under other programs;
  - (d) Meals used as a non-federal match for other federal program funding;
  - (e) Alcoholic beverages and vitamin supplements;
  - (f) Sponsored meals if a set fee or charge is involved; or
  - (g) Meals served to individuals in nursing homes, adult day care, or assisted living facilities if the meal is a part of the per diem.

#### Section 8. Nutrition Program Costs.

- (1) Ready-to-serve meal costs shall include the following:
- (a) The cost of raw food, including food purchased with NSIP cash resources;
  - (b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;
  - (c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:
    - 1. Fringe benefits;
    - 2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and
    - 3. Wages paid for time spent in food and supplies inventorying, storing and receiving, and in direct supervision of employees;
  - (d) Equipment costs for capital items such as a:
    - 1. Range;
    - 2. Dishwasher;
    - 3. Truck or van;
    - 4. Steam table; or
    - 5. Freezer;
  - (e) The costs of space, related utility costs, equipment operation, maintenance and repair costs; and
  - (f) The nonlabor costs of transporting food, food storage, insurance, and general liability.
- (2) Food service and delivery costs shall include:
- (a) The total labor costs for serving foods and for home delivery of meals to a participant;
  - (b) Mileage and maintenance of vehicle costs for home delivery of meals;
  - (c) Costs incurred for nutrition education and nutrition outreach services; and
  - (d) Project management costs, including personnel, equipment, and supply costs.
- (3)
- (a) A food service contract bid shall be structured in accordance with Kentucky's Procurement Code, KRS Chapter 45A.
  - (b) Meals shall:
    - 1. Be bid without regard to funding source; and
    - 2. Contain both a meal preparation cost and a delivery cost.

#### Section 9. Responsibilities of AAAIL.

- (1) An AAAIL shall have written policies and procedures to carry out the AAAIL's responsibilities as established in this subsection. The AAAIL shall:

- (a) Solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science or an individual with comparable expertise in the planning of nutritional services pursuant to 42 U.S.C. 3030g-21(1);
- (b) Pursuant to 42 U.S.C. 3030g-21(2)(K), encourage individuals who distribute nutrition services to provide homebound older individuals with medical information approved by health care professionals, such as informational brochures on how to get vaccines in the individual's community for:
1. Influenza;
  2. Pneumonia; and
  3. Shingles;
- (c) Provide implementation and management of the state nutrition program for older persons;
- (d) Assure that a nutrition service provider provides:
1. At least one (1) meal per day in a congregate nutrition site or provide home delivered meals based upon a determination of a participant's needs;
  2. Meals to reach the maximum number of eligible older individuals consistent with the requirement established in 42 U.S.C. 3025(a)(2)(E);
  3. Nutrition screening ~~and~~, malnutrition screening, counseling and nutrition education services to address a participant's assessed needs and ensure that nutrition funds are used to provide these services.
    - a. Nutrition screening and malnutrition screening shall be provided for all participants of the nutrition program for older persons as outlined in the state data system at least annually.
    - b. The results of this screening shall be reported to the department.
    - c. A participant who receives a nutrition score of six (6) or higher shall have documentation of further action based on a referral to a:
      - (i) Dietitian for nutrition counseling; or
      - (ii) Participant's physician;
    - d. A participant who receives a malnutrition score of two (2) or higher shall have documentation of further action based on a referral to a:
      - (i) Dietitian for nutrition counseling; or
      - (ii) Participant's physician;
    - e. A participant shall receive follow up regarding their nutrition and malnutrition screening score within three (3) months of the assessment date to address the needs and concerns.
  4. Nutrition services to keep older persons healthy, reduce the older adult's risk of chronic disease and disability, and help the older adult to manage chronic diseases and conditions;
  5. An emergency plan for back up food preparation sites, nutrition sites, and meal delivery; and
  6. A plan for furnishing emergency meals during an emergency, such as:
    - a. Inclement weather conditions;
    - b. Power failure;
    - c. A disaster that may cause isolation; or
    - d. A medical emergency; and
- (e) Use meal contributions to increase the number of meals served and facilitate access to these meals~~[-, and]~~
- ~~[(f)] [Monitor the nutrition program a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies and central kitchens a minimum of one (1) time per year].~~
- (2) If the AAAIL is the provider of meals and services, the AAAIL shall comply with all responsibilities of the nutrition service provider as specified in Section 12 of this

administrative regulation.

#### Section 10. Nutrition Site Operation.

(1)

(a) Congregate meal services shall be funded at a site if the site has been approved by the department, in accordance with this section.

(b) The services shall not become operational until the department grants written approval through review of:

1. A completed DAIL-NP-17.96 Kitchen Checklist; and

2.

a. Pictures documenting compliance with the checklist; or

b. An on-site visit by the department.

(2) Prior to approval of any site, it shall be inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes; and

(c) The department for compliance with 42 U.S.C. 3027(a)(8).

(3) A site shall:

(a) Be located as near as possible to the target group of individuals;

(b) Comply with the confidentiality and disclosure requirements of KRS 194A.060(2); and

(c) Be clearly identified to the public with a sign.

(4)

(a) Selection of a site to offer congregate meal services shall be based on information on older people in its service area and on the advice of public and voluntary agencies serving the elderly.

(b) The following factors shall be given consideration in choosing a site:

1. Demographic information and projections;

2. Accessibility to the maximum number of people who are socially or economically deprived;

3. Proximity to other services and facilities;

4. Convenience to public or private transportation or location within comfortable walking distance for participants;

5. Clear of structural barriers or difficult terrain; and

6. The safety and security of participants and staff.

(5) A site shall:

(a) Take necessary actions to create for handicapped older people barrier-free access and movement within the facility in conformance with the requirements of 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973;

(b) Make arrangements for security of site equipment, furniture, and files;

(c) Have signs visible for exits, entrances, and other areas of importance;

(d) Adopt procedures for fire safety, including:

1. Fire drills;

2. Inspection;

3. Maintenance of fire extinguishers; and

4. Training by fire department personnel; and

(e) Maintain and repair the site.

(6) A site that does not meet the requirements of subsection (5) of this section shall comply with a corrective action plan administered by the department.

(7)

(a) A site shall have an individual, either volunteer or paid staff, who shall be responsible for the administration of the site.

(b) At least one (1) staff person or trained volunteer shall be present at the site during hours of operation.

(c) A site shall have available the following minimum services:

1. At least one (1) hot meal in accordance with Section 4 of this administrative regulation;
2. Outreach services that may be funded by Title III-B or Title III-C;
3. Information and referral; and
4. Nutrition education.

(d) An optional service may be home-delivered meals.

(e) A congregate meal shall be:

1. Prepared on site;
2. Catered; or
3. Prepared in a central kitchen.

#### Section 11. Kitchen Approval.

(1) A new kitchen preparing a congregate meal or home delivered meal shall not become operational until inspected by the following:

- (a) A local health department for compliance with applicable health codes;
- (b) A local fire department for compliance with fire and building safety codes;
- (c) An AAAIL inspector for compliance with DAIL-NP-17.96, Kitchen Checklist; and
- (d) The department utilizing the DAIL-NP-17.96, Kitchen Checklist, submitted in accordance with Section 10(1)(b)1. and 2. of this administrative regulation, for compliance with:
  1. Facility specifications;
  2. Food preparation; and
  3. Clean up.

(2) The department shall notify the AAAIL of kitchen operation approval within ten (10) days of the initial on-site visit.

#### Section 12. Responsibilities of Nutrition Service Providers.

(1) The nutrition service provider contracting to provide meals and services shall have written policies and procedures to carry out the responsibilities of the service provider as established in this subsection. The nutrition service provider shall:

- (a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018;
- (b) Provide a recipient with an opportunity to voluntarily contribute to the cost of the service. Pursuant to 42 U.S.C. 3030c-2(b), voluntary contributions:
  1. May be solicited if the method of solicitation is noncoercive; and
  2. Shall be encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level, at contribution levels based on the actual cost of the service;
- (c) Assure that an older person shall not be denied service because the older person does not or cannot contribute to the cost of the service;
- (d) Protect the privacy of each older person with respect to contributions;
- (e) Report to appropriate officials, such as Department for Community Based Services, EMS, local law enforcement, for follow-up, conditions or circumstances which place the older person or his or her household in imminent danger;
- (f) Make arrangements for services to older persons in weather-related or declared emergencies;
- (g) Assist a participant with access to benefits under other programs;
- (h) Employ staff to ensure that the service staff is based on the number of program participants and the type of services provided;

(i) Have a site director, on a paid or volunteer basis, responsible for activities at the site.

1. Congregate and home delivered meals funds shall pay up to a maximum of five (5) hours, per day, of a paid site director's time; and

2. Other funding sources may be used to pay for additional hours;

(j) Permit staff of the AAAIL, the cabinet, and federal representatives to monitor and inspect the operation of the site; and

(k) Attend meetings and training sessions as requested by the AAAIL and the department.

(2) The service provider contracting to provide meals only shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018; and

(b) Abide by the requirements of subsection (1)(i) through (k) of this section.

### Section 13. Meal Planning.

(1) Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of foods. The use of saturated fats, salt, and sugar shall be restricted to maintain good health, in accordance with the dietary reference intakes and the Dietary Guidelines for Americans.

(2) Menus shall be:

(a) Planned through a formal procedure for soliciting participant comments established in each district;

(b) Planned a minimum of one (1) month in advance or, if a cycle menu is planned, used at least for five (5) weeks;

(c) In compliance with the Dietary Guidelines for Americans;

(d) Provided to each participating older individual and shall include a meal plan to provide:

1. A minimum of thirty-three and one-third (33 1/3) percent of the allowances established in the dietary reference intakes, if the individual is provided one (1) meal per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(I);

2. A minimum of sixty-six and two-third (66 2/3) percent of the allowances established in the dietary reference intakes, if the individual is provided two (2) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A) (ii)(II); or

3. 100 percent of the allowances established in the dietary reference intakes, if the individual is provided three (3) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A) (ii)(III);

(e) Altered to meet participant dietary needs such as low sugar, low salt, low fat, or low cholesterol;

(f) Certified by ~~the~~ a Kentucky licensed dietitian or Kentucky certified nutritionist as meeting the nutritional requirements, unless:

1. Meals are provided through an approved national distribution center, and

2. Approved by the DAIL dietitian.

(g) Adhered to without substitution, unless a substitution is approved by the licensed dietitian or certified nutritionist. If a substitution is approved, the nutrition service provider shall provide a copy of the revised menu to the AAAIL; and

(h)

1. Posted in a conspicuous location, including at each congregate meal site and each preparation site; or

2. Provided in advance to each participant receiving home delivered meals.

(3) Special menus which allow for modified meals, religious, ethnic, cultural, or regional dietary practices may be provided if foods and preparations are available.

- (4)
  - (a) Additional foods, such as fresh produce, baked items, or donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition but shall not be considered part of the reimbursable program meal.
  - (b) Home-canned foods shall not be used.
- (5)
  - (a) If a potluck meal is served at a particular site, a congregate meal shall not be served at that site for that particular mealtime.
  - (b) Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

#### Section 14. Food Procurement.

- (1) Foods purchased for use in the nutrition program shall be obtained from sources which conform to the nutritional requirements of 902 KAR 45:005.
- (2)
  - (a) Term contracts may be used for repetitively purchased items.
  - (b) Fixed quantity contracting shall be used if definite items and quantities can be determined for future delivery dates.

#### Section 15. Food Preparation.

- (1)
  - (a) Standardized recipes shall be used in food preparation and yield shall be indicated.
  - (b) Recipes shall specify the yield and portion size adjusted for the requirements of the nutrition program for older persons.
- (2) The standards established in this section shall apply for quality control.
  - (a) Food production standards.
    - 1. The handling and preparation of food shall be conducted in safe and hygienic conditions pursuant to 902 KAR 45:005 State food service code.
    - 2. ~~1.1.~~ Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe.
    - 3. ~~2.2.~~ Protein foods shall be cooked completely once the cooking cycle has begun.
    - 4. ~~3.3.~~ Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe.
    - 5. ~~4.4.~~ Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.
  - (b) The holding time for hot foods shall not exceed four (4) hours after preparation.
  - (c) Temperature standards.
    - 1. Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 135 degrees Fahrenheit during transportation and service.
    - 2. Cold foods shall not exceed forty-one (41) degrees Fahrenheit during transportation and service.
    - 3. Thermometers used to check food temperatures shall be:
      - a. Of metal stem-type construction;
      - b. Numerically scaled;
      - c. Accurate to plus or minus three (3) degrees Fahrenheit; and
      - d. Checked periodically to ensure that each thermometer is registering accurately.
    - 4. Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.
    - 5. Infrared thermometers may be used for lettuce-based salads, sandwich garnishes, and during the home delivery route to check weekly temperatures of hot and frozen meals.

(3)

- (a) Food preparation facilities shall be in compliance with state and local fire, health, sanitation, and safety administrative regulations which apply to food service operations.
- (b) A food preparation and service kitchen shall be inspected periodically by state and local health officials and the department dietitian.
- (4) Standards for food handling and personal hygiene shall be in accordance with the food service requirements of the Kentucky Food Code governed by 902 KAR 45:005.

Section 16. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "DAIL-NP-17.96 Kitchen Checklist", edition 5/12; and
  - (b) [~~"DAIL-NP-17.9.8, Meal Planning Nutrient Requirements", December 30, 2009; and~~]
  - ~~[(c)]~~ "Dietary Guidelines for Americans", most current version [2010], U.S. Department of Agriculture, and U.S. Department of Health and Human Services and may be accessed online at [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov).
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
- ~~[(3)] [The Dietary Guidelines for Americans may be accessed online at [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov).]~~

*VICTORIA ELRIDGE, Commissioner*  
*ERIC C. FRIEDLANDER, Secretary*

APPROVED BY AGENCY: November 4, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 24, 2022, 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 January 14, 2022, 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 January 31, 2022. 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](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person: Phyllis Sosa or Krista Quarles**

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:**

This amended regulation helps provide guidance that follows the Older Americans Act Nutrition programs.

**(b) The necessity of this administrative regulation:**

This amended regulation is needed to ensure that agencies receiving Older Americans Act funding are following the same guidance and have an outlined expectation of the programs.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:**

This administrative regulation amendment uses the authorized statutes as a base to build the guidance provided in this regulation. This amended regulation allows Kentucky to provide more in-depth detail of the Older Americans Act Nutrition Program that best fits the needs of Kentucky's older adults.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:**

This amended administrative regulation will clarify expectations for Older Americans Act Nutrition programs.

**(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 includes updates based on the USDA "Dietary Guidelines for Americans" that was recently updated in 2020. The amended administrative regulation also updates disaster/emergency preparedness requirements. The amendment also allows seniors the opportunity to receive culturally or therapeutic appropriate meals.

**(b) The necessity of the amendment to this administrative regulation:**

This amendment is needed to comply with current guidelines relevant to the Older Americans Act.

**(c) How the amendment conforms to the content of the authorizing statutes:**

This amendment conforms to the existing statutes by aligning expectations in accordance with updated federal guidelines that affect Kentucky's older adult population.

**(d) How the amendment will assist in the effective administration of the statutes:**

This amendment provides specific expectations that follow the existing statutes to best serve the older adults of Kentucky.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:**

Kentucky Department for Aging and Independent Living; 15 Kentucky Area Agency on Aging (which may include local governments on their boards); 1 million senior citizens living in Kentucky.

**(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:**

These agencies will need to insure they meet the specified expectations in the amendment. These amendments are to help simplify and streamline services while being mindful of budgets as well as keeping Kentucky's older adults in mind.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):**

The proposed amended regulation will not increase costs and may result in an actual reduction in costs.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):**

This amended regulation should result in cost savings to providers as well as loosening some of the current regulations.

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

**(a) Initially:**

None. Services are currently in place and there is no additional cost.

**(b) On a continuing basis:**

None. Services are currently in place and there is no additional cost.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:**

Older Americans Act funding, State and Local funds

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:**

There will not be a need for an increase of funding requests to implement these proposed changes.

**(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:**

No fees will be increased based on this amended regulation.

**(9) TIERING: Is tiering applied?**

There is no tiering for this program as there are no fees related to this program or regulation.

## FEDERAL MANDATE ANALYSIS COMPARISON

**(1) Federal statute or regulation constituting the federal mandate.**

29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

**(2) State compliance standards.**

KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031

**(3) Minimum or uniform standards contained in the federal mandate.**

29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

**(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?**

This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirements than the federal mandate.

**(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.**

This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirements than the federal mandate.

## 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?**

No answer provided.

**(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031, 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

**(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.**

This amended regulation will not affect expenditures and revenue. Services are currently in place and there is no additional cost.

**(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?**

This amended regulation will not generate revenue.

**(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?**

This amended regulation will not generate revenue.

**(c) How much will it cost to administer this program for the first year?**

This amended regulation will not require additional costs.

**(d) How much will it cost to administer this program for subsequent years?**

This amended regulation will not require additional costs.

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

**Revenues (+/-):0**

**Expenditures (+/-):0**

**Other Explanation:**