

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Epidemiology

(Emergency Amended at ARRS Committee)

902 KAR 2:213E. Childcare standards for covering the face in response to declared national or state public health emergency.

RELATES TO: KRS 211.180(1), 214.010, 214.645, 333.130

STATUTORY AUTHORITY: KRS 12.270(2), 39A.180, 194A.010, 194A.025, 194A.050(1), 211.025, 211.180(1), 214.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.020 requires the Cabinet for Health and Family Services to take action, promulgate, adopt, and enforce rules and regulations it deems efficient in preventing the introduction or spread of infectious or contagious disease within this state. KRS 211.025 requires the cabinet to perform actions reasonable necessary to protect and improve the health of the people. KRS 211.180(1) requires the cabinet to enforce administrative regulations to control communicable diseases. This administrative regulation establishes requirements for face covering in child care settings in response to a declared national or state public health emergency.

Section 1. Definition. "Face covering" means a material that covers the nose and mouth and that:

- (1)
 - (a) Is secured to the head with ties, straps, or loops over the ears; or
 - (b) Is wrapped around the lower face;
- (2) May be made of a variety of materials, including cotton, silk, or linen;
- (3) Shall have two (2) or more layers; and
- (4) Shall be factory-made, homemade, or improvised from household items such as a scarf, bandana, or t-shirt.

Section 2. Personal Protective Equipment (PPE) Requirements.

- (1) All staff, volunteers, visitors, parents, guardians, and all children age 2 and older who are able to wear a face covering, shall wear a face covering while inside a child care center or family child care home, unless they meet any of the exemption criteria established in subsection (5) of this section;
- (2) A provider shall make face coverings available to children, parents, guardians, and other adults permitted into the facility.
- (3)
 - (a) A provider shall require all children (2) years of age or older to wear a face covering;
 - (b) A child who is younger than two (2) years of age shall not wear a face covering due to increased risk of suffocation and strangulation;
 - (c) A face covering lanyard shall be prohibited for all children due to increased risk of suffocation and strangulation.
- (4) If a child age two (2) or older or an adult refuses to wear a face covering, or face shield as permitted by subsection (1)(c) of this section, the facility may refuse the individual the right to enter the facility.
- (5) The following shall not be required to wear a face covering:
 - (a) Any person who is sleeping or unconscious, or who cannot otherwise remove the face covering on their own;
 - (b) Any person with a disability, or a physical or mental impairment, that prevents them from safely wearing a face covering;

- (c) Any person who is deaf or hard of hearing and is actively communicating, or any person who is actively communicating with someone who is deaf or hard of hearing, an is able to maintain a safe distance of six (6) feet from all individuals who are not members of that person's household;
- (d) Any person engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to their health or safety;
- (e) Any person who is seated and actively consuming food or beverage;
- (f) Any person who is obtaining s service that requires temporary removal of the face covering in order to perform the service;
- (g) Any person who is required to temporarily remove their face covering to confirm their identity or for security or screening purposes;
- (h) Any person who is giving a speech or broadcast to an audience and is able to maintain a safe distance of six feet from all individuals who are not members of the person's household;
- (i) Any person who is in a swimming pool or other body of water indoors;
- (j) Any person who is actively engaged in exercise indoors in a facility; and
- (k) Any person who is engaged in a lawful activity where federal or state law prohibits wearing a face covering.

Section 3. Effective Date.

- (1) In accordance with KRS 13A.190, this administrative regulation shall remain in effect until:
 - (a) Expiration of the time period established by KRS 13A.190; or
 - (b) Withdrawn in accordance with KRS 13A.190(12).
- (2) The Cabinet for Health and Family Services shall regularly consult with the Governor's Office, the Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190.

Section 4. Reference. Guidance on how to make a face covering at home is available at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>.

Section 5. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on August 17, 2021.

FILED WITH LRC: August 17, 2021

CONTACT PERSON: Krista Quarles, Policy Specialist, 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.