CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Program Integrity
(Amendment)

908 KAR 3:010. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B
STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060, EO 2004-726, SB 100 2022 Regular Session
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, created the Cabinet for Health and Family Services and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities within the cabinet. KRS Chapters 202A and 202B, relating to the hospitalization of an individual with mental illness, developmental or intellectual disabilities, direct that the Secretary for the Cabinet for Health and Family Services shall adopt rules and administrative regulations which insure proper administration and enforcement of these chapters. The function of this administrative regulation is to describe the rights of an individual with mental illness, developmental or intellectual disabilities patients and to establish rules for the use of seclusion, restraint, and treatment under emergency situations, in the treatment of these patients.

Section 1. Definitions. For purposes of this administrative regulation, the following definitions shall apply:

(1) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:
  (a) A statement of the diagnosis of the patient;
  (b) The short and long-range objectives of care and treatment;
  (c) The methods of treatment to be employed;
  (d) The names of persons responsible for preparing and implementing the plan.

(2) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:
  (a) Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless the changes involve introduction of new classes of medication including antipsychotic or anticonvulsant drugs;
  (b) Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless the changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.

(3) "Emergency situation" means the presence of a situation in which a patient's behavior in the present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.
  (a) Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;
  (b) Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or

residential treatment center by the patient which presents an immediate and substantial danger to that person or to others may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of the patient's individual treatment plan and as to the rules and procedures which may be applicable to the patient's behavior.

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to an individual with mental illness, developmental or intellectual disabilities resident with the sole or primary purpose of controlling or limiting the physical activities of the patient or resident.

(5) "Seclusion" means the confinement of ~~[a]~~an individual with mental illness, developmental or intellectual disabilities patient alone in a locked room.

(6) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

Section 2. Right to be Adequately Informed. Each patient shall be adequately informed as to the patient's individual treatment plan.

(1) A written individual treatment plan shall be prepared and entered into the medical record of each patient. The treatment plan shall be subject to periodic review and shall be modified in the event of substantive changes;

(2) Each patient and the patient's authorized representative shall have access to a written copy of the patient's individual treatment plan;

(3) Upon written request, each patient and the patient's authorized representative shall also be provided access to the patient's entire medical record. In the event that full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for such refusal;

(4) In the case of minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians or other members of the immediate family shall be entered into the medical record if these persons can be located.

Section 3. Right to Assist in Treatment Plan. Each patient shall have the right to assist in the planning of the treatment program.

(1) Each patient shall be informed of the contents of the patient's individual treatment plan and the verbal, written or behavioral responses to this information shall be entered in the medical records. If possible, the responses of a patient to the patient's treatment plan shall be used to review and modify its contents including, but not limited to, the objectives and methods of treatment to be employed;

(2) In the cases of minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if these persons can be located.

Section 4. Right to Refuse Treatment.

(1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. The refusal shall be clearly documented in the medical records.

(a) All patients, whether admitted voluntarily, or committed on an involuntary basis as the result of a hearing held pursuant to KRS Chapter 202A or 202B, have the right to refuse treatment. A patient who refuses treatment may be forcibly treated only pursuant to a court order after a de novo review as set forth in KRS 202A.196.

(b) If no court findings exist to support the implementation of a specific treatment plan which is unacceptable to the patient, the treatment may be implemented or continued only in an emergency situation documented in the medical records of the patient. The hospital or residential treatment center shall seek to develop an alternative plan of treatment acceptable to both the hospital or residential treatment center and the patient or secure a court order sanctioning forced treatment. If the hospital or residential treatment center and a voluntarily admitted patient cannot agree on an acceptable alternative plan of treatment, the hospital or residential treatment center may discharge the patient or pursue other remedies under law as may be necessary. If the hospital or residential treatment center prior to obtaining a judicial order for forced treatment determines that an emergency exists and that the patient presents an immediate and substantial danger or threat of immediate and substantial danger to self or others, the hospital or residential treatment center may intervene in the least intrusive manner possible while simultaneously seeking a de novo review.

(2) Refusal to participate in the treatment plan shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which the patient has at the time of refusal unless such privileges are clearly documented in the individual treatment plan as being contingent upon participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the treatment review committee shall be informed and shall proceed according to law.

Section 5. Right to Personal Effects.

(1) Each patient shall have the right to maintain, keep, and use personal effects, items or money except in the following instances:

(a) Retention of the item would be contrary to the patient's individual treatment plan;

(b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;

(c) Retention of the item would subject it to a substantial risk of loss, theft or destruction by the patient or other persons;

(d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or

(e) Retention of the item is contrary to rules and administrative regulations of the hospital which are reasonably related to the health and safety of the patient or other patients, except that the rules and administrative regulations shall be waived when possession of the item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of the items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors.

(1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

(a) Exercise of the right would be inconsistent with the written provisions of the individual treatment plan, or

(b) An emergency situation exists.

(2) Each hospital or residential treatment center shall establish and post conspicuously rules governing visitors and visiting hours.

(3) All patients shall also have the right to refuse to meet with friends or relatives except that the right may be waived if the meetings are prescribed in the patient's individual treatment plan.

(4) Patients shall have the right to meet their authorized representative during nonvisitation hours, if suitable arrangements are made in advance with the hospital or residential treatment centers.

(5) All patients shall have the right to name an essential personal care visitor as defined and established in 900 KAR 14:010.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.

(1) All patients shall be provided compensation as designated by appropriate federal and state statutes and regulations for work performed at a hospital or residential treatment center where the work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.

(2) The patient shall have the absolute right to refuse to perform any work except activities of immediate and direct benefit to the patient and the patient's personal comfort.

Section 8. Right to De Novo Review. Involuntarily committed patients may be provided electroshock therapy or psychosurgery only pursuant to a court order after a de novo review as set forth in KRS 202A.196.

Section 9. Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residential treatment facilities shall be limited and shall be carried out only with appropriate precautions.

(1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior which is the result of mental illness shall be instituted only when part of an individual treatment plan or in an emergency situation.

(2) If use of seclusion or restraints is warranted under this section, the following rules shall apply:

(a) The medical records shall document the conditions which prevail at the time of the use of these treatments and shall include the order of a licensed physician prescribing or justifying the treatment;

(b) Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints other than to prevent or treat self-inflicted injury or to treat a concomitant medical or surgical disorder shall be individually observed and the need for continuing restraints or seclusion determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician and the reasons for continued use of this treatment procedure shall be documented in the medical records;

(c) The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;

(3) No order by a licensed physician for seclusion or use of mechanical restraints shall be effective longer than twenty-four (24) hours after the treatment is implemented, and must be renewed if the treatment continues to be necessary, except where the treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder; provided that any renewal order shall state the necessity for the continued treatment.

(4) In no circumstances shall restraints or seclusion be used principally or solely for the treatment of mental illness except as part of the documented individual treatment plan or

in response to a documented emergency unless the treatment has received a review and approval by the court.

WENDY T. MORRIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 16, 2022
FILED WITH LRC: February 21, 2022 at 12:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 23, 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 hearing shall notify this agency in writing by May 16, 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 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 May 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Rachael Ratliff or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This amended administrative regulation establishes guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

(b) The necessity of this administrative regulation:

This amended administrative regulation is necessary to comply with Senate Bill 100 (2022 Regular Session).

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

This amended administrative regulation conforms to the content of Senate Bill 100 (2022 Regular Session) by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

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

This amended administrative regulation assists in the effective administration of the statutes by establishing guidelines for implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

(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 amended administrative regulation will incorporate the provisions of SB 100 for essential personal care visitor programs.

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

This amended administrative regulation incorporates the provisions of SB 100 for essential personal care visitors to residents in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals

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

This amended administrative regulation incorporates the provisions of SB 100.

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

This amended administrative regulation will incorporate the provisions of SB 100 and the essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

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

This amended administrative regulation affects assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals. There are 10 state-owned or operated assisted-living communities and long-term care facilities; and 3 state-owned or operated psychiatric hospitals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

In accordance with the requirements of Senate Bill 100 and this administrative regulation, individuals designated as essential personal care visitors shall be exempt from any prohibitions on visiting a resident of an assisted-living community, long-term care facility, or state-owned or operated mental or psychiatric hospital.

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

There will not be significant costs to facilities to implement essential personal care visitor programs.

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

Essential personal care visitor programs are intended to help enhance the well-being and quality of life of Kentuckians in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

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

(a) Initially:

There are no additional costs to the Cabinet for Health and Family Services for implementation of this amended administrative regulation.

(b) On a continuing basis:

There are no additional costs to the Cabinet for Health and Family Services for implementation of this amended administrative regulation on a continuing basis.

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

State general funds and agency monies are used to implement and enforce this administrative regulation.

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

No increase in fees or funding is necessary to implement this amendment.

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

This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This amended administrative regulation impacts assisted-living communities, long-term care facilities, state-owned or operated psychiatric hospitals, and the Cabinet for Health and Family Services.

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

Senate Bill 100 (2022 Regular Session)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

This amended administrative regulation will not generate revenue for state or local government.

(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 administrative regulation will not generate revenue for state or local government for subsequent years.

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

This amended administrative regulation imposes no additional costs on the administrative body.

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

No additional costs will be incurred to implement this amended administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: