

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(Amendment)

902 KAR 30:120. Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 211.647, 216.2970, 34 C.F.R. ~~{303.11, 303.321, }303.322, 303.421~~, ~~20 U.S.C. 1434~~

STATUTORY AUTHORITY: KRS 194A.050, 200.660(7), 34 C.F.R. 303.300, 303.321, 20 U.S.C. 1434

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds ~~{appropriated}~~ to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation, eligibility, and redetermination of eligibility requirements for the Kentucky Early Intervention System (KEIS)~~{First Steps, Kentucky's Early Intervention program}~~.

Section 1. Initial Eligibility.

- (1) Initial eligibility shall be determined by the review ~~{and synthesis}~~ of:
 - (a) The results of at least one (1) multi-domain evaluation instrument designed to confirm the presence of a significant developmental delay;
 - (b) Information about the infant or toddler's~~{child's}~~ developmental history through parent interview;
 - (c) Identification of the infant or toddler's~~{child's}~~ level of functioning in each developmental area;
 - (d) Information from other sources, such as childcare workers; and
 - (e) All available relevant medical and educational records.
- (2) An infant or toddler ~~{A child}~~ shall be eligible for services~~{First Steps service}~~ if the infant or toddler~~{child}~~:
 - (a) Is between~~{age}~~ birth and~~{up to}~~ three (3) years of age;
 - (b) Is a resident of Kentucky or homeless within the boundaries of the state at the time of referral and resides in Kentucky while receiving early intervention services; and
 - (c)
 1. Has a documented established risk condition that has a high probability of resulting in developmental delay; or
 2. Is determined to have a significant developmental delay based on the evaluation and assessment process.
- (3) Eligibility by established risk conditions:
 - (a) In accordance with KRS 200.654(10)(b), an infant or toddler~~{a child}~~ meeting the criteria established in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible once the diagnosis is confirmed by a physician. The established risk condition shall be documented in the infant or toddler's~~{child's}~~ record through the KEIS online~~{First Steps}~~~~{on-line}~~ data management system.
 - (b) The ~~{First Steps}~~ established risk condition list shall be maintained by KEIS~~{the}~~ ~~{First Steps Program}~~.
 1. An infant or toddler ~~{A child}~~ with an established risk shall have a five (5) area assessment, assessing the five (5) areas listed in subsection (4)(a) of this section, completed by a primary level~~{developmental}~~ evaluator using a cabinet-approved, criterion-referenced assessment instrument in lieu of a norm-referenced evaluation, in accordance with 902 KAR 30:130.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing.

(4) Eligibility by developmental delay:

(a) An infant or toddler ~~[A child]~~ meeting the criteria established in subsection (2)(a) and (b) of this section shall be eligible for ~~[First Steps]~~ services if the infant or toddler~~[child]~~ is determined to have a developmental delay~~[fallen significantly behind in development]~~, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;
2. Total communication area through speech and language development, ~~that~~~~[which]~~ shall include expressive and receptive language;
3. Total physical development including motor development, vision, hearing, and general health status;
4. Total social and emotional development; or
5. Total adaptive skills development.

(b) Evidence of a developmental delay~~[falling significantly behind in developmental norms]~~ shall be determined on a norm-referenced test by the infant or toddler's~~[child's]~~ score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or
2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c)

1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by paragraph (b) of this subsection, a more in-depth standardized test in that area of development may be administered if the following is evident:

- a. The ~~[initial evaluator and a]~~parent ~~has~~~~[or guardian have]~~ a concern or suspects the infant or toddler's~~[suspect that the child's]~~ delay is greater than the testing revealed; and
- b. A different norm-referenced test tool reveals a standardized score ~~that~~~~[which]~~ would meet eligibility criteria~~;~~~~and~~
~~[e.] [There is one (1) area of development that is of concern].~~

2. The results of the alternate testing required by subparagraph 1. of this paragraph shall be considered as part of the infant or toddler's~~[child's]~~ eligibility if the standardized scores indicate a delay of at least two (2) standard deviations below the mean.

(5) Eligibility by professional judgment. An infant or toddler~~[A child]~~ may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

- (a) An approved neonatal follow-up program team, as described in 902 KAR 30:150 Section 2(3)~~(f)~~~~(e)~~;
- (b) An approved intensive level evaluation team, as described in 902 KAR 30:150 Section 2(3)~~(e)~~~~(d)~~; or
- (c) The designated record review team, if reviewing for eligibility.

Section 2. Initial ~~[Child]~~Evaluation.

(1) Prior to the administration of an evaluation instrument, the infant or toddler's~~[child's]~~ vision and hearing status shall be determined through screening or evaluation.

(2) An infant or toddler referred to KEIS ~~[A child referred to the First Steps Program]~~ who meets the criteria established in Section 1(2)(a) and (b) of this administrative regulation shall receive an initial evaluation if:

- (a) There is a suspected developmental delay ~~as~~ confirmed by the cabinet-approved screening protocol;
 - (b) The infant or toddler~~child~~ does not have an established risk diagnosis; and
 - (c) The parent requests and consents to an evaluation that includes norm-referenced and criterion-referenced instruments.
- (3) For an infant or toddler~~a child~~ without an established risk diagnosis, an initial evaluation shall be used to:
- (a) Determine developmental status; and
 - (b) Establish the baselines for progress monitoring.
- (4) For an infant or toddler~~a child~~ with an established risk diagnosis, a cabinet-approved criterion-referenced assessment shall be completed to:
- (a) Determine developmental status for program planning; and
 - (b) Establish the baseline for progress monitoring.
- (5)
- (a) Initial evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion-referenced assessment instrument, in accordance with 902 KAR 30:130.
 - (b) The initial evaluation shall include:
 1. A medical component completed by a qualified medical professional~~physician or nurse practitioner~~ that includes:
 - a. A complete history;~~and~~
 - b. Physical examination; and
 - c. Other medical information; and
 2. A developmental component completed by a cabinet-approved initial evaluator, in accordance with 902 KAR 30:150, that includes:
 - a. A statement of the infant or toddler's~~child's~~ health status during the evaluation, including notation of health issues that affect the results of the evaluation; and
 - b. Completion of each appropriate instrument needed to determine the infant or toddler's~~child's~~ unique strengths and needs.
 - (c) An evaluation report shall be entered into the KEIS~~First Steps online~~ data management system:
 1. Within five (5) business~~working~~ days of the completion of the evaluation; and
 2. In clear, concise language that is easily understood by the family.
- (6) Infant or toddler ~~Child~~ records of evaluations transferred from a developmental evaluator outside the program~~Kentucky Early Intervention System~~ shall be reviewed by the POE~~Point of Entry~~ staff and shall be used for eligibility determination if:
- (a) The records meet evaluation timelines established in subsection (7) of this section; and
 - (b) The records contain the developmental evaluation information required by subsection (5)(b) of this section.
- (7) If there is a developmental evaluation available, as required by subsection (5)(b) of this section, it shall be considered as part of the infant or toddler's~~child's~~ eligibility if the evaluation was performed within:
- (a) Three (3) months prior to referral to KEIS for an infant~~First Steps, for a child~~ under twelve (12) months of age; or
 - (b) Six (6) months prior to referral to KEIS for a toddler who is at least~~First Steps,~~ ~~for a child between~~ twelve (12) months up to~~of age and~~ three (3) years of age.
- (8)

- (a) An infant or toddler ~~[A child]~~ referred to KEIS~~[the First Steps program]~~ who was born premature~~[at less than thirty-seven (37) weeks gestational age]~~ shall be evaluated and assessed using an adjusted gestational age to account~~[correct]~~ for prematurity, unless the toddler~~[child]~~ is twenty-four (24) months of age or older at the time of the referral.
- (b) For an infant~~[a child]~~ who is less than six (6) months corrected age, the initial evaluation shall be done by an approved intensive level evaluation team, an approved neonatal follow-up program team, or an approved district child evaluation specialist in accordance with Section 1(5) of this administrative regulation.
- (9) If the infant or toddler~~[child]~~ does not have an established risk diagnosis and is determined not eligible, the POE staff shall:
- (a) Provide a ~~[First Steps]~~ Notice of Action (FS-9) in accordance with 34 C.F.R. 303.421; and
- (b) Discuss available community resources~~[- such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other community programs].~~
- (10) Eligibility for cases that are complex or have contradictory information from the initial evaluation shall be determined by record review. Upon receiving a referral, the record review team shall conduct a review of all available evidence and issue an eligibility determination within ten (10) calendar days. ~~[A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation] [system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.]~~
- ~~[(a)] [Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:]~~
- ~~[1.] [The child does not meet eligibility guidelines at the initial evaluation;]~~
- ~~[2.] [The initial evaluator and a parent or guardian have concerns that the child is developing atypically; and]~~
- ~~[3.] [A determination of eligibility based on professional judgment is needed.]~~
- ~~[(b)] [Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.]~~

Section 3. Annual Redetermination of Eligibility.

- (1) A redetermination of eligibility shall occur at least annually~~[not be used to address concerns that are medical in nature].~~
- (2) An infant or toddler ~~[A child]~~ shall have continuing program eligibility for ~~[First Steps]~~ services if:
- (a) The infant or toddler is eligible by age and residency~~[child is:]~~
- ~~[1.] [Under three (3) years old; and]~~
- ~~[2.] [A resident of Kentucky or homeless within the boundaries of the state]; and~~
- (b) The result of the most recent progress review, including the annual five (5) area assessment, demonstrates:
1. A significant delay in at least one (1) or more developmental areas; and
 2. Continued ~~[First Steps]~~ services are required in order to support continuing developmental progress.
- (3) Based on the results of the redetermination of eligibility, the IFSP team shall:
- (a) Continue with the same or modified outcomes and services; or
- (b) ~~[Continue with modified outcomes and services; or]~~
- ~~[(c)]~~ Transition the infant or toddler from~~[child from First Steps]~~ services.
- (4) Redetermination of eligibility shall not be used to address concerns that are medical in nature~~[occur at least annually].~~

(a) The annual redetermination shall be part of the infant or toddler's~~child's~~ ongoing assessment and shall include an assessment in all five (5) areas using a cabinet-approved criterion-referenced instrument, in accordance with 902 KAR 30:130, and shall be completed between thirty (30) and sixty (60) calendar days prior to the annual IFSP date.

(b) If a person directly involved in conducting the evaluation and assessments is unable to attend an IFSP meeting, arrangements shall be made for that person's involvement by other means including participating in an audio-only or audio-visual~~a telephone~~ conference call, designating~~having~~ a representative to attend the meeting, or making records and reports available at the meeting.

Section 4. Determination of ~~Child's~~ Hearing Status.

(1) If the referral is for an infant or toddler~~a child~~ who has a diagnosis of a~~significant~~ hearing loss, in accordance with~~as specified by~~ KRS 200.654(10)(b), the infant or toddler~~child~~ shall be considered to have an established risk diagnosis and be eligible for ~~First Steps~~ services and the referral process shall continue.

(2) If the referral is for an infant or toddler~~a child~~ who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having developmental delays, the POE staff shall initiate the evaluation ~~that for First Steps, which~~ shall include an audiological evaluation at a cabinet-~~an~~ approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "~~First Steps~~ Notice of Action (FS-9)", October 2021~~October 2012~~ edition; and

(b) "Kentucky Early Intervention System~~First Steps~~ Established Risk Conditions~~Condition list~~", January 2022~~January 2014~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and available by contacting the Kentucky Early Intervention System office at <https://chfs.ky.gov/agencies/dph/dmch/ecdb/fs/SLAcontacts.pdf>.

STEVEN J. STACK, MD, MBA

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 28, 2022

FILED WITH LRC: March 1, 2022 at 9:05 a.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 virtual 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 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 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. 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation outlines the processes necessary to determine a child's eligibility for early intervention services.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to ensure all infants and toddlers who are potentially eligible for early intervention services are referred and evaluated in a timely manner.

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

KRS 194A.050 authorizes the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs, and 34 C.F.R. 303.321 requires the state lead agency to ensure each child under the age of three who is suspected of having a disability is referred for evaluation or early intervention services, and receives a timely, comprehensive, multidisciplinary evaluation. KRS 200.660(7) requires the cabinet to develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner.

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

This administrative regulation ensures all infants and toddlers who are potentially eligible for early intervention services are properly evaluated and assessed. The evaluation and assessment procedures help ensure appropriate early intervention services are provided to the eligible infant or toddler and their family.

(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:

The amendment to this administrative regulation clarifies the evaluation and assessment procedures for infants and toddlers referred for early intervention services, expands the eligibility for infants and toddlers experience hearing loss, and revises the material incorporated by reference.

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

The amendment to this administrative regulation is necessary to ensure consistent evaluation and assessment procedures of potentially eligible infants and toddlers are followed, and to ensure infants and toddlers with a diagnosed hearing loss are evaluated and enrolled in early intervention services in a timely manner.

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

KRS 194A.050 authorizes the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its

programs, 34 C.F.R. 303.321 requires the state lead agency to ensure each child under the age of three who is suspected of having a disability is referred for evaluation or early intervention services, and receives a timely, comprehensive, multidisciplinary evaluation, and KRS 200.660(7) requires the cabinet to develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner.

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

The amendment to this administrative regulation will ensure the requirements of 34 C.F.R. 303.321, KRS 194A.050, and KRS 200.660(7) are met.

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

The amendment to this administrative regulation will impact approximately 200 children and parents. In addition, fifteen (15) initial evaluators, 160 service coordinators, and twenty-five (25) early intervention providers will be impacted by the amendment to this administrative regulation.

(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:

Parents of infants and toddlers who may be eligible for early intervention services will need to provide consent for and avail themselves and their child for the required assessment and evaluation. Service coordinators and initial evaluators will need to review available records and ensure the child and family are referred to the correct provider type to complete the assessment and evaluation. Early intervention providers will need to ensure the annual assessment is completed in a timely manner so continued eligibility can be determined.

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

There will be no costs to the regulated entities associated with compliance with this amended administrative regulation.

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

Children and their families will receive appropriate early intervention services that can reduce the ongoing, long-term costs associated with special education services.

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

(a) Initially:

It is estimated that the change in eligibility for hearing loss will result in an initial increase of \$600,000 in the first year.

(b) On a continuing basis:

It is estimated that the change in eligibility for hearing loss will result in an additional \$600,000 per year.

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

Early intervention services are funding through a mix of federal dollars, state general fund dollars, and nominal family fees.

(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:

An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

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

. There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied. While this administrative regulation does distinguish between eligibility due to developmental delay and eligibility due to an established risk condition, all infants and toddlers referred for early intervention services must have an assessment and evaluation completed.

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 administrative regulation impacts the Division of Maternal and Child Health, as well as any local health department that operates a point of entry.

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

KRS 194A.050, 200.660(7), 34 C.F.R. 303.300, 303.321, and 20 U.S.C. 1434.

(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 administrative regulation does 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 administrative regulation does not generate revenue.

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

The change in eligibility for hearing loss is anticipated to cost an additional \$600,000 the first year.

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

The change in eligibility for hearing loss is anticipated to cost an additional \$600,000 on an annual 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:

FEDERAL MANDATE ANALYSIS COMPARISON

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

34 C.F.R. 303.300, 303.321, and 20 U.S.C. 1434

(2) State compliance standards.

KRS 194A.050 authorizes the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

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

In order to receive federal funds, 20 U.S.C 1434 requires states to have a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the state and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the state. This administrative regulation ensures all potentially eligible infants and toddlers are evaluated for early intervention services.

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

No, this administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements.

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

Not applicable.