

STATEMENT OF EMERGENCY
901 KAR 5:120E.

This emergency administrative regulation is being promulgated to implement the requirements of 2022 Ky. Acts ch. 210. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to implement the expanded abortion reporting requirements. This emergency administrative regulation is necessary to implement 2022 Ky. Acts ch. 210, which expands the information required to be reported for each abortion and requires the cabinet to promulgate the administrative regulation within sixty (60) days of the passage of the Act. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Emergency Amendment)

901 KAR 5:120E. Abortion reporting.

RELATES TO: KRS 213.101, 213.106, 311.595, 311.720, 311.774, 311.781, 311.782, 311.783

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (7), 2022 Ky. Acts ch. 210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each abortion that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(7) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information. This administrative regulation establishes the reporting criteria for abortions.

Section 1. Definitions.

- (1) "Abortion" is defined by KRS 311.720(1).
- (2) "Probable post-fertilization age" is defined by KRS 311.781(6).
- (3) "Reasonable medical judgment" is defined by KRS 311.781(7).
- (4) "Serious risk of the substantial and irreversible impairment of a major bodily function" is defined by KRS 311.781(8).

Section 2. Reporting.

- (1) A person or institution shall comply with the reporting requirements of KRS 213.101(1) and (2).
- (2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time of the abortion.
- (3) The report shall be made within three (3) days after the end of the month in which the abortion was performed through the cabinet's electronic database or on VS-913, Report of Abortion.
- (4) The report shall:
 - (a) Contain the information required to be certified in writing including the following:
 1. The probable post-fertilization age of the unborn child;
 2. Whether the abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;
 3. The available methods or techniques considered and the reasons for choosing the method or technique employed;
 4. Whether the physician determined in his or her reasonable medical judgment that termination of the pregnancy in the manner selected provides the best opportunity for the unborn child to survive;
 5. If the physician did not choose the method of abortion that provides the best chance of survival for the unborn child, whether the pregnancy termination in that

manner would have posed a greater risk of death of the pregnant woman or a greater risk of substantial and irreversible impairment of a major bodily function of the pregnant woman than other available methods of abortion; and

6. Any complications known to the provider as a result of the abortion, as set forth in KRS 311.774(3); and

(b) Not contain information that identifies the woman or man involved.

(5) Pursuant to KRS 213.106, a report shall be used in accordance with the provisions of KRS 213.101.

Section 3. Prescription Reporting.

(1) In accordance with KRS 213.101(2), each prescription for a drug or combination of drugs for which the primary indication is the induction of abortion shall be reported by the physician prescribing the medication and the pharmacy dispensing the medication within three (3) days after the end of the month in which the prescription was issued.

(2) The report shall be made through the cabinet's electronic database or on VS-913P, Abortion Prescription Reporting Form.

(3) The report shall:

(a) Contain the drug or combination or drugs prescribed;

(b) The information required by 2022 Ky. Acts ch. 210; and

(c) Not contain information that identifies the woman or man involved.

Section 4. Penalties. Failure to comply with the provisions of KRS 213.101(1) shall subject the reporting person or institution to the penalties provided in KRS 213.101(5) and (6).

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form VS-913P, "Abortion Prescription Reporting Form", 6/2022; and

(b) Form VS-913, "Report of Abortion", 6/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 27, 2022

FILED WITH LRC: June 30, 2022 at 12:05 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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.