

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

901 KAR 5:120. 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 ~~physician,~~ 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)~~ ~~fifteen (15)~~ 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;~~and~~

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

(c) Not contain information that identifies the ~~physician,~~ 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~~~~[4/2020]~~; and

(b) Form VS-913, "Report of Abortion", ~~6/2022~~~~[10/2020]~~.

(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) There 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 21, 2022

FILED WITH LRC: June 24, 2022 at 10:15 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 30, 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 or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the criteria for reporting abortions as described in KRS 213.101 and 2022 Ky. Acts ch. 210.

(b) The necessity of this administrative regulation:

KRS 213.101(7) requires the Office of Vital Statistics (OVS) to promulgate administrative regulations for compliance with the reporting requirements of the statute. This administrative regulation is necessary to ensure that each abortion that occurs in the commonwealth is reported to OVS in a timely manner.

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

KRS 213.101 requires the reporting of each abortion that occurs in the commonwealth and requires OVS to issue a public report by September 30 each year.

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

This administrative regulation allows OVS to compile statistical data regarding the number of abortions that occur yearly and the abortion procedures utilized.

(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 updates the material incorporated by reference for compliance with 2022 Ky. Acts ch. 210.

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

The amendment to this administrative regulation is necessary because 2022 Ky. Acts ch. 210 expanded the information required to be reported for each abortion. The report forms incorporated by reference were amended to include all required data elements.

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

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.

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

The amendment to this administrative regulation will ensure all required elements are reported to the cabinet.

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

This administrative regulation will impact any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics within the Department for Public Health will also be impacted by 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:

Physicians who perform abortions will need to be aware of the changes in reporting requirements, will need to monitor a woman who has received an abortion for complications, and will need to make reasonable efforts to ensure the woman receives any necessary follow-up treatment. Pharmacies that dispense the medications will need to be aware of the reporting requirements.

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

Physicians and pharmacists reporting abortions will have no additional costs associated with this amended administrative regulation.

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

By complying with the reporting requirements, physicians who perform abortions will be in full compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes. By complying with the medication reporting requirements, pharmacists will be in compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes.

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

(a) Initially:

The required changes to the current reporting data system will cost \$48,000 to implement.

(b) On a continuing basis:

Ongoing costs for maintenance of the reporting data system and production of the required reports will be \$18,000 yearly. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

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

Agency funds are used for the implementation and enforcement of 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:

This amendment does not require an increase in fees or funding for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There is no increase in, or establishment of, fees associated with this amendment.

(9) TIERING: Is tiering applied?

This administrative regulation impacts all affected entities equally.

FISCAL NOTE

(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 will impact the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, 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.

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

(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 total costs to implement the changes to the reporting data system as a result of the amendment to this administrative regulation will be \$48,000 for the first year.

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

Ongoing costs for the reporting data system will be \$18,000 for subsequent years. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will not generate any costs savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will not generate any costs savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year?

The costs associated with the amendment to this administrative regulation are state costs only. The regulated facilities providing abortions will not have any costs associated with compliance with this administrative regulation. The total state costs in the first year will be \$48,000 for enhancements to the reporting system.

(d) How much will it cost the regulated entities for subsequent years?

Ongoing state costs will be approximately \$24,000 a year for reporting system maintenance and staff costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.