

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Aging and Disability Services
(Amendment)

910 KAR 1:090. Personal care attendant program and assistance services.

RELATES TO: KRS ~~12.290~~, Chapter 13B, 205.455(4), ~~205.8451(3)~~, 205.900 - 205.925

STATUTORY AUTHORITY: KRS 194A.050(1), 205.910, 205.920

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.910 requires the Cabinet for Health and Family Services to establish an eligibility standard for personal care assistance services which takes into consideration the unique economic and social needs of severely physically disabled adults. KRS 205.920 authorizes the cabinet to promulgate administrative regulations to implement provisions concerning personal care assistance services. This administrative regulation establishes the personal care attendant program.

Section 1. Definitions.

- (1) "Administrative support personnel" means staff designated within a contract agency who offer technical assistance to, and monitor the activities of, the qualified agency.
- (2) "Approved plan" means an agreement between the department and a contract agency to administer the personal care attendant program.
- (3) "Assessment" means the collection and evaluation of information:
 - (a) About a person's situation and functioning;
 - (b) To determine the applicant's or participant's service level; and
 - (c) To develop a plan of care utilizing a holistic, person centered approach by the evaluation team.
- (4) "Attendant" means a person who provides personal care assistance services.
- (5) "Contract agency" means the agency with which the cabinet has contracted to administer the personal care attendant program.
- (6) "Department" means the Department for Aging and Independent Living or its designee.
- (7) "Evaluation team" is defined by KRS 205.900(2).
- (8) "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.
- (9) "Immediate family member" is defined by KRS 205.8451(3) ~~[means a legal guardian, parent, step parent, foster parent, adoptive parent, sibling, grandparent, child, or spouse].~~
- (10) "Income eligibility standard" means a formula to determine an applicant's income eligibility for the personal care attendant program pursuant to KRS 205.910(1).
- (11) "Natural supports" means a non-paid person or persons or community resource, that can provide, or has historically provided, assistance to the participant or due to the familial relationship, would be expected to provide assistance.
- (12) "Participant" means a person accepted into the personal care attendant program and who has met the eligibility requirements of a severely physically disabled adult.
- (13) "PCAP" means personal care attendant program.
- ~~(14)~~ "Personal care assistance services" is defined by KRS 205.900(3).
- ~~(15)~~ ~~(14)~~ "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic requirements for eligibility.
- ~~(16)~~ ~~(15)~~ "Qualified agency or organization" is defined by KRS 205.900(4).
- ~~(17)~~ ~~(16)~~ "Reassessment" means reevaluation of the situation and functioning of a client.
- ~~(18)~~ ~~(17)~~ "Service area" means those counties listed in an approved plan of the qualified agency or organization.

(19) ~~((18))~~ "Severely physically disabled adult" is defined by KRS 205.900(6).

(20) ~~((19))~~ "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).

(21) ~~((20))~~ "Work agreement" means an agreement of time and tasks developed by the participant as the employer for the attendant as the employee.

Section 2. Eligibility.

(1) To be eligible for participation in the personal care attendant program an applicant shall:

(a) Be a severely physically disabled adult who:

1. Meets the qualifications required by KRS 205.905(1); and

2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;

(b) Agree to obtain an initial assessment for eligibility and a ~~reassessment~~~~[re-assessment]~~ at least annually by an evaluation team in accordance with KRS 205.905(2)(b)1 and 2;

(c) Be able to reside or reside in a non-institutional setting;

(d) Work with a program coordinator in establishing a work agreement between the participant and attendant;

(e) Be responsible for attendant payroll reports and computing required employer tax statements;

(f) Have immediate family or natural supports to meet the individual's needs if a paid attendant is not available; and

(g) Not be receiving the same services obtainable from any federal, state, or combination of federal and state funded programs. If the individual's needs cannot be met with the funding received from any of those programs, the individual may be eligible to receive personal care attendant program services above and beyond what the other programs provide.

(2) An applicant shall be accepted for service if:

(a) The evaluation team determines that the applicant is eligible to participate in the program in accordance with this section;

(b) The department agrees that the determination in accordance with this section; and

(c) Funds are available.

(3) An applicant shall be income eligible if they are eligible for:

(a) Supplemental Security Income; or

(b) Medicaid.

(4) If an applicant's gross annual income is less than 200 percent of the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services, the applicant shall be income eligible.

(5) If an applicant is not eligible pursuant to subsections (3) or (4) of this section, the income eligibility standard shall be determined by a program coordinator using the PCAP-05 Income Eligibility form as follows:

(a) The program coordinator shall determine the adjusted gross income by deducting:

1. The cost of unreimbursed extraordinary medical expenses, and impairment-related expenses as recorded on the PCAP-05;

2. An amount adjusted for family size based on 200 percent of the official poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services; and

3. Dependent care expenses.

(b) If the adjusted gross income is less than 200 percent of the annual federal poverty guidelines, the applicant shall be income eligible.

(c) If the adjusted gross income is more than 200 percent of the annual federal poverty guidelines, the following shall be used to determine the applicant's contribution to cost of care:

1. From the adjusted gross income subtract a current annual standard deduction for one (1) as determined by the Internal Revenue Service;
2. Divide the remaining income by two (2) to allow for the unique economic and social needs of the severely disabled adult;
3. Divide the final income by fifty-two (52) weeks; and
4. Calculate the estimated cost of personal care services by multiplying the estimated number of hours of personal care assistance services per week times the cost per hour of service.

(d)

1. If the resulting monetary amount in ~~subparagraph (e)~~3. of this subsection is less than the estimated cost of services calculated in ~~subparagraph (e)~~4. of this subsection, the qualified agency shall provide the full subsidy.
2. If the resulting monetary amount in ~~subparagraph (e)~~3. of this subsection is more than the estimated cost of services calculated in ~~subparagraph (e)~~4. of this subsection, the participant shall pay the difference between the cost of services and the qualified agency's maximum hourly rate.

(6) The income eligibility criteria set out in subsections (3) through (5) of this section shall be applied to a current participant at the time of the participant's next reassessment.

Section 3. Application and Evaluation.

(1) A referral to the personal care attendant program may be made by:

- (a) The applicant;
- (b) Family, with applicant knowledge;
- (c) Another person, with applicant knowledge; or
- (d) Agency, with applicant knowledge.

(2) If an opening for services is available, a program coordinator shall:

- (a) Visit and assist an applicant in the completion of a PCAP-01 Application for Services; and
- (b) Complete and have all evaluation team members sign a PCAP-04 Evaluation Team Findings and Recommendations.

(3) A qualified agency shall:

- (a) Report an evaluation team's findings and recommendations to the contract agency for final review of the applicant or participant; and
- (b) Notify the applicant or participant if the findings and recommendations are accepted by the contract agency.

(4) A contract agency shall:

- (a) Review recommendations of the evaluation team and notify the qualified agency in writing of the final determination within ten (10) business days of receipt of the recommendations; and
- (b) Notify the applicant or participant in writing within twenty (20) business days of receipt of the recommendations in accordance with KRS 205.905(3):
 1. Whether the recommendations of the evaluation team are accepted or not accepted; and
 2. The reasons for the contract agency's decision.

Section 4. Waiting List.

(1) If the personal care attendant program is at capacity, an eligible applicant shall be placed on a ~~department-~~ approved waiting list and, as a vacancy occurs, be accepted for services in priority order based on the following categories:

- (a) Emergency situation because of an imminent danger to self or at risk of institutionalization;
 - (b) Urgent situation because there are no community supports; or
 - (c) Stable because there is a currently reasonable support system.
- (2) Every effort shall be used to provide referrals to other services if personal care assistance services are not available.

Section 5. Relocation.

- (1) If an eligible participant receiving personal care assistance services relocates to another service area to complete a training or educational course, the participant shall remain a client of the service area of origin, if the:
- (a) Participant considers the personal care attendant program service area of origin to be his or her place of residence; and
 - (b) Participant's purpose for relocation is to complete a course of education or training to increase employment skills.
- (2) The receiving service area shall provide courtesy monitoring to coordinate the aspects of program requirements.
- (3) The service area of origin shall retain responsibility for:
- (a) Payment of a subsidy, if the participant meets eligibility for the duration of the educational or training course; and
 - (b) Monthly programmatic and financial reports.
- (4) The receiving service area shall forward a copy of reports to the service area of origin by the fifth (5th) of the following month.
- (5) If a participant moves from one service area of origin to another for any reason other than relocation for a training or educational course, the participant's program funding shall be transferred to the receiving service area.
- (6) If a participant's personal care assistance services terminate, the program funding shall return to the service area of origin.

Section 6. Suspension of Services.

- (1) Suspension of services shall occur for the following reasons:
- (a) Condition improved – on reassessment a participant is determined to need less than fourteen (14) hours of care per week;
 - (b) Condition worsened - on reassessment a participant is determined to need more hours of care than the program can provide and to be in danger if left alone due to lack of other caregivers;
 - (c) Participant's behavior clearly presents a danger to the program coordinator or attendant;
 - (d) Participant does not submit required employer taxes to the qualified agency;
 - (e) Participant moves from Kentucky;
 - ~~(f) [Participant moves into an area of Kentucky where no services are contracted, unless the closest qualified agency determines that it remains feasible to provide services to the relocation area;]~~
 - (f) ~~(g)~~ Participant fails to hire an attendant;
 - (g) ~~(h)~~ Participant dies;
 - (h) ~~(i)~~ Participant chooses to:
 - 1. Give up personal care assistance services; and
 - 2. Be admitted to a long-term care facility; or
 - (i) ~~(j)~~ Participant requests suspension of services.
- (2) Services may be suspended if either of the following occurs:
- (a) A non-return of an overpayment of services; or
 - (b) An intentional deception to obtain services.

(3) Suspension of services shall occur if there are any substantiated deceptive practices of paying for services that are:

- (a) Not actually provided; or
- (b) Duplicative services obtained through another program or agency at the same time.

Section 7. Participant Responsibilities. A participant shall:

- (1) Meet the eligibility requirements to receive a subsidy set out in Section 2(1) of this administrative regulation;
- (2) Select an attendant for personal care assistance services including screening and interviewing the attendant for employment;
- (3) Instruct the attendant on specific personal care assistance services;
- (4) Evaluate the attendant's personal care assistance services;
- (5) Discuss and come to a written agreement with each attendant about:
 - (a) Services that shall be provided; and
 - (b) The terms of employment including:
 - 1. Time;
 - 2. Hours;
 - 3. Duties; and
 - 4. Responsibilities;
- (6) Keep records and report to the qualified agency attendant hours worked for payment to the attendant;
- (7) Be responsible for all requirements of being an employer, including:
 - (a) Employee payroll;
 - (b) Withholdings;
 - (c) Actual payment of required withholdings;
 - (d) Taxes appropriate to being an employer; and
 - (e) Issuing the employee a W-2 as required by the Internal Revenue Service;
- (8) Negotiate for room and board for an attendant as specified in Section 9(4)(a) of this administrative regulation; and
- (9) Coordinate with a program coordinator the aspects of program requirements.

Section 8. Attendant Responsibilities.

- (1) An attendant shall:
 - (a) Enter into and comply with the written agreement for terms of work required by Section 7(5) of this administrative regulation;
 - (b) Perform personal care assistance services and other tasks that may include:
 - 1. Turning;
 - 2. Repositioning;
 - 3. Transferring;
 - 4. Assistance with oxygen;
 - 5. Hygiene;
 - 6. Grooming;
 - 7. Washing hair;
 - 8. Skin care;
 - 9. Shopping;
 - 10. Transportation;
 - 11. Chores;
 - 12. Light correspondence;
 - 13. Equipment cleaning; and
 - 14. Emergency procedures, if necessary;
 - (c) Perform tasks consistent with the work agreement as instructed by the participant;
 - (d) Report to work as scheduled;
 - (e) Maintain the privacy and confidentiality of the participant;

- (f) If unable to report for work as scheduled, notify the participant at least six (6) hours in advance unless an emergency arises;
 - (g) Maintain a list of emergency numbers;
 - (h) Participate in [Attend] attendant training provided by the participant related to his or her specific care needs and, if applicable, training related to dementia care, specified by 910 KAR 4:010;
 - (i) Keep a daily record of hours worked and services rendered;
 - (j) Submit to the participant documents and material necessary to comply with the formal payment process;
 - (k) Meet with the participant and program coordinator for monitoring and coordinating the aspects of the program;
 - (l) Disclose misdemeanor or felony convictions to the applicant or participant through a law enforcement agency;
 - (m) Authorize a qualified agency to obtain a criminal background check from the Kentucky National Background Check Program as defined in 906 KAR 1:190~~[Kentucky nurse aide registry, central registry, Adult Protective Services caregiver misconduct registry, and criminal background checks as specified in Section 11(6) of this administrative regulation];~~ and
 - (n) Notify the program coordinator of conditions which seriously threaten the health, ~~or~~ safety, or welfare of the participant or attendant.
- (2) An individual shall not be hired as an attendant if the individual:
- (a) Has not submitted to the background checks specified in subsection (1)(m) of this section;
 - ~~(b)~~ [Is on any of the following registries:]
 - ~~[1.] [Kentucky nurse aide registry;]~~
 - ~~[2.] [Adult Protective Services caregiver misconduct registry; or]~~
 - ~~[3.] [Central registry;]~~
 - ~~(b)~~ (e) Has pled guilty or been convicted of committing:
 - 1. A felony crime related to theft or drugs; or
 - 2. A misdemeanor or felony crime related to sexual or violent offenses including assault; or
 - ~~(c)~~ (d) Is not able to understand and carry out a participant's instructions.

Section 9. Attendant Payment.

- (1) The amount of attendant payment shall be in compliance with the following:
 - (a) The maximum hourly subsidized rate for direct personal care assistance services shall be eleven (11) dollars per hour~~[no more than ten (10) percent over the current minimum wage rate established by KRS 337.275].~~
 - (b) If the hourly subsidized rate established in paragraph (a) of this subsection is insufficient to obtain direct personal care assistance services in a specific Kentucky service area, a provider may request a higher rate by mailing a written request and justification of the need for a higher rate to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.
 - (c) Minimum hours for direct personal care assistance services per week shall be fourteen (14).
 - (d) Maximum hours for direct personal care assistance services per week shall be forty (40).
- (2) In an extreme situation that results in a temporary increased need for services, such as the illness of the participant, or illness or death of a caregiver, a temporary waiver of maximum hours and the resulting cost may be granted by the contract agency.
- (3) A special night rate may be negotiated:
 - (a) If a participant does not:

1. Require an attendant during the day; or
 2. Need direct personal care assistance services from this attendant; or
- (b) To provide for caregiver respite service.
- (4)
- (a) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate, if necessary, with a potential attendant on room and board for personal care assistance services.
 - (b) A live-in attendant shall not be excluded from employment as a part-time attendant.
 - (c) Maximum payment under this arrangement shall be for forty (40) hours of personal care assistance services per week, and overtime shall not be provided or paid.

Section 10. Program Coordinator Qualifications and Responsibilities.

- (1) A program coordinator shall meet at least one (1) of the following minimum qualifying requirements:
 - (a) A bachelor's degree with two (2) years experience working in the disability community; or
 - (b) Completion of fifty-four (54) semester hours of college with four (4) years working in the disability community.
- (2) The department may waive the education requirements required by subsection (1) of this section based on consideration of work experience involving:
 - (a) Interviewing to select an employment candidate;
 - (b) More than five (5) years of experience working with the disability community;
 - (c) Administrative work involving:
 1. The review of assessment criteria;
 2. Monitoring program compliance;
 3. Training program participants, employees, and staff regarding program requirements; or
 - (d) Determination of eligibility for human services programs.
- (3) If employed, a program coordinator shall complete the following hours of training:
 - (a) Within thirty (30) working days of hire:
 1. Complete a minimum of sixteen (16) hours of orientation program training; and
 2. Shadow an experienced program coordinator for one (1) to two (2) days;
 - (b) Within the first six (6) months of employment, complete a minimum of fourteen (14) hours of initial program coordination training; and
 - (c) Complete follow-up quarterly trainings with the department and contract agency.
- (4) A program coordinator shall:
 - (a) Collaborate with the evaluation team to determine if an applicant is eligible to participate in the personal care attendant program in accordance with Section 2 of this administrative regulation;
 - (b) Complete the application process required by Section 3(2)(a) of this administrative regulation;
 - (c) Maintain a waiting list of eligible applicants who are unable to be funded for program participation until an opening occurs; and
 - (d) Perform the assessments required in Section 12(2) of this administrative regulations.
- (5) A program coordinator or program coordinator's designee shall:
 - (a) Identify severely physically disabled adults who may be eligible for participation in the personal care attendant program;
 - (b) Prescreen an applicant for eligibility to participate in the personal care attendant program;
 - (c) Assist a participant in learning how to conduct an interview and screen a prospective attendant;

- (d) Assist in or arrange for the training of the attendant, if necessary;
- (e) Review with the participant the results of an assessment or reassessment signed by an evaluation team;
- (f) Assist the participant in completing and updating a PCAP-06 Plan of Care;
- (g) Assist the participant in developing a work agreement between the participant and attendant;
- (h) Obtain a PCAP-02 Authorization for Release of Confidential Information from the participant;
- (i) Monitor the program with each participant on a quarterly basis, including:
 - 1. A face-to-face visit with the participant during at least two (2) of the quarters; and
 - 2. Making verbal contact with the participant in the quarters that a face-to-face visit is not made;
- (j) Assist the participant in finding a back-up attendant for:
 - 1. An emergency; or
 - 2. The regular attendant's time off;
- (k) Assist in the recruitment and referral of an attendant, if requested;
- (l) Submit monthly activity reports to a qualified agency as specified in Section 15(2) of this administrative regulation by the fifth (5th) of the following month; and
- (m) Assure that the participant:
 - 1. Enters into agreement to pay employee taxes with a PCAP-03 Employer Tax Agreement; and
 - 2. Receives training in recordkeeping and tax responsibilities related to services.

Section 11. Qualified Agency Responsibilities. A qualified agency shall:

- (1) Employ or contract with an evaluation team pursuant to KRS 205.905(2);
- (2) Provide monthly programmatic and financial reports on an attendant per participant to the contract agency by the fifth (5th) of the following month;
- (3) Develop a procedure for:
 - (a) Payment of a subsidy; and
 - (b) Establishment of appropriate fiscal control within the qualified agency;
- (4) Employ or contract for the services of a program coordinator;
- (5) Oversee the training requirements for a program coordinator as specified in Section 10(3) of this administrative regulation;
- (6) Obtain a criminal background check from the Kentucky National Background Check Program as defined in 906 KAR 1:190~~[the following]~~ on a potential attendant;~~[-]~~
 - ~~[(a)] [The results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency, if the potential attendant resided or worked outside of Kentucky during the year prior to employment;]~~
 - ~~[(b)] [Within thirty (30) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and]~~
 - ~~[(c)] [Prior to employment, the results of a nurse aide registry check as described in 906 KAR 1:100;]~~
- (7) Report evaluation team findings and recommendations to a contract agency as specified in Section 3(3) of this administrative regulation;
- (8) Maintain participant records as required by Section 15(1) of this administrative regulation; and
- (9) Provide accessibility to services through proper evaluation of applicants who are deaf or hard-of-hearing by utilizing an interpreter service in accordance with KRS 12.290.

Section 12. Evaluation Team Members and Responsibilities.

- (1) An evaluation team:
 - (a) Shall consist of a program coordinator; and
 - (b) May consist of:

1. An occupational or physical therapist;
 2. A registered nurse;
 3. A director or executive director of the qualified agency;
 4. A fiscal officer of the qualified agency;
 5. A mental health provider;
 6. An in-home services coordinator; or
 7. Another entity involved in the participant's care.
- (2) The program coordinator of the evaluation team shall complete:
- (a) An applicant's initial assessment to establish eligibility pursuant to KRS 205.905(2)(b)1; and
 - (b) A participant's reassessment, at least annually for continuing services pursuant to KRS 205.905(2)(b)2, or more frequently if changes occur in the participant's situation.

Section 13. Contract Agency Responsibilities. The contract agency shall:

- (1) Implement a personal care attendant program according to an approved plan;
- (2) Assume fiscal accountability for state funds designated for the program;
- (3) Provide necessary administrative support personnel within a contract agency office;
- (4) Provide an appeals procedure and hearing process in compliance with:
 - (a) KRS Chapter 13B; and
 - (b) KRS 205.915;
- (5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with cabinet financial audit requirements;
- (6) Provide, in conjunction with a qualified agency, a procedure for attendant payment;
- (7) Review recommendations of an evaluation team and notify a participant and qualified agency as specified in Section 3(4) of this administrative regulation;
- (8) Submit monthly program reports along with the submission of financial invoices to the department as specified in Section 15(3) of this administrative regulation; and
- (9) Maintain files and records for cabinet audit, including participant records and statistical reports in accordance with Kentucky Department for Libraries and Archives Records Retention Schedule.

Section 14. Department Responsibilities. The department shall:

- (1) Provide a format for the approved plan for the personal care attendant program;
- (2) Review proposed plans submitted by a contract agency to administer the personal care attendant program;
- (3) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program that shall include one (1) of the following outcomes:
 - (a) Approve the plan as submitted;
 - (b) Require the contract agency to revise the plan; or
 - (c) Reject the plan;
- (4) Monitor the contract agency at least annually;
- (5) Develop and revise program and fiscal requirements;
- (6) Allocate available funding;
- (7) Advocate for program expansion; and
- (8) Provide technical assistance.

Section 15. Reporting and Recording.

- (1) An individual record for each participant shall be maintained by the qualified agency and shall include:
 - (a) The forms specified in Section 17 of this administrative regulation;
 - (b) A chronological record of contacts with:
 1. The participant;

2. The family;
 3. The physician; and
 4. Others involved in care with quarterly monitoring reports; and
- (c) An assessment record of eligibility.
- (2) A program coordinator shall:
- (a) Submit completed reports for monthly activities to a qualified agency by a designated date in the contract; and
 - (b) Forward a copy to the contract agency.
- (3) A contract agency shall make a copy of reports on monthly activities available to the department.

Section 16. Appeals. An applicant or participant may request an informal dispute resolution or an appeal:

- (1) A recipient may request an informal dispute resolution.
- (2) A dispute resolution shall be limited to:
 - (a) The denial, reduction, or termination of a:
 1. Personal care attendant program plan; or
 2. Personal care attendant program plan amendment;
 - (b) The reduction of personal care attendant program funding as requested in the plan;
or
 - (c) The reduction or termination of personal care attendant program grant program funding, unless due to state budget cuts.
- (3) A request for an informal dispute resolution shall:
 - (a) Be submitted to the department's PCAP program coordinator within thirty (30) days following the notification by the personal care attendant program grant program coordinator of a decision in subsection (2) of this section; and
 - (b) Contain the following information:
 1. Name, address, and telephone number of the recipient;
 2. Decision being disputed;
 3. Justification for the dispute;
 4. Documentation supporting the dispute; and
 5. Signature of person requesting the dispute resolution.
- (4) The dispute resolution shall be heard by:
 - (a) Three (3) members of the council, one (1) of whom shall be the chairman or the chairman's designee;
 - (b) One (1) member of the review team; and
 - (c) The personal care attendant program grant program coordinator.
- (5) The recipient shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of the grant.
- (6) The dispute resolution team shall inform a recipient, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.
- (7) A recipient dissatisfied with the result of the dispute resolution may request an appeal:
 - (a) ~~[(1)]~~ In accordance with:
 1. ~~[(a)]~~ KRS Chapter 13B; and
 2. ~~[(b)]~~ KRS 205.915; and
 - (b) ~~[(2)]~~ Within thirty (30) days of any decision by the:
 1. ~~[(a)]~~ Cabinet;
 2. ~~[(b)]~~ Contract agency; or
 3. ~~[(c)]~~ Qualified agency.

Section 17. Incorporation by Reference.

- (1) The following forms are incorporated by reference:
 - (a) "PCAP-01 Application for Services", edition 4/2018;

- (b) "PCAP-02 Authorization for Release of Confidential Information", edition 4/2018;
- (c) "PCAP-03 Employer Tax Agreement", edition 4/2018;
- (d) "PCAP-04 Evaluation Team Findings and Recommendations", edition 4/2018;
- (e) "PCAP-05 Income Eligibility", edition 4/2018; and
- (f) "PCAP-06 Plan of Care", edition 4/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dail/Pages/default.aspx>. 910 KAR 1:090

VICTORIA ELRIDGE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 21, 2022

FILED WITH LRC: July 1, 2022 at 8:20 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: Robin Boggs and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides for a subsidy for personal care assistance outlined in KRS 205.905 to individuals with functional loss of two or more limbs.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to operate the personal care attendant program as established in KRS 205.905.

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

This administrative regulation conforms to the statute by establishing eligibility and implementation of the personal care attendant program.

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

This administrative regulation allows the personal care attendant program to operate in the Commonwealth of Kentucky.

(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 will increase the subsidy paid to caregivers. Other amendments were made to align with the CHFS background check process as well as to clarify the appeals and hearing process.

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

It is necessary to update the administrative regulation to support recipients in finding caregivers and paying them a more competitive wage. Currently, caregivers are hard to find as other programs have a higher rate of pay.

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

The amendments improve the program, specifically the rate of pay for the caregivers.

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

The amendment updates background check information, aligning it with other programs at CHFS.

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

This will positively affect more than 175 Kentuckians who are enrolled in this program by increasing the subsidy so that participants may competitively hire caregivers. The employees will also benefit as they will be paid an increased wage. State and local government will see an increase in payroll taxes due to increased wages. There are six entities contracted to provide this service, but it will not have any affect as it is just an increase in the subsidy rate.

(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:

The regulated entities contracted to provide personal care attendant services will have to increase the workers' wages from \$7.25 to \$11 per hour.

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

This amendment will not increase the cost of the program to outside entities nor the state agency. The cost will be within budgeted funds for this program.

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

Individuals enrolled in the program will be able to offer potential caregivers a more competitive rate of pay, thereby increasing the likelihood of maintaining their services.

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

(a) Initially:

There will be no initial implementation cost for this amendment.

(b) On a continuing basis:

The currently budgeted General Funds will continue to be the ongoing cost of this service.

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

The source of funding for the implementation and enforcement of this administrative regulation is General Funds.

(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 will be necessary to implement this administrative regulation.

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

This administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied?

No tiering is applied because the administrative regulation equally applies to all individuals and entities.

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?

The Department for Aging and Independent Living will need to adjust the rate of reimbursement for personal care attendant services.

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

KRS 205.905 Subsidy for personal care assistance.

(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.

This amendment will have a neutral effect on revenue for DAIL, however state and local payroll tax revenue will increase due to increased wages. Expenditures for this program will remain within the established program budget.

(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 will 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 will not generate revenue.

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

It will cost approximately \$4,345,836 to administer this program for the first year.

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

It will cost approximately \$4,345,836 to administer this program for subsequent years.

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?

No cost savings will be generated for this administrative regulation in the first year.

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

No cost savings will be generated for this administrative regulation in subsequent years.

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

No cost to regulated entities for the first year.

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

No cost to regulated entities for the subsequent years.

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 will have no major economic impact.