

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

910 KAR 1:180. Homecare program for the elderly.

RELATES TO: KRS 13B.010-13B.170, 194A.700(1), (7), 205.010(6), 205.201, 205.203, 205.455-465, 209.030(2), (3), 42 U.S.C. Chapter 35

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. Chapter 35 authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) authorizes the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet as the state agency to administer 42 U.S.C. Chapter 35 in Kentucky and promulgate administrative regulations for this purpose. This administrative regulation establishes the standards of operation for a homecare program for elderly persons in Kentucky.

Section 1. Definitions.

- (1) "Activities of daily living" is defined by KRS 194A.700(1).
- (2) "Area plan" means the plan that:
 - (a) Is submitted by a district for the approval of the department; and
 - (b) Releases funds under contract for the delivery of services within the planning and service area.
- (3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant's or recipient's service level and development of a plan of care utilizing a holistic, person-centered approach by a qualified case manager~~[independent care coordinator (ICC)]~~.
- (4) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based services as identified in the plan of care by:
 - (a) Planning;
 - (b) Referring;
 - (c) Monitoring;
 - (d) Advocating; and
 - (e) Following the timeline of the assessment agency to obtain:
 1. Service level; and
 2. Development of the plan of care.
- (5) "Case management supervisor" means an individual meeting the requirements of Section 5(1)(a)~~[and (b)]~~ of this administrative regulation and who shall have four (4) years or more experience as a case manager.
- (6) "Case manager" means the individual employee responsible for:
 - (a) Coordinating services and supports from all agencies involved in providing services required by the plan of care;
 - (b) Completing the initial assessment, plan of care, and annual reassessment;
 - (c) Ensuring all service providers have a working knowledge of the plan of care; and
 - (d) ~~(e)~~ Ensuring services are delivered as required.
- (7) "Case record" means the collection of information, documents, demographics and required information maintained in the Aging Services tracking data system.
- (8) "Department" means the Department for Aging and Independent Living.
- (9) ~~(8)~~ "District" is defined by KRS 205.455(4).

- (10) ~~[(9)]~~ "Educational or experiential equivalent" means:
- (a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and
 - (b) At least 400 documented hours of experience assisting aging or disabled individuals through:
 1. Practicum placement;
 2. Clinicals; or
 3. Volunteerism.
- (11) ~~[(10)]~~ "Extraordinary out of pocket expenses" means medical expenses not covered by insurance including:
- (a) Copays;
 - (b) Deductibles;
 - (c) Prescriptions;
 - (d) Premiums for medical insurance; or
 - (e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures.
- (12) ~~[(11)]~~ "Homecare services" means services that:
- (a) Are:
 1. Provided to an eligible individual who is functionally impaired as defined by KRS 205.455(7); and
 2. Directed to the individual specified in subparagraph 1 of this paragraph toward:
 - a. Prevention of unnecessary institutionalization; and
 - b. Maintenance in the least restrictive environment, excluding residential facilities; and
 - (b) Include:
 1. Chore services as defined by KRS 205.455(1);
 2. Core services as defined by KRS 205.455(2);
 3. Escort services as defined by KRS 205.455(5);
 4. Home-delivered meals as defined by KRS 205.455(8);
 5. Home-health aide services as defined by KRS 205.455(9);
 6. Homemaker services as defined by KRS 205.455(10);
 7. Home repair services as defined by KRS 205.455(11);
 8. Personal care services as established in subsection (16) of this section;
 9. Respite services as defined by KRS 205.455(12)~~[-]~~
- ~~[(12)]~~ ~~["Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and annual reassessment].~~
- (13) "Informal support system" means any care provided to an individual which is not provided as part of a public or private formal service program;
- (14) "Instrumental activities of daily living" is defined by KRS 194A.700(7).
- (15) "Natural Supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.
- (16) "Personal care services" means assistance with activities of daily living.
- (17) "Person centered planning" means a process for selecting and organizing the services and supports that an older adult or person with a disability may need to live in the community and is directed by the person who receives the support. Most important, it is a process that is directed by the person who receives the support.
- (18) "Reassessment" means reevaluation of the situation and functioning of a client.
- (19) ~~[(18)]~~ "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.
- (20) ~~[(19)]~~ "Social service assistant" means an individual who:
- (a) Has at least a high school diploma or equivalent;
 - (b) Works under the direction of the case manager supervisor;

- (c) Assists the case manager with record keeping, filing, data entry, and phone calls;
- (d) Helps determine what type of assistance their clients need;
- (e) Assists the client in getting services to carry out the plan of care;
- (f) Coordinates services provided to the client;
- (g) Assists clients in applying for other services or benefits for which they may qualify;
and
- (h) Monitors clients to ensure services are provided appropriately.

Section 2. Service Provider Responsibilities. A service provider contracting with a district to provide homecare services supported in whole or in part from funds received from the cabinet shall:

- (1) Assure the provision of homecare services throughout the geographic area covered under its plan or proposal;
- (2) Review the provision of homecare services to assure safety and consistency;
- (3) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of homecare services;
- (4) Permit staff of the cabinet and the district to monitor and evaluate homecare services provided;
- (5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the department;
- (6) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;
- (7) Develop and maintain written personnel policies and a wage scale for each job classification; and
- (8) Designate a supervisor to assure that staff providing homecare services are provided supervision.

Section 3. Homecare Plan. For program approval, a district shall submit to the cabinet a proposal within its area plan to include at least the following:

- (1) An assurance of access for the department to records of the district pertaining to its contract for delivery of homecare services; and
- (2) A plan for the delivery of homecare services in the area to be served by the district containing:
 - (a) Identification of services currently provided in the district; and
 - (b) The following assurances:
 - 1. A justification of a decision not to fund a homecare service, including an assurance of adequate availability from another funding source;
 - 2. A policy and procedure for assuring a client's:
 - a. Eligibility in accordance with Section 4 of this administrative regulation; and
 - b. Implementation of case management;
 - 3. A policy and procedure for a client's referral for service to other appropriate programs and services as specified in paragraph (a) of this subsection;
 - 4. A policy and procedure for volunteer programs to be utilized;
 - 5. Identification of a service provider for each specific service;
 - 6. A policy and procedure for the periodic monitoring of a client for the appropriateness of homecare services and to assure safety and consistency ~~by:~~
 - a. In home visits; and
 - b. Review of records on site and electronically;
 - 7. A number of proposed clients for homecare services to be provided directly or by contract;
 - 8. A unit cost per service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section ~~9(2)~~ ~~{8(2)}~~ of this administrative regulation;

9. A policy and procedure for the acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;
10. A policy and procedure for the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3);
11. A policy and procedure for the manner in which delivery of homecare services shall be provided to an eligible individual;
12. A policy and procedure for monitoring a subcontract for delivery of direct homecare services;~~and~~
13. A policy and procedure assuring that assessments~~[an assessment]~~ and client information, as specified in Section ~~5(4)~~~~5(3)~~ of this administrative regulation, shall include the following information submitted electronically to the department in the formats prescribed by the Aging Services Tracking System:
 - a. Demographic information, including family income;
 - b. Physical health;
 - c. Activities of daily living and instrumental activities of daily living;
 - d. Physical environment;
 - e. Mental and emotional status;
 - f. Assistive devices, sensory impairment, and communication abilities;
 - g. Formal and informal resources; and
 - h. Summary and judgment;~~;~~
14. A policy and procedure assuring that training is provided or requested for issues found during sub-provider monitoring;
15. A policy and procedure for placing clients on hold including but not limited to:
 - a. Reasons a client;
 - b. How contact will be made while client is on hold;
 - c. Any exceptions to the hold policy; and
 - d. Length of time a client may be on hold; and
16. A policy and procedure for termination or reduction of services.

Section 4. Eligibility.

- (1) A prospective client for homecare services shall:
 - (a) ~~Verify~~ ~~[Demonstrate]~~ that the prospective client is a person sixty (60) years of age or older;
 - (b) Not be eligible for the same or similar services through Medicaid unless the individual is:
 1. Considered inappropriate for person directed services due to:
 - a. An inability to manage his own services; and
 - b. A lack of availability of a person to act as his representative; or
 2. Unable to access the Home and Community Based Waiver through a traditional provider; and
 - (c) Meet one (1) of the following criteria:
 1. Be functionally impaired in the performance of:
 - a. Two (2) activities of daily living;
 - b. Three (3) instrumental activities of daily living; or
 - c. A combination of one (1) activity of daily living and two (2) instrumental activities of daily living;
 2. Have a stable medical condition requiring skilled health services; or
 3. Be:
 - a. Currently residing in:
 - (i) A skilled nursing facility;
 - (ii) An intermediate care facility; or
 - (iii) A personal care facility; and

- b. Able to be maintained at home if appropriate living arrangements and support systems are established.
- (2) Eligibility shall be determined by a case manager that is qualified in accordance with Section 5(2) of this administrative regulation.~~[an ICC:]~~
- ~~{(a)} [Qualified in accordance with Section 5(1) and (2) of this administrative regulation; and]~~
- ~~{(b)} [In accordance with Section 5(3) of this administrative regulation.]~~
- (3) If a client meets eligibility requirements of subsection (1) of this section for homecare services, the client or caregiver shall be informed that the client shall be eligible for services~~[as long as he or she meets eligibility requirements].~~
- (4) The case manager ~~[An ICC]~~ shall determine a prospective client's eligibility for:
- (a)
1. ~~[Adult day health services;]~~
 - ~~[2.] [Alzheimer's respite care services;]~~
 - ~~[3.] In-home services; or~~
 2. ~~[4.]~~ Respite for the unpaid primary caregiver; and
- (b) Service level of case management as determined on the DAIL-HC-01, Scoring Service Level.
- (5)
- (a) The homecare program shall not supplant or replace services provided by the client's natural support system.
 - (b) If needs are being met by the natural support system, the client shall be deemed ineligible.
 - (c) An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.
- (6) Applicants who are eligible for services and funding is not available shall be placed on a waiting list for services.

Section 5. Case Management Requirements.

- (1) A district shall employ a case manager to assess the eligibility and needs for each client and provide case management.
- (2) A case manager ~~[and an ICC]~~ shall:
- (a) Meet one (1) of the following qualifications:
 1. Possess a minimum of a bachelor's degree in one (1) of the following:
 - a. Social work;
 - b. Gerontology;
 - c. Psychology;
 - d. Sociology; or
 - e. A field related to geriatrics;
 2. Possess a bachelor's degree in nursing with a current Kentucky nursing license;
 3. Possess a bachelor's degree in a field not related to geriatrics with two (2) years of experience working with the elderly or a master's degree in a human services field will substitute for the required experience;
 4. Having an associate's degree in a health or family services field and two years of experience working with the elderly may substitute for a bachelor's degree;
 5. A Kentucky registered nurse with a current Kentucky license and two (2) years of experience working with the elderly; or
 6. A Licensed practical nurse with a current Kentucky license and three (3) years of experience working with the elderly. ~~[Possess a Bachelor's degree in a health or human services profession from an accredited college or university with:]~~
 - ~~{a.} [One (1) year experience in health or human services; or]~~

- ~~{b.} [The educational or experiential equivalent in the field of aging or physical disabilities;]~~
- ~~{2.} [Be a currently licensed RN as defined in KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities;]~~
- ~~{3.} [Be a currently licensed LPN as defined in KRS 314.011(9) who has:]~~
- ~~{a.} [At least three (3) years of experience in the field of aging or physical disabilities; and]~~
- ~~{b.} [An RN to consult and collaborate with regarding changes to the Plan of Care; or]~~
- ~~{4.} [Have a Master's degree from an accredited college or university which serves as a substitute for the experience required by subparagraphs 1. through 3. of this paragraph;]~~
- ~~{(b)} [Be a department certified case manager beginning July 1, 2015;] and~~
- ~~{(c)} [Be supervised by a case management supervisor.]~~
- ~~(3) {(2)} Each client shall be assigned a case manager.{.}~~
- ~~{(a)} [Case manager; or]~~
- ~~{(b)} [Social service assistant.]~~
- ~~(4) {(3)}~~
- ~~{(a)} [The case manager shall assess the eligibility and needs of individuals:~~
- ~~(a) [Initially; and [A client shall be assessed initially and reassessed]~~
- ~~(b) [At [at] least annually thereafter[by an ICC].~~
- ~~{(b)} [After each assessment or reassessment, the ICC shall determine eligibility and service level of each assessed individual.]~~
- ~~(c) [If the client is ineligible, the case manager shall close the case, document the reason in the case record, provide a list of potential resources and notify the client or caregiver by mail[be closed with the reason documented in the case record and notification shall be mailed to the client or caregiver].~~
- ~~(5) [Case management services shall not be provided to individuals on a waiting list for homecare.]~~
- ~~(6) {(4)} [The case manager shall:~~
- ~~(a) [Be responsible for coordinating, arranging, and documenting those services provided by:~~
- ~~1. [Any funding source;{or}]~~
- ~~2. [A volunteer; or]~~
- ~~3. [Formal or informal supports.]~~
- ~~(b)~~
- ~~1. [Make a reasonable effort to secure and utilize informal supports for each client; and]~~
- ~~2. [Document the reasonable effort in the client's case record;]~~
- ~~(c) [Monitor each client by conducting a home visit according to the assessed service level and through a telephone contact between home visits. Clients shall be contacted at a minimum as follows:~~
- ~~1. [Level 1, a home visit shall be conducted every other month;]~~
- ~~2. [Level 2, a home visit shall be conducted every four (4) months; and]~~
- ~~3. [Level 3, a home visit shall be conducted every six (6) months; and]~~
- ~~(d) [Document in the case record each contact made with a client, as specified in paragraph (c) of this subsection, or on behalf of the client.]~~
- ~~(e) [Practice cultural humility with awareness and respect for diversity and inclusion;]~~
- ~~(f) [Provide a copy of the Rights and Responsibilities form to the client, in his or her preferred language; and]~~
- ~~1. [Explain the rights and responsibilities to the client; and]~~

2. Document receipt of form in the client record.

~~[(5)]~~

~~[(a)] [A district shall employ an ICC to assess the eligibility and needs for each client.]~~

~~[(b)] [Clients assessed at a Level 1 or a Level 2 shall be assigned a case manager.]~~

~~[(c)] [Clients assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting their needs.]~~

~~[(6)] [A client shall receive homecare services in accordance with an individualized Plan of Care developed through person centered planning. The plan shall:]~~

~~[(a)] [Relate to an assessed problem;]~~

~~[(b)] [Identify a goal to be achieved;]~~

~~[(c)] [Identify a scope, duration and unit of service required;]~~

~~[(d)] [Identify a source of service;]~~

~~[(e)] [Include a plan for reassessment; and]~~

~~[(f)] [Be signed by the client or client's representative and case manager, with a copy provided to the client.]~~

(7) A social service assistant may be assigned to Level 3 clients to assist with meeting the assessed needs. ~~[Case management services shall not be provided to individuals on a waiting list.]~~

Section 6. Service Planning.

(1) The client shall participate in the assessment and development of a person-centered plan of care with the case manager, natural supports and other formal or informal service providers.

(2) Upon the receipt of a referral the case manager shall:

(a) Contact the client or client's representative and schedule the initial assessment;

(b) Perform the assessment through:

1. Interviews with the client, existing care givers, and natural supports;

2. Direct observation of the client's abilities and deficits; and

3. Discovery of the client's cultural preferences, practices, and beliefs;

(c) Determine the client's eligibility;

(d) Document all activities and determinations in the case record;

(e) Meet with the person-centered planning team and identify:

1. The assessed needs of the client;

2. The services that will address the identified needs; and

3. Goals that support the client's needs and preferences; and

(f) Compose the plan of care.

(3) The plan of care shall:

(a) Relate to an assessed problem;

(b) Identify a goal to be achieved;

(c) Identify a scope, duration and unit of service required;

(d) Identify a source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager, with a copy provided to the client.

(4) The client shall be reassessed at least annually, and more frequently when there is a documented change in status that indicates a need for adjustment to the service level or plan of care.

Section 7. Quality Service. If a client is determined eligible for homecare services, the case manager shall:

(1) Read, or have read and explained to the client, the purpose of the DAIL-HC- 02, Quality Service Agreement;

(2) Document the client's acknowledgement of receipt in the case record;

- (3) Maintain the original document in the client's case record;
- (4) Provide a copy of the completed agreement to the client which shall contain the name, address, and telephone number of:
 - (a) The current case manager~~[or social service assistant];~~
 - (b) A designated representative of the district; and
 - (c) A representative of the department;
- (5) Inform the client of his or her right to file a complaint regarding services and provide assistance as requested;
- (6) ~~[(3)]~~ Ensure that a copy of a DAIL – HC- 03, Report of Complaint or Concern containing written complaints and detailed reports of telephoned or verbal complaints, concerns or homecare service suggestions is maintained in the client's case record~~[permanent file]~~ and documented in a centralized log;~~[and]~~
- (7) Keep the identity of a complainant confidential; and
- (8) Document investigation and efforts at resolution or service improvement that shall be available for monitoring by the district and department staff.

Section 8. ~~[Section 7.] Appeals. [Request for a Hearing.]~~ A client may request an informal dispute resolution or an appeal~~[a hearing]:~~

- (1) An informal dispute resolution shall be limited to the denial, reduction, or termination of services. ~~[As provided by KRS 13B.010-170; and]~~
- (2) An informal dispute resolution shall not be accepted when services are unavailable due to ~~[Within thirty (30) days of any decision by the]:~~
 - (a) The program not having funding to provide the services; or ~~[Cabinet;]~~
 - (b) The individual does not meet the eligibility requirements pursuant to Section 4 of this administrative regulation ~~[District; or]~~
 - ~~[(c)] [Service provider].~~
- (3) A request for an informal dispute resolution shall:
 - (a) Be submitted to the department's homecare program coordinator within thirty (30) days following the notification of an adverse decision; and
 - (b) Contain the following information:
 - 1. Name, address, and telephone number of the client;
 - 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 three (3) employees of the departments Division of Quality Living. One of which shall be the division director or his/her designee.
- (5) The complainant shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction or termination of services.
- (6) The dispute resolution team shall inform the complainant, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.
- (7) A complainant may request an appeal for an administrative hearing conducted in accordance with KRS Chapter 13B:
 - (a) Within thirty (30) calendar days of the notice regarding the results of the dispute resolution; or
 - (b) Within thirty (30) calendar days of the notice regarding the adverse action by the cabinet.
 - (c) By submitting a written request for appeal to the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main St, 2 E-O, Frankfort, Kentucky 40621.

Section 9. [~~Section 8.~~] Fees and Contributions.

(1) The case manager[~~HCC~~] shall be responsible for determining fee paying status, using the criteria established in this subsection.

(a) A fee shall not be assessed for the provision of assessment, case management services, or home-delivered meals.

(b) The case manager[~~HCC~~] shall:

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

(c) A fee shall not be assessed to an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d)

1. SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family using 130 percent the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract. The copayment amount shall be based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0 – 129%	0%	0%	0%
130% - 149%	20%	0%	0%
150% - 169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%
250% and above	100%	100%	100%

(3)

(a) A contribution from an individual or family with a zero percent copay shall be encouraged.

(b) Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Homecare services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve the procedure implemented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

Section 10. [~~Section 9.~~] Allocation Formula. The homecare program funding formula shall consist of a \$40,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

Section 11. [~~Section 10.~~] Termination or Reduction of Homecare Services.

(1)

- (a) A case manager or client may terminate or reduce homecare services.
- (b) Homecare services shall be terminated if:
 - 1. The program can no longer safely meet the client's needs;
 - 2. The client does not pay the copay for services as established in Section ~~9[8]~~(2) of this administrative regulation;
 - 3. The client refuses to follow the plan of care; or
 - 4. The client or family member has exhibited abusive, intimidating, or threatening behavior and the client or representative is unable or unwilling to comply with the corrective action plan.
- (2) Homecare services may be reduced if:
 - (a) The client's condition or support system improves;
 - (b) Program funding has been reduced; or
 - (c) The client refuses to follow the plan of care for a particular service.
- (3) If homecare services are terminated or reduced, the case manager shall:
 - (a) Inform the client of the right to file a complaint;
 - (b) Notify the client or caregiver of the action taken; and
 - (c) Assist the client and family in making referrals to another agency if applicable.
- (4) If homecare services are terminated or reduced due to reasons unrelated to the client's needs or condition, the designated district representative in conjunction with the case manager shall determine reduction or termination on a case-by-case basis.

Section 12. [~~Section 11.~~] Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "DAIL-HC 01, Scoring Service Level", 4/2014;
 - (b) "DAIL –HC- 02, Quality Service Agreement", 4/2014;~~and~~
 - (c) "DAIL –HC- 03, Report of Complaint or Concern", 4/2014; and
 - (d) "Rights and Responsibilities", 1/2023.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 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>.

VICTORIA ELDRIDGE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 19, 2023 at 11:40 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 24 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this hearing shall notify this agency in writing by April 17, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office

of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This amended administrative regulation updates definitions, establishes case managers instead of independent care coordinators and updates the qualifications for case managers, updates the required policy and procedures required to be in place by contractors, adds requirements for service planning and adds appeal rights including an informal dispute resolution process and where to submit a formal appeal.

(b) The necessity of this administrative regulation:

This amended administrative regulation is necessary to carry out the requirements of the homecare program as established to carry out KRS 205.201 and 205.203 by establishing in home services to the aging population. This administrative regulation sets out the eligibility for services and responsibilities of the provider agencies.

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

This amended administrative regulation conforms to the content of KRS 205.201 and 205.203 by establishing the homecare program for older adults and the minimum requirements for eligibility and service provisions.

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

This amended administrative regulation assists in the effective administration of the statutes by establishing the minimum requirements for eligibility and service provision. This amendment updates definitions and requirement for the provider agencies to ensure appropriateness of services, safety of participants and consistency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment updates definitions, changes the independent care coordinator to a case manager, updates the qualifications for a case manager, adds monitoring of the services for appropriateness and safety of the clients, establishes policy and procedures provider agency shall have in place to prevent the reduction or termination of services to a client without cause, adds requirement for service planning and to include the client in the planning and updates the appeal rights to include an informal dispute resolution and address to submit a request for an appeal.

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

This amendment is necessary to update the case management requirements and add protections for clients in the homecare program.

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

This amendment provides for in home services as authorized by KRS 205.203. The amendment establishes additional requirements for the provider agencies to ensure appropriate service planning and monitoring of safety

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

This amended administrative regulation provides more planning for needed services and a higher level of case management. The homecare program provides needed services to aged individuals to assist them to remain in their own home for as long as possible and prevent premature placement in a long-term care facility.

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

This amended administrative regulation affects the fifteen (15) Area Agencies on Aging and Independent Living (AAAs), twenty (20) provider agencies under contract with the AAAs that provide homecare services and the 4,500 individuals enrolled in the homecare program.

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

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

In accordance with this administrative regulation, the title Independent Care Coordinator will need to be updated to Case Manager, this will not have an effect on the AAAs as they have already been utilizing the Case Manager title and the reason for the amendment. The AAAs will need to establish four (4) new policies to provide written details on staff, placing services on hold when clients are not able to receive services (i.e., in the hospital or away on vacation), and the termination or reduction of services to a client and service planning. AAAs and subcontractors will have to update policies on appeals to include the informal dispute resolution process and the address to submit an appeal should the informal dispute resolution not be successful. There are no new actions of the clients or applicants for the home care program, they will benefit from the amendments updating the case management and policy requirements and providing them with an official dispute resolution at the local level before determining that they need to file an official appeal. The amendment also includes information on where to send an appeal making the filing of an appeal easier.

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

This administrative regulation establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

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

CAHs and rural hospitals that convert to an REH may avert potential closure and continue to provide essential services for the communities they serve.

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

(a) Initially:

There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation.

(b) On a continuing basis:

There are no additional costs to the Office of Inspector General for implementation of this amended administrative regulation on a continuing basis.

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

The source of funding used for the implementation and enforcement of the homecare program is state general funds and matching funds from the provider agencies.

(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 administrative regulation as amended does not increase fees or funding necessary to operate the homecare program.

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

This administrative regulation as amended does not modify the current fee structure. This administrative regulation establishes a fee for services based on income.

(9) TIERING: Is tiering applied?

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

FISCAL NOTE

(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 Area Development Districts, Area Agencies on Aging and Independent Living and the Cabinet for Health and Family Services, Department for Aging and Independent Living.

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

KRS 194A.700(1), (7), 205.010(6), 205.201, 205.203, 205.455-465, 209.030(2)(3) and 42 U.S.C. Chapter 35.

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

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

This amended administrative regulation establishes a sliding scale fee for service based on income. Because the fees are paid for a service rendered at less than the cost of service, there is no increase in 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 amended administrative regulation establishes a sliding scale fee for service based on income. Because the fees are paid for a service rendered at less than the cost of service, there is no increase in revenue.

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

There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation.

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

There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation during 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?

There are no cost savings with the implementation of this amended administrative regulation.

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

There are no cost savings with the implementation of this amended administrative regulation in subsequent years.

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

There are no additional costs with the implementation of this amended administrative regulation.

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

There are no additional costs with the implementation of this amended administrative regulation in 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)]. There is no major economic impact with this amended administrative regulation. There is no change to the income or expenditures for the implementation of this amendment.