

## **CABINET FOR HEALTH AND FAMILY SERVICES**

### **Department for Community Based Services**

#### **Division of Family Support**

#### **(Amendment)**

### **921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.**

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), ~~[216.530, 216.557(1), 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. Part 416, 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641], 42 U.S.C. 415(i), 1381-1383~~

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the commonwealth~~[Commonwealth]~~ and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

#### **Section 1. Definitions.**

- (1) "Activities of daily living" is defined by KRS 194A.700(1).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.
- (4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.
- (5) "Department" means the Department for Community Based Services or its designee.
- (6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.
- (7) "Instrumental activities of daily living" is defined by KRS 194A.700(9).
- (8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.
- (9) "Qualified immigrant " means an immigrant who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.
- (10) "Qualified mental health professional" is defined by KRS 202A.011(12).
- (11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.
- (12) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

## Section 2. Mandatory State Supplementation.

- (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.
- (2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.
- (3) A mandatory state supplementation payment shall be equal to the difference between:
  - (a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and
  - (b)
    1. The total of the SSI payment; or
    2. The total of the SSI payment and other income for the current month.
- (4) A mandatory payment shall discontinue if:
  - (a) The needs of the recipient as recognized in December 1973 have decreased; or
  - (b) Income has increased to the December 1973 level.
- (5) The mandatory payment shall not be increased unless:
  - (a) Income as recognized in December 1973 decreases;
  - (b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or
  - (c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.
- (6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

## Section 3. Optional State Supplementation Program.

- (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:
  - (a) 907 KAR 20:001;
  - (b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;
  - (c) 907 KAR 20:020, Section 2(4)(a);
  - (d) 907 KAR 20:025; or
  - (e) 907 KAR 20:040, Section 1.
- (2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:
  - (a) Furnish a Social Security number; or
  - (b) Apply for a Social Security number, if a Social Security number has not been issued.
- (3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.
- (4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

## Section 4. Optional State Supplementation Payment.

- (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:
  - (a) Requires a full-time living arrangement;
  - (b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and
  - (c)
    1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);
  3. Receives caretaker services and is at least eighteen (18) years of age; or
  4.
    - a. Resides in a private residence;
    - b. Is at least eighteen (18) years of age; and
    - c. Has SMI.
- (2) A full-time living arrangement shall include:
- (a) Residence in a personal care home that:
    1. Meets the requirements and provides services established in 902 KAR 20:036; and
    2. Is licensed under KRS 216B.010 to 216B.131;
  - (b) Residence in a family care home that:
    1. Meets the requirements and provides services established in 902 KAR 20:041; and
    2. Is licensed under KRS 216B.010 to 216B.131;
  - (c) A situation in which a caretaker is required to be hired to provide care other than room and board; or
  - (d) A private residence, which shall:
    1. Be permanent housing with:
      - a. Tenancy rights; and
      - b. Preference given to single occupancy; and
    2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.
- (3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:
- (a) Return the check to the Kentucky State Treasurer, the month after the month of:
    1. Discharge to a:
      - a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or
      - b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or
    2. Death of the state supplementation recipient; and
  - (b) Notify a local county department within five (5) working days of the death or discharge of the state supplementation recipient.
- (4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.
- (5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:
- (a) Return the check to the Kentucky State Treasurer, the month after the month of:
    1. Discharge to a:
      - a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;
      - b. Another personal care or family care home; or
      - c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or
    2. Death of the state supplementation recipient; and
  - (b) Notify a local county department within five (5) working days of the:
    1. Death or discharge of the state supplementation recipient; or
    2. Voluntary relinquishment of a license to the Office of the Inspector General.
- (6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2. of this section,

the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

#### Section 5. Eligibility for Caretaker Services.

(1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;
2. In another family setting; or
3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;
2. Parent of an adult or minor child who has a disability; or
3. Adult child of a parent who is aged, blind, or has a disability.

#### Section 6. Eligibility for Community Integration Supplementation.

(1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);

(c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

(a) Often services, including those that address subsection (1)(c) of this section, are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

#### Section 7. Resource Consideration.

(1) Except as provided in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

- (a) \$2,000 for an individual; or
- (b) \$3,000 for a couple.

#### Section 8. Income Considerations.

(1) Except as provided in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.

(2) The optional supplementation payment shall be determined by:

- (a) Adding:
  - 1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
  - 2. A payment made to a third party on behalf of an applicant or recipient; and
- (b) Subtracting the total of paragraph (a)1. and 2. of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

- (a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
- (b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:
  - 1. The applicant or recipient; and
  - 2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

#### Section 9. Standard of Need.

(1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2021 pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>:

- (a) For a resident of a personal care home, \$1,409;
- (b) For a resident of a family care home, \$965;
- (c) For an individual who receives caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability, \$855;
2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care, \$1,251; or
3. An eligible couple, both aged, blind, or having a disability and both requiring care, \$1,305; or
- (d) For an individual who resides in a private residence and has SMI, \$1,313.
- (2)
  - (a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.
  - (b) One-half (1/2) of the deficit shall be payable to each.
- (3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.
- (4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

#### Section 10. Temporary Stay in a Medical Facility.

- (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:
  - (a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;
  - (b) Social Security Administration notifies the department that the admission shall be temporary; and
  - (c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.
- (2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three
- (3) full months of medical care in a health care facility if:
  - (a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;
  - (b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and
  - (c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:
    1. Notification of the temporary admission; and
    2. The physician statement specified in paragraph (b) of this subsection.
- (3) A temporary admission shall be limited to the following health care facilities:
  - (a) Hospital;
  - (b) Psychiatric hospital; or
  - (c) Nursing facility.
- (4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

#### Section 11. Citizenship requirements. An applicant or recipient shall be a:

- (1) Citizen of the United States; or
- (2) Qualified immigrant.

#### Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

#### Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of ~~\$25,000[fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month]~~;

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of the Inspector General in accordance with Section 6 of 902 KAR 20:036~~[15(2) through (4) of this administrative regulation]~~; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number, ~~and~~ address, and staff information as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of the Inspector General as specified in Section 6 of 902 KAR 20:036~~[15(6) of this administrative regulation]~~; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the last four (4) digits only of the resident's Social Security Number;

3. Lists the resident's date of birth; and

4. Is marked appropriately for each resident to indicate the resident:

a. Has a mental illness diagnosis;

b. Has an intellectual disability diagnosis; or

- c. Receives state supplementation; and
- (b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:
  - 1. Mail;
  - 2. Fax; or
  - 3. Electronically.
- (5) The monthly report shall be used by the department for:
  - (a) Verification as specified in subsection (4)(a) of this section;
  - (b) Payment; and
  - (c) Audit purposes.
- (6)
  - (a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.
  - (b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.
- (7) If a Type A Citation is received, the personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.
- (8) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.
- (9) The personal care home shall provide the department with the information requested on the STS-2:
  - (a) Relevant to unmet certification criteria specified on the STS-4; and
  - (b) Within ten (10) working days after the STS-2 is issued.
- (10) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.
- (11) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with subsection (1)(c)6. of this section, for the next following quarter.

#### Section 14. Mental Illness or Intellectual Disability (MI/ID) Training.

- (1)
  - (a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.
  - (b) Other staff may complete the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.
- (2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:
  - (a) Importance of proper medication administration;
  - (b) Side effects and adverse medication reactions with special attention to psychotropics;
  - (c) Signs and symptoms of an acute onset of a psychiatric episode;
  - (d) SMI;
  - (e) SMI recovery;



- (f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;
  - (g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability;
  - (h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;
  - (i) Activities of daily living and instrumental activities of daily living;
  - (j) Adult learning principles; and
  - (k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.
- (3) Initial training shall:
- (a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and
  - (b) Be in the quarter during which the STS-1 is filed with the department.
- (4)
- (a) A personal care home shall have at least one (1) direct care staff member who has received training.
  - (b) A personal care home shall have on staff a licensed nurse or individual who:
    - 1. Has successfully completed certified medication technician or Kentucky medication aide training; and
    - 2.
      - a. Has received mental illness or intellectual disability training; or
      - b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.
- (5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:
- (a) Certificate to direct care staff who complete the training workshop; and
  - (b) Listing to the department of staff who completed the training workshop.
- (6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:
- (a) That has applied for the MI/ID Supplement Program; and
  - (b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. ~~[MI/ID Supplement Program Certification.]~~

- ~~[(1)] [The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.]~~
- ~~[(a)] [The personal care home's initial MI/ID Supplement Program Certification Survey:]~~
  - ~~[1.] [May be separate from an inspection conducted in accordance with KRS 216.530; and]~~
  - ~~[2.] [Shall be in effect until the next licensure survey.]~~
- ~~[(b)] [After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2. of this subsection.]~~
- ~~[(c)] [The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.]~~
- ~~[(2)] [During the eligibility inspection, the Office of the Inspector General shall:]~~
  - ~~[(a)] [Observe and interview residents and staff; and]~~
  - ~~[(b)] [Review records to assure the following criteria are met:]~~

~~[1.] [Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;]~~

~~[2.] [The personal care home:]~~

~~[a.] [Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and]~~

~~[b.] [Maintains documentation of completion at the in-service training for all direct care staff;]~~

~~[3.] [Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training:]~~

~~[a.] [Demonstrates a knowledge of psychotropic drug side effects; and]~~

~~[b.] [Is on duty as specified in Section 13(1)(c)3. of this administrative regulation; and]~~

~~[4.] [An activity is being regularly provided that meets the needs of a resident.]~~

~~[a.] [If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.]~~

~~[b.] [An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.]~~

~~[(3)] [The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.]~~

~~[(4)] [If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(e)2. of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(e) of this section.]~~

~~[(5)] [If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.]~~

~~[(6)] [The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:]~~

~~[(a)] [Initial survey; or]~~

~~[(b)] [Inspection in accordance with KRS 216.530.]~~

~~[(7)] [The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.]~~

~~[(8)] [The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.]~~

~~[(9)] [If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.]~~

~~[(10)] [The personal care home shall provide the department with the information requested on the STS-2:]~~

~~[(a)] [Relevant to unmet certification criteria specified on the STS-4; and]~~

~~[(b)] [Within ten (10) working days after the STS-2 is issued.]~~

~~[(11)] [If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.]~~

~~{(12)} [If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(e)6. of this administrative regulation, for the next following quarter.]~~

~~[Section 16.]~~ Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. ~~[Section 17.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", ~~12/23~~~~[01/15]~~;
- (b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;
- (c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and
- (d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 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/dcbs/Pages/default.aspx>.

*LESA DENNIS, Commissioner*

*ERIC C. FRIEDLANDER, Secretary*

APPROVED BY AGENCY: December 1, 2023

FILED WITH LRC: December 6, 2023 sat 1:20 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 2024, 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 February 19, 2024, 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 February 29, 2024. 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: 502-564-7476; Fax: 502-564-7091; [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:**Krista Quarles

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:**

This administrative regulation establishes a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

**(b) The necessity of this administrative regulation:**

The administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Program.

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

This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program of persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U. S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

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

This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplemental Program for persons who are aged, blind, or have a disability.

**(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 only includes changes affecting the Mental Illness or Intellectual Disability (MI/ID) Supplement Program. This amendment increases the supplement rate provided to participating facilities, recognizing that the cost of care provided has increased as a result of the passage of Senate Bill 110 from the 2023 Regular Session of the General Assembly, which amended KRS 194A.705(2)(c) and required specific long term care facilities to ensure that unlicensed staff administering medications have successfully completed a medication aide training and skills competency evaluation program. Most of Section 15 relating to MI/ID Supplement Program certification performed by the Office of Inspector General (OIG) has been removed from this administrative regulation and added to the OIG administrative regulation, 902 KAR 20:036.

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

This amendment is necessary for consistency with amendments made to 902 KAR 20:036, required by Senate Bill 110 that amended KRS 194A.705(2)(c).

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

KRS 205.245 requires the mandatory supplementation program for needy persons who are aged, blind, or have a disability established in this administrative regulation. This amendment increases the supplemental payment amount for participants in the voluntary MI/ID program.

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

This amendment is necessary for consistency with 902 KAR 20:036, amended as a result of the passage of SB 110 in the 2023 Regular Session.

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

Thirteen personal care homes are currently participating in the MI/ID Supplement Program and receiving the supplement on behalf of approximately 2,000 residents.

**(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 MI/ID Supplement Program is a voluntary program, but participating personal care homes will receive greater financial support for participating once this amendment becomes effective.

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

This is no cost.

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

In order to participate in this voluntary supplement program, a personal care home must care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and other related requirements must be met.

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

**(a) Initially:**

The cabinet estimates this supplement increase to cost approximately \$200,000 more per year and possibly more if additional personal care homes meet the MI/ID program requirements in the future.

**(b) On a continuing basis:**

The cabinet estimates this supplement increase to cost approximately \$200,000 more per year and possibly more if additional personal care homes meet the MI/ID program requirements in the future.

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

General Fund appropriations and agency funds are used to implement and enforce the State Supplementation Program.

**(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:**

If the number of personal care home participants in the program increases dramatically, an increase in funding may be necessary to sustain the increased rates. There are no fees associated with the program.

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

This administrative regulation does not establish or increase fees.

**(9) TIERING: Is tiering applied?**

Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

## **FEDERAL MANDATE ANALYSIS COMPARISON**

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

20 C.F.R. Part 416, 42 U.S.C. 1382e-g

**(2) State compliance standards.**

KRS 194.050(1), 205.245

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

20 C.F.R. Part 416, 42 U.S.C. 1382 e-g

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

This administrative regulation does not impose a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

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

This administrative regulation does not impose a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

## **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 Cabinet for Health and Family Services, Department for Community Based Services, administers this program with oversight provided by the Office of Inspector General.

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

KRS 194.050(1), 205.245, 42 U.S.C.1328e-g, 20 C.F.R. Part 416.

**(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 will not generate revenue for the state or local government.

**(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 for the state or local government.

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

There will be an additional cost of approximately \$200,000.

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

There will be an additional cost of approximately \$200,000, possibly more if program participation increases.

**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 cost savings, but the increased supplement payment will help to offset costs.

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



This administrative regulation will not generate cost savings, but the increased supplement payment will help to offset costs.

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

There is no cost to regulated entities associated with this amendment.

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

There is no cost to regulated entities associated with this amendment.

**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 not have a major economic impact.