

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Substance Use Disorder
(Amended After Comments)

908 KAR 1:410. Recovery housing.

RELATES TO: 26 U.S.C. 501(c), 42 U.S.C. 3607, 12187

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 210.450, 222.211, 222.500-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 222.504(3) allows for the promulgation of administrative regulations governing recovery housing certification. This administrative regulation establishes the standards and requirements for recovery housing certification.

Section 1. Definitions.

- (1) "Applicant" means the owner, operator, or agency that submits an application for the certification of a recovery residence.
- (2) "Cabinet" is defined by KRS 222.500(1).
- (3) "Certified recovery residence" means a recovery residence that has met the required standards recognized and approved by the Cabinet for Health and Family Services.
- (4) "Certifying organization" is defined by KRS 222.500(2).
- (5) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.
- (6) "Kentucky Recovery Housing Network" means the organization recognized by the National Alliance for Recovery Residences (NARR) as the state affiliate.
- (7) "Local government" is defined by KRS 222.500 (3).
- (8) "National Alliance for Recovery Residence Standards" or "NARR standards" means a set of published national standards for all levels of recovery residences and is available on the NARR Web site at <https://narronline.org/affiliate-services/standards-and-certification-program/>.
- (9) "Recovery residence" is defined by KRS 222.500(5).
- (10) "Recovery support services" is defined by KRS 222.500(6).

Section 2. Application Process for Certification of Recovery Residences.

- (1) Entities required by KRS 222.502 to obtain certification as a recovery residence shall submit:
 - (a) A "Recovery Housing Certification Application" that includes full, complete, and accurate information for each residence;
 - (b) A completed "Recovery Housing Assurances" for each residence;
 - (c) A signed "Recovery Housing Code of Ethics";
 - (d) A signed, notarized statement granting permission by the property owner of record, if other than the applicant, to operate a recovery residence on the owner's property;
 - (e) Proof of fire, liability, and hazard insurance coverage on the building in which the residence is located;
 - (f) ~~{Proof of current inspections for:}~~
 - ~~{1.} {Health and safety;}~~
 - ~~{2.} {Building and occupancy;}~~
 - ~~{3.} {Fire codes; and}~~
 - ~~{4.} {Zoning requirements;}~~

~~(g)~~ Proof of current registration with the Kentucky Secretary of State;

(g) ~~(h)~~ A copy of resident program policies that include:

1. Terms of occupancy, **including policies related to a residents prescription and non-prescription medication usage and storage;**

2. Financial obligations, including any fees, charges, or rents that may accrue to the resident and the process, time frame, and requirements for the collection of such obligations;

3. Financial deposits that may be collected, if any, and the time frame process, and requirements for the return of such deposits; and

4. Any circumstances under which the resident may be entitled to a refund of any amount for financial obligations collected by the recovery residence, if applicable;

(h) ~~(i)~~ A copy of the emergency preparedness plan for the recovery house, that includes:

1. Emergency contact numbers;

2. An evacuation plan and map;

3. An emergency relocation plan that specifies where residents may live temporarily; and

4. A continuity of operations plan; and

(i) ~~(j)~~ If applicable, any forms, documents, and guides used to mentor each resident or monitor each resident's participation in the development of the resident's recovery plan;

(2) If an application is incomplete or inaccurate, the certifying organization:

(a) Shall return the application within ten (10) business days to the applicant with written instructions regarding proper completion and resubmission of the application within a specified time frame; and

(b) May conduct ~~or delegate a designee to conduct,~~ a pre-inspection site visit.

(3) The cabinet ~~or,~~ certifying organization ~~or its designee~~ may conduct an inspection of the residence at any time without prior notice, including inspecting and copying financial and resident records.

(4) Required entities as established by KRS 222.502 shall submit a "Kentucky Recovery Housing Application" with the required supporting documentation identified in Section 2(1) to the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Kentucky Recovery Housing Certification Program via:

(a) Electronic mail to kyrecoveryhousing@ky.gov; or

(b) Written mail to 275 E. Main Street, 4W, Frankfort, Kentucky, 40621.

Section 3. Approval or Denial of the Application for Recovery Residence Certification.

(1) The certifying organization shall conduct a site visit after the completed application and required documentation is received to determine if the application for certification for a recovery residence is:

(a) Approved;

(b) Provisionally approved; or

(c) Denied.

(2) The certifying organization shall grant approval for certification for a period of twelve (12) months if the applicant is in compliance with the "NARR standards"; or

(3) The certifying organization may grant provisional approval of the application for initial certification of a recovery residence in the following circumstances:

(a) The certifying organization has identified deficiencies with respect to specific NARR standards; and

(b) The identified deficiencies do not pose an imminent risk to the health, safety, or welfare of a resident; or

- (4) The certifying organization shall deny the application for certification of a recovery residence in the following circumstances:
- (a) The applicant is in noncompliance with the NARR standards;
 - (b) One or more deficiencies have been identified that pose an imminent risk to the health, safety, or welfare of the residents; or
 - (c) Information contained on the application reveals that there would be an unreasonable risk of harm to the residents if certification were granted; or
- (5) The certifying organization may deny the application for certification of a recovery residence if the applicant has previously discontinued operations of a recovery residence without prior notification to staff, residents, and the certifying organization, and without implementation of a transition plan for residents to alternative living arrangements.
- (6) If provisional approval is granted, it shall:
- (a) Be for a period of six (6) months from the date of the issuance of the provisional approval;
 - (b) Require the entity to request the certifying organization to conduct a site visit for reconsideration of certification prior to the expiration of the provisional approval; and
 - (c) Require the entity to submit documentation that demonstrates that the identified deficiencies have been eliminated.
- (7)
- (a) Provisional approval may be granted two consecutive times, for a maximum of twelve (12) months, at **the end of which**~~that~~ time the application for certification shall be denied;
 - (b) **The entity shall have up to thirty (30) days to continue to operate and assist residents in securing alternative housing;**
 - (c) **The entity shall cease all operations by the thirty-first day after the date of notification of denial; and**
 - (d) **The entity shall submit a new application for certification as a recovery residence** ~~and~~
~~{(b)} {The entity shall wait twelve (12) months from the date of denial before a new application may be submitted}.~~
- (8) Certification, if granted, shall be valid for the residence and address for which the original certification is issued.
- (9) Recovery residence certification is not transferable, if the sale or transfer of a recovery residence causes a change in **at least twenty-five (25) percent of** ownership, the new owner must apply for certification as established in Section 2 of this administrative regulation.

Section 4. Recertification.

- (1) An entity that has been granted certification as a recovery residence, shall submit an application for recertification to the certifying organization at least sixty (60) days prior to the expiration date of the current certification.
- (2) The certifying organization shall conduct a site visit as part of the recertification process.
- (3)
- (a) Recertification shall be granted **for a period of two (2) years** if the applicant is currently certified and is in compliance with the NARR standards; or
 - (b) Subsequent to the issuance of provisional recovery residence certification, the identified deficiencies on the basis of which the provisional certification was granted have been fully and satisfactorily remediated;
- (4) Provisional approval shall be granted of the application for recertification of a recovery residence if:

- (a) The certifying organization has identified deficiencies with respect to specific NARR standards; and
 - (b) The identified deficiencies do not pose an imminent risk to the health, safety, or welfare of a resident; or
- (5) If provisional approval is granted during recertification, it shall be granted once and for a period not to exceed six (6) months.
- (6) If an applicant is granted provisional approval during the recertification process before being granted certification, then certification shall be for a period of one (1) year.**
- (7)** An application for recertification shall be denied in the following circumstances:
- (a) The applicant is in noncompliance with the NARR standards;
 - (b) One or more deficiencies have been identified that pose an imminent risk to the health, safety, or welfare of the residents; or
 - (c) The application reveals that there would be an unreasonable risk of harm to the residents if certification were granted.
- (8) ~~(7)~~** If the applicant has discontinued operations of a recovery residence without complying with the provisions of this administrative regulation an application for recertification may be denied.
- (9) ~~(8)~~** If the certifying organization does not conduct a site visit before the expiration of certification, the certifying organization shall issue a written notification to the owner or operator of the recovery residence that extends certification **for a period of up to ninety (90) days or** until the certifying organization is able to conduct a site visit of the recovery residence.
- (10) ~~(9)~~** The certifying organization shall notify the department of the organizations determination of an application for certification within ten (10) business days from the date of notification to the applicant.

Section 5. Department Responsibilities.

- (1) The department shall:
- (a) Require certified recovery residences to provide proof of certification at least annually;
 - (b) Require certified recovery residences to notify the department of any change in their certification status by a certifying organization;
 - (c) Require separate proof of certification for each recovery residence owned or operated by an individual or entity in the commonwealth;
 - (d) Post on its Web site the name, telephone number, and location by local jurisdiction of each certified recovery residence and shall update the list at least quarterly;
 - (e) Post on its Web site the name of each certifying organization approved by the cabinet; and
 - (f) Notify local governments with appropriate jurisdiction of receipt of proof of certification from a recovery residence within thirty (30) days of receipt of proof of certification.
- (2) The department may seek legal action, up to and including cessation of operations and monetary penalties, against a recovery residence that fails to meet the requirements of this administrative regulation.
- (3) The department, **or certifying organization**, shall not disclose the address of a recovery residence except to local governments, local law enforcement, and emergency personnel.

Section 6. Recovery Residence Owner or Operator Responsibilities. The owner or operator of a certified recovery residence shall ensure the following:

- (1) The residence and its operations are in compliance with the NARR standards;

(2) The residence shall develop and adhere to a written policy regarding the criminal history, including substantiated abuse or neglect of a child or vulnerable adult, of any staff member, employee, peer, or volunteer who serves in a staff capacity with the recovery residence and, in that capacity, has direct and regular interaction with residents;

(3) If the certified recovery residence plans to discontinue operations, the owner or operator shall submit, at least sixty (60) calendar days before the residence intends to cease operations, to the certifying organization, a written plan that includes the following information:

(a) Date operations will cease; and

(b) Notification to residents of the planned discontinuation of operations and of other certified recovery residences and housing options.

Section 7. Background checks.

(1) All staff of a recovery residence shall:

(a) Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police; and

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500;

2. Criminal offense against a minor as specified in KRS 17.500; or

3. Felony offense related to neglect, physical abuse, sexual abuse, or exploitation of a child or adult.

(2) A recovery residence that houses individuals under the age of eighteen (18) shall not employ anyone listed on the central registry established by 922 KAR 1:470.

Section 8. Request for Reconsideration.

(1) An applicant for certification dissatisfied by a decision of the cabinet, or certifying agency may submit a request for reconsideration by submitting, in writing, to the commissioner for the department, or designee, within ten (10) days following notice of the decision.

(2) The written request shall include:

(a) Application for certification that was denied; and

(b) Documentation that addresses the reasons an application for certification was denied.

(3) Upon receipt of a request for reconsideration, the commissioner or designee, shall:

(a) Review the request; and

(b) Render a written decision on the request for reconsideration within thirty (30) calendar days unless an extension is granted by the commissioner or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the applicant for certification.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Recovery Housing Assurances", 07/24;

(b) "Kentucky Recovery Housing Certification Application", 07/24;

(c) "Kentucky Recovery Housing Code of Ethics", 07/24; and

(d) "NARR Standard 3.0", 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based 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 departments Web site at <https://www.chfs.ky.gov/agencies/dbhdid/Pages/default.aspx>.

(3) This material is also available at <https://narronline.org/affiliate-services/standards-and-certification-program/.908> KAR 1:410

KATHERINE R. MARKS, Ph. D., Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY; March 13, 2024

FILED WITH LRC: March 14, 2024

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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rachael Ratliff

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements and standards for the administration of recovery housing certification.

(b) The necessity of this administrative regulation:

This administrative regulation establishes the requirements and standards for the administration of recovery housing certification.

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

This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 222.502 establishing the requirements and standards for the administration of recovery housing certification.

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

This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 222.502 by establishing the standards and requirements for the certification of recovery housing.

(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 is a new administrative regulation.

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

This is a new administrative regulation.

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

This is a new administrative regulation.

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

This is a new administrative regulation.

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

As of February 5, 2024, there are currently 101 certified recovery residences with a total of 1,370 available beds for 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 regulated entities will be required to meet the criteria established in the statute and submit the required application and supporting documentation required to meet the standards established to be certified as a recovery residence.

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

There are no costs associated with the application for certification.

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

The regulated entities will experience certification and an increased opportunity for funding for programming designed for individuals who experience substance use disorder and are in recovery.

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

(a) Initially:

The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$980,000 to implement the recovery house certification program in the first year.

(b) On a continuing basis:

The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$980,000 annually, on a continuing basis.

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

This administrative regulation will be funded through a combination of federal grant funds and state 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:

The new administrative regulation may result in an increased need for funding and or the establishment of fees dependent upon the request from the impacted entities. The impact is unknown at this time and is being implemented at no cost to the applicants.

(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.

(9) TIERING: Is tiering applied?

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

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 Behavioral Health, Developmental and Intellectual Disabilities.

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

KRS 222.502

(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 any revenue in the first year.

(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 any revenue in subsequent years.

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

The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$980,000 to implement the recovery house certification program in the first year.

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

The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$980,000 annually, on a continuing basis.

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:

To administer this regulation, funds are needed to support salaries of at least 8 full-time staff to implement the certification process, travel reimbursement to perform recovery residence site visits, training and technical assistance, community outreach and education. These costs also include the funds necessary to purchase, implement, and utilize a data management platform.

(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 for the regulated entities in the first year.

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

This administrative regulation will not generate cost saving for the regulated entities in subsequent years.

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

This administrative regulation should not cost regulated entities in the first year for the provision of already established services.

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

This administrative regulation should not cost regulated entities in subsequent years for the provision of already established services.

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 a major economic impact to the department without a budget allocation for the implementation of recovery housing certification. Implementation will require approximately 8 full time staff which will result in a financial expenditure of \$980,000 for salary, fringe, and operating costs annually.