

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

RELATES TO: KRS Chapter 13B, 205.455(4), 205.900 - 205.925

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

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

Section 1. Definitions.

- (1) "Administrative support personnel" means staff designated within a contract agency who offer technical assistance to, and monitor the activities of, the qualified agency.
- (2) "Approved plan" means an agreement between the department and a contract agency to administer the personal care attendant program.
- (3) "Assessment" means the collection and evaluation of information:
 - (a) About a person's situation and functioning;
 - (b) To determine the applicant's or participant's service level; and
 - (c) To develop a plan of care utilizing a holistic, person centered approach by the evaluation team.
- (4) "Attendant" means a person who provides personal care assistance services.
- (5) "Contract agency" means the agency with which the cabinet has contracted to administer the personal care attendant program.
- (6) "Department" means the Department for Aging and Independent Living or its designee.
- (7) "Evaluation team" is defined by KRS 205.900(2).
- (8) "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.
- (9) "Immediate family" means a legal guardian, parent, step parent, foster parent, adoptive parent, sibling, grandparent, child, or spouse.
- (10) "Income eligibility standard" means a formula to determine an applicant's income eligibility for the personal care attendant program pursuant to KRS 205.910(1).
- (11) "Natural supports" means a non-paid person or persons or community resource, that can provide, or has historically provided, assistance to the participant or due to the familial relationship, would be expected to provide assistance.
- (12) "Participant" means a person accepted into the personal care attendant program and who has met the eligibility requirements of a severely physically disabled adult.
- (13) "Personal care assistance services" is defined by KRS 205.900(3).
- (14) "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic requirements for eligibility.
- (15) "Qualified agency or organization" is defined by KRS 205.900(4).
- (16) "Reassessment" means reevaluation of the situation and functioning of a client.
- (17) "Service area" means those counties listed in an approved plan of the qualified agency or organization.
- (18) "Severely physically disabled adult" is defined by KRS 205.900(6).
- (19) "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).
- (20) "Work agreement" means an agreement of time and tasks developed by the participant as the employer for the attendant as the employee.

Section 2. Eligibility.

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

- (a) Be a severely physically disabled adult who:
 - 1. Meets the qualifications required by KRS 205.905(1); and
 - 2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;
- (b) Agree to obtain an initial assessment for eligibility and a re-assessment at least annually by an evaluation team in accordance with KRS 205.905(2)(b)1 and 2;
- (c) Be able to reside or reside in a non-institutional setting;
- (d) Work with a program coordinator in establishing a work agreement between the participant and attendant;
- (e) Be responsible for attendant payroll reports and computing required employer tax statements;
- (f) Have immediate family or natural supports to meet the individual's needs if a paid attendant is not available; and
- (g) Not be receiving the same services obtainable from any federal, state, or combination of federal and state funded programs. If the individual's needs cannot be met with the funding received from any of those programs, the individual may be eligible to receive personal care attendant program services above and beyond what the other programs provide.

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

- (a) The evaluation team determines that the applicant is eligible to participate in the program in accordance with this section;
- (b) The department agrees that the determination in accordance with this section; and
- (c) Funds are available.

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

- (a) Supplemental Security Income; or
- (b) Medicaid.

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

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

- (a) The program coordinator shall determine the adjusted gross income by deducting:
 - 1. The cost of unreimbursed extraordinary medical expenses, and impairment-related expenses as recorded on the PCAP-05;
 - 2. An amount adjusted for family size based on 200 percent of the official poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services; and
 - 3. Dependent care expenses.

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

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

- 1. From the adjusted gross income subtract a current annual standard deduction for one (1) as determined by the Internal Revenue Service;
- 2. Divide the remaining income by two (2) to allow for the unique economic and social needs of the severely disabled adult;
- 3. Divide the final income by fifty-two (52) weeks; and

4. Calculate the estimated cost of personal care services by multiplying the estimated number of hours of personal care assistance services per week times the cost per hour of service.

(d)

1. If the resulting monetary amount in paragraph (c)3. of this subsection is less than the estimated cost of services calculated in paragraph (c)4. of this subsection, the qualified agency shall provide the full subsidy.

2. If the resulting monetary amount in paragraph (c)3. of this subsection is more than the estimated cost of services calculated in paragraph (c)4. of this subsection, the participant shall pay the difference between the cost of services and the qualified agency's maximum hourly rate.

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

Section 3. Application and Evaluation.

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

(a) The applicant;

(b) Family;

(c) Another person; or

(d) Agency.

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

(a) Visit and assist an applicant in the completion of a PCAP-01 Application for Services; and

(b) Complete and have all evaluation team members sign a PCAP-04 Evaluation Team Findings and Recommendations.

(3) A qualified agency shall:

(a) Report an evaluation team's findings and recommendations to the contract agency for final review of the applicant or participant; and

(b) Notify the applicant or participant if the findings and recommendations are accepted by the contract agency.

(4) A contract agency shall:

(a) Review recommendations of the evaluation team and notify the qualified agency in writing of the final determination within ten (10) business days of receipt of the recommendations; and

(b) Notify the applicant or participant in writing within twenty (20) business days of receipt of the recommendations in accordance with KRS 205.905(3):

1. Whether the recommendations of the evaluation team are accepted or not accepted; and

2. The reasons for the contract agency's decision.

Section 4. Waiting List.

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

(a) Emergency situation because of an imminent danger to self or at risk of institutionalization;

(b) Urgent situation because there are no community supports; or

(c) Stable because there is a currently reasonable support system.

(2) Every effort shall be used to provide referrals to other services if personal care assistance services are not available.

Section 5. Relocation.

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

Section 6. Suspension of Services.

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

Section 7. Participant Responsibilities. A participant shall:

- (1) Meet the eligibility requirements to receive a subsidy set out in Section 2(1) of this administrative regulation;
- (2) Select an attendant for personal care assistance services including screening and interviewing the attendant for employment;

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

Section 8. Attendant Responsibilities.

- (1) An attendant shall:
 - (a) Enter into and comply with the written agreement for terms of work required by Section 7(5) of this administrative regulation;
 - (b) Perform personal care assistance services and other tasks that may include:
 1. Turning;
 2. Repositioning;
 3. Transferring;
 4. Assistance with oxygen;
 5. Hygiene;
 6. Grooming;
 7. Washing hair;
 8. Skin care;
 9. Shopping;
 10. Transportation;
 11. Chores;
 12. Light correspondence;
 13. Equipment cleaning; and
 14. Emergency procedures, if necessary;
 - (c) Perform tasks consistent with the work agreement as instructed by the participant;
 - (d) Report to work as scheduled;
 - (e) Maintain the privacy and confidentiality of the participant;
 - (f) If unable to report for work as scheduled, notify the participant at least six (6) hours in advance unless an emergency arises;
 - (g) Maintain a list of emergency numbers;
 - (h) Attend attendant training provided by the participant related to specific care needs;
 - (i) Keep a daily record of hours worked and services rendered;
 - (j) Submit to the participant documents and material necessary to comply with the formal payment process;
 - (k) Meet with the participant and program coordinator for monitoring and coordinating the aspects of the program;

- (l) Disclose misdemeanor or felony convictions to the applicant or participant through a law enforcement agency;
 - (m) Authorize a qualified agency to obtain Kentucky nurse aide registry, central registry, Adult Protective Services caregiver misconduct registry, and criminal background checks as specified in Section 11(6) of this administrative regulation; and
 - (n) Notify the program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.
- (2) An individual shall not be hired as an attendant if the individual:
- (a) Has not submitted to the background checks specified in subsection (1)(m) of this section;
 - (b) Is on any of the following registries:
 - 1. Kentucky nurse aide registry;
 - 2. Adult Protective Services caregiver misconduct registry; or
 - 3. Central registry;
 - (c) Has pled guilty or been convicted of committing:
 - 1. A felony crime related to theft or drugs; or
 - 2. A misdemeanor or felony crime related to sexual or violent offenses including assault; or
 - (d) Is not able to understand and carry out a participant's instructions.

Section 9. Attendant Payment.

- (1) The amount of attendant payment shall be in compliance with the following:
- (a) The maximum hourly subsidized rate for direct personal care assistance services shall be no more than ten (10) percent over the current minimum wage rate established by KRS 337.275.
 - (b) If the hourly subsidized rate established in paragraph (a) of this subsection is insufficient to obtain direct personal care assistance services in a specific Kentucky service area, a provider may request a higher rate by mailing a written request and justification of the need for a higher rate to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.
 - (c) Minimum hours for direct personal care assistance services per week shall be fourteen (14).
 - (d) Maximum hours for direct personal care assistance services per week shall be forty (40).
- (2) In an extreme situation that results in a temporary increased need for services, such as the illness of the participant, or illness or death of a caregiver, a temporary waiver of maximum hours and the resulting cost may be granted by the contract agency.
- (3) A special night rate may be negotiated:
- (a) If a participant does not:
 - 1. Require an attendant during the day; or
 - 2. Need direct personal care assistance services from this attendant; or
 - (b) To provide for caregiver respite service.
- (4)
- (a) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate, if necessary, with a potential attendant on room and board for personal care assistance services.
 - (b) A live-in attendant shall not be excluded from employment as a part-time attendant.
 - (c) Maximum payment under this arrangement shall be for forty (40) hours of personal care assistance services per week, and overtime shall not be provided or paid.

Section 10. Program Coordinator Qualifications and Responsibilities.

- (1) A program coordinator shall meet at least one (1) of the following minimum qualifying requirements:

- (a) A bachelor's degree with two (2) years experience working in the disability community; or
 - (b) Completion of fifty-four (54) semester hours of college with four (4) years working in the disability community.
- (2) The department may waive the education requirements required by subsection (1) of this section based on consideration of work experience involving:
- (a) Interviewing to select an employment candidate;
 - (b) More than five (5) years of experience working with the disability community;
 - (c) Administrative work involving:
 - 1. The review of assessment criteria;
 - 2. Monitoring program compliance;
 - 3. Training program participants, employees and staff regarding program requirements; or
 - (d) Determination of eligibility for human services programs.
- (3) If employed, a program coordinator shall complete the following hours of training:
- (a) Within thirty (30) working days of hire:
 - 1. Complete a minimum of sixteen (16) hours of orientation program training; and
 - 2. Shadow an experienced program coordinator for one (1) to two (2) days;
 - (b) Within the first six (6) months of employment, complete a minimum of fourteen (14) hours of initial program coordination training; and
 - (c) Complete follow-up quarterly trainings with the department and contract agency.
- (4) A program coordinator shall:
- (a) Collaborate with the evaluation team to determine if an applicant is eligible to participate in the personal care attendant program in accordance with Section 2 of this administrative regulation;
 - (b) Complete the application process required by Section 3(2)(a) of this administrative regulation;
 - (c) Maintain a waiting list of eligible applicants who are unable to be funded for program participation until an opening occurs; and
 - (d) Perform the assessments required in Section 12(2) of this administrative regulations.
- (5) A program coordinator or program coordinator's designee shall:
- (a) Identify severely physically disabled adults who may be eligible for participation in the personal care attendant program;
 - (b) Prescreen an applicant for eligibility to participate in the personal care attendant program;
 - (c) Assist a participant in learning how to conduct an interview and screen a prospective attendant;
 - (d) Assist in or arrange for the training of the attendant, if necessary;
 - (e) Review with the participant the results of an assessment or reassessment signed by an evaluation team;
 - (f) Assist the participant in completing and updating a PCAP-06 Plan of Care;
 - (g) Assist the participant in developing a work agreement between the participant and attendant;
 - (h) Obtain aPCAP-02 Authorization for Release of Confidential Information from the participant;
 - (i) Monitor the program with each participant on a quarterly basis, including:
 - 1. A face-to-face visit with the participant during at least two (2) of the quarters; and
 - 2. Making verbal contact with the participant in the quarters that a face-to-face visit is not made;
 - (j) Assist the participant in finding a back-up attendant for:
 - 1. An emergency; or

- 2. The regular attendant's time off;
- (k) Assist in the recruitment and referral of an attendant, if requested;
- (l) Submit monthly activity reports to a qualified agency as specified in Section 15(2) of this administrative regulation; and
- (m) Assure that the participant:
 - 1. Enters into agreement to pay employee taxes with a PCAP-03 Employer Tax Agreement; and
 - 2. Receives training in recordkeeping and tax responsibilities related to services.

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

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

Section 12. Evaluation Team Members and Responsibilities.

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

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

- (1) Implement a personal care attendant program according to an approved plan;

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

Section 14. Department Responsibilities. The department shall:

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

Section 15. Reporting and Recording.

- (1) An individual record for each participant shall be maintained by the qualified agency and shall include:
 - (a) The forms specified in Section 17 of this administrative regulation;
 - (b) A chronological record of contacts with:
 1. The participant;
 2. The family;
 3. The physician; and
 4. Others involved in care with quarterly monitoring reports; and
 - (c) An assessment record of eligibility.
- (2) A program coordinator shall:
 - (a) Submit completed reports for monthly activities to a qualified agency by a designated date in the contract; and
 - (b) Forward a copy to the contract agency.
- (3) A contract agency shall make a copy of reports on monthly activities available to the department.

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

- (1) In accordance with:
 - (a) KRS Chapter 13B; and
 - (b) KRS 205.915; and
- (2) Within thirty (30) days of any decision by the:

- (a) Cabinet;
- (b) Contract agency; or
- (c) Qualified agency.

Section 17. Incorporation by Reference.

(1) The following forms are incorporated by reference:

- (a) "PCAP-01 Application for Services", edition 4/2018;
- (b) "PCAP-02 Authorization for Release of Confidential Information", edition 4/2018;
- (c) "PCAP-03 Employer Tax Agreement", edition 4/2018;
- (d) "PCAP-04 Evaluation Team Findings and Recommendations", edition 4/2018;
- (e) "PCAP-05 Income Eligibility", edition 4/2018; and
- (f) "PCAP-06 Plan of Care", edition 4/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(12 Ky.R. 386; eff. 10-8-1985; 18 Ky.R. 2051; 2574; 2828; eff. 3-7-1992; 19 Ky.R. 2143; 2450; eff. 4-21-1993; Recodified from 905 KAR 8:090, 10-30-1998; Recodified from 923 KAR 1:090, 7-8-1999; 34 Ky.R. 1578; 2128; eff. 3-19-2008; 45 Ky.R. 187, 657; eff. 9-19-2018.)