

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

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

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

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

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

- (1) "Activities of daily living" is defined by KRS 194A.700(1).
- (2) "Area plan" means the plan that:
  - (a) Is submitted by a district for the approval of the department; and
  - (b) Releases funds under contract for the delivery of services within the planning and service area.
- (3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant's or recipient's service level and development of a plan of care utilizing a holistic, person centered approach by a qualified independent care coordinator (ICC).
- (4) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based services as identified in the Plan of Care by:
  - (a) Planning;
  - (b) Referring;
  - (c) Monitoring;
  - (d) Advocating; and
  - (e) Following the timeline of the assessment agency to obtain:
    1. Service level; and
    2. Development of the Plan of Care.
- (5) "Case management supervisor" means an individual meeting the requirements of Section 5(1)(a) and (b) of this administrative regulation and who shall have four (4) years or more experience as a case manager.
- (6) "Case manager" means the individual employee responsible for:
  - (a) Coordinating services and supports from all agencies involved in providing services required by the Plan of Care;
  - (b) Ensuring all service providers have a working knowledge of the Plan of Care; and
  - (c) Ensuring services are delivered as required.
- (7) "Department" means the Department for Aging and Independent Living.
- (8) "District" is defined by KRS 205.455(4).
- (9) "Educational or experiential equivalent" means:
  - (a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and
  - (b) At least 400 documented hours of experience assisting aging or disabled individuals through:
    1. Practicum placement;
    2. Clinicals; or
    3. Volunteerism.

(10) "Extraordinary out of pocket expenses" means medical expenses not covered by insurance including:

- (a) Copays;
- (b) Deductibles;
- (c) Prescriptions;
- (d) Premiums for medical insurance; or
- (e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures.

(11) "Homecare services" means services that:

(a) Are:

- 1. Provided to an eligible individual who is functionally impaired as defined by KRS 205.455(7); and
- 2. Directed to the individual specified in subparagraph 1 of this paragraph toward:
  - a. Prevention of unnecessary institutionalization; and
  - b. Maintenance in the least restrictive environment, excluding residential facilities; and

(b) Include:

- 1. Chore services as defined by KRS 205.455(1);
- 2. Core services as defined by KRS 205.455(2);
- 3. Escort services as defined by KRS 205.455(5);
- 4. Home-delivered meals as defined by KRS 205.455(8);
- 5. Home-health aide services as defined by KRS 205.455(9);
- 6. Homemaker services as defined by KRS 205.455(10);
- 7. Home repair services as defined by KRS 205.455(11);
- 8. Personal care services as established in subsection (16) of this section;
- 9. Respite services as defined by KRS 205.455(12);

(12) "Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and annual reassessment.

(13) "Informal support system" means any care provided to an individual which is not provided as part of a public or private formal service program;

(14) "Instrumental activities of daily living" is defined by KRS 194A.700(7).

(15) "Natural Supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.

(16) "Personal care services" means assistance with activities of daily living.

(17) "Reassessment" means reevaluation of the situation and functioning of a client.

(18) "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.

(19) "Social service assistant" means an individual who:

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

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

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

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

- (1) An assurance of access for the department to records of the district pertaining to its contract for delivery of homecare services; and
- (2) A plan for the delivery of homecare services in the area to be served by the district containing:
  - (a) Identification of services currently provided in the district; and
  - (b) The following assurances:
    1. A justification of a decision not to fund a homecare service, including an assurance of adequate availability from another funding source;
    2. A policy and procedure for assuring a client's:
      - a. Eligibility in accordance with Section 4 of this administrative regulation; and
      - b. Implementation of case management;
    3. A policy and procedure for a client's referral for service to other appropriate programs and services as specified in paragraph (a) of this subsection;
    4. A policy and procedure for volunteer programs to be utilized;
    5. Identification of a service provider for each specific service;
    6. A policy and procedure for the periodic monitoring of a client for the appropriateness of homecare services and to assure safety and consistency;
    7. A number of proposed clients for homecare services to be provided directly or by contract;
    8. A unit cost per service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 8(2) of this administrative regulation;
    9. A policy and procedure for the acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;
    10. A policy and procedure for the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3);
    11. A policy and procedure for the manner in which delivery of homecare services shall be provided to an eligible individual;
    12. A policy and procedure for monitoring a subcontract for delivery of direct homecare services; and
    13. A policy and procedure assuring that an assessment, as specified in Section 5(3) of this administrative regulation, shall include the following information submitted electronically to the department in the formats prescribed by the Aging Services Tracking System:

- a. Demographic information, including family income;
- b. Physical health;
- c. Activities of daily living and instrumental activities of daily living;
- d. Physical environment;
- e. Mental and emotional status;
- f. Assistive devices, sensory impairment, and communication abilities;
- g. Formal and informal resources; and
- h. Summary and judgment.

#### Section 4. Eligibility.

- (1) A prospective client for homecare services shall:
  - (a) Demonstrate that the prospective client is a person sixty (60) years of age or older;
  - (b) Not be eligible for the same or similar services through Medicaid unless the individual is:
    - 1. Considered inappropriate for person directed services due to:
      - a. An inability to manage his own services; and
      - b. A lack of availability of a person to act as his representative; or
    - 2. Unable to access the Home and Community Based Waiver through a traditional provider; and
  - (c) Meet one (1) of the following criteria:
    - 1. Be functionally impaired in the performance of:
      - a. Two (2) activities of daily living;
      - b. Three (3) instrumental activities of daily living; or
      - c. A combination of one (1) activity of daily living and two (2) instrumental activities of daily living;
    - 2. Have a stable medical condition requiring skilled health services; or
    - 3. Be:
      - a. Currently residing in:
        - (i) A skilled nursing facility;
        - (ii) An intermediate care facility; or
        - (iii) A personal care facility; and
      - b. Able to be maintained at home if appropriate living arrangements and support systems are established.
- (2) Eligibility shall be determined by an ICC:
  - (a) Qualified in accordance with Section 5(1) and (2) of this administrative regulation; and
  - (b) In accordance with Section 5(3) of this administrative regulation.
- (3) If a client meets eligibility requirements of subsection (1) of this section for homecare services, the client or caregiver shall be informed that the client shall be eligible for services as long as he or she meets eligibility requirements.
- (4) An ICC shall determine a prospective client's eligibility for:
  - (a)
    - 1. Adult day health services;
    - 2. Alzheimer's respite care services;
    - 3. In-home services; or
    - 4. Respite for the unpaid primary caregiver; and
  - (b) Service level of case management as determined on the DAIL-HC-01, Scoring Service Level.
- (5)
  - (a) The homecare program shall not supplant or replace services provided by the client's natural support system.

- (b) If needs are being met by the natural support system, the client shall be deemed ineligible.
- (c) An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.
- (6) Applicants who are eligible for services and funding is not available shall be placed on a waiting list for services.

Section 5. Case Management Requirements.

- (1) A case manager and an ICC shall:
  - (a) Meet one (1) of the following qualifications:
    - 1. Possess a Bachelor's degree in a health or human services profession from an accredited college or university with:
      - a. One (1) year experience in health or human services; or
      - b. The educational or experiential equivalent in the field of aging or physical disabilities;
    - 2. Be a currently licensed RN as defined in KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities;
    - 3. Be a currently licensed LPN as defined in KRS 314.011(9) who has:
      - a. At least three (3) years of experience in the field of aging or physical disabilities; and
      - b. An RN to consult and collaborate with regarding changes to the Plan of Care; or
    - 4. Have a Master's degree from an accredited college or university which serves as a substitute for the experience required by subparagraphs 1. through 3. of this paragraph;
  - (b) Be a department certified case manager beginning July 1, 2015; and
  - (c) Be supervised by a case management supervisor.
- (2) Each client shall be assigned a:
  - (a) Case manager; or
  - (b) Social service assistant.
- (3)
  - (a) A client shall be assessed initially and reassessed at least annually thereafter by an ICC.
  - (b) After each assessment or reassessment, the ICC shall determine eligibility and service level of each assessed individual.
  - (c) If the client is ineligible, the case shall be closed with the reason documented in the case record and notification shall be mailed to the client or caregiver.
- (4) The case manager shall:
  - (a) Be responsible for coordinating, arranging, and documenting those services provided by:
    - 1. Any funding source; or
    - 2. A volunteer;
  - (b)
    - 1. Make a reasonable effort to secure and utilize informal supports for each client; and
    - 2. Document the reasonable effort in the client's case record;
  - (c) Monitor each client by conducting a home visit according to the assessed service level and through a telephone contact between home visits. Clients shall be contacted at a minimum as follows:
    - 1. Level 1, a home visit shall be conducted every other month;
    - 2. Level 2, a home visit shall be conducted every four (4) months; and

3. Level 3, a home visit shall be conducted every six (6) months; and
- (d) Document in the case record each contact made with a client, as specified in paragraph (c) of this subsection, or on behalf of the client.
- (5)
  - (a) A district shall employ an ICC to assess the eligibility and needs for each client.
  - (b) Clients assessed at a Level 1 or a Level 2 shall be assigned a case manager.
  - (c) Clients assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting their needs.
- (6) A client shall receive homecare services in accordance with an individualized Plan of Care developed through person centered planning. The plan shall:
  - (a) Relate to an assessed problem;
  - (b) Identify a goal to be achieved;
  - (c) Identify a scope, duration and unit of service required;
  - (d) Identify a source of service;
  - (e) Include a plan for reassessment; and
  - (f) Be signed by the client or client's representative and case manager, with a copy provided to the client.
- (7) Case management services shall not be provided to individuals on a waiting list.

Section 6. Quality Service. If a client is determined eligible for homecare services, the case manager shall:

- (1) Read, or have read and explained to the client, the purpose of the DAIL-HC- 02, Quality Service Agreement;
- (2) Provide a copy of the completed agreement to the client which shall contain the name, address, and telephone number of:
  - (a) The current case manager or social service assistant;
  - (b) A designated representative of the district; and
  - (c) A representative of the department;
- (3) Ensure that a copy of a DAIL – HC- 03, Report of Complaint or Concern containing written complaints and detailed reports of telephoned or verbal complaints, concerns or homecare service suggestions is maintained in the client's permanent file and documented in a centralized log; and
- (4) Document investigation and efforts at resolution or service improvement that shall be available for monitoring by the district and department staff.

Section 7. Request for a Hearing. A client may request a hearing:

- (1) As provided by KRS 13B.010-170; and
- (2) Within thirty (30) days of any decision by the:
  - (a) Cabinet;
  - (b) District; or
  - (c) Service provider.

Section 8. Fees and Contributions.

- (1) The ICC shall be responsible for determining fee paying status, using the criteria established in this subsection.
  - (a) A fee shall not be assessed for the provision of assessment, case management services, or home-delivered meals.
  - (b) The ICC shall:
    1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and
    2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

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

(d)

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

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

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

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

(3)

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

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

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

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

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

Section 10. Termination or Reduction of Homecare Services.

(1)

(a) A case manager or client may terminate homecare services.

(b) Homecare services shall be terminated if:

1. The program can no longer safely meet the client's needs;

2. The client does not pay the copay for services as established in Section 8(2) of this administrative regulation;

3. The client refuses to follow the plan of care; or

4. The client or family member has exhibited abusive, intimidating, or threatening behavior and the client or representative is unable or unwilling to comply with the corrective action plan.

(2) Homecare services may be reduced if:

- (a) The client's condition or support system improves;
  - (b) Program funding has been reduced; or
  - (c) The client refuses to follow the plan of care for a particular service.
- (3) If homecare services are terminated or reduced, the case manager shall:
- (a) Inform the client of the right to file a complaint;
  - (b) Notify the client or caregiver of the action taken; and
  - (c) Assist the client and family in making referrals to another agency if applicable.
- (4) If homecare services are terminated or reduced due to reasons unrelated to the client's needs or condition, the designated district representative in conjunction with the case manager shall determine reduction or termination on a case-by-case basis.

#### Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "DAIL-HC 01, Scoring Service Level", 4/2014;
  - (b) "DAIL –HC- 02, Quality Service Agreement", 4/2014; and
  - (c) "DAIL –HC- 03, Report of Complaint or Concern", 4/2014.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
- (18 Ky.R. 1748; Am. 2278; eff. 1-10-1992; Am. 23 Ky.R. 4000; 24 Ky.R. 110; eff. 6-18-1997; Recodified from 905 KAR 8:180, 10-30-1998; Recodified from 923 KAR 1:180, 7-8-1999; 32 Ky.R. 420; 686; eff. 10-19-2005; 41 Ky.R. 200; 527; eff. 10-15-2014; Certified to be amended, filing deadline 1-23-2023.)