

## **911 KAR 1:010. Application to clinical programs.**

RELATES TO: KRS 200.460, 200.470, 200.654(13), Chapters 311, 319, 334A, 42 U.S.C. 9902(2), 42 C.F.R. 435.603

STATUTORY AUTHORITY: KRS 194A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(5) authorizes the Office for Children with Special Health Care Needs to promulgate administrative regulations to implement and administer its responsibilities. This administrative regulation establishes application forms used for clinical programs, procedures for application and reapplication, eligibility criteria, assignment of pay category, and processes used to determine initial and continuing eligibility for services, as well as a process for reconsideration of an adverse decision.

### Section 1. Definitions.

- (1) "Affordable Care Act" is defined by 42 U.S.C. 9902(2).
- (2) "Applicant" means a person in need of services offered by the Office for Children with Special Health Care Needs clinical program.
- (3) "Clinical program" means an established clinical service by which OCSHCN delivers care to treat conditions listed on the OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services, through a provider:
  - (a) Contracted in accordance with 911 KAR 1:060; or
  - (b) Employed by OCSHCN as an audiologist.
- (4) "Eligibility Committee" means an OCSHCN committee that is charged with:
  - (a) Clarifying financial eligibility questions that arise during:
    1. The application review process; and
    2. Ongoing eligibility reviews;
  - (b) Evaluating appeal requests for reconsideration pursuant to Section 13 of this administrative regulation;
  - (c) Clarifying medical eligibility questions that arise during the application review process; and
  - (d) Determining if a diagnosis qualifies for inclusion in the clinical program.
- (5) "Income" means money received from:
  - (a) Statutory benefits (for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits);
  - (b) Military housing;
  - (c) Clerical housing;
  - (d) Farm or business operations;
  - (e) Pensions;
  - (f) Wages for labor or services;
  - (g) Royalties;
  - (h) Alimony, maintenance, or child support;
  - (i) Miscellaneous income as defined by the Internal Revenue Service at [www.irs.gov/form1099misc](http://www.irs.gov/form1099misc);
  - (j) Retirement Survivors Disability Insurance;
  - (k) Disability benefits;
  - (l) Unemployment benefits;
  - (m) Supplemental Security Income;
  - (n) Workers' compensation;
  - (o) Annuities; or
  - (p) Interest and dividends.
- (6) "OCSHCN" means Office for Children with Special Health Care Needs.
- (7) "Responsible adult" means a person who is:

- (a) Responsible for making decisions about an OCSHCN clinical program applicant or recipient of services; or
- (b) Required to provide financial support for an OCSHCN clinical program applicant or recipient of services.

## Section 2. Criteria for Application to an OCSHCN Clinical Program.

- (1) In order to be eligible to apply to an OCSHCN clinical program, an applicant shall:
  - (a) Be under twenty-one (21) years of age;
  - (b) Live in Kentucky;
  - (c) Provide a Kentucky physical mailing address at which the applicant receives mail; and
  - (d) Declare Kentucky as permanent domicile and residency.
- (2) An applicant to the OCSHCN Autism Spectrum Disorder Diagnostic Service shall be referred by:
  - (a) A physician, licensed in accordance with KRS Chapter 311;
  - (b) An advanced practice registered nurse, licensed in accordance with KRS Chapter 314;
  - (c) A licensed behavioral analyst, licensed in accordance with KRS Chapter 319;
  - (d) A therapist, licensed in accordance with KRS Chapter 334A;
  - (e) A qualified service provider with the Kentucky Early Intervention System, as defined by KRS 200.654(13); or
  - (f) School personnel, based on testing results.
- (3) An applicant to the OCSHCN Autism Spectrum Disorder Medical Service shall be:
  - (a) Referred by a:
    - 1. Physician, licensed in accordance with KRS Chapter 311;
    - 2. Psychologist, licensed in accordance with KRS Chapter 319; or
    - 3. Speech-language pathologist, licensed in accordance with KRS Chapter 334A, if an Autism Diagnostic Observation Schedule assessment tool was used; and
  - (b) Diagnosed with an autism spectrum disorder.
- (4) An applicant to the OCSHCN Hearing Aid Only Service shall be:
  - (a) Diagnosed to have a permanent childhood hearing loss; and
  - (b) Under the care of a licensed otorhinolaryngologist.
- (5) An applicant to clinical services not established in subsections (2), (3), or (4) of this section may be referred by any person or provider.
- (6) An individual shall be ineligible for application to clinical programs if a write-off balance for services is owed to OCSHCN for clinical services delivered to the individual.
- (7) Any balances owed pursuant to subsection (6) of this section shall be paid in accordance with the:
  - (a) Individual's pay category status; and
  - (b) Provisions of 911 KAR 1:020.
- (8) OCSHCN shall allow up to three (3) reapplications for an applicant if the applicant has been discharged for failure to:
  - (a) Complete financial update in accordance with Section 12 of this administrative regulation;
  - (b) Cooperate with medical care;
  - (c) Make payments on a past due account balance;
  - (d) Pay OCSHCN for services received; or
  - (e) Reimburse OCSHCN if an insurance payment has been received by the applicant.
- (9) Exceptions to subsections (7) and (8) this section shall be determined by the OCSHCN request for reconsideration process in accordance with Section 13 of this administrative regulation.

## Section 3. Initial Application.

(1) If an individual who meets the criteria established in Section 2 of this administrative regulation expresses interest in submitting an application to OCSHCN's clinical program, designated staff shall provide the application packet indicated for the individual's situation, in accordance with Section 4 of this administrative regulation:

- (a) At a scheduled intake appointment with the individual;
  - (b) By postal mail; or
  - (c) Electronically.
- (2) An application shall be made by:
- (a) The parent or other legally appointed guardian, if the individual is:
    - 1. A minor who is not legally emancipated; or
    - 2. An adult who is in custodial care; or
  - (b) The individual, if the individual is:
    - 1. An adult; and
    - 2. Not in the custodial care of another person or entity.
- (3) OCSHCN may require the signature of both the applicant and responsible adult if:
- (a) The applicant is over the age of eighteen (18); and
  - (b) There is a question of the applicant's competence to make decisions regarding self-care.

#### Section 4. Application Forms.

(1) An applicant to an OCSHCN clinical program shall provide to the agency within thirty (30) days:

- (a) A copy of the applicant's insurance card, or documentation thereof, if the applicant is not receiving Medicaid or K-CHIP;
- (b) OCSHCN-10b, Consent for Care Agreement;
- (c) OCSHCN-10c, Guaranty of Payment Agreement;
- (d) OCSHCN-10d, Coordination of Benefits Agreement;
- (e) OCSHCN-10a, Application for Service Legal Guardian, if the application is made by a legal guardian on behalf of a child or adult who is:
  - 1. Under the age of twenty-one (21); and
  - 2. Not legally emancipated;
- (f) OCSHCN-10e, Application for Service Young Adult, if the application is made by an individual who is:
  - 1. Not legally emancipated; or
  - 2.
    - a. Between the ages of eighteen (18) and twenty-one (21); and
    - b. A full-time student; and
- (g) OCSHCN-10f, Application for Service Head of Household, if the application is made by an individual who is:
  - 1. Under the age of eighteen (18) and legally emancipated; or
  - 2. Between the ages of eighteen (18) and twenty-one (21) and financially emancipated.

(2) OCSHCN may request that the applicant submit additional information or documentation concerning medical history within thirty (30) days, based on:

- (a) Medical staff request; and
- (b) Specific medical need.

#### Section 5. Limited English Proficiency.

(1) OCSHCN shall ensure the availability of foreign language interpretation services in order to assure that families, staff, and providers have an opportunity to communicate effectively.

(2) OCSHCN shall arrange sign language interpreter services for persons who are deaf or hard of hearing, pursuant to 920 KAR 1:070.

Section 6. Proof of Custody for Applicants.

- (1) OCSHCN shall require a signed and dated legal court filing establishing custody rights of a minor if:
  - (a) The parents of a minor are divorced;
  - (b) The minor is adopted or in the legal custody of the commonwealth; or
  - (c) The legal guardianship of the minor is in question.
- (2) OCSHCN shall require a signed and dated legal court filing establishing custody rights of an adult if the adult is said to be in custodial care of another individual.
- (3) OCSHCN may require that the application be signed by the responsible adult if:
  - (a) The applicant is his or her own legal guardian; and
  - (b) There is a legitimate concern as to the applicant's ability to make decisions regarding self-care.

Section 7. Application Review Process.

- (1) Upon receipt of an application for the OCSHCN clinical program, designated staff shall review the packet to ensure all materials have been completed in accordance with Sections 3 and 4 of this administrative regulation.
- (2) Designated staff shall notify the applicant of:
  - (a) Missing information or clarification needed; and
  - (b) The timeframe for submitting requested information.
- (3) Complete applications shall be processed in accordance with Sections 8, 9, and 10 of this administrative regulation.
- (4) Failure to submit requested information to OCSHCN within the specified timeframe shall result in the application process being closed.

Section 8. Medical Eligibility Determination.

- (1) In order to be eligible for an OCSHCN clinical program, the applicant shall have a documented condition that is treated by OCSHCN.
- (2) An application shall be eligible for expedited review if designated OCSHCN staff determine that recent medical records exist documenting that a contracted provider staffing an OCSHCN clinical program has:
  - (a) Diagnosed the applicant with a condition on the OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services; and
  - (b) Agreed to a treatment plan for the child's condition that is supported by the OCSHCN services offered.
- (3) If records established in subsection (2) of this section are not available for OCSHCN review, designated OCSHCN staff shall schedule an onsite clinical evaluation:
  - (a) By:
    1. A contracted provider staffing an OCSHCN clinical program; or
    2. An OCSHCN clinic employee; and
  - (b) To obtain documentation needed to confirm medical eligibility.
- (4) Upon receipt of documentation pursuant to this section, designated staff shall determine an applicant's medical eligibility for the OCSHCN clinical program.

Section 9. Financial Eligibility Determination and Pay Category Assignment.

- (1) Each applicant shall undergo a financial review process upon:
  - (a) Application;
  - (b) Confirmation of medical eligibility;
  - (c) Change in income or household size prior to annual financial review; and
  - (d) Annual financial review.
- (2) The OCSHCN process to determine pay category assignment shall:
  - (a) Be based on the household income of the responsible adult requesting services; and
  - (b) Include income of:

1. The applicant, if the applicant is:
    - a. An adult; or
    - b. Not in the custodial care of another person or entity;
  2. Parents, step-parents, or legal guardians, if the applicant is:
    - a. A minor who is not legally emancipated; or
    - b. An adult who is in custodial care; and
  3. Spouse of the applicant, if the applicant is married.
- (3) Designated OCSHCN staff shall establish a household size based on family composition, including:
- (a) The applicant;
  - (b) If the applicant is a minor:
    1. Parents;
    2. Step-parents;
    3. Siblings, including:
      - a. Half siblings; and
      - b. Step-siblings; and
    4. Any other dependent child claimed by the applicant on a federal tax return; and
  - (c) If the applicant is an emancipated minor or adult:
    1. Spouse;
    2. Children, including:
      - a. Half children; and
      - b. Step-children; and
    3. Any other dependent child claimed by the applicant on a federal tax return.
- (4) The documents required for income verification shall be the most recent:
- (a) Federal tax return of the applicant or the responsible adult; and
  - (b) Paycheck statement with year-to-date gross earnings for each currently held job.
- (5) An applicant or responsible adult without a paycheck containing the criteria established in subsection (4)(b) of this section shall provide two (2) consecutive and the most recent pay stubs or a written statement from the employer that shows:
- (a) Gross amount earned; and
  - (b) Frequency of pay.
- (6) An applicant who is covered by Kentucky Medicaid shall be:
- (a) Exempt from income verification;
  - (b) Considered financially eligible; and
  - (c) Placed in the zero percent pay category.
- (7) If household income suggests that an applicant is possibly Medicaid- eligible, a Medicaid application shall be completed within thirty (30) days.
- (8) If a Medicaid application completed pursuant to subsection (7) of this section is denied for a reason other than being over income, the applicant shall:
- (a) Be considered financially eligible;
  - (b) Meet medical eligibility criteria pursuant to Section 8 of this administrative regulation; and
  - (c) Be assigned a pay category in accordance with Section 10 of this administrative regulation.
- (9) If a Medicaid application completed pursuant to subsection (7) of this section is denied for being over income, the applicant shall be:
- (a) Considered financially eligible; and
  - (b) Assigned a pay category in accordance with Section 10 of this administrative regulation.
- (10) If an application for Medicaid is not completed as requested within the specified timeframe, the application process shall be closed.

#### Section 10. Family Participation Scale.

- (1) An eligible applicant shall be assigned a pay category, which is determined based on:
  - (a) Annual gross income; and
  - (b) Household size.
- (2) OCSHCN shall:
  - (a) Calculate minimum and maximum annual gross income limits annually, utilizing:
    1. The federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2); and
    2. Modified adjusted gross income-based methods established in 42 C.F.R. 435.603; and
  - (b) Post the current Family Participation Scale at <https://chfs.ky.gov/agencies/ccshcn>.
- (3) Except as established in subsection (5) of this section, pay categories shall:
  - (a) Represent eligibility requirements at income levels for the Kentucky Children's Health Insurance Program established in 907 KAR 4:030; and
  - (b) Be established at:
    1. Zero percent;
    2. Twenty (20) percent;
    3. Forty (40) percent;
    4. Sixty (60) percent;
    5. Eighty (80) percent; and
    6. 100 percent.
- (4) In accordance with KRS 200.470(1), an applicant who is placed in the 100 percent pay category shall be eligible for acceptance only if access to adequate care and treatment is limited as evidenced by:
  - (a) Service needed is not otherwise available within a fifty (50) mile radius of where the patient resides;
  - (b) Treatment requires a multi-disciplinary team, which may include a physician, RN care coordinator, social worker, nutritionist, and therapist;
  - (c) Service is needed for the purchase of hearing aids;
  - (d) The patient is:
    1. Uninsured; and
    2. A member of a religious sect that is exempt from the requirement to maintain minimum essential coverage as required by the Affordable Care Act;
  - (e) The patient is:
    1. Uninsured;
    2. Not eligible for Medicaid or the Kentucky Children's Health Insurance Program (KCHIP); and
    3. Is exempt from the requirement to maintain minimum essential coverage as required by the Affordable Care Act; or
  - (f) The medical care or service ordered by an OCSHCN-contracted specialist as treatment for a qualifying condition:
    1. Is a non-covered benefit or excluded under the patient's insurance policy; and
    2. The patient would benefit from the OCSHCN negotiated rate.
- (5) An exception to subsection (3) of this section shall be determined by the OCSHCN request for reconsideration process in accordance with Section 13 of this administrative regulation.

#### Section 11. Notice of Eligibility Determination.

- (1) If an applicant is determined to be eligible in accordance with Sections 8 and 9 of this administrative regulation, designated staff shall notify the applicant in writing of the:
  - (a) Acceptance into the OCSHCN clinical program;
  - (b) Effective date of eligibility;

- (c) Pay category assigned and a description of family participation fees and responsibilities;
  - (d) Annual review date;
  - (e) Name of the OCSHCN contact person assigned to:
    - 1. Manage medical care;
    - 2. Schedule appointments; and
    - 3. Discuss services available; and
  - (f) Right to request reconsideration of pay category assignment, in accordance with Section 13 of this administrative regulation.
- (2) If an applicant is determined to be ineligible for acceptance into the OCSHCN clinical program, designated staff shall notify the following individuals, in writing, of the reason for denial:
- (a) The applicant, enumerating a right to request reconsideration of the adverse decision; and
  - (b) The applicant's primary care or referring physician, if applicable.

#### Section 12. Continuing Eligibility and Reapplication.

- (1) A responsible adult shall advise OCSHCN if there is a change in:
  - (a) Employment;
  - (b) Contact information;
  - (c) Insurance coverage; or
  - (d) Family composition.
- (2) A financial recertification shall be completed annually.
- (3) During the financial recertification, designated OCSHCN staff shall:
  - (a) Verify continued Medicaid enrollment; or
  - (b) If the recipient of services is not enrolled in Kentucky Medicaid, send the responsible adult written notice pursuant to Section 4 of this administrative regulation, requesting completion of:
    - 1. The financial portion of the application form; and
    - 2. The OCSHCN-10c, Guaranty of Payment Agreement form.
- (4) If the forms requested pursuant to subsection (3)(b) of this section are not returned in accordance with the requested timeframe, designated staff shall follow up in writing.
- (5) If the requested forms are not returned subsequent to a written follow up pursuant to subsection (4) of this section, designated staff shall:
  - (a) Initiate discharge of the recipient from the OCSHCN clinical program; and
  - (b) Notify the responsible adult or person receiving services, providing the:
    - 1. Date of discharge;
    - 2. Referral to primary care physician;
    - 3. Option to reapply for OCSHCN services, and contact phone number; and
    - 4. Courtesy copies of notifications of discharge sent to:
      - a. Primary care physician;
      - b. Dental provider, if applicable; and
      - c. Pharmacy provider, if applicable.
- (6) Financial recertification shall occur if there is:
  - (a) A loss of Medicaid;
  - (b) Change in circumstances, such as income or household size; or
  - (c) Change in guardianship.
- (7) Upon receipt of documentation related to this section's continuing eligibility and reapplication, designated staff shall notify the responsible adult in writing of the:
  - (a) Acceptance into the OCSHCN clinical program;
  - (b) Effective date of eligibility;

- (c) Pay category assigned and a description of family participation fees and responsibilities;
- (d) Annual review date;
- (e) Name of OCSHCN contact person assigned to:
  - 1. Manage medical care;
  - 2. Schedule appointments; and
  - 3. Discuss services available; and
- (f) Right to request reconsideration of pay category assignment, pursuant to Section 13 of this administrative regulation.

#### Section 13. Request for Reconsideration.

- (1) An individual who is aggrieved by an adverse decision regarding initial eligibility, termination of services, or pay category assignment in accordance with the procedures established in Section 10 of this administrative regulation may request a reconsideration. A request for reconsideration shall be filed within thirty (30) days of receipt of the adverse decision.
- (2) A request for reconsideration of pay category assignment shall be directed to the Eligibility Committee for resolution.
- (3) Once a request for reconsideration of the pay category assigned is received, the applicant shall be provided with an OCSHCN-10h, Medical Expense Worksheet, which shall be completed and returned to OCSHCN within thirty (30) days.
- (4) An applicant shall submit with the OCSHCN-10h, Medical Expense Worksheet, and written proof of out of pocket payment for allowable medical expenses as established in subsection (5) of this section and paid for:
  - (a) By the applicant or a member of the applicant's household; and
  - (b) Within the last twelve (12) months from the date of the letter of pay category assignment.
- (5) Allowable medical expenses shall include:
  - (a) Insurance premiums;
  - (b) Medical office or clinic visits;
  - (c) Medical supplies;
  - (d) Nutritional supplies;
  - (e) Prescription medications;
  - (f) Over the counter medications;
  - (g) Durable medical equipment;
  - (h) Hearing aids;
  - (i) Dental or orthodontia;
  - (j) Vision or Eye;
  - (k) Hospitalizations;
  - (l) Additional expenses for consideration; and
  - (m) OCSHCN payments in accordance with 911 KAR 1:020.
- (6) Upon receipt of the OCSHCN-10h, Medical Expense Worksheet, and documentation established in subsection (4) of this section, OCSHCN staff shall:
  - (a) Verify expenses;
  - (b) Present to the OCSHCN Eligibility Committee for review; and
  - (c) Notify the applicant in writing of the determination.

Section 14. Request for Hearing. An individual who has received a notice of adverse action following a reconsideration may request an administrative hearing. A request for an administrative hearing shall be:

- (1) In accordance with KRS Chapter 13B; and
- (2) Received by OCSHCN within thirty (30) days of the notice of adverse action.



Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) OCSHCN-10a, "Application for Service Legal Guardian," 01/2019;
- (b) OCSHCN-10b, "Consent for Care Agreement," 01/2019;
- (c) OCSHCN-10c, "Guaranty of Payment Agreement," 01/2019;
- (d) OCSHCN-10d, "Coordination of Benefits Agreement," 01/2019;
- (e) OCSHCN-10e, "Application for Service Young Adult," 01/2019;
- (f) OCSHCN-10f, "Application for Service Head of Household," 01/2019;
- (g) OCSHCN-10g, "Medical Eligibility List for Clinical and Case Management Services," 08/2019;
- (h) OCSHCN-10h, "Medical Expense Worksheet," 01/2019; and
- (i) "Family Participation Scale," 04/01/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the agency's Web site at <https://chfs.ky.gov/agencies/ccshcn>.

(45 Ky.R. 2814; 3425; 46 Ky.R. 906; eff. 8-19-2019.)