

922 KAR 2:300. Emergency child care approval.

RELATES TO: KRS 199.011(3), (4), 199.894, 199.895, 199.896(2), 42 U.S.C. 5122, 42 U.S.C. 9858c(c)(2)(U)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 45 C.F.R. 98.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. 45 C.F.R. 98.16(aa) requires a state to demonstrate how it will address the needs of children during a state of emergency. This administrative regulation establishes approval standards and requirements for emergency child care.

Section 1. Definitions.

- (1) "Applicant" means an individual or entity applying to become an Emergency Child Care (ECC) program.
- (2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).
- (3) "Child" is defined by KRS 199.011(4).
- (4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.
- (5) "Child-care center" is defined by KRS 199.894(3).
- (6) "Emergency Child Care" or "ECC" means a child-care program temporarily established as a result of a localized emergency or declared state of emergency.
- (7) "Family child-care home" is defined by KRS 199.894(5).
- (8) "Infant" means a child who is less than twelve (12) months of age.
- (9) "Premises" means the building and contiguous property in which emergency child care is provided.

Section 2. Application.

- (1) A child-care center, family child-care home, or new applicant may apply to be an approved ECC.
- (2) An applicant to be approved as an ECC shall submit to the cabinet a completed OIG-DRCC-07, Emergency Child Care Application.
- (3) The application shall include:
 - (a) A cleaning and safety plan;
 - (b) An evacuation plan for use in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U);
 - (c) A staffing plan that demonstrates enough staff to adequately supervise the expected number of children;
 - (d) Guidance and discipline process;
 - (e) A medication policy; and
 - (f) Background check verification for staff.
- (4) Approval as an ECC shall not exceed ninety (90) days with the exception permitted by Section 5(6)(b) of this administrative regulation.

Section 3. On-Site Visit for Approval.

- (1) For ECC approval of a currently licensed or certified child-care program, an on-site visit shall not be required if:

- (a) The child-care program shall continue to operate with the same capacity and age groupings; and
 - (b) A cabinet surveyor has inspected the facility at least once in the preceding twelve (12) months.
- (2) For all other applicants, a visit by a cabinet surveyor shall be conducted as soon as possible after the receipt of the application. A visit shall occur prior to approval.

Section 4. New Site or Alternative Location Approval. If the child-care program requires a new or an alternative location for its premises:

- (1) The child-care program shall obtain an inspection by the Kentucky State Fire Marshal of the new location or alternative location to ensure that safety codes are met prior to opening;
- (2) The square footage per child requirement shall meet the requirements of 922 KAR 2:100 or 2:120, respectively, for a family child-care home or center;
- (3) The new location or alternative location shall have access to clean drinking water, restrooms, and sinks for handwashing; and
- (4) Basic equipment shall meet the needs for the ages of children in care.

Section 5. Approval of Application.

- (1) Upon receipt of a complete, signed OIG-DRCC-07, the cabinet shall conduct an on-site visit in order to determine if the applicant meets the requirements established by this administrative regulation, except as permitted by Section 3(1) of this administrative regulation.
- (2) A child-care program that is currently licensed or certified shall be provided ten (10) business days in which they may operate while pending approval of ECC designation.
- (3) The cabinet shall approve applications to be an ECC based on the need throughout the state or the community experiencing the emergency.
- (4) A child-care program that is currently licensed or certified through the Commonwealth of Kentucky shall be given first consideration for approval.
- (5) If the licensed or certified child-care program, or new applicant, is approved as an ECC, the cabinet shall issue emergency approval to the applicant.
- (6)
 - (a) Except as provided by paragraph (b) of this subsection, ECC approval shall expire after ninety (90) days or at the end of the localized emergency or declared state of emergency, whichever is less.
 - (b) ECC approval may be renewed by the cabinet based on the duration of the emergency situation. The cabinet may conduct a renewal site visit.

Section 6. Suspension or Closure of Emergency Child-Care Programs.

- (1) During the hours of operation, the cabinet may visit an approved ECC to ensure the health and safety of children and to provide support and resources for the program.
- (2)
 - (a) An ECC that was not previously licensed or certified shall surrender the ECC approval and close within thirty (30) days after the expiration of the approval or the end of the localized emergency or declared state of emergency pursuant to Section 5(6) (a) of this administrative regulation if not renewed by the cabinet pursuant to Section 5(6)(b) of this administrative regulation.
 - (b) An ECC shall operate in compliance during the time period established in paragraph (a) of this subsection.
- (3) The cabinet may suspend approval to operate as an ECC by issuing an emergency order if:
 - (a) The provider interferes with the cabinet's ability to perform an official duty pursuant to Section 5(6) or 6(1) of this administrative regulation;

(b) The cabinet, a representative from another agency with regulatory authority, or a parent or guardian is denied access during operating hours to:

1. A child;
2. The ECC; or
3. ECC staff or volunteers; or

(c)

1. A provider, director, staff, volunteer, or any person with supervisory or disciplinary control over, or unsupervised contact with, a child in care fails to meet the requirements of this administrative regulation; and
2. The regulatory violation poses an immediate threat to the health, safety, or welfare of the children in care.

(4) Pursuant to subsection (3) of this section, an emergency order shall:

- (a) Be served on an approved ECC in person; and
- (b) Specify the regulatory violation that caused the suspension.

(5) Upon suspension, the cabinet or its designee and the ECC shall make reasonable efforts to:

- (a) Notify a parent or guardian of each child of the program's suspension; and
- (b) Refer a parent or guardian for assistance in locating an alternate child care arrangement.

Section 7. General Requirements.

(1) An ECC shall:

- (a) Be responsible for operating the child-care program in compliance with:
 1. This administrative regulation;
 2. The health and safety requirements established in 922 KAR 2:100 for a family child-care home or 922 KAR 2:120 for a child-care center; and
 3. 922 KAR 2:280; and
- (b) Protect and assure the health, safety, and comfort of each child.

(2) ECC staff shall be:

- (a) Instructed by the program director, if applicable, regarding requirements for operation; and
- (b) Provided with a copy of this administrative regulation, 922 KAR 2:100 or 922 KAR 2:120, and 922 KAR 2:280.

(3) The director of a child-care center approved as an ECC shall meet the requirements of 922 KAR 2:090, Section 10.

(4) If a provider, director, staff, volunteer, or any person with supervisory or disciplinary control over, or unsupervised contact with, a child in care, is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with all children in care:

- (a) For the duration of the assessment or investigation; and
- (b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(5) An ECC caring for an infant shall have basic equipment needed for infant care including an individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220 and diaper changing area.

(6) The cabinet may mandate child-care provider training specific to a regional or statewide emergency declaration in order to give specific information regarding the state of emergency. All child-care staff working in an ECC shall be required to complete this training if mandated.

- (7) ECC staff and volunteers shall not work more than twelve (12) hours during a twenty-four (24) hour time period.
- (8) Daily attendance records shall be required in an approved ECC. Documentation shall show when children are moved from one (1) group of care to another.
- (9) An ECC shall maintain a written record for each child attending the child-care program that contains:
 - (a) Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
 - (b) Contact information to enable staff to contact the child's:
 - 1. Parent or guardian at their home or place of employment;
 - 2. Family physician; and
 - 3. Preferred hospital;
 - (c) The name of each person who is designated in writing to pick up the child;
 - (d) The child's general health status and medical history including, if applicable:
 - 1. Allergies; and
 - 2. Restrictions on the child's participation in activities or in the child's diet with specific instructions from the child's parent, guardian, or health professional;
 - (e) The name and phone number of each person to be contacted in an emergency involving or impacting the child; and
 - (f) Authorization by the parent or guardian for staff to seek emergency medical care for the child in the parent or guardian's absence.
- (10) An ECC shall have at least one (1) staff person on duty and present at all times children are in the facility certified by a cabinet-approved training agency in:
 - (a) Cardiopulmonary resuscitation (CPR); and
 - (b) First aid.
- (11) An ECC may be required to prioritize the enrollment of the children of emergency responders, essential employees, or other groups designated by the cabinet, depending on the nature and gravity of the emergency.

Section 8. Authority During a Statewide Emergency.

- (1) During a statewide emergency, the Governor or the secretary of the cabinet shall have the ability to issue a statewide mandate for approved ECCs.
- (2) If the emergency is limited to a region or a specific city, the mayor or county judge executive of the affected area or areas may also issue a demand for localized approved ECCs.
- (3) An individual program experiencing an emergency shall contact the cabinet.
- (4) An ECC shall be supervised by the cabinet.
- (5) The Division of Child Care shall collaborate with the Division of Regulated Child Care, the Department for Public Health, and the Kentucky Fire Marshal to approve an ECC.
- (6) An ECC shall continue to follow the guidelines of the Child Care and Development Block Grant (CCDBG) federal funding source during the emergency.

Section 9. Incorporation by Reference.

- (1) "OIG-DRCC-07, Emergency Child Care Application", 04/21, is incorporated by reference.
 - (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 department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.
- (47 Ky.R. 2509; 48 Ky.R. 380; eff. 8-26-2021.)