

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Amended After Comments)

900 KAR 14:010. Essential personal care visitor programs; visitation guidelines.

RELATES TO: KRS 194A.700(4), 216.510(1)

STATUTORY AUTHORITY: KRS 216.505 ~~{2022 Ky Acts ch. 10, sec. 1}~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.505 ~~{2022 Ky Acts ch. 10, sec. 1}~~ requires the cabinet to promulgate administrative regulations, subject to applicable federal requirements, to establish guidelines for any individual designated as an essential personal care visitor to have in-person visitation with a resident of an assisted-living community, long-term care facility, or state-owned or operated mental or psychiatric hospital during a period when general visitation is limited or prohibited. This administrative regulation establishes guidelines for implementation of essential personal care visitor programs.

Section 1. Definitions.

(1) "Essential personal care visitor" means a family member, legal guardian, outside caregiver, friend, or volunteer who:

- (a) Is eighteen (18) years of age or older;
- (b) May have provided regular care and support to a resident prior to any restrictions on visitation;
- (c) Is designated as being important to the mental, physical, or social well-being of the resident; and
- (d) Meets an essential need of the resident, including companionship, assisting with personal care, or positively influencing the behavior of the resident.

(2) "Facility" means:

- (a) An assisted-living community as defined by KRS 194A.700(4);
- (b) A long-term care facility as defined by KRS 216.510(1); or
- (c) A mental hospital as defined by KRS 216.505(1)(c) ~~{2022 Ky Acts ch. 10, sec. 1}~~.

(3) ~~{ "Facility-onset" means a COVID-19 or other communicable disease case that originates in a facility. }~~

~~{(4)} {"Outbreak" means one (1) new COVID-19 or other communicable disease case among facility staff or one (1) new facility-onset case among residents. }~~

~~{(5)} "Personal care" means assisting a resident with essential everyday activities, which may include grooming, dressing, and eating.~~

~~{(6)} "Resident" means an individual who:~~

- (a) Resides in an assisted-living community or long-term care facility; or
- (b) Is a patient of a mental hospital as defined by KRS 216.505(1)(c) ~~{2022 Ky Acts ch. 10, sec. 1}~~.

Section 2. Essential personal care visitation.

(1) A facility shall:

- (a) Allow essential personal care visitation as an exception from any prohibition against general visitation;
- (b) Establish policies and procedures for the designation of at least one (1) essential personal care visitor, including a process for changing the designated essential personal care visitor; and
- (c) In accordance with KRS 216.505(3)(h) ~~{2022 Ky Acts ch. 10, sec. 1}~~, not be required to permit an in-person visitor at all times.

(2) Designation of an essential personal care visitor shall be made in consultation with, and upon agreement by the:

- (a) Resident; and
 - (b) Resident's representative, if applicable.
- (3) A facility may require a written agreement with an essential personal care visitor.
- (4) A facility may limit the total number of visitors permitted in the facility at any one (1) time.
- (5) A facility may limit visitation by an essential personal care visitor to the resident or residents he or she is approved to visit.
- (6) ~~{A facility may temporarily suspend essential personal care visitation based on a clinical or safety factor, including:}~~
- ~~{(a)} {An outbreak in the facility;}~~
 - ~~{(b)} {The resident's communicable disease status; or}~~
 - ~~{(c)} {Noncompliance by the essential personal care visitor with:}~~
 - ~~{1.} {Safety protocols or other requirements established by this emergency administrative regulation; or}~~
 - ~~{2.} {Any policies and procedures the facility deems necessary to keep staff and residents safe.}~~
- ~~{(7)}~~ An essential personal care visitor who enters a facility during a period when general visitation is limited or prohibited shall:
- (a) Assume the risk of contracting a communicable disease;
 - (b) Limit visitation to the resident's room or a facility-designated room within the building;
 - (c) Limit his or her movement within the facility;
 - (d) Follow the facility's safety protocols; and
 - (e) Inform the facility if he or she develops symptoms of a communicable disease within fourteen (14) days of the visit.
- ~~{(8)}~~ If the resident has a roommate, an essential personal care visitor shall:
- (a) Not enter the resident's room if the roommate is there unless the roommate agrees in advance; and
 - (b) Be prohibited from staying in the room for more than fifteen (15) minutes unless otherwise approved by the roommate or roommate's representative.
- ~~{(9)}~~ An essential personal care visitor shall follow the same safety protocols required for facility staff, which may include one (1) or more of the following:
- (a) Testing for a communicable disease, which may be the responsibility of the essential personal care visitor. If testing is provided by the facility, essential personal care visitors shall be tested on the same schedule as staff;
 - (b) Health screens, including screening for signs and symptoms of a communicable disease and denial of entry of any individual with signs and symptoms;
 - (c) Using appropriate personal protective equipment (PPE);
 - (d) Washing or sanitizing hands regularly;
 - (e) Maintaining a distance of six (6) feet from staff and other residents at all times. Social distancing from the resident receiving an essential personal care visit may be relaxed for a short period of time under certain circumstances, e.g., providing assistance with a personal care activity; and
 - (f) Adhering to any other requirement the facility deems appropriate in accordance with guidance from the Centers for Disease Control and Prevention (CDC).
- ~~{(10)}~~ During a period when general visitation is limited or prohibited, a facility shall:
- (a) Be responsible for verifying and tracking the testing status of each essential personal care visitor if the facility requires testing as a safety protocol;
 - (b) Schedule essential personal care visits in advance or in accordance with a written agreement;
 - (c) Consider the number of other essential visitors who will be in the building at the same time when developing a visitation schedule;

- (d) Establish limitations on the visitation frequency and length of the visits to keep staff and residents safe;
- (e) Sanitize the area's high-frequency touched surfaces after the visit; and
- (f) Continue to provide all required services and activities to a resident while an essential personal care visitor is with the resident.

Section 3. Training.

(1) If required by the facility's written policies and procedures, each essential personal care visitor shall complete facility-designated training that includes basic information on infection prevention and control~~[, including:]~~

~~{(a)} {Proper hand hygiene;}~~

~~{(b)} {Use of PPE, if applicable;}~~

~~{(c)} {Proper respiratory hygiene; and}~~

~~{(d)} {Any other infection control measure the facility may require}.~~

(2) A facility may post signage throughout the facility that demonstrate key instructions to reinforce safe practices.

(36 Ky.R. 239; Am. 626; 808; eff. 10-28-2009; 38 Ky.R. 339; 1007; 1140; eff. 12-7-2011; 39 Ky.R. 857; 1467; 1695; eff. 3-8-2013; 42 Ky.R. 546; 1781; eff. 12-16-2015; 45 Ky.R. 1427, 2395; eff. 5-31-2019; 46 Ky.R. 2332; eff. 7-29-2020; 48 Ky.R. 2662; 49 Ky.R. 2662; eff. 8-25-2022.)

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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(1) Provide a brief summary of:

(a) What this administrative regulation does:

This new administrative regulation establishes guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

(b) The necessity of this administrative regulation:

This new administrative regulation is necessary to comply with KRS 216.505 (Senate Bill 100).

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

This new administrative regulation conforms to the content of KRS 216.505 by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

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

This new administrative regulation assists in the effective administration of the statutes by establishing guidelines for implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

(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 amended after comments administrative regulation deletes Section 2(6) and also deletes paragraphs (a) – (d) of Section 3(1) to align with the agency amendment on 900 KAR 14:010E, adopted on March 7, 2022, following a request from legislators. This amended after comments administrative regulation also makes conforming changes to Section 1(3) and (4) by deleting the definitions of “facility-onset” and “outbreak”.

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

This amended after comments administrative regulation is necessary to conform to the content of KRS 216.505 by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

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

This amended after comments administrative regulation conforms to the content of KRS 216.505 by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

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

This amended after comments administrative regulation assists in the effective administration of the statutes by establishing guidelines for implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

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

This new administrative regulation affects assisted-living communities, state-owned or operated psychiatric hospitals, and long-term care facilities. There are 133 assisted-living communities and three (3) state-owned or operated psychiatric hospitals, The number of long-term care facilities by licensure category is as follows: one (1) Alzheimer's nursing home; nine (9) intermediate care facilities; sixteen (16) intermediate care facilities for individuals with intellectual disabilities; twelve (12) licensed nursing facilities; twenty-seven (27) licensed nursing homes; 169 personal care homes; and 281 certified nursing facilities.

(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:

In accordance with the requirements of KRS 216.505 and this administrative regulation, individuals designated as essential personal care visitors shall be exempt from any general prohibitions on visiting a resident of an assisted-living community, long-term care facility, or state-owned or operated mental or psychiatric hospital.

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

There will not be significant costs to facilities to implement essential personal care visitor programs.

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

Essential personal care visitor programs are intended to help enhance the well-being and quality of life of Kentuckians in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

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

(a) Initially:

There are no additional costs to the Cabinet for Health and Family Services for implementation of this new administrative regulation.

(b) On a continuing basis:

There are no additional costs to the Cabinet for Health and Family Services for implementation of this new administrative regulation on a continuing basis.

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

State general funds and agency monies are used to implement and enforce this administrative regulation.

(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:

No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

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?

This administrative regulation impacts assisted-living communities, long-term care facilities, state-owned or operated psychiatric hospitals, and the Cabinet for Health and Family Services.

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

KRS 216.505

(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 revenue for state or local government.

(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 revenue for state or local government for subsequent years.

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

This administrative regulation imposes no additional costs on the administrative body.

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

No additional costs will be incurred to implement this administrative regulation 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:

(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 regulated entities during 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 savings for regulated entities during subsequent years.

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

This administrative regulation will not impose additional costs on regulated entities.

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

Same response as provided in (4)(c) above.

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 amendment will not have a major economic impact on the regulated entities.