



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of Inspector General

3 Division of Health Care

4 (Amendment)

5 902 KAR 20:300. Operation and services; nursing facilities.

6 RELATES TO: KRS 194A.705(2)(c), 209.030(2)-(4), 209.032, 216.510-216.525,  
7 216.532, 216.535, 216.540, 216.543, 216.545, 216.547, 216.785-216.793, 42 C.F.R.  
8 483.1-483.95

9 STATUTORY AUTHORITY: KRS 216B.042

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the  
11 Cabinet for Health and Family Services to promulgate administrative regulations  
12 necessary for the proper administration of the licensure function, which includes  
13 establishing licensure standards and procedures to ensure safe, adequate, and efficient  
14 health facilities and health services. This administrative regulation establishes minimum  
15 licensure requirements for the operation of and services provided by nursing facilities.

16 Section 1. Scope of Operations and Licensure.

17 (1) A nursing facility licensed under this administrative regulation shall comply with  
18 federal, state, and local laws and regulations pertaining to the operation of the facility,  
19 including compliance with the laws and regulations specified in this subsection.

20 (a) A nursing facility shall comply with the requirements of 42 C.F.R. 483.1-483.95.

21 (b) A nursing facility shall not be operated by or employ any person who is listed on

mg 20:15

1 the:

2 1. Nurse aide abuse registry pursuant to KRS 216.532; or

3 2. Caregiver misconduct registry established by KRS 209.032 and 922 KAR 5:120.

4 (c) A nursing facility shall comply with the preemployment criminal background

5 check requirements of KRS 216.785 - 216.793.

6 (d) A nursing facility shall comply with the tuberculosis (TB) testing requirements

7 established by:

8 1. 902 KAR 20:200; and

9 2. 902 KAR 20:205;

10 (e) A nursing facility shall ensure that the rights of residents are protected in

11 accordance with KRS 216.515 - 216.520.

12 (f) A nursing facility shall conspicuously display the posters required by KRS

13 216.525 that detail how an individual may make a written or oral complaint to the

14 cabinet.

15 (g) A nursing facility shall provide the information required by KRS 216.535(3) upon

16 admission of a nursing facility resident.

17 (h) A nursing facility shall comply with the requirements for access to the facility

18 pursuant to KRS 216.540(2) - (5).

19 (i) A nursing facility shall comply with the posting requirements of KRS 216.543.

20 (j) Upon admission, a nursing facility shall provide a copy of the statement required

21 by KRS 216.545(2) to the resident, resident's family member, or guardian.

22 (k) A nursing facility shall comply with the requirements for public inspection of the

23 information and documents identified in KRS 216.547(1).

(l) A nursing facility shall comply with the license procedures and fee schedule established by 902 KAR 20:008.

(m) A nursing facility shall maintain written policies that assure the reporting of cases of abuse, neglect, or exploitation of adults pursuant to KRS 209.030(2) - (4).

(n) A nursing facility may allow an unlicensed staff person to administer medication in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:

1. Medication administration is delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide credential from the Kentucky Community and Technical College System (KCTCS); and

3. If administration of a preloaded insulin injection is delegated in addition to oral or topical medication, the unlicensed staff person shall have a certified medication aide II credential from a training and skills competency evaluation program approved by KBN.

(2) A nursing facility may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of subsection (1)(b) and (c) of this section.

902 KAR 20:300

REVIEWED:

5/25/2023

Date

DocuSigned by:

*Adam Mather*

Adam Mather, Inspector General  
Office of Inspector General

APPROVED:

5/26/2023

Date

DocuSigned by:

*Eric Friedlander*

Eric C. Friedlander, Secretary  
Cabinet for Health and Family Services

## **PUBLIC HEARING AND PUBLIC COMMENT PERIOD:**

A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 902 KAR 20:300

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Contact Person: Krista Quarles

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(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by nursing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing the minimum licensure requirements for the operation of and services provided by nursing facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by nursing facilities.

(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 amendment requires unlicensed staff who administer medications to nursing facility residents under the delegation of a nurse to be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the 2023 passage of SB 110, which amended KRS 194A.705(2)(c) to require all long-term care facilities that provide basic health and health-related services or dementia care services to ensure that unlicensed staff who administer oral or topical medications, or preloaded injectable insulin to residents under the delegation of a nurse to have successfully completed a medication aide training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 194A.705(2)(c) because the statute applies to all long-term care facilities, including nursing facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 194A.705(2)(c) because the statute applies to all long-term care facilities, including nursing facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the 290 licensed nursing facilities in Kentucky.

(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: Nursing facilities must ensure that unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Most licensed nursing facilities use certified medication aides to administer medications under the delegation of a nurse. In addition, it is important to stress that the use of properly trained and competent medication aides leads to fewer errors with drug use and medication administration, thereby enhancing liability protections for the facility and helping ensure fewer negative outcomes for residents.

(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 Office of Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds and state matching funds of general and agency appropriations.

(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? (Explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.



## FISCAL NOTE

Administrative Regulation: 902 KAR 20:300

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(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 the Cabinet for Health and Family Services, Office of Inspector General, and licensed nursing facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.705(2)(c) and 216B.042.

(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 amendment will not generate additional 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 amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

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 imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation imposes no additional costs on regulated entities during subsequent years.

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 is not expected to have a major economic impact on the regulated entities.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 902 KAR 20:018

Agency Contact: Kara Daniel; Stephanie Brammer-Barnes

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1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 483.1-483.95
2. State compliance standards. KRS 216B.042
3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.1-483.95 establishes the Federal requirements for participation in Medicare and Medicaid to ensure the health and safety of individuals to whom services are furnished in nursing facilities.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The existing language of this regulation requires Kentucky-licensed nursing facilities to comply with the consolidated Medicare and Medicaid requirements for participation for long-term care facilities (42 C.F.R. 483.1-483.95); requires compliance with the abuse registry checks required by KRS 216.532 and KRS 209.032; requires compliance with the criminal background checks required by KRS 216.785 – 216.793; requires compliance with the tuberculosis (TB) testing requirements established by 902 KAR 20:200 and 902 KAR 20:205; requires facilities to ensure that residents rights are protected in accordance with KRS 216.515 – 216.520; requires facilities to conspicuously display posters required by KRS 216.525; requires facilities to provide information required by KRS 216.535(3); requires compliance with the requirements for access to the facility pursuant to KRS 216.540(2) – (5); requires compliance with the posting requirements of KRS 216.543; requires compliance with the statement required by KRS 215.545(2); requires compliance with the requirements for public inspection of the information and documents identified in KRS 216.547(1); requires compliance with the licensing procedures and fee schedule established by 902 KAR 20:008; and requires compliance with the reporting requirements of KRS 209.030(2) – (4).

In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires nursing facilities to ensure that any unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements for nursing facilities are established in state law as identified above.