CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care

(New Administrative Regulation)

906 KAR 1:210. Health care services agencies.
RELATES TO: KRS 216.718 – 216.728, 216.785 – 216.793
STATUTORY AUTHORITY: KRS 216.720(2), 216.728(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.720(2) requires the cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A to establish the application process for registration of health care services agencies. KRS 216.728(2) requires the cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for health care services agencies to submit quarterly reports. This administrative regulation establishes requirements for health care services agency registration and quarterly reporting.

Section 1. Definitions. (1) "Assisted-living community” is defined by KRS 216.718(1).

(2) "Cabinet" is defined by KRS 216.718(2).

(3) "Controlling person" is defined by KRS 216.718(3).

(4) "Direct care service" is defined by KRS 216.718(4).

(5) "Direct care staff" is defined by KRS 216.718(5).

(6) "Health care services agency" is defined by KRS 216.718(6).
(7) "Hospital" is defined by KRS 216.718(7).

(8) "Long-term care facilities" is defined by KRS 216.718(8).

Section 2. Registration. A health care services agency that refers direct care staff to assisted-living communities, long-term care facilities, or hospitals in Kentucky shall register with the cabinet as required by KRS 216.720(1).

Section 3. Application and Fees. (1) An applicant for initial registration or annual renewal as a health care services agency shall submit to the Office of Inspector General:

(a) A completed Application for Registration to Operate a Health Care Services Agency; and

(b) In accordance with KRS 216.720(2)(f), an accompanying fee in the amount of $3,000, made payable to the Kentucky State Treasurer.

(2) As a condition of annual renewal, the application required by subsection (1) of this section shall be submitted to the cabinet at least sixty (60) days prior to the date of expiration of the agency's registration.

(3) In accordance with KRS 216.720(1), each separate location of a health care services agency shall register and obtain a separate registration.

(4)(a) Name change. A health care services agency shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the agency's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A health care services agency shall not change the location where a facility is operated until an Application for Registration to Operate a Health
Care Services Agency accompanied by a fee of one hundred (100) dollars is filed with
the Office of Inspector General.
(c) Change of ownership.
1. In accordance with KRS 216.720(4), if a controlling person changes, the health
care services agency is sold, or the management is transferred, the agency shall submit
to the Office of Inspector General a completed Application for Registration to Operate a
Health Care Services Agency accompanied by a fee of $3,000 no later than thirty (30)
calendar days from the effective date of the change.
2. A change of ownership shall be deemed to occur if more than twenty-five (25)
percent of an existing health care services agency or capital stock or voting rights of the
corporation is purchased, leased, or otherwise acquired by one (1) person from another.

Section 4. Scope of Operations. (1) In accordance with KRS 216.722(1), a health
care services agency shall:
(a) Retain documentation that each direct care staff contracted with or employed by
the agency meets the minimum licensing, certification, training, and continuing
education standards for his or her position;
(b) Comply with all pertinent requirements relating to the health and other
qualifications of personnel employed in:
1. An assisted-living community;
2. A long-term care facility; or
3. A hospital;
(c) Carry all professional and general liability insurance coverage to insure against
loss, damage, or expense incident to a claim arising out of the death or injury of any
person as the result of negligence or malpractice in the provision of direct care services
by the health care services agency or any direct care staff;
(d) Carry an employee dishonesty bond in the amount of $10,000;
(e) Maintain coverage for workers' compensation for all direct care staff; and
(f) Retain all records for five (5) calendar years and make all records immediately
available to the cabinet upon request.
(2) A health care services agency shall demonstrate compliance with:
(a) KRS 216.724;
(b) KRS 216.789; and
(c) KRS 216.793.
Section 5. Quarterly Reports. (1) In accordance with KRS 216.728, a health care
services agency shall submit quarterly reports to the cabinet that include the following
information:
(a) The name, professional licensure or certification, and assigned location for each
direct care staff;
(b) The length of time the direct care staff person has been assigned to the
assisted-living community, long-term care facility, or hospital and the total hours worked;
and
(c) For all long-term care facilities or hospitals that participate in the Medicare and
Medicaid programs:
1. Copies of all invoices submitted to the long-term care facility or hospital; and
2. Proof of payment by the long-term care facility or hospital.
(2) The quarterly reports shall be submitted to the cabinet for the preceding
calendar quarter by February 1, May 1, August 1, and November 1 of each year.

Section 6. Complaints. In accordance with KRS 216.726, a complaint relating to a health care services agency or direct care staff may be made in accordance with the instructions provided in the complaint information document available for download from the Office of Inspector General's Web site:


Section 7. Denial, Expiration, Revocation, and Fines. (1) The cabinet shall deny an Application for Registration to Operate a Health Care Services Agency if:

(a) The applicant or existing agency knowingly misrepresents or submits false information on the application;

(b) The applicant or existing agency fails to provide the information and fee required by Section 3(1) of this administrative regulation;

(c) The applicant or existing agency fails to comply with Section 4(1) of this administrative regulation; or

(d) A controlling person in the entity applying for registration was a controlling person in a previously registered health care services agency that had its registration revoked for noncompliance during the five (5) year period immediately preceding the filing of the application.

(2)(a) In accordance with KRS 216.720(4), a health care services agency's registration shall expire one (1) year from the date of issuance.

(b) If the health care services agency fails to renew its registration pursuant to Section 3(2) of this administrative regulation:

1. Its registration shall be cancelled effective one (1) day after the expiration date;
2. The Office of Inspector General shall document the agency’s registration as
inactive; and

3. The agency shall not continue to refer staff to an assisted-living community, long-
term care facility, or hospital in Kentucky until its registration is renewed.
   (3) Failure to comply with Section 4(1) of this administrative regulation shall result
   in:
   (a) Revocation of registration; and
   (b) A monetary penalty in the amount of $25,000.
   (4) The cabinet shall revoke registration if:
      (a) In accordance with KRS 216.722(3), the cabinet determines that a health care
services agency knowingly provided to an assisted-living community, a long-term care
facility, or a hospital direct care staff who have illegally or fraudulently obtained or been
issued a diploma, registration, license, certification, or criminal background check; or
      (b) The cabinet determines that there has been substantial failure by the health care
services agency to comply with the provisions of this administrative regulation or KRS
216.718 – 216.728.

Section 8. Notice of Adverse Action. (1) Except for a violation of KRS 216.722(3),
OIG shall provide written notice of adverse action at least thirty (30) calendar days prior
to the effective date of the denial or revocation.

(2) In accordance with KRS 216.722(3), the cabinet shall immediately notify a health
care services agency that its registration will be revoked in fifteen (15) days if the
cabinet determines that the agency has knowingly provided to an assisted-living
community, long-term care facility, or a hospital direct care staff who have illegally or
fraudulently obtained or been issued a:

(a) Diploma, registration, license, or certification; or

(b) Criminal background check.

(3) A notice of adverse action issued in accordance with subsection (1) or (2) of this section shall:

(a) Explain the reason for the denial or revocation, and monetary penalty if applicable;

(b) Advise the health care services agency of the right to request an appeal prior to the effective date of the denial or revocation, and monetary penalty if applicable; and

(c) Specify that the adverse action shall be stayed if an appeal is requested.

Section 9. Closure of a Health Care Services Agency. If a health care services agency closes voluntarily or as the result of denial or revocation of the registration, the agency shall relinquish to the cabinet its registration to operate as a health care services agency immediately after the effective date of the closure.

Section 10. Appeals. A health care services agency that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action, including revocation pursuant to KRS 216.722(3), shall be afforded a hearing in accordance with KRS Chapter 13B.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form OIG 1:210, "Application for Registration to Operate a Health Care Services Agency", August 2022 edition; and

(2) This material may be inspected, copied, or obtained, subject to applicable
copyright law, at the Office of Inspector General, 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 Office of Inspector General's Web site at:

906 KAR 1:210

REVIEWED:

8/2/2022
Date

Adam Mather, Inspector General
Office of Inspector General

APPROVED:

8/2/2022
Date

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 October 24, 2022, 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 hearing shall notify this agency in writing by October 17, 2022, 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 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 October 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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 Specialist, 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: 906 KAR 1:210
Agency Contact: Kara Daniel; Stephanie Brammer-Barnes
Phone Number: (502) 564 – 2888
Email: karal.daniel@ky.gov; sbramerbarnes@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-6746
Email: CHFSregs@ky.gov

(1) Provide a brief summary of:
(a) What this administrative regulation does: This new administrative regulation establishes requirements for health care services agency registration.
(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with KRS 216.718 – 216.728 (HB 282).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 216.718 – 216.728 (HB 282) by establishing requirements for health care services agency registration.
(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 requirements for the registration of health care services agencies as required by HB 282 enacted by the 2022 General Assembly.

(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 is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(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 entities seeking registration as a health care services agency. It is not known how many entities will apply for registration.

(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 HB 282 and this administrative regulation, entities seeking registration as a health care services agency will be required to submit an initial and annual renewal application to the cabinet. The requirements for registration and quarterly reporting are established in KRS 216.720 and 216.722, and Sections 3 through 5 of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KRS 216.720(2)(f) establishes an initial and annual registration fee of $3,000. KRS 216.722(1) requires health care services agencies to carry professional and general liability insurance as well as an employee dishonesty bond in the amount of $10,000. This administrative regulation also establishes a processing fee of $25 for a change of name and a processing fee of $100 for a change of location.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities seeking registration as a health care services agency must demonstrate compliance with this administrative regulation and KRS 216.718 – 216.728.

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

(a) Initially: The Office of Inspector General (OIG) is seeking to hire one (1) additional grace 15 position to implement and oversee HB 282’s new registration program for health care services agencies. The cost of the additional staff person will be approximately $88,000.

(b) On a continuing basis: The continuing costs will be approximately $88,000 per year.

(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 will be 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: KRS 216.720(2)(f) establishes an initial and annual registration fee of $3,000. In addition, this administrative regulation establishes a processing fee of $25 for a change of name and a processing fee of $100 for a change of location.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual registration fee of $3,000 in accordance with KRS 216.720(2)(f). In addition, this administrative regulation establishes a processing fee of $25 for a change of name and a processing fee of $100 for a change of location.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 906 KAR 1:210
Agency Contact: Kara Daniel; Stephanie Brammer-Barnes
Phone Number: (502) 564 – 2888
Email: karal.daniel@ky.gov; sbramerbarnes@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-6746
Email: CHFSregs@ky.gov

(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 health care services agencies and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.720(2), 216.728(2)

(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? KRS 216.720(2)(f) establishes an initial and annual registration fee of $3,000. KRS 216.722(2) authorizes the cabinet to impose a fine of $25,000 for noncompliance. In addition, this administrative regulation establishes a processing fee of $25 for a change of name and a processing fee of $100 for a change of location. It is not known how many entities will apply for registration. Therefore, the cabinet is not able at this time to predict how much additional revenue will be generated.

(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? KRS 216.720(2)(f) establishes an initial and annual registration fee of $3,000. KRS 216.722(2) authorizes the cabinet to impose a fine of $25,000 for noncompliance. In addition, this administrative regulation establishes a processing fee of $25 for a change of name and a processing fee of $100 for a change of location. It is not known how many entities will apply for registration. Therefore, the cabinet is not able at this time to predict how much additional revenue will be generated.

(c) How much will it cost to administer this program for the first year? The Office of Inspector General (OIG) is seeking to hire one (1) additional grade 15 position to implement and oversee HB 282’s new registration program for health care services agencies. The cost of the additional staff person will be approximately $88,000.

(d) How much will it cost to administer this program for subsequent years? The continuing costs will be approximately $88,000 per year.
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? In accordance with KRS 216.722(2), this administrative regulation will cost regulated entities a fee of $3,000 during the first year. In accordance with KRS 216.722(1), regulated entities must carry all professional and general liability insurance and carry an employee dishonesty bond of $10,000.
   (d) How much will it cost the regulated entities for subsequent years? In accordance with KRS 216.722(2), this administrative regulation will cost regulated entities a fee of $3,000 during subsequent years. In accordance with KRS 216.722(1), regulated entities must carry all professional and general liability insurance and carry an employee dishonesty bond of $10,000.

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))

It is not known how many entities will apply for registration. Therefore, the cabinet is not able to determine whether this administrative regulation will have a major economic impact on the regulated entities.
COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF INSPECTOR GENERAL

906 KAR 1:210. Health care services agencies.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The Form OIG 1:210, "Application for Registration to Operate a Health Care Services Agency", August 2022 edition is the 6-page application form that entities are required to submit to the Office of Inspector General prior to obtaining registration to operate a health care services agency and annually thereafter as part of the renewal process.

The Form OIG 1:210-A, “Quarterly Report”, August 2022 edition is the 1-page form that health care services agencies are required to use to meet the reporting requirements of KRS 216.728(2) and Section 5 of this administrative regulation.

A total of seven (7) pages are incorporated by reference.