CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

902 KAR 20:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities[~~the mentally retarded and developmentally disabled~~].

RELATES TO: KRS 194A.705(2)(c), 209.030, 209.032, 216.510 – 216.525, 216.532, 216.789, 216.793, 216A.080, 310.031, 315.035, 620.030, 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. 1325.3, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8[~~216B.010-216B.131, 216B.990(1), (2), 222.210 et. seq.~~]

STATUTORY AUTHORITY: KRS 216B.042[~~, 216B.105~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient[~~mandates that the Kentucky Cabinet for Human Resources regulate~~] health facilities and health services. This administrative regulation establishes minimum[~~provides~~] licensure requirements for the operation and services provided by intermediate care facilities for individuals with intellectual disabilities (ICF/IID)[~~of intermediate care facilities for the mentally retarded/developmentally disabled (MR/DD)~~].

Section 1. Definitions.

(1) "Active treatment" means the delivery of resident-specific specialized and generic training, treatment, health services, and related services directed toward the:

(a) Acquisition of behaviors necessary for the resident to function with as much self-determination and independence as possible; and

(b) Prevention or deceleration of regression or loss of current optimal functional status.[~~daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.~~]

(2) "Administrator" means a person who has a license to practice long-term care administration[~~is licensed as a nursing home administrator~~] pursuant to KRS 216A.080.

(3) "Aversive stimuli" means things or events that the resident finds unpleasant or painful that are used to immediately discourage undesired behavior.

(4) **[~~"Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.~~]**

[~~(5)~~] "Developmental disability" is defined by 45 C.F.R. 1325.3[~~means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in three (3) or more areas of major life activity including self-care, receptive and expressive language, learning, self direction, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration~~].

(5)[~~(6)~~(5)] "Developmental nursing services" means treatment of an individual's[~~a person's~~

~~developmental~~] needs by designing interventions to modify the rate or[~~and/or~~] direction of the individual's development [~~especially~~]in the areas of:

(a) Self-help skills;[~~,~~]

(b) Personal hygiene;[~~,~~] and

(c) Sex education[~~ while also meeting his physical and medical needs.~~]

[~~(6)~~] [~~"Facility" means an intermediate care facility for the mentally retarded and the developmentally disabled (MR/DD).~~]

[~~(7)~~] [~~"Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection~~].

(6)[~~(7)~~] "Intellectual disability" is defined by 34 C.F.R. 300.8(c)(6).

(7)[~~(8)~~] "Interdisciplinary team" means the group of people assembled by the facility who represent the professions, disciplines, or service areas that are relevant to:

(a) Identify the resident's needs; and

(b) Make recommendations for:

1. The resident's individual program plan; and

2. Services designed to meet the resident's needs[~~persons responsible for the diagnosis, evaluation and individualized program planning and service implementation for the resident. The team is composed of relevant professionals, and may include the resident, the resident's family, or the guardian.~~]

[~~(9)~~] [~~"License" means an authorization issued by the cabinet for the purpose of offering intermediate care MR/DD services.~~]

[~~(10)~~] [~~"MR/DD" means the mentally retarded and the developmentally disabled persons~~].

(8)[~~(9)~~(11)] "Normalization principle" means making available to all people with disabilities patterns of life and conditions of everyday living that are as close as possible to the regular circumstances and ways of life or society[~~is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.~~]

[~~(12)~~] [~~"Qualified dietician or nutritionist" means:~~]

[~~(a)~~] [~~A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or~~]

[~~(b)~~] [~~A person who has a masters degree in nutrition and is a member of the ADA or is eligible for registration by ADA; or~~]

[~~(c)~~] [~~A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.~~]

[~~(13)~~] [~~"Qualified occupational therapist" means a graduate of a program of occupational therapy approved by the Council on Medical Education of the American Medical Association and licensed in the state, if required.~~]

[~~(14)~~] [~~"Qualified speech pathologist or audiologist" means a person who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed~~][~~the equivalent education and experimental requirements for such a certificate~~].

(9)[~~(15)~~] "Qualified social worker" means a person who:

(a) Meets the requirements of 42 C.F.R. 483.430(b)(5)(vi); or

(b) Has[~~is licensed or exempt from licensure pursuant to KRS Chapter 335 with bachelor's degree in social work from an accredited program or~~] a bachelor's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a [~~qualified~~]social worker who meets the requirements of 42 C.F.R. 483.430(b)(vi).

(10)[~~(11)~~(16)] "A qualified intellectual disability[~~mental retardation~~] professional (QIDP)" is defined by 42 C.F.R. 483.430(a)[~~means a person who has specialized training or one (1) year of experience in treating or working with the mentally retarded and/or developmental disabilities and is one (1) of the following:~~]

[~~(a)~~] [~~A psychologist with a master's degree from an accredited program;~~]

[~~(b)~~] [~~A licensed physician;~~]

[~~(c)~~] [~~A educator with a degree in education from an accredited program;~~]

[~~(d)~~] [~~A social worker who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in:~~]

[~~1.~~] [~~Social work from an accredited program; or~~]

[~~2.~~] [~~A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social workers;~~]

[~~(e)~~] [~~A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association.~~]

[~~(f)~~] [~~A speech pathologist or audiologist who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for~~

~~such a certificate;~~]

[~~(g)~~] [~~A registered nurse;~~]

[~~(h)~~] [~~A therapeutic recreation specialist who is graduate of an accredited program and is licensed in the state, if required, or who has:~~]

[~~1.~~] [~~A bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or~~]

[~~2.~~] [~~An associate degree in recreation and one (1) year of experience in recreation; or~~]

[~~3.~~] [~~A high school diploma, or an equivalency certificate; and~~]

[~~a.~~] [~~Two (2) years of experience in recreation; or~~]

[~~b.~~] [~~One (1) year of experience in recreation plus completion of comprehensive in-service training in recreation; or~~]

[~~4.~~] [~~Demonstrated proficiency and experience in conducting activities in one (1) or more recreation program areas; or~~]

[~~(i)~~] [~~A "rehabilitation/counselor" who is certified by the Committee on Rehabilitation Counselor Certification~~].

(11)[~~(12)~~(17)] "Restraint" means any pharmaceutical[~~chemical~~] agent or [~~any~~]physical or mechanical device used to restrict the movement of a portion of an individual's body[~~an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment~~].

(12)[~~(13)~~(18)] "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented

from leaving[~~the retention of a resident alone in a locked room~~].

[~~(19)~~] [~~"Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.~~]

[~~(20)~~] [~~"Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart~~].

(13)[~~**(14)**~~(21)] "Time-out"[~~"Time-out"~~] means a procedure that[~~which~~] involves removing an individual[~~the person~~] from a reinforcing situation[~~,~~] for a period of time if[~~when~~] the individual[~~person~~] engages in a specified inappropriate behavior.

Section 2. Scope of Operation and Services.

(1) An ICF/IID shall[~~Intermediate care facilities for mentally retarded and developmentally disabled persons~~] provide services for all age groups on a twenty-four (24) hour basis, seven (7) days per[~~a~~] week[~~,~~] in an establishment located in a[~~with~~] permanent building with[~~facilities including~~] resident beds for individuals with intellectual disabilities or related conditions who require[~~persons whose mental or physical condition requires~~] developmental nursing services and[~~along with~~] a planned program of active treatment.

(2) The facility shall provide[~~provides special~~] programs as indicated by a resident's individual program plan[~~care plans~~] to maximize the resident's mental, physical, and social development in accordance with the normalization principle.

(3) The facility shall[~~intermediate care facilities for the mentally retarded and developmentally disabled must~~] comply with the facility specification requirements of[~~specifications for Intermediate Care Facilities,~~] 902 KAR 20:056.

Section 3. Administration and Operation.

(1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the facility; and[~~for~~]

(b) Compliance with federal, state and local laws, and administrative regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who shall:[~~is~~]

(a) Be responsible for the day-to-day operation of the facility;

(b) Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's[~~and delegating such responsibility in his~~] absence; and[~~,~~]

(c) [~~The administrator shall~~]Not be the nursing services supervisor.

(3) Contracted services. The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of each resident.[~~the residents. The contract shall be in writing.~~]

(4) Administrative records.

(a) The facility shall maintain a [~~bound, permanent, chronological~~]resident registry that documents the:[~~showing date of admission,~~]

1. Name of each resident;

2. Date of admission; and

3. Date of discharge.

(b) The facility shall [~~require and~~]maintain written recommendations or comments from consultants regarding the active treatment program and its development on a per visit basis.

(c) The facility shall maintain menu and food purchase records[~~shall be maintained~~].

(d)

1. The administrator or administrator's designee shall make a written report of any incident or accident involving a:

a. Resident,[(]including a medication error[~~errors~~] or drug reaction;[~~reactions),~~]

b. Visitor; or

c. Staff member.

2. The report shall:

a. Identify[~~ be made and signed by the administrator or nursing services supervisor, and~~] any staff member who witnessed the incident; and[.]

b. [~~The report shall~~]Be filed in an incident file.

(5) Policies. The facility shall have[~~establish~~] written policies and procedures that govern all services provided by the facility. The [~~written~~]policies shall[~~ include~~]:

(a) Address resident services, including medical, nursing, habilitation, pharmaceutical[~~(including medication stop orders policy)~~], and residential services;

(b) Require[~~Adult and child protection. The facility shall have written policies which assure~~] the reporting of cases of abuse, neglect, or exploitation of adults or[~~and~~] children [~~to the Department for Human Resources~~]pursuant to KRS 209.030 or 620.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in process[~~Chapters 209 and 620~~];

(c) Ensure that residents are:

1. Free from unnecessary drugs and physical restraints; and

2. Provided active treatment to reduce dependency on drugs and physical restraints; and[~~Use of restraints. The facility shall have a written policy that defines the use of restraints and~~

[~~supportive devices and a mechanism for monitoring and controlling their use; and~~]

(d) [~~Missing resident procedures. The facility shall have a written procedure to~~]Specify in a step-by-step manner the actions that[~~which~~] shall be taken by staff if[~~when~~] a resident is [~~determined to be~~]lost, unaccounted for, or on other unauthorized absence.

(6) Resident[~~Patient~~] rights. Resident[~~Patient~~] rights shall be provided for pursuant to KRS 216.510 to 216.525.

(7) Admission.

(a) A resident of an ICF/IID[~~Patients~~] shall:

1. Be admitted only upon the referral[~~approval~~] of a physician; and[~~.~~]

2. [~~The facility shall admit only persons who~~]Have a [~~physical or mental~~]condition that[~~which~~] requires developmental nursing services and a planned program of active treatment.

(b) The interdisciplinary team shall consist of:

1. A physician;[~~,~~]

2. A psychologist;[~~,~~]

3. A registered nurse;[~~,~~]

4. A qualified social worker; and

5. Other professionals, at least one (1) of whom is a QIDP[~~qualified mental retardation professional~~].

(c) Prior to admission, the interdisciplinary team shall:

1. Conduct a comprehensive evaluation of the individual no less than ninety (90) days[~~, not more than three (3) months~~] before the date of admission;

2. Assess the individual's[~~, covering~~] physical, emotional, social, and cognitive status[~~factors~~]; and

3.[~~2.~~] Determine[~~Prior to admission define~~] the need for services, including a review of[~~service without regard to availability of those services. The team shall review~~] all available[~~and applicable~~] programs of care, treatment, and training[~~ and record its findings~~].

(d) Admission decisions shall be made in accordance with 42 C.F.R. 483.440.

(e)[~~(c)~~] Upon admission, the facility shall provide[~~If admission is not the best plan but the individual must be admitted nevertheless, the facility shall clearly acknowledge that the admission is inappropriate and initiate plans to actively explore alternatives;~~]

[~~(d)~~] [~~Before admission,~~] the resident and a responsible family member [~~of his family~~]or guardian, if applicable, with written information regarding the facility's policies, including:

1. Services offered and charges;

2. [~~committee shall be informed in writing of the established policies of the facility and fees, reimbursement,~~]Visitation rights during serious illness;[~~,~~]

3. Visiting hours; and[~~,~~]

4. Type of diets offered.

(f) [~~and services offered; and~~]

[~~(e)~~] The facility shall [~~provide and~~]maintain a system for:

1. Identifying each resident's personal property; and[~~ facilities for~~]

2. Safekeeping [~~of his declared~~]valuables, including assurance that[~~,~~] each resident's clothing and other property is[~~shall be~~] reserved for the resident's[~~his~~] own use.

(8) Discharge planning.[~~ Prior to discharge~~]

(a) The facility shall have a discharge planning program **which begins at admission and is an integral part of each individual's treatment plan** that[~~postinstitutional plan which~~]identifies other settings[~~the residential setting~~] and support services that may[~~which would~~]

enable a[~~the~~] resident to live in a less restrictive environment[~~alternative to the current setting~~].

(b) If a resident is to be transferred or discharged, the facility shall comply with requirements of 42 C.F.R. 483.440(4) and (5)[~~Before a resident is released, the facility shall:~~]

[~~(a)~~] [~~Offer counseling to parents or guardians who requests the release of a resident concerning the advantages and disadvantages of the release;~~]

[~~(b)~~] [~~Plan for release of the resident, to assure that appropriate services are available in the resident's new environment, including protective supervision and other follow-up services; and~~]

[~~(c)~~] [~~Prepare and place in the resident's record a summary of findings, progress, and plans~~].

(9) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of a resident to a higher intensity level of care, if indicated[~~residents to other health care facilities which can provide a level of health care not provided by the facility~~].

(b) A[~~Any~~] facility that[~~which~~] does not have a transfer agreement in effect, but has attempted in[~~which documents a~~] good faith [~~attempt~~]to enter into an agreement shall be considered to be in compliance with the requirements of paragraph (a) of this subsection[~~licensure requirement~~].

(c) The facility's transfer procedures and agreements shall:

1. Specify the responsibilities of each party[~~institution assumes~~] in the transfer of a resident;[~~, and shall~~]

2. Establish responsibility for notifying the other party[~~institution promptly~~] of an[~~the~~] impending transfer; and[~~ of a resident and shall~~]

3. Arrange for appropriate and safe transportation of the resident and resident's files.

(d) Except in cases of emergency, the administrator shall:

1. Initiate a transfer through the resident's physician if the resident's[~~When the resident's~~] condition exceeds the scope of services of the facility; or

2. Contract for services[~~, the resident, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for~~] from another community resource to meet the resident's needs.

(e)[~~(c)~~] If a resident's condition improves and the resident may be served in a less restrictive environment,[~~When changes and progress occur which would enable the resident to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility,~~] the facility shall offer assistance in making arrangements for the resident[~~residents~~] to be transferred to a lower intensity level of care[~~facilities providing appropriate services~~].

(f)[~~(d)~~] Except in an emergency, the resident, resident's responsible family member[~~his next of kin~~], or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge[~~of any resident~~].

(g)[~~(e)~~] If a resident transfers[~~When a transfer is~~] to another level of care[~~within the same facility~~], the complete medical record or a current summary of the resident's medical record shall accompany the resident[~~thereof shall be transferred with the resident~~].

(h)[~~(f)~~] If the resident is transferred to another health care facility or other community resource, a transfer form shall:

1. Accompany the resident;[~~,~~]

2. [~~The transfer form shall~~] Include the following[~~at least~~]:

a. Physician's orders,[~~(~~]if available[~~)~~];[~~,~~]

b. Current information regarding the resident's[~~relative to~~] diagnosis with a history of any health conditions that require[~~problems requiring~~] special care;[~~,~~]

c. A summary of [~~the course of~~]prior treatment, special supplies, or equipment needed for the resident's[~~resident~~] care;[~~,~~] and

d. Pertinent social information on the resident and resident's family.

(10) Medical records.

(a) The facility shall maintain a record for each resident that includes documentation of[~~for~~]:

1. Planning and continuous evaluation of the resident's habilitation program, including evidence of the resident's progress; and

2. Protecting the resident's rights[~~Furnishing documentary evidence of each resident's progress and response to his habilitation program; and~~]

[~~3.~~] [~~Protecting the rights of the residents, the facility and the staff~~].

(b) Each entry in a[~~All entries in the~~] resident's record shall be legible, dated, and signed.

(c) Each record shall include:[~~At the time a resident is admitted, the facility must enter in the individual's record the following information:~~]

1. Identifying information, including:

a. Resident's name;[~~,~~]

b. Date of admission;[~~,~~]

c. Birth date and place of birth;[~~,~~]

d. Citizenship status;[~~,~~]

e. Marital status;[~~, and~~]

f. Social Security number;

g.[~~2.~~] Father's name and birthplace;[~~,~~]

h. Mother's maiden name and birthplace;[~~, and~~]

i. Parents' marital status;

j.[~~3.~~] [~~Name and~~]Address of parents, [~~legal~~]guardian, or responsible family member,[~~and next of kin~~] if applicable[~~needed~~]; and

k.[~~4.~~] Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;

2.[~~5.~~] Reason for admission or referral[~~ problem~~];

3.[~~6.~~] Type and legal status of admission;

4.[~~7.~~] Legal competency status;

5.[~~8.~~] Language spoken or understood;

6.[~~9.~~] Sources of support, including Social Security, veterans' benefits, or[~~and~~] insurance;

7.[~~10.~~] Religious affiliation, if any;

8.[~~11.~~] Documentation of[~~Reports of~~] the preadmission evaluation[~~evaluations~~]; and

9.[~~12.~~] Documentation[~~Reports~~] of assessments[~~previous histories~~] and any other previous evaluations[~~, if any~~].

(d) Within thirty (30) days[~~one (1) month~~] after [~~the~~]admission[~~ of each resident~~], the facility shall[~~ICF/MR must~~] enter the following in the resident's record:

1. A report of assessments or reassessments performed by the interdisciplinary team to supplement the[~~the review and updating of the~~] preadmission evaluation;

2. The resident's specific developmental and behavioral management needs[~~A prognosis that can be used for programming and placement~~]; and

3. A comprehensive functional assessment[~~evaluation~~] and individual program plan developed[~~, designed~~] by the[~~an~~] interdisciplinary team.

(e) The facility shall[~~must~~] enter the following information in a resident's record[~~ during~~

~~his residence~~]:

1. A written report of any accident, seizure, or illness, and treatment services provided[~~Reports of accidents, seizures, illnesses, and treatments for these conditions~~];

2. Documentation[~~Records~~] of immunizations;

3. Documentation of the use of any restraint on the resident, including an explanation of[~~Records of all time periods that restraints were used, with justification~~] and authorization for the restraint[~~each~~];

4. Documentation of the interdisciplinary team's annual[~~Reports of regular, at least annual,~~] review and evaluation of the resident's individual program plan, developmental progress, and status[~~of each resident~~];

5. Observations regarding[~~of~~] the resident's response to the individual[~~his~~] program plan used to evaluate[~~to enable evaluation of~~] its effectiveness;

6. A record[~~Records~~] of significant behavior incidents;

7. Documentation[~~Records~~] of family visits and contacts;

8. Documentation of any incident in which the resident is lost, unaccounted for, or on other unauthorized absence[~~Records of attendance and absences~~];

9. Correspondence pertaining to the resident;

10. [~~Periodic~~]Updates as needed to[~~of~~] the information initially recorded at the time of admission; and

11. A record of any applicable[~~Appropriate~~] authorizations or[~~and~~] consent.

(f) The facility shall[~~ICF/MR must~~] enter a discharge summary in the resident's record at the time of discharge[~~he is discharged~~].

(11) Confidentiality and Security: Use and Disclosure.

(a) The facility shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, and as provided by applicable federal or state law.

(b) The facility may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) The facility may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(12)[~~(11)~~] Personnel.

(a) In accordance with KRS 216.532, an ICF/IID shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, an ICF/IID shall not employ or be operated by an individual who is listed on the caregiver misconduct registry established by 922 KAR 5:120.

(c) An ICF/IID shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) An ICF/IID may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) through (c) of this subsection.

(e) A[~~Job descriptions.~~] written job description[~~descriptions~~] shall be developed for each category of personnel, including:[~~to include~~]

1. Qualifications;[~~,~~]

2. Lines of authority; and

3. Specific duty assignments.

(f)[~~(b)~~] [~~Employee records.~~] Current employee records shall be maintained on each staff member and contain:

1. Name and address;

2. Verification of[~~shall include a resume of each employee's~~] training and experience, including evidence of current licensure,[~~or~~]registration, or certification, if applicable;

3. Employee[~~where required by law,~~] health records;

4. Annual performance evaluations; and

5. Documentation of compliance with the background check requirements of paragraphs (a) through (c) of this subsection[~~, records of in-service training and ongoing education, and the employee's name, address and Social Security number~~].

(13)[~~(c)~~] Staffing requirements.

(a) Staffing in the facility shall be sufficient in number and qualifications[~~have adequate personnel~~] to meet the personal care, nursing care, supervision, and other needs of each resident[~~the residents~~] on a twenty-four (24) hour basis.[~~The number and classification of personnel required shall be based on the number of residents, the amount and the kind of personal care, nursing care, supervision and program needed to meet the needs of the resident as determined by the interdisciplinary team, and the services required by this administrative regulation.~~]

(b)[~~(d)~~] The licensee shall have a QIPD[~~qualified mental retardation professional~~] who is responsible for:

1. Supervising the delivery of each resident's individual program plan[~~of care~~];

2. Supervising the delivery of training and habilitation services;

3. Integrating the various aspects of the facility's[~~facility~~] program;

4. Recording each resident's progress; and

5. Initiating [~~a periodic~~]review of each individual program plan [~~of care~~]for necessary changes.

(c)[~~(e)~~] Each residential[~~resident~~] living unit shall maintain direct care staff-to-resident ratios in accordance with 42 C.F.R. 483.430(d)[~~, regardless of organization or design, must have, as a minimum, overall staff-resident ratios (allowing for a five (5) day work week plus holiday, vacation, and sick time)~~][~~as follows unless program needs justify otherwise:~~]

[~~1.~~] [~~For units serving children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic like behavior, the~~][~~overall ratio is one (1) to two (2);~~]

[~~2.~~] [~~For units serving moderately retarded residents requiring habit training, the overall ratio is one (1) to two and five tenths (2.5); and~~]

[~~3.~~] [~~For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is one (1) to five (5).~~]

[~~(f)~~] [~~When the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination~~].

(d)[~~(g)~~] A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in case of injury, illness, [~~or~~]fire, or other emergency[~~emergencies~~].

(e)[~~(h)~~] The use ofvolunteers shall not be:

1. Included in the[~~counted to make up~~] minimum staffing requirements of this subsection; or

2. Relied upon to perform direct care services for the facility.

(14) Nurse staffing.

(a)[~~(i)~~] The facility shall have[~~Supervision of nursing services shall be by~~] a registered nurse or licensed practical nurse during[~~employed on~~] the day shift, seven (7) days per week to supervise nursing services.

(b) The supervising nurse[~~supervisor~~] shall have training and experience in the field of intellectual and developmental disabilities[~~and mental retardation~~].

(c) If[~~When~~] a licensed practical nurse serves as the supervisor, [~~consultation shall be provided by~~]a registered nurse shall provide consultation[~~preferably with a baccalaureate degree,~~] at regular intervals, not less than four (4) hours weekly.

(d) The supervising nurse's responsibilities [~~of the nursing services supervisor~~]shall include developing and maintaining:

1. Nursing service objectives;[~~,~~]

2. Standards of nursing practice;[~~,~~]

3. Nursing procedure manuals;[~~,~~] and

4. A written job description for each level of nursing personnel.[~~,~~]

(e)[~~2.~~] Nursing service personnel at all levels of experience and competence shall:

1. Be assigned responsibilities in accordance with their qualifications;[~~,~~]

2. Delegate tasks as authorized under the nurse's scope of practice;[~~authority commensurate with their responsibility, and~~]

3. Provide appropriate professional nursing supervision; and

4.[~~3.~~] Participate in the development and implementation of resident care policies.

(15)[(~~j~~)] Each[~~The~~] facility shall retain a licensed pharmacist on a full-time, part-time, or consultant basis to direct pharmaceutical services.

(16)[(~~k~~)] Each facility shall have a full-time staff person designated by the administrator who shall be:[~~,~~]

(a) Responsible for the total food service operation of the facility; and

(b) On duty a minimum of thirty-five (35) hours each week.

(17)[(~~l~~)] Each facility shall ensure that supportive personnel, consultants, assistants, and volunteers are[~~shall be~~] supervised and [~~shall~~]function within the policies and procedures of the facility.

(18)[(~~m~~)] An employee who contracts a communicable or[~~Health requirements. No employee contracting an~~] infectious disease shall:

(a) Be immediately excluded from[~~appear at~~] work; and

(b) Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(19) All employees of an ICF/IID shall be screened and tested for tuberculosis in accordance with the provisions of 902 KAR 20:205[~~until the infectious disease can no longer be transmitted. The facility shall comply with the following tuberculosis testing requirements:~~]

[~~1.~~] [~~The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment~~

~~if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.~~]

[~~2.~~] [~~All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly, if symptoms persist.~~]

[~~3.~~] [~~The administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with paragraphs 1 and 2 of this subsection. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.~~]

[~~4.~~] [~~The following shall be reported by the administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; names of staff who have a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.~~]

[~~5.~~] [~~Any staff whose skin test status changes on annual testing from less than ten (10) to~~

~~ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion for a total of five (5) chest x-rays.~~]

[~~6.~~] [~~Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements~~].

(20) In-service training.

(a)[(~~n~~)] Each[~~The~~] facility shall have a staff training program adequate for the size and nature of the facility with a staff person who is assigned[~~designated the~~] responsibility for staff development and training.

(b) The training program shall include:

1. Orientation to acquaint[~~for~~] each new employee [~~to acquaint him~~]with the philosophy, organization, program, practices, and goals of the facility;

2. Follow-up[~~In-service~~] training for any employee who has not achieved the desired level of competence;

3. Continuing in-service training held at least annually for all employees to update and improve their skills; and

4. Supervisory and management training for each employee who is in, or a candidate for,

a supervisory position.

Section 4. Provision of Services.

(1) The [~~professional~~]interdisciplinary team shall assure that:

(a) The health needs of each resident[~~the residents~~] are met; and

(b) Each resident has an individual program plan developed in accordance with the requirements of 42 C.F.R. 483.440(c) through (f)[~~that plans are developed for each resident which include treatments, medications, dietary requirements, and other program services. All activities shall reflect adherence to the normalization principle. The active treatment program shall assure:~~]

[~~(a)~~] [~~An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.~~]

[~~(b)~~] [~~Regular participation, in accordance with an individualized plan, in a program of activities that are designed to attain the optimum physical, intellectual, social, and vocational functioning of which a resident is capable.~~]

[~~(c)~~] [~~Reevaluation medically, socially, and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individualized plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care~~].

(2) Infection control[~~and communicable diseases~~].

(a) There shall be written infection control policies that address[~~, which are consistent with~~

~~the Centers for Disease Control guidelines including~~]:

1. [~~Policies which address~~]The prevention of disease transmission[~~ to and from patients, visitors and employees~~], including:

a. Universal blood and body fluid precautions;

b. Precautions for infections that[~~which~~] can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases; and[~~.~~]

2. [~~Policies which address the~~]Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections for all personnel responsible for direct [~~patient~~]care.

(c) Sharp wastes.

1. Sharp wastes[~~, including needles, scalpels, razors, or other sharp instruments used for patient care procedures,~~] shall be segregated from other wastes and placed in puncture-resistant[~~puncture resistant~~] containers immediately after use.

2. A needle or other contaminated sharp[~~Needles~~] shall not be recapped[~~ by hand~~], purposely bent,[~~ or~~] broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall[~~The containers of sharp wastes shall either~~] be incinerated on or off-site[~~off site~~], or be rendered nonhazardous [~~by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet~~].

4. Any non-disposable sharps be placed in a hard walled container for transport to a processing area for decontamination.

(d) Disposable waste.

1. All disposable waste shall be:

a. Placed in a suitable bag[~~bags~~] or closed container[~~containers~~] so as to prevent leakage or spillage;[~~,~~] and[~~shall be~~]

b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The facility shall establish specific written policies regarding handling and disposal of all waste material[~~wastes~~].

[~~3.~~] [~~The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.~~]

[~~4.~~] [~~Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 C.F.R. 403 and 401 KAR 5:055, Section 9.~~]

(e) Infectious or communicable diseases. An individual[~~Patients~~] infected with one (1) of the following diseases shall not be admitted to the facility:

1. Anthrax;[~~,~~]

2. Campylobacteriosis;[~~,~~]

3. Cholera;[~~,~~]

4. Diphtheria;[~~,~~]

5. Hepatitis A;[~~,~~]

6. Measles;[~~,~~]

7. Pertussis;[,]

8. Plague;[,]

9. Poliomyelitis;[,]

10. Rabies (human);[,]

11. Rubella;[,]

12. Salmonellosis;[,]

13. Shigellosis;[,]

14. Typhoid fever;[,]

15. Yersiniosis;[,]

16. Brucellosis;[,]

17. Giardiasis;[,]

18. Leprosy;[,]

19. Psittacosis;[,]

20. Q fever;[,]

21. Tularemia; or[, ~~and~~]

22. Typhus.

(f) A facility may admit a noninfectious[~~(noninfectious)~~] tuberculosis resident in accordance with 902 KAR 20:200, Section 4 or Section 8(5)[~~patient under continuing medical supervision for his tuberculosis disease~~].

(g) A resident with symptoms or an abnormal chest x-ray consistent with tuberculosis shall be isolated and evaluated in accordance with 902 KAR 20:200, Section 6(4)[~~Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet~~].

(3) Resident behavior and facility practices[~~Use of control and discipline of residents~~].

(a) Each[~~The~~] facility shall develop and implement[~~must have~~] written policies and procedures for the management of conduct between staff and clients in accordance with 42 C.F.R. 483.450(a)[~~control and discipline of residents that are available in each living unit and to parents and guardians~~].

(b) The facility shall:

1. Develop and implement written policies and procedures that govern the management of inappropriate resident behavior in accordance with 42 C.F.R. 483.450(b); and

2.[~~1.~~] Not allow corporal punishment or seclusion of a resident[~~;~~]

[~~2.~~] [~~A resident to discipline another resident, unless it is done as part of an organized self-government program conducted in accordance with written policy; or~~]

[~~3.~~] [~~Seclusion of a resident~~].

(c) Chemical and physical restraints shall not be used, except as authorized by KRS 216.515(6).

(d) Restraints that require lock and key shall not be used.

(e) Emergency use of a restraint shall be applied only by appropriately trained personnel if:

1. A resident poses an imminent risk of harm to self or others; and

2. The emergency restraint is the least restrictive intervention to achieve safely.

(f) A restraint shall not be used as:

1. Punishment;

2. Discipline;

3. Convenience for staff; or

4. Retaliation[~~On orders of a physician, or in the case of an emergency until a physician is contacted, the facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others but may not use physical restraint as punishment, for the convenience of the staff, or as a substitute for activities or treatment~~].

[~~(d)~~] [~~The facility must have a written policy that specifies how and when physical restraint may be used, the staff members who must authorize its use, and the method for monitoring and controlling its use~~].

(g)[~~(e)~~] An order for physical restraint shall:[~~may~~]

1. Be by a physician or other licensed health care practitioner who is acting within the scope of practice and trained in the use of emergency safety interventions;

2. Be carried out by trained staff;

3. Be the least restrictive safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff; and

4. Not be in effect longer than twelve (12) hours.

(h) Appropriately trained staff shall[~~must~~] check a resident placed in a physical restraint at least every thirty (30) minutes and document each check[~~keep a record of these checks~~].

(i) A resident who is in a physical restraint shall[~~must~~] be given an opportunity for motion and exercise for a period of not less than ten (10) minutes during each two (2) hours of restraint.

(j) A mechanical device[~~devices~~] used for physical restraint shall[~~must~~] be designed and used in a way that:

1. Avoids[~~causes the resident no~~] physical injury; and

2. Results in the least possible physical discomfort[~~. Restraints that require lock and key shall not be used~~].

(k)[~~(f)~~] A mechanical support[~~supports~~] used as a protective device shall[~~devices must~~] be designed and applied:

1. Under the supervision of a qualified professional trained in the use of emergency safety interventions;[~~,~~] and

2. In accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

(l)[~~(g)~~] [~~The facility may not use chemical restraint excessively, as punishment, for the convenience of the staff, as a substitute for activities or treatment, or in quantities that interfere with a resident's habilitation program.~~]

[~~(h)~~] Behavior modification programs involving the use of aversive stimuli or time-out devices shall be:

1. Reviewed and approved by the facility's human rights committee or a QIPD[~~qualified mental retardation professional~~];

2. Conducted only with the consent of the affected resident's parents, responsible family member, or [~~legal~~]guardian; and

3. Described in written plans that are kept on file in the facility[~~ICF/MR~~].

(m)[~~(i)~~] A physical restraint used as a time-out device may be applied only:

1. During a behavior modification exercise;[~~exercises~~] and[~~only~~]

2. In the presence of the trainer.

(n)[~~(j)~~] A time-out device or[~~devices and~~] aversive stimuli shall:

1. [~~may~~]Not be used for longer than one (1) hour;[~~,~~] and

2. Used[~~then~~] only during a[~~the~~] behavior modification program [~~and only~~]under the supervision of the trainer.

(4) Medical supervision of residents.

(a) Each[~~The~~] facility shall maintain policies and procedures to ensure[~~assure~~] that each resident is[~~shall be~~] under the medical supervision of a physician.

(b)[~~(a)~~] The facility shall permit the resident, resident's responsible family member, or guardian to have a[~~(or his guardian) shall be permitted his~~] choice of physicians[~~physician~~].

(c)[~~(b)~~] The physician shall visit each resident at least every sixty (60) days or[~~the residents~~] as often as necessary[~~, and in no case less often than every sixty (60) days~~], unless justified and documented by the attending physician.

(d)[~~(c)~~] No less than ninety (90) days prior to the date of admission, each resident shall have a complete medical evaluation to assess the resident's[~~include~~]social, physical, emotional, and cognitive status[~~factors shall be made of the person desiring or requiring institutionalization prior to, but not to exceed three (3) months before admission~~].

(e)[~~(d)~~] After admission, each resident shall have a medical evaluation[~~reevaluation~~] at least annually[~~, shall be made by the resident's physician, a physician provided by a community service, or a registered visiting nurse, according to the resources for the community and the apparent needs of the resident receiving intermediate care~~].

(f)[~~(e)~~] The facility shall have formal arrangements to ensure that a physician or health care practitioner acting within the scope practice is available to provide necessary medical care in case of[~~shall be made to provide for~~] medical emergency[~~emergencies on a twenty four (24) hour, seven (7) days a week basis. This shall be the responsibility of the facility providing care~~].

(5) Health services.

(a) Health services shall include[~~:~~]

[~~(a)~~] the establishment of a nursing care plan that:

1. Is[~~as~~] part of the total habilitation program for each resident;[~~,~~]

2. [~~Each plan~~]Shall be reviewed and modified as necessary, but no less than[~~or at least~~] quarterly; and[~~,~~]

3. [~~Each plan~~]Shall include goals[~~,~~] and nursing care needs.[~~,~~]

(b) Nursing care shall help enable each resident[~~to~~] achieve and maintain the highest degree of function, self-care, and independence, including[~~with those procedures requiring medical approval ordered by the attending physician. Nursing care shall include~~]:

1. Positioning and turning in which[~~,~~] nursing personnel shall encourage and assist residents in maintaining good body alignment while standing, sitting, or lying in bed to prevent decubiti;[~~,~~]

2. Exercises in which[~~,~~] nursing personnel shall assist residents in maintaining maximum range of motion;[~~,~~]

3. Bowel and bladder training in which[~~,~~] nursing personnel shall make every effort to train incontinent residents to gain bowel and bladder control;[~~,~~]

4. Training in habits of personal hygiene, family life, and sex education that includes [~~but is not limited to~~]family planning and venereal disease counseling;[~~,~~]

5. Ambulation in which[~~,~~] nursing personnel shall assist and encourage residents with daily ambulation unless otherwise ordered by the physician; and[~~,~~]

6. Administration of medications and appropriate treatment.

(c)[~~7.~~] A written monthly assessment of the resident's general condition with any changes in the resident's condition, actions, responses, attitudes, or appetite shall be recorded in the resident's record by licensed personnel.

(6) Pharmaceutical services.

(a) The facility shall provide pharmaceutical services, including[~~appropriate methods and~~] procedures that assure the accurate acquiring, receiving,[~~for obtaining,~~] dispensing, and administering of all drugs and biologicals to meet the needs of each resident[~~, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacist~~].

(b) [~~If~~]The facility shall employ or obtain the services of[~~has a pharmacy department,~~] a licensed pharmacist who shall:

1. Provide consultation on all aspects of the provision of pharmacy services in the facility;

2. Establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation;

3. Determine that drug records are in order; and

4. Ensure that an account of all controlled drugs is maintained and reconciled[~~be employed to administer the pharmacy department~~].

(c) If the facility does not have a pharmacy department, it shall ensure that[~~have provision for promptly obtaining~~] prescribed drugs and biologicals may be obtained from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy[~~,~~] pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but maintains a supply of drugs, the consultant pharmacist shall:

1. Be responsible for the control of all bulk drugs;

2. Maintain records of the receipt and disposition of bulk drugs; and

3. Dispense drugs from the drug supply, properly label them, and make them available to appropriate licensed nursing personnel.

(e) A facility that stores and administers non-controlled substances in an emergency medication kit (EMK) shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

(f) A facility that stores and administers non-controlled substances from a long-term care facility drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(a)[~~An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used~~].

(7)[~~(e)~~] Medication[~~Medication requirement and~~] services.

(a)[~~1.~~] Medication administered to a resident[~~Conformance with physician's orders. All medications administered to residents~~] shall be ordered in writing by the prescribing:

1. Physician; or

2. Health care practitioner as authorized by the scope of practice.

(b) If an order is received by telephone, the order shall be:

1. Recorded in the resident's medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen (14) days.

(c) If an order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician or prescribing practitioner that the medication will be stopped at a certain date unless the medication order is continued[~~Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders~~].

(d) A registered nurse or[~~The~~] pharmacist [~~or nurse~~]shall review the resident's medication profile at least monthly[~~on a regular basis~~].

(e) The prescribing physician or other prescribing practitioner shall review the resident's medication profile at least every two (2) months.

(f) The facility shall release medications to a resident who is discharged upon[~~The resident's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the resident's therapeutic regimen is not interrupted. Medications shall be released to residents on discharge or visits only after being labeled appropriately and on the~~] written authorization of the physician or prescribing practitioner.

(8)[~~2.~~] Administration of medications.

(a) A licensed health professional may:

1. Administer medications as authorized under the professional's scope of practice; or

2. Delegate medication administration tasks in accordance with paragraph (b) of this subsection.

(b) A 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 (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide (KMA) credential from the Kentucky Community and

Technical College System (KCTCS); and

3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN[~~All medications shall be administered by licensed nurses or personnel who have completed a state approved training program, from a state approved training provider~~].

(c) Each medication[~~dose~~] administered shall be recorded in the resident's medical record.

(d) An intramuscular injection[~~injections~~] shall be administered by a licensed nurse or [~~a~~]physician.

(e) If an intravenous injection is[~~injections are~~] necessary, the injection[~~they~~] shall be administered by a licensed physician or [~~a~~]registered nurse.

(f)[~~a.~~] The nursing station shall have readily available items necessary[~~required~~] for the proper administration of medication[~~readily available~~].

(g)[~~b.~~] A medication that is[~~Medications~~] prescribed for one resident shall not be administered to any other resident.

(h)[~~c.~~] A resident shall not be allowed to self-administer a medication[~~Self-administration of medications by residents shall not be permitted~~] except:[~~for drugs~~]

1. On special order of the resident's physician or prescribing practitioner; or[~~and~~]

2. In a predischarge program under the supervision of a licensed nurse as a part of the resident's treatment plan.

(i) The facility shall assure that a medication error or drug reaction is:

1.[~~d.~~] [~~Medication errors and drug reactions shall be~~] Immediately reported to the resident's physician or practitioner; and

2. Documented[~~pharmacist and an entry thereof made~~] in the resident's medical record and

in[~~as well as on~~] an incident report.

(j)[~~3.~~] [~~The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).~~]

[~~4.~~] [~~Labeling and storing medications.~~] All resident medications shall be plainly labeled with the:

1. Resident's name;[~~, the~~]

2. Name of the drug;[~~,~~]

3. Strength;[~~,~~]

4. Name of the pharmacy;[~~,~~]

5. Prescription number;[~~,~~]

6. Date;[~~,~~]

7. Prescriber's[~~Physician~~] name;[~~,~~]

8. Caution statements and directions for use, unless a[~~except where accepted~~] modified unit dose distribution system is[~~systems conforming to federal and state laws~~][~~are~~] used.

(k) All[~~The~~] medications [~~of each resident shall be~~]kept by the facility shall be:[~~and~~]

1. Stored in their original containers; and

2. [~~transferring between containers shall be prohibited. All medicines kept by the facility shall be~~]Kept in a locked place.

(l) The facility shall ensure that:

1. All[~~and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key.~~] medications requiring refrigeration are[~~shall be~~] kept in a separate locked box of adequate size in the refrigerator in the medication area;[~~.~~]

2. Drugs for external use are[~~shall be~~] stored separately from those administered by mouth

injection; and

3. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels are returned to the issuing pharmacist or pharmacy for relabeling or disposal[~~. Provisions shall also be made for the locked separate storage of medications of deceased and discharge resident until such medication is surrendered or destroyed in accordance with federal and state laws and regulations~~].

(9)[~~5.~~] Controlled substances.

(a) Controlled substances shall be kept under double lock, for example[~~(i.e.,~~] in a locked box in a locked cabinet, and keys or access to the locked box and locked cabinet shall be accessible to designated staff only[~~)~~].

(b) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.

(c) For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:

1. The medication has been prescribed and labeled in a container for a specific resident;

2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;

3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and

4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.

(d) There shall be a controlled substances bound record book with numbered pages that includes:[~~, in which is recorded~~]

1. The name of the resident;[~~, the~~]

2. Date, time, kind, dosage, [~~balance remaining~~]and method of administration of each[~~all~~] controlled substance[~~substances~~];[~~ the~~]

3. Name of the physician or practitioner who prescribed the medications; and

4. Name of the:

a. Nurse or CMA who administered the controlled substance;[~~it,~~]or

b. Staff member who supervised the self-administration.

(e) A staff member with access to controlled substances[~~In addition, there~~] shall be responsible for maintaining a recorded and signed:

1. Schedule II controlled substances count daily;[~~,~~] and

2. Schedule III, IV, and V controlled substances count at least one (1) time[~~once~~] per week[~~by those persons who have access to controlled substances~~].

(f) All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or

2. From the date the medication was discontinued.

(g) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;

2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

a. Date of destruction;

b. Resident name;

c. Drug name;

d. Drug strength;

e. Quantity;

f. Method of destruction;

g. Name of the person responsible for the destruction; and

h. Name of the witness[~~All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 C.F.R. 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources~~].

(h) A facility that stores and administers controlled substances in an EMK shall comply with the:

1. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through (9); and

2. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(10)[~~(7)~~] Personal care services.

(a) Each resident shall receive training in personal skills essential for privacy and independence,[~~be trained to be as independent as possible to achieve and maintain good personal hygiene~~] including:

1. Bathing in which the facility shall:

a. [~~of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall~~]Provide soap, clean towels, and wash cloths for each

resident; and[.]

b. Ensure that toilet articles such as brushes and combs shall not be used in common;[.]

2. Personal hygiene;[~~Shaving.~~]

3. Dental hygiene;[~~Cleaning and trimming of fingernails and toenails.~~]

4. Dressing;

5. Grooming;

6. Self-feeding; and

7. Communication of basic needs[~~Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable~~].

[~~5.~~] [~~Washing, grooming, and cutting of hair~~].

(b) If a[~~Each~~] resident [~~who~~]does not eliminate appropriately and independently, the facility shall:

1. Provide a[~~must be in a regular, systematic~~] toilet training program; and

2. Document the resident's[~~a record must be kept of his~~] progress[~~ in the program~~].

(c) A resident who is incontinent shall[~~must~~] be bathed or cleaned immediately upon voiding or soiling[~~, unless specifically contraindicated by the training program,~~] and all soiled items shall[~~must~~] be changed.

(d) The staff shall train and if[~~when~~] necessary, assist a resident with dressing[~~the residents to dress in their own street clothing (unless otherwise indicated by the physician)~~].

(11)[~~(8)~~] Dental services.

(a) The facility shall provide or make arrangements for dental services, comprehensive dental diagnostic services, and comprehensive dental treatment in accordance with 42 C.F.R.

483.460(e) through (g).

(b) The facility shall maintain documentation of dental services in accordance with 42 C.F.R. 483.460(h)[~~shall be provided and if not available within the facility, arrangements with specialists in the dental field will be made for such service.~~]

[~~1.~~] [~~Appropriate dental services shall be provided through personal contact with all residents by dentists, dental hygienists, and dental assistants under the supervision of the dentists, health educators, and oral hygiene aids~~].

(c)[~~2.~~] A dental professional shall participate, as appropriate, on the facility's interdisciplinary team[~~serving the facility~~].

[~~3.~~] [~~There shall be sufficient supporting personnel, equipment, and facilities available to the dental professional if dental services are delivered within the facility.~~]

[~~(b)~~] [~~Dental records shall be part of each resident's record.~~]

(d)[~~(c)~~] A dentist shall be responsible for ensuring[~~insuring~~] that direct care staff are instructed in the proper use of oral hygiene methods for residents.

(12)[~~(9)~~] Social services.

(a) The facility shall provide social services directly or by contract to[~~shall be available either on staff or by formal arrangement with community resources for all~~] residents and their families, including:

1. Evaluation and counseling with referral to, and use of, other planning for community placement; and[~~,~~]

2. Discharge and follow up services rendered by or under the supervision of a qualified social worker.

(b) A facility's[~~The~~] social worker [~~of the intermediate care facility, providing services for~~

~~the mentally retarded and developmentally disabled~~]shall be under the supervision of a:

1. Qualified social worker; or

2. QIDP[~~who is a qualified mental retardation professional~~].

(c) Social services shall be integrated with other elements of the individual program plan[~~of care~~].

(d) A plan for social services[~~such care~~] shall be recorded in the resident's record and [~~periodically~~]evaluated in conjunction with resident's individual program plan[~~total plan of care~~].

[~~(e)~~] [~~Social services records shall be maintained as an integral part of case record maintained on each resident.~~]

(13)[~~(10)~~] Recreation services. The facility shall:

(a) Coordinate recreational services with other services and programs that are provided to each resident;[~~and shall:~~]

(b)[~~(a)~~] Provide recreation equipment and supplies in a quantity and variety that is sufficient to carry out the stated objectives of the activities programs;

(c) Maintain in the resident's record a review conducted at least annually of each resident's recreational[.]

[~~(b)~~] [~~Keep resident records that include periodic surveys of the residents' recreation~~] interests, including a determination of[~~and~~] the extent and level of the resident's[~~residents'~~]participation in the recreation program; and[.]

(d)[~~(c)~~] Have enough qualified staff who meet the requirements of 42 C.F.R. 483.430(b)(5)(viii) and support personnel available to carry out the various recreation services[~~with the qualifications as defined in the definitions~~].

(14)[~~(11)~~] Speech-language[~~Speech~~] pathology and audiology services. The facility shall

provide speech-language[~~speech~~] pathology and audiology services:

(a) By an individual who meets the requirements of 42 C.F.R. 483.430(b)(5)(vii); and

(b) As needed to maximize the communication skills of each resident in need of services[~~residents needing such services. These services shall be provided by, or under the supervision of, a certified speech pathologist or audiologist who is a member of the interdisciplinary team~~].

(15)[~~(12)~~] Occupational therapy.

(a) The facility shall provide occupational therapy [~~shall be provided~~]by or under the supervision of an[~~a qualified~~] occupational therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(i) to meet a resident's need for services[~~to residents as required by the resident's needs~~].

(b) The occupational therapist or occupational therapy assistant shall provide services in accordance with[~~act upon~~] the individual program plan designed by the [~~professional~~]interdisciplinary team[~~ of which the therapist is a member~~].

(16)[~~(13)~~] Physical therapy.

(a) The facility shall provide physical therapy [~~shall be provided~~]by or under the supervision of a licensed physical therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(iii) to meet a resident's need for services[~~to residents as required by the resident's needs~~].

(b) The physical therapist or physical therapy assistant shall provide services in accordance with[~~act upon~~] the individual program plan designed by the [~~professional~~]interdisciplinary team[~~ of which the therapist is a member~~].

(17)[~~(14)~~] Psychological services.

(a) The facility shall provide psychological services as needed by a[~~shall be provided by a licensed or certified~~] psychologist who meets the requirements of 42 C.F.R. 483.430(b)(5)(v).

(b) The psychologist[~~pursuant to KRS Chapter 319 who~~] shall participate in [~~the~~]evaluation of each resident[~~and periodic review~~], individual treatment, and consultation and training of direct care[~~program~~] staff as a member of the interdisciplinary team.

(18)[~~(15)~~] Transportation.

(a) If transportation of residents is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for each resident[~~residents~~] who uses a wheelchair[~~use wheelchairs~~].

2. An escort or assistant to the driver shall accompany a resident or residents,[~~be provided in transporting residents to and from the facility~~] if necessary, to help ensure[~~for the resident's~~] safety during transport.

(b) The facility shall arrange for appropriate transportation in case of a medical emergency[~~emergencies~~].

(19)[~~(16)~~] Residential care services.

(a) All facilities shall provide residential care services to all residents including:

1. Room accommodations;

2. [~~,~~] Housekeeping and maintenances services;[~~,~~] and

3. Dietary services.

(b) [~~All facilities shall meet the following requirements relating to the provision of residential care services:~~]

[~~(a)~~] Room accommodations.

1. The facility shall provide each resident with:

a. A[~~shall be provided a standard size~~] bed that is at least thirty-six (36) inches wide;

b. [~~, equipped with substantial spring, ~~]A clean, comfortable mattress with a support mechanism;[~~,~~]

c. A mattress cover;[~~,~~]

d. Two (2) sheets and a pillow; and[~~,~~]

e. [~~an such ~~]Bed covering [~~as is required ~~]to keep the resident comfortable.

2. Each bed[~~Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents~~] shall be placed so that a[~~no~~] resident does not[~~may~~] experience discomfort because of proximity to a radiator, heat outlet, or[~~radiators, heat outlets, or by~~] exposure to drafts.

3.[~~2.~~] The facility shall provide:

a. Window coverings;[~~,~~]

b. Bedside tables with reading lamps,[~~(~~]if appropriate;[~~),~~]

c. Comfortable chairs;

d. A chest or dresser with a mirror for each resident;

e. [~~, chests or dressers with mirrors, ~~]A night light;[~~,~~] and

f. Storage space for clothing and other possessions.

4.[~~3.~~] A resident[~~Residents~~] shall not be housed in a room, detached building, or other enclosure that has not been previously inspected and approved for residential use by the Office of Inspector General and the Department for Housing, Building, and Construction[~~unapproved rooms or unapproved detached buildings~~].

5.[~~4.~~] Basement rooms shall not be used for sleeping rooms for residents.

6.[~~5.~~] Residents may have personal items and furniture, if[~~when it is physically~~] feasible.

7.[~~6.~~] Each living room or lounge area shall have an adequate number of:

a. Reading lamps;[~~,~~] and

b. Tables and chairs or settees of sound construction and satisfactory design.

8.[~~7.~~] Dining room furnishings shall be adequate in number, well-constructed[~~well constructed~~], and of satisfactory design for the residents.

(c)[~~8.~~] [~~Each resident shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other residents.~~]

[~~(b)~~] Housekeeping and maintenance services.

1. The facility shall:

a. Maintain a clean and safe facility free of unpleasant odors; and

b. Ensure that[~~,~~] odors are[~~shall be~~] eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

2. The facility shall:

a. Have available at all timesan adequate supply of clean linen essential to the proper care and comfort of residents;

b. Ensure that[~~shall be on hand at all times.~~] soiled clothing and linens [~~shall~~]receive immediate attention and [~~shall~~]not be allowed to accumulate;[~~,~~]

c. Ensure that clothing and linens[~~or bedding~~] used by one resident shall not be used by another unless[~~until~~] it has been laundered or dry cleaned; and[~~,~~]

d.[~~3.~~] Ensure that soiled clothing and linens[~~linen~~] shall be:

(i) Placed in washable or disposable containers;[~~,~~]

(ii) Transported in a sanitary manner; and

(iii) Stored in separate, well-ventilated areas in a manner to prevent contamination and odors.

3. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area.

5. Handwashing facilities with hot and cold water, soap dispenser, and paper towels shall be provided in the laundry area.

6.[~~5.~~] Clean linen shall be sorted, dried, ironed, folded, transported, stored, and distributed in a sanitary manner.

7.[~~6.~~] Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

8.[~~7.~~] Personal laundry [~~of residents or staff~~]shall be:

a. Collected, transported, sorted, washed, and dried in a sanitary manner[~~,~~] separate from bed linens;[~~.~~]

b.[~~8.~~] [~~Resident's personal clothing shall be~~]Laundered [~~by the facility~~]as often as necessary;

c. [~~. Resident's personal clothing shall be~~]Laundered by the facility unless the resident or the resident's family accepts this responsibility; and

d. [~~. Residents capable of laundering their own personal clothing may be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be~~]Marked or labeled to identify the resident so that it may be[~~owner and~~] returned to the correct resident.

(20)[~~9.~~] Maintenance. The premises shall be well kept and in good repair as established in paragraphs (a) through (d) of this subsection.

(a) [~~Requirements shall include:~~]

[~~a.~~] The facility shall ensure[~~insure~~] that the grounds are well kept and the exterior of the building, including the sidewalks, wide walks, steps, porches, ramps, and fences are in good repair.

(b)[~~b.~~] The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors shall be screened.

(c)[~~c.~~] Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(d)[~~d.~~] A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(21)[~~(c)~~] Dietary services.

(a) The facility shall provide or contract for food services[~~service~~] to meet the dietary needs of the residents, including:

1. Modified diets; or

2. Dietary restrictions as prescribed by the attending physician.

(b)

1. If[~~When~~] a facility contracts for food services[~~service~~] with an outside food management company, the company shall provide a licensed **dietitian**[~~qualified **dietician or certified nutritionist**~~] on a full-time, part-time,[~~full time, part time~~] or consultant basis to the facility.

2. The licensed **dietitian**[~~qualified **dietician or certified nutritionist**~~] shall make recommendations to[~~have continuing liaison with~~] the medical and nursing staff [~~of the facility for~~

~~recommendations~~]on dietetic policies affecting resident care.

3. The food management company shall comply with the[~~all of the appropriate requirements for~~] dietary services requirements of this subsection[~~ in this administrative regulation~~].

(c)[~~1.~~] [~~Therapeutic diets.~~] If the facility provides therapeutic diets and the staff member responsible for the food services is not a licensed **dietitian** [~~**dietician or certified nutritionist**~~], the responsible staff person shall consult with a licensed **dietitian**[~~designated person responsible for food service is not a qualified~~ ~~**dietician or certified nutritionist**~~, ~~consultation by a qualified dietician or qualified nutritionist shall be provided~~].

(d) The facility shall:

1.[~~2.~~] Have a[~~Dietary staffing. There shall be~~] sufficient number of food service personnel;

2. Ensure that the food service staff schedules are[~~employed and their working hours, schedules of hours on duty, and days off shall be~~] posted; and[~~.~~]

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety, or time required from regular dietary assignments.

(e)[~~3.~~] Menu planning.

1.[~~a.~~] Menus shall be planned, written, and rotated to avoid repetition.

2. The facility shall meet the nutrition needs of residents in accordance with a[~~shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with~~] physician's orders.

3.[~~b.~~] Except as established in subparagraph 5. of this paragraph, meals shall correspond

with the posted menu.

4. Menus shall[~~must~~] be planned and posted one (1) week in advance.

5. If[~~When~~] changes in the menu are necessary;[~~,~~]

a. Substitutions shall provide equal nutritive value;

b. The changes shall be recorded on the menu; and[~~and~~]

c. Menus shall be kept on file for at least thirty (30) days.

(f)[~~e.~~] [~~The daily menu shall include regular and all modified diets served within the facility based on a currently approved diet manual. The manual shall be available in the dietary department. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the resident's care with the resident and resident's chart through such methods as resident instruction, recording diet histories and through participation in rounds and conferences.~~]

[~~4.~~] Food preparation and storage.

1.[~~a.~~] There shall be at least a three (3) day supply of food to prepare well balanced, palatable meals.

2.[~~b.~~] Food shall be prepared with consideration for any individual dietary requirement.

3. Modified diets, nutrient concentrates, and supplements shall be given only on the written orders of a:

a. Physician;

b. Advanced practice registered nurse; or

c. Physical assistant.

4.[~~c.~~] At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the [~~substantial~~]evening meal and breakfast.

5. Between-meal snacks and beverages, including[~~to include~~] an evening snack before bedtime, shall be available at all times for each resident, unless[~~offered to all residents. Adjustments shall be made when~~] medically contraindicated as documented by a physician in the resident's record.

6.[~~d.~~] Foods shall be:

a. Prepared by methods that conserve nutritive value, flavor, and appearance; and

b. [~~shall be attractively~~]Served at the proper temperature[~~temperatures,~~] and in a form to meet individual needs.

7. [~~(~~]A file of tested recipes, adjusted to appropriate yield shall be maintained.[~~)~~]

8. Food shall be cut, chopped, or ground to meet individual needs.

9. If a resident refuses the food served, nutritious substitutions shall be offered.

10.[~~e.~~] All opened containers or leftover food items shall be covered and dated when refrigerated.

(g)[~~5.~~] Serving of food.

1. If[~~When~~] a resident cannot be served in the dining room, trays shall:

a. Be provided; and[~~shall~~]

b. Rest on firm supports.

2. Sturdy tray stands of proper height shall be provided for residents able to be out of bed.

3.[~~a.~~] Direct care staff shall be responsible for correctly positioning a resident to eat meals served on a tray[~~Correct positioning of the resident to receive his tray shall be the responsibility of the direct care staff~~].

4. A resident in need of[~~Residents requiring~~] help [~~in~~]eating shall be assisted promptly upon receipt of meals[~~according to their training plan~~].

5.[~~b.~~] The facility shall provide adaptive feeding equipment if needed by a resident[~~self-help devices shall be provided to contribute to the resident's independence in eating, if assessments deem necessary~~].

6. Food services shall be provided in accordance with[~~Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and~~] 902 KAR 45:005[~~(Kentucky's Food Service Establishment Act and Food Service Code)~~].

902 KAR 20:086

REVIEWED:

3/12/2024

Date

DocuSigned by:
David T. Lovely
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David T. Lovely, Acting Inspector General
Office of Inspector General

APPROVED:

3/12/2024

Date

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation number: 902 KAR 20:086
Contact Person: Valerie Moore
Email: valeriek,moore@ky.gov
Phone: 502-226-0196

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes minimum licensure requirements for the operation of and services provided by intermediate care facilities for individuals with intellectual disabilities (ICF/IID).

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services 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 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 standards for licensed ICF/IID providers.

(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 standards for licensed ICF/IID providers.

(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 ICF/IID residents under the delegation of a nurse to be a certified medication aide (CMA) I or Kentucky medication aide, or be a CMA II. This amendment also makes technical changes to comply with the drafting requirements of KRS Chapter 13A to help improve clarity and flow. Other needed updates include the addition of: 1. A cross-reference to KRS 216.532 to ensure compliance with the requirement nurse aide and home health aide abuse registry checks; 2. A cross-reference to KRS 209.030 to ensure compliance with the requirement for caregiver misconduct registry checks; 3. A cross-reference to KRS 216.789 and 216.793 to ensure compliance with the requirement for criminal background checks; 4. New language related to the confidentiality and security of resident records to ensure compliance with the Health Insurance Portability and Accountability Act of 1996. 5. New language that aligns with the requirements of 201 KAR 2:370 regarding the storage and administration of medications from emergency medication kits; and 6. New language to allow a CMA to administer controlled substances under the delegation of a nurse, including a controlled substance ordered on a PRN basis under certain conditions.

The Amended After Comments version deletes "certified nutritionist" and all references throughout the regulation. The amendment corrects spelling from "dietician" to industry standard "dietitian". Additionally, the Amended After Comments version makes changes to Section 3(8)(a) concerning discharge planning, which intends to comply with a settlement the commonwealth entered into with the Department of Justice in the mid-2000s. This amendment further clarifies the discharge planning process to preserve the principle that in Kentucky the transition process at

ICF/IIDs begins at admission.

(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 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 ICF/IID providers.

(d) How the amendment will assist in the effective administration of the statutes:
This amendment assists in the effective administration of the statutes by establishing standards that align with the statutory requirements for licensed ICF/IID providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
This administrative regulation impacts licensed ICF/IID providers. Kentucky's licensed ICFs/IID are as follows: Bingham Gardens, Cedar Lake Lodge, Cedar Lake Lodge – Park Place I, Cedar Lake Lodge – Park Place II, Cedar Lake Lodge – Sycamore Run I, Cedar Lake Lodge – Sycamore Run II, Del Maria ICF/IID, Hazelwood Center, Meadows ICF/IID, Oakwood – Unit 1, Oakwood – Unit 2, Oakwood – Unit 3, Oakwood – Unit 4, Outwood ICF/IID, Wendell Foster, and Windsong ICF/IID.

(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:
ICF/IID providers must ensure that unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a CMA I or Kentucky medication aide, or be a CMA 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 because ICF/IID providers already use certified medication aides.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
The use of properly trained and competent certified medication aides leads to fewer errors with drug use and medication administration, thereby helping ensure fewer negative outcomes for residents. This amendment expands the scope of certified mediation aides in accordance with the 2023 passage of SB 110 by allowing them to administer preloaded injectable insulin if they have a CMA II credential. CMAs are currently restricted to administering oral and topical medications.

(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?

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

FISCAL NOTE

Regulation number: 902 KAR 20:086
Contact Person: Valerie Moore
Email: valeriek.moore@ky.gov
Phone: 502-226-0196

(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 ICF/IID providers.

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

(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 general any additional revenue 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 (+/-):
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 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.

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

Regulation number: 902 KAR 20:086
Contact Person: Valerie Moore
Email: valeriek.moore@ky.gov
Phone: 502-226-0196

(1) Federal statute or regulation constituting the federal mandate.
21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8

(2) State compliance standards.
KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate.
21 C.F.R. Part 1317 sets forth the Drug Enforcement Administration's rules for the safe disposal and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances. 29 C.F.R. 1910.1030(d)(2)(vii) establishes universal precautions for preventing contact with blood or other potentially infectious materials. 34 C.F.R. 300.8(c)(6) establishes the federal definition of "intellectual disability" under the Individuals with Disabilities Education Act. 42 C.F.R. 483.400 – 483.480 establish health and safety requirements that ICF/IID providers must meet in order to participate in the Medicare and Medicaid programs. 45 C.F.R. 1325.3 establishes definitions, including the federal definition of "developmental disabilities." 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires all long-term care facilities, including ICF/IID providers, 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.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
This administrative regulation is not more strict than the federal regulations.

STATEMENT OF CONSIDERATION
Relating to 902 KAR 20:086

Cabinet for Health and Family Services, Office of Inspector General
Division of Health Care
(Amended After Comments)

I. The public hearing on 902 KAR 20:086, was held January 22, 2024, at 9:00 a.m. in a Zoom meeting format by the CHFS Office of Legislative and Regulatory Affairs. Formal comments were presented at the hearing and written comments were also received during the public comment period.

II. The following people submitted comments:

Name and Title	Agency/Organization/Entity/Other
Whitney Duddey, LD, RDN	Kentucky Academy of Nutrition and Dietetics
Charla Burill, JD, RDN Senior Director of State Government	Kentucky Academy of Nutrition and Dietetics
Angela Gingerich, RD, CSR, LD Renal Dietitian	University Kidney Centers
Candice Tufano, RD, LD, CDCES Public Policy Coordinator	Kentucky Academy of Nutrition and Dietetics
Jeanne Blankenship, MS, RDN Vice President	Kentucky Academy of Nutrition and Dietetics
Jenny Nixon, MBA, RD, LDN President	Kentucky Academy of Nutrition and Dietetics
Marianne Crecelius, RDN, LD State Regulatory Specialist	Kentucky Academy of Nutrition and Dietetics
Lauren Roberson, RD President-Elect	Kentucky Academy of Nutrition and Dietetics
William S. Dolan Staff Attorney Supervisor	Protection and Advocacy

III. The following people from the promulgating administrative body responded to the comments:

Name and Title:
David T. Lovely, Acting Inspector General/Deputy Inspector General
Valerie Moore, Policy Specialist

IV. Summary of Comments and Responses

(a) Comment: Whitney Duddey, LD, RDN; Charla Burill, JD, RDN; Candice Tufano, RD, LD, CDCES; Jeanne Blankenship, MS, RDN; Jenny Nixon, MBA, RD, LDN; Marianne Crecelius, RDN, LD; and Lauren Roberson, RD, all on behalf of the Kentucky Academy of Nutrition and Dietetics, and Angela Gingerich, RD, CSR, LD, on behalf of University Kidney Centers submitted comments. They state that 902 KAR 20:086 has been amended to replace the terms "qualified dietician" or "nutritionist" with "certified nutritionist" and "licensed dietician". They recommend removal of the "certified nutritionist" term from this regulation and references throughout the proposed amendment, maintaining "licensed dietitians", adding that they should be solely responsible for the dietary services in this care setting this regulation refers to. They make this recommendation because of the differences in qualifications between a "certified nutritionist" and a "licensed dietitian". A "certified nutritionist", according to Kentucky law, is only required to have obtained a baccalaureate degree and a master's degree in food science, nutrition, or closely-related area with only 12 semester hours in human nutrition. "Certified nutritionists" are not required to complete supervised clinical training or pass an exam of competency. Comparatively, a "licensed dietitian" in the state of Kentucky is required to obtain at least a baccalaureate degree, complete a supervised practice, experience under the supervision of a registered dietitian, and pass a national exam administered by the Commission on Dietetic Registration. They believe that allowing a "certified nutritionist" to be responsible for dietary services, including therapeutic diets, which may necessitate provision of enteral or parenteral nutrition, would allow unqualified individuals who have had no clinical training to supervise nutritional needs provided to a clinical population that often has significant nutrition needs, nursing home patients, and that, in their opinion, would put patients at risk of unnecessary harm.

(b) Response: The cabinet appreciates the comments from the Kentucky Academy of Nutrition and Dietetics. The cabinet will amend the language from "licensed dietician or certified nutritionist" to "licensed dietitian".

(2) Subject: Industry preferred spelling of "dietitian".

(a) Comment: Lauren Roberson, RD, Jenny Nixon, MBA, RD, LDN, and Marianne Crecelius, RDN, LD, of the Kentucky Academy of Nutrition and Dietitians,

recommended amending this regulation to the utilize the industry's preferred spelling of "dietitian" instead of "dietician" as provided in KRS 310.021.

(b) Response: The cabinet appreciates the comments from Ms. Nixon and Ms. Crecelius. The cabinet will amend the spelling of "dietician" to the industry preferred spelling of "dietitian".

(3) Subject: Amend language to preserve the principle that in Kentucky the transition process at ICF/IIDs begins at admission.

(a) Comment: William S. Dolan, on behalf of Protection and Advocacy, commented as follows: "I. Section 3 (8)(a) concerns discharge planning. In the mid-2000s, the Department of Justice entered into a settlement agreement with the Commonwealth regarding DOJ's investigation into allegations of unconstitutional and unlawful conditions at a state-run ICF/IID in Kentucky.[1] Part of that agreement focused on community transition to ensure that each resident was served in the most integrated setting appropriate to meet their needs in accordance with Title II of the Americans with Disabilities Act and the Act's implementing regulations. The agreement said "[t]he Commonwealth shall implement and maintain a transition process that begins at admission and is an integral part of each individual's treatment plan." Pg. 12.

"To its credit, the Commonwealth applied this principle—that transition begins at admission—to all the state-run/contracted ICF/IIDs and has done so up to today. The proposed amendments to Section 3 (8)(a) do not appear to upend this progress, but this discharge principal is not foremost. Therefore, we suggest adding the following to (8)(a), or similar language, to preserve the principle that in Kentucky the transition process at ICF/IIDs begins at admission:

"The facility shall have a discharge planning program, which begins at admission and is an integral part of each individual's treatment plan, that identifies . . . .

"The Cabinet last amended 902 KAR 20:086 some 10 years before the Supreme Court's landmark integration mandate case of *Olmstead v. L.C.* and 15 years before the DOJ Agreement. Since this period, Kentucky has made significant progress in re-balancing its institutional versus community-based spending.[2] P&A encourages the Cabinet to take this opportunity to amend the regulation after comments with the above discharge planning language."

(b) Response: The cabinet appreciates the comments from Mr. Dolan. The cabinet will amend language to read as follows: "The facility shall have a discharge planning program, which begins at admission and is an integral part of each individual's treatment plan, that identifies".

Summary of Statement of Consideration and
Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was held on February 26, 2024, at 9:00 a.m. in Zoom meeting format by the CHFS Office of Legislative and Regulatory Affairs. Formal comments were presented at the hearing and written comments were also received during the public comment period. The Cabinet for Heath and Family Services, Office of Inspector General, responded to the comments and amends the administrative regulation as follows:

Page 2
Section 1(4)
Line 15

After "(4)", delete the following language:"

"Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.

(5)

Renumber "(6)" as "**(5)**"
Renumber "(7)" as "**(6)**"
Renumber "(8)" as "**(7)**"
Renumber "(9)" as "**(8)**"
Renumber "(15)" as "**(9)**"
Renumber "(11)" as "**(10)**"
Renumber "(12)" as "**(11)**"
Renumber "(13)" as "**(12)**"
Renumber "(14)" as "**(13)**"

Page 12
Section 3(7)(f)2.
Line 7

Add a space between "including" and "assurance"

Page 12
Section 3(8)(a)
Line 11

After "discharge planning program", insert the following language:

which begins at admission and is an integral part of each individual's treatment plan

Page 52
Section 4(21)(b)1.
Line 13

After "licensed", insert "**dietitian**"
Delete the following language:

qualified dietician or certified nutritionist

Page 52
Section 4(21)(b)2.
Line 16
After "licensed", insert "**dietitian**"
Delete the following language:
qualified dietician or certified nutritionist

Page 52
Section 4(21)(c)
Line 23
After "licensed", insert "**dietitian**"
Delete the following language:
dietician or certified nutritionist

Page 53
Section 4(21)(c)
Line 1
After "licensed", insert "**dietitian**"
Delete the following language:
dietician or certified nutritionist