STATEMENT OF EMERGENCY
922 KAR 2:120E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky Acts ch. 135 and the Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members, improved access to emergency medications for children in care, and reflects assessment of child care provider standards in accordance with the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
SCOTT W. BRINKMAN, Acting Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Emergency Amendment)

922 KAR 2:120E. Child-care center health and safety standards.

RELATES TO: KRS Chapter 151, 158.030, Chapter 186, 189.125, 199.011(3), 199.894(1), 199.896(2), (18), (19), 199.898, 211.350-211.380, Chapter 217, 227.220, 311.646, Chapter 318, 314.011(5), 527.070(1), 620.030, 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q
STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)
EFFECTIVE: February 14, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).
(2) "Corporal physical discipline" is defined by KRS 199.896(18).
(3) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.
(4) "Director" means an individual:
(a) Who meets the education and training requirements as specified in 922 KAR 2:090[~~2:110~~], Section 10[4];
(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR

2:090, 922 KAR 2:280[~~922 KAR 2:110~~], and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at the child-care center.

(5) "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician[~~Physician's~~] assistant;

(c) Advanced practice registered nurse[~~practitioner~~]; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(6) "Infant" means a child who is less than twelve (12) months of age.

(7) "Licensee" means the owner or[~~and~~] operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(8) "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(9) "Parent" is defined in 45 C.F.R. 98.2.

(10) "Premises" means the building and contiguous property in which child care is licensed.

(11) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(12) "Protective surface" means loose surfacing material not installed over concrete, which includes the following:

(a) Wood mulch;

(b) Double shredded bark mulch;

(c) Uniform wood chips;

(d) Fine sand;

(e) Coarse sand;

(f) Pea gravel, except for areas used by children under three (3) years of age;

(g) Certified shock absorbing resilient material; or

(h) Other material approved by the cabinet or designee.

(13) "Related" means having one (1) of the following relationships with the operator of the child-care center:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Stepchild; or

(g) Child in legal custody of the operator.

(14) "School-age child" means a child who meets the age requirements of KRS 158.030 or

who attends[~~attending~~] kindergarten, elementary, or secondary education.

(15) "Toddler" means a child between the age of twelve (12) months and thirty-six (36)[~~twenty-four (24)~~] months.

(16) "Transition" means the changing from one (1) child care arrangement to another.

(17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.

(18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:

Age of Children	Ratio	Maximum Group Size*
Infant	1 staff for 5 children	10
Toddler 12 to 24 months	1 staff for 6 children	12
Toddler 24 to 36 months[~~Preschool-age 2 to 3 years~~]	1 staff for 10 children	20
Preschool-age 3 to 4 years	1 staff for 12 children	24
Preschool-age 4 to 5 years	1 staff for 14 children	28
School-age 5 to 7 years	1 staff for 15 children	30
School-age 7 and older	1 staff for 25 children (for before and after school)	30

	1 staff for 20 children (full day of care)	30

*Maximum Group Size shall be applicable only to Type I child-care centers.

(a) In a Type I child-care center, a group size shall:

1. Be separately maintained in a defined area unique to the group; and

2. Have specific staff assigned to, and responsible for, the group.

(b) The age of the youngest child in the group shall determine the:

1. Staff-to-child ratio; and

2. Maximum group size.

(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a center:

1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) years to six (6) years; and

2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child-care program that assures each child will be:

1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:

a. Within scope of vision and range of voice; or

b. For a school-age child, within scope of vision or range of voice; and

2. Protected from abuse or neglect.

(b) The program shall include:

1. A procedure to ensure compliance with and inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect set forth in KRS 620.030; and

2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:

(a) Posted in writing in a conspicuous location with each age group and followed;

(b) Of activities that are individualized and developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) Unless the child-care center is a before- or after-school program that operates part day or less, that offers a variety of creative activities including the following:

1. Art or music;

2. Math or numbers[~~Music~~];

3. Dramatic play;

4. Stories and books;

5. Science or nature;

6. Block building or stacking;

7. Tactile or sensory activity;

8. Multi-cultural exposure[~~Culture~~];

9. Indoor or outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity;

11. An opportunity for a child to:
a. Have some free choice of activities;
b. If desired, play apart from the group at times; and
c. Practice developmentally appropriate self-help procedures in respect to:
(i) Clothing;
(ii) Toileting;
(iii) Hand-washing; and
(iv) Eating; and
12. Use of electronic viewing and listening devices if the:
a. Material is appropriate to the child using the equipment;
b. Material does not include any violence, adult content viewing, or inappropriate language;
c. Viewing or individual listening is limited to two (2) hours per day;
d. Viewing or listening is discussed with parents prior to viewing or listening; and
e. Viewing or listening is designed as an educational tool.

(5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities.

(6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.

(7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.

(8) A child shall not be required to stand or sit for a prolonged period of time:
(a) During an activity;
(b) While waiting for an activity to start; or
(c) As discipline[~~punishment~~].

(9) If school-age care is provided:
(a) A separate area or room shall be provided in a Type I child-care center; and
(b) Each child shall be provided a snack after school.

(10) A child shall not be subjected to:
(a) Corporal physical discipline pursuant to KRS 199.896(18);
(b) Loud, profane, threatening, frightening, humiliating, or abusive language; or
(c) Discipline that is associated with:
1. Rest;
2. Toileting; or
3. Food.

(11) If nontraditional hours of care are provided:
(a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;
(b) At least one (1) staff member shall be assigned responsibility for each sleeping room;
(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that is developmentally appropriate for the child;
(d) A child sleeping three (3) hours or more shall sleep in:
1. Pajamas; or
2. A nightgown;
(e) If a child attends school from the child-care center, the child shall be offered breakfast; and
(f) Staff shall:
1. If employed by a Type I child-care center, remain awake while on duty; or
2. If employed by or is the operator of a Type II child-care center, remain awake until every

child in care is asleep.

(12)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 3. General Requirements. (1) Electronic viewing and listening devices shall only be used in the center as a part of the child's planned program of activity described in Section 2(4) of this administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity can be given adequate supervision by staff.

(3) Computer equipment shall be equipped with a monitoring device which limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness based upon their developmental skills; [~~and~~]

(b) Wash his or her hands with liquid soap and warm running water:

1. a. Upon arrival at the center; or

b. Within thirty (30) minutes of arrival for school-age children;

2. Before and after eating or handling food;

3. After toileting or diaper change;

4. After handling animals;

5.[~~After wiping or blowing nose;~~

~~6.~~] After touching an item or an area of the body[~~items~~] soiled with body fluids or wastes; and

6.[~~7.~~] After outdoor or indoor play time; and

(c) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (b) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) Staff shall:

(a) Maintain personal cleanliness;

(b) Conform to hygienic practices while on duty; [~~and~~]

(c) Wash their hands with liquid soap and running water:

1. Upon arrival at the center;

2. After toileting or assisting a child in toileting;

3. Before and after diapering each child;

4. After wiping or blowing a child's or own nose;

5. After handling animals;

6. After caring for a sick child;

7. Before and after feeding a child or eating;

8. Before dispensing medication;[~~and~~]

9. After smoking or vaping; and

10. If possible, before administering first aid; and

(d) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (c) of this subsection. The staff shall wash the staff's hands as soon as practicable once liquid soap and warm running water are available.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement from a health professional, if requested.

(7)[~~Except in accordance with subsection (8) of this section,~~] The following shall be inaccessible to a child in care:

(a) Toxic cleaning supplies, poisons, and insecticides;

(b) [~~Knives and sharp objects;~~

~~(c)~~] Matches, cigarettes, lighters, and flammable liquids; and

(c)[~~(d) Plastic bags;~~

~~(e) Litter and rubbish;~~

~~(f) Bar soap; and~~

~~(g)~~] Personal belongings and medications of staff.

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

(a) Knives and sharp objects;

(b) Litter and rubbish;[~~and~~]

(c) Bar soap; and

(d) Plastic bags not used for personal belongings.

(9) In accordance with KRS 527.070(1), firearms and ammunition shall be stored separately in a locked area outside of the designated child care area.

(10) Smoking or vaping shall:

(a) Be permitted in accordance with local ordinances;

(b) Be allowed only in outside designated areas; and

(c) Not be permitted in the presence of a child.

(11) While bottle feeding a child[~~an infant~~], the:

(a) Child shall be held; and

(b) Bottle or beverage container shall not be:

1. Propped;

2. Left in the mouth of a sleeping child[~~infant~~]; or

3. Heated in a microwave.

(12) A fire drill shall be:

(a) Conducted during hours of operation at least monthly; and

(b) Documented.

(13) An earthquake drill and a tornado drill shall be:

(a) Conducted during hours of operation at least quarterly; and

(b) Documented.

Section 4. Premises Requirements. (1) The premises shall be:

(a) Suitable for the purpose intended;

(b) Kept clean and in good repair; and

(c) Equipped with:

1. A working[~~land-line~~] telephone accessible to a room used by a child; and

2. A list of emergency numbers posted by the telephone or maintained in the telephone's contact, including numbers for the:

a. Police;

b. Fire station;

c. Emergency medical care and rescue squad; and

d. Poison control center.

(2) A child-care center shall be in compliance with the State Fire Marshal and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:

(a) Uses fuel burning appliances; or

(b) Has an attached garage.

(5) The building shall be constructed to ensure the:

(a) Building is:

1. Dry;

2.[~~Adequately heated;~~

~~3.~~] Ventilated; and

3.[~~4.~~] Well lit, including clean light fixtures that are:

a. In good repair in all areas; and

b. Shielded or have shatter-proof[~~shattered proof~~] bulbs installed; and

(b) Following are protected:

1. Windows;

2. Doors;

3. Stoves;

4. Heaters;

5. Furnaces;

6. Pipes; and

7. Stairs.

(6) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.

(7) Measures shall be utilized to control the presence of:

(a) Rodents;

(b) Flies;

(c) Roaches; and

(d) Other vermin.

(8) An opening to the outside shall be effectively protected against the entrance of vermin by:

(a) Self-closing doors;

(b) Closed windows;

(c) Screening;

(d) Controlled air current; or

(e) Other effective means.

(9) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.

(10) The water supply shall be:

(a) Potable;

(b) Protected from contamination;

(c) Adequate in quality and volume;

(d) Under sufficient pressure to permit unrestricted use; and

(e) Obtained from an approved public water supply or a source approved by the local health department.

(11) Groundwater supplies for a child-care center caring for:

(a) More than twenty-five (25) children shall meet the specifications of the Energy and Environment Cabinet,[~~for Environmental and Public Protection~~] Division of Water[~~,~~] established in KRS Chapter 151; or

(b) Twenty-five (25) children or less shall secure approval from the:

1. Energy and Environment Cabinet[~~for Environmental and Public Protection~~]; or

2. Local health department.

(12) Sewage shall be properly disposed by a method approved by the:

(a) Energy and Environment Cabinet[~~for Environmental and Public Protection~~]; or

(b) Cabinet.

(13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.

(14) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.

(15) If a portion of the building is used for a purpose other than child care:

(a) Necessary provisions shall be made to avoid interference with the child-care program; and

(b) A separate restroom shall be provided for use only by those using the building for its child care purpose.

(16) The temperature of the inside area of the premises shall be sixty-five (65) to eighty-two (82) degrees Fahrenheit[~~:~~

~~(a) Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or~~

~~(b) Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months~~].

(17) Outdoor activity shall be restricted based upon:

(a) Temperature;

(b) Weather conditions; or

(c) Weather alerts, advisories, and warnings issued by the National Weather Service.

(18) A kitchen shall not be required if:

(a) The only food served is an afternoon snack to school-age children; and

(b) Adequate refrigeration is maintained.

(19) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(20) An outdoor play area shall be:

(a) Except for an after-school child-care program[~~,~~] located on the premises of a public or state-accredited nonpublic school, [~~and~~] fenced for the safety of the children;

(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Free from:

1. Litter;

2. Glass;

3. Rubbish; and

4. Flammable materials;

(d) Safe from foreseeable hazard;

(e) Well drained;

(f) Well maintained;

(g) In good repair; and

(h) Visible to staff at all times.

(21) A protective surface shall:

(a) Be provided for outdoor play equipment used to:

1. Climb;

2. Swing; and

3. Slide; and

(b) Have a fall zone equal to the height of the equipment.

(22) If a child-care center does not have access to an outdoor play area, an indoor space

shall:

(a) Be used as a play area;

(b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Include equipment for gross motor skills; and

(d)[~~Be well-ventilated;~~

~~(e) Be heated; and~~

~~(f)~~] Have a protective surface of at least two (2) inches thick around equipment intended for climbing.

(23) Fences shall be:

(a) Constructed of safe material;

(b) Stable; and

(c) In good condition.

(24) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.

(25) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.

(26) A sandbox shall be:

(a) Constructed to allow for drainage;

(b) Covered when not in use;

(c) Kept clean; and

(d) Checked for vermin prior to use.

(27) Bodies of water that shall not be utilized include:

(a) Portable wading pools;

(b) Natural bodies of water; and

(c) Unfiltered, nondisinfected containers.

(28) A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

(29) Storage space shall be provided:

(a) In the form of:

1. Shelves; or

2. Other storage device accessible to the children; and

(b) In sufficient quantity for each child's personal belongings.

(30) Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Infant and toddler inside areas shall:

(a) Be separate from an area used by an older child;

(b) Not be an exit or entrance; and

(c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) Except in accordance with subsection (3) of this section or Section 2(2)(c) of this administrative regulation, an infant or toddler shall not participate in an activity with an older child for more than one (1) hour per day.

(3) A toddler may participate in an activity with an older child for more than one (1) hour per day if:

(a) The toddler is in transition to the pre-school age group;

(b) The toddler is thirty-two (32)[~~twenty-one (21)~~] months or older;

(c) Space for the toddler is available in the preschool-age group;

(d) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;

(e) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and

(f) The child care center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.

(4) If a child-care center provides an outdoor play area for an infant or toddler, the outdoor area shall be:

(a) Shaded; and

(b) A separate area or scheduled at a different time than an older child.

(5) Playpens and play yards shall:

(a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;

(b) Be manufactured for commercial use; and

(c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements. (1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;

2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

a. Weekly; or

b. Immediately if it is soiled or wet;

3. No loose bedding, such as a bumper or a blanket; and

4. No toys or other items except the infant's pacifier; or

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

a. Weekly; or

b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

(a) Drafts;

(b) Liquid substances;

(c) Dirt; and

(d) Dampness.

(8)(a) Cots or mats not labeled for individual use by a child shall be disinfected[~~sanitized~~] after each use.

(b) Cots or mats labeled for individual use by a child shall be disinfected:
1. At least weekly; or
2. Immediately if it is soiled or wet.
(9) Individual bedding shall be stored in a sanitary manner.

Section 7. First Aid and Medicine. (1) First aid supplies shall:
(a) Be available to provide prompt and proper first aid treatment;
(b) Be stored out of reach of a child;
(c) Be periodically inventoried to ensure the supplies have not expired[~~are current~~];
(d) If reusable, be:
1. Sanitized; and
2. Maintained in a sanitary manner; and
(e) Include:
1. Liquid soap;
2. Adhesive bandages;
3. Sterile gauze;
4. Medical tape;
5. Scissors;
6. A thermometer;
7. Flashlight;
8. Cold pack;
9. First aid book;
10. Disposable gloves; and
11. A cardiopulmonary resuscitation mouthpiece protector.
(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child-care program.
(3) If a child becomes ill while at the child-care center:
(a) The child shall be placed in a supervised area isolated from the rest of the children;
(b) The parent shall be contacted immediately; and
(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.
(4) Prescription and nonprescription medication shall be administered to a child in care:
(a)1. With a[~~daily~~] written request of the child's parent or the child's prescribing health professional; and
2.[~~(b)~~] According to the directions or instructions on the medication's label; or
(b) In accordance with KRS 311.646.
(5) The child-care center shall keep a written record of the administration of medication, including:
(a) Time of each dosage;
(b) Date;
(c) Amount;
(d) Name of staff person giving the medication;
(e) Name of the child; and
(f) Name of the medication.
(6) Medication, including refrigerated medication, shall be:
(a) Stored in a separate and locked place, out of the reach of a child unless the medication is:
1. A first aid supply and is maintained in accordance with subsection (1) of this section;
2. Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be

inaccessible to a child;

3. An epinephrine auto-injector. In accordance with KRS 199.8951:

a. An epinephrine auto-injector shall be inaccessible to a child;

b. A child-care center shall have at least one (1) person onsite who has received training on the administration of an epinephrine auto-injector if the child-care center maintains an epinephrine auto-injector;

c. A child-care center shall seek emergency medical care for a child if an auto-injector is administered to the child; and

d. A child-care center shall report to the child's parent and the cabinet in accordance with 922 KAR 2:090, Section 12(1)(b) if an epinephrine auto-injector is administered to a child; or

4. An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) Medication shall not be given to a child if the medication's expiration date[~~on the bottle~~] has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:

(a) Be clean;

(b) Be equipped for proper food:

1. Preservation;

2. Storage;

3. Preparation; and

4. Service;

(c) Be adequately ventilated to the outside air; and

(d) Except in a Type II child-care center when a meal is not being prepared, not be used for the activity of a child.

(2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.

(3) Convenient and suitable sanitized utensils shall be:

(a) Provided; and

(b) Used to minimize handling of food during preparation.

(4) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:

(a) Have an indicating thermometer or other appropriate temperature measuring device;

(b) Be in a safe environment for preservation; and

(c) Be forty (40) degrees Fahrenheit or below.

(5) Frozen food shall be:

(a) Kept at a temperature of zero degrees Fahrenheit or below; and

(b) Thawed:

1. At refrigerator temperatures;

2. Under cool, potable running water;

3. As part of the cooking process; or

4. By another method in accordance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217.

(6) Equipment, utensils, and surfaces contacting food shall be:

(a) Smooth;

(b) Free of breaks, open seams, cracks, and chips;

(c) Accessible for cleaning; and

(d) Nontoxic.
(7) The following shall be clean and sanitary:
(a) Eating and drinking utensils;
(b) Kitchenware;
(c) Food contact surfaces of equipment;
(d) Food storage utensils;
(e) Food storage containers;
(f) Cooking surfaces of equipment; and
(g) Nonfood contact surfaces of equipment.
(8) A single-service item shall be:
(a) Stored;
(b) Handled and dispensed in a sanitary manner; and
(c) Used only once.
(9) Bottles shall be:
(a) Individually labeled;
(b) Promptly refrigerated;
(c) Covered when not in use; and
(d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Meal Requirements. (1) Food shall be:
(a) Clean;
(b) Free from:
1. Spoilage;
2. Adulteration; and
3. Misbranding;
(c) Safe for human consumption;
(d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
(e) Obtained from a source that is in compliance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217;
(f) Acceptable if from an established commercial food store;
(g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and
(h) Protected against contamination from:
1. Dust;
2. Flies;
3. Rodents and other vermin;
4. Unclean utensils and work surfaces;
5. Unnecessary handling;
6. Coughs and sneezes;
7. Cuts in skin;
8.Communicable disease;
9. Flooding;
10. Drainage; and
11. Overhead leakage.
(2) Food shall not be:
(a) Used for reward;
(b) Used for discipline;

(c) Withheld until all other foods are consumed; or
(d) Served while viewing electronic devices.
(3) A serving of milk shall consist of:
(a) Breast milk or iron-fortified formula for a child:
1. Age birth to twelve (12) months; or
2. Beyond twelve (12) months of age as documented by the parent or the child's physician;
(b) Pasteurized whole milk for children ages twelve (12) months to twenty-four (24) months; or
(c) Pasteurized low fat one (1) percent or fat-free skim milk for children ages twenty-four (24) months to school-age.
(4) Formula or breast milk provided by the parent shall be prepared and labeled.
(5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
(6) A serving of bread shall only consist of whole or enriched grain.
(7) Drinking water shall be freely available to a child throughout the day.
(8) Food shall be stored on:
(a) Clean racks;
(b) Clean shelves;
(c) Other clean surfaces; or
(d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
(9) Fruits and vegetables shall be washed before cooking or serving.
(10) Meat salads, poultry salads, and cream-filled pastries shall be:
(a) Prepared with utensils that are clean; and
(b) Refrigerated unless served immediately.
(11) An individual portion of food served to a child or adult shall not be served again.
(12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
(13) Meals shall be:
(a) Served every two (2) to three (3) hours; and
(b) Served to a child:
1. Seated with sufficient room to manage food and tableware; and
2. Supplied with individual eating utensils designed for use by a child.
(14) All children shall be offered the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.
(15) A child-care center shall serve:
(a)1. Breakfast; or
2. A mid-morning snack;
(b)1. Lunch; or
2. A mid-afternoon snack; and
(c) If appropriate, dinner.
(16) A weekly menu shall be:
(a) Prepared;
(b) Dated;
(c) Posted in advance in a conspicuous place;
(d) Kept on file for thirty (30) days; and
(e) Amended in writing with any substitutions on the day the meal is served.
(17) Breakfast shall include:
(a) Milk;
(b) Bread; and

(c)1. Fruit;
2. Vegetable; or
3. 100 percent juice.
(18) A snack shall include two (2) of the following:
(a) Milk;
(b) Protein;
(c) Bread; or
(d)1. Fruit;
2. Vegetable; or
3. 100 percent juice.
(19) Lunch and dinner shall include:
(a) Milk;
(b) Protein;
(c) Bread; and
(d)1. Two (2) vegetables;
2. Two (2) fruits; or
3. One (1) fruit and one (1) vegetable.
(20) A child-care center shall meet requirements of subsections (3), (15), and (17) through (19) of this section if the child-care center participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.
(2) A toilet room shall:
(a)1. Be provided for each gender; or
2. A plan shall be implemented to use the same toilet room at separate times;
(b) Have a supply of toilet paper; and
(c) Be cleaned and disinfected[~~sanitized~~] daily.
(3) A sink shall be:
(a) Located in or immediately adjacent to toilet rooms;
(b) Equipped with hot and cold running water that allows for hand washing;
(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
(d) Equipped with liquid soap;
(e) Equipped with hand-drying blower or single use disposable hand drying material;
(f) Equipped with an easily cleanable waste receptacle; and
(g) Immediately adjacent to a changing area used for infants and toddlers.
(4) Each toilet shall:
(a) Be kept in clean condition;
(b) Be kept in good repair;
(c) Be in a lighted room; and
(d) Have ventilation to outside air.
(5) Toilet training shall be coordinated with the child's parent.
(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.
(7) If a toilet training chair is used, the chair shall be:
(a) Used over a surface that is impervious to moisture;
(b) Out of reach of other toilets or toilet training chairs;

(c) Emptied promptly; and
(d) Disinfected[~~Sanitized~~] after each use.
(8) Diapers or clothing shall be:
(a) Changed when soiled or wet;
(b) Stored in a covered container temporarily; and
(c) Washed or disposed of at least once a day.
(9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.
(10) When a child is diapered, the child shall:
(a) Not be left unattended; and
(b) Be placed on a surface that is:
1. Clean;
2. Padded;
3. Free of holes, rips, tears, or other damage;
4. Nonabsorbent;
5. Easily cleaned; and
6. Free of any items not used for diaper changing.
(11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.
(12) Staff shall disinfect the diapering surface after each child is diapered.
(13) If staff wears disposable gloves, the gloves shall be changed and disposed after each child is diapered.
(14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:
(a) Individually stored in separate containers; and
(b) Plainly labeled with the child's name.
(15) Toothbrushes shall be:
(a) Individually identified;
(b) Allowed to air dry; and
(c) Protected from contamination.
(16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 11. Toys and Furnishings. (1) All toys[~~, equipment,~~] and furniture contacted by a child shall be:
(a) Kept clean and in good repair; and
(b) Free of peeling, flaking, or chalking paint.
(2) Indoor and outdoor equipment shall:
(a) Be clean, safe, and in good repair;
(b) Meet the physical, developmental needs, and interests of children of different age groups;
(c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and
(d) Be designed to guard against entrapment or situations that may cause strangulation.
(3) Toys shall be:
(a) Used according to the manufacturer's safety specifications;
(b) Durable; and
(c) Without sharp points or edges.
(4) A toy or another item that is[~~Toys and other items that are~~] considered a mouth contact

surface[surfaces] by a child not toilet trained shall be sanitized daily by:

(a)1. Scrubbing in warm, soapy water using a brush to reach into crevices;

2.[(b)] Rinsing in clean water;

3.[(c)] Submerging in a sanitizing solution for at least two (2) minutes; and

4.[(d)] Air dried; or

(b) Cleaning in a dishwasher if the toy or other item is dishwasher safe.

(5) Tables and chairs shall be of suitable size for children.

(6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:

(a) Vehicles;

(b) Drivers; and

(c) Insurance.

(2) A center providing or arranging transportation service shall:

(a) Be licensed and approved by the cabinet or its designee prior to transporting a child;

(b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and

(c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports children.

(3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:

(a) Type of transportation offered;

(b) Type of vehicle used for transportation;

(c) Plan for ensuring staff perform duties relating to transportation properly;

(d) Full insurance coverage for each vehicle;

(e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;

(f) Contracts, agreements, or documents detailing arrangements with any third party for services; and

(g) Safety procedures for:

1. Transporting a child;

2. Loading and unloading a child; and

3. Providing adequate supervision of a child.

(4) A vehicle used to transport children shall be equipped with:

(a) A fire extinguisher;

(b) First aid supplies as described in Section 7 of this administrative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.

(6) A vehicle used to transport children shall meet the following requirements:

(a) For a twelve (12) or more passenger vehicle, the child-care center shall maintain[display] a current certification of inspection from the Transportation Cabinet[on the designated window].

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;

2. Identifying colors; and

3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed prior to the vehicle's use and documented for the following:

(a) Tire inflation consistent with tire manufacturer's recommended air pressure[~~Tires~~];

(b) Working lights, signals, mirrors, gauges, and wiper blades;

(c) Working safety restraints;

(d) Adequate fuel level; and

(e) Cleanliness and good repair[~~free of debris~~].

(9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.

(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).

(10) Each child shall:

(a) Have a seat;

(b) Be individually belted or harnessed in the seat; and

(c) Remain seated while the vehicle is in motion.

(11) A child shall not be left unattended:

(a) At the site of aftercare delivery; or

(b) In a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) If a vehicle needs to be refueled, it shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver's seat, the:

(a) Engine shall be turned off;

(b) Keys shall be removed; and

(c) Emergency brake shall be set.

(17) Transportation services provided shall:

(a) Be recorded in writing and include:

1. The first and last name of the child transported; and

2. The time each child gets on and the time each child gets off;

(b) Be completed by a staff member other than the driver; and

(c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:

(a) Be at least twenty-one (21) years old;

(b) Complete:

1. The background checks as described in 922 KAR 2:280[~~2:110~~]; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's li-

cense;

(c) Hold a current driver's license which has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident which resulted in the death of a person.

(19) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(20)(a) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall revoke a center's privilege to transport a child or pursue an adverse action in accordance with Section 14, 15, 16, or 17[~~9, 10, 11, or 12~~] of 922 KAR 2:090:

1. For a violation of this section; or

2. If the center:

a. Fails to report an accident in accordance with 922 KAR 2:090[~~2:110~~], Section 12[~~6~~]; or

b. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

(b) Revocation of a center's privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:

1. Apply to each site listed under the licensee; and

2. Remain effective for no less than a twelve (12) month period.

(21) A parent may use the parent's vehicle to transport the parent's child during a field trip.

Section 13. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;

2. Written parental consent has been obtained; and

3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:

(a) A part of a planned program activity led[~~lead~~] by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

(4) This section shall not apply to wild animals on the outer property of the child-care center which are expected to be found outdoors, such as squirrels and birds, if they are not:

(a) Disturbed; or

(b) Brought indoors.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes health and safety standards for child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards regarding health and safety for child-care centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing minimum health and safety standards for child-care centers as condition of their licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the health and safety standards for child-care centers.

(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: The amendment to this administrative regulation clarifies numerous provisions and eliminates others due to public comments received and agency reviews conducted as a result of the Red Tape Reduction initiative, including feeding and meal requirements, multi-aged children in a classroom, and access to hygiene and health products. In addition, the administrative regulation assures more consistent terminology use, aligns the administrative regulation with the Child Care and Development Fund's 2014 reauthorization and other concurrent regulatory changes, requires hand-washing by staff after smoking and vaping, and incorporates epi-pen allowances authorized by 2016 Ky Acts ch. 122. Lastly, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to clarify health and safety requirements of licensed child-care centers, make the administrative regulations governing licensed child-care centers congruent, and be responsive to provider and agency inputs resulting from the Red Tape Reduction initiative.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorized statutes by further clarifying and specifying health and safety standards for licensed child -care centers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its provision of enhanced health and safety measures for licensed child care providers in a manner responsive to recent context, congruent with recognized practice, and supportive of integrity in the child care community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of November 22, 2017, there were 1,980 Kentucky licensed child-care centers, both Type I and Type II.

(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: Given the new federally mandated background check requirements applicable to licensed child-care centers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will impose no new or additional cost on providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed child-care centers and children in their care will benefit from the clarity and specificity provided in this administrative regulation and new permissions afforded.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any ongoing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, or directly or indirectly increased any fees.

(9) TIERING: Is tiering applied? This administrative regulation does not establish any fees, or directly or indirectly increased any fees.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

(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 does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(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? The Cabinet for Health and Family Services is impacted by this administrative regulation. A local government or a school district operating a licensed child-care center, in whole or in part, will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the

action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

(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? The amendment to this administrative regulation will generate no revenue in the first year.

(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? The amendment to this administrative regulation will generate no revenue in the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program in 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: