

CHAPTER 5**(SB 2)**

AN ACT relating to COVID-19 emergency actions and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. (1) Notwithstanding any state law to the contrary, by October 1, 2021, and until January 31, 2022, the Cabinet for Health and Family Services shall require that visitation in a long-term care facility as defined in KRS 216A.010 or a residential long-term care facility as defined in KRS 216.510 be allowed by an essential compassionate care visitor, including a family member, legal guardian, outside caregiver, friend, or volunteer, who:

- (a) Provided regular care and support to the resident prior to the COVID-19 pandemic; and
 - (b) Is designated an essential compassionate care visitor who is important to the mental, physical, or social well-being of a resident in:
 1. Critical situations such as end of life;
 2. Instances of significant mental or social decline of the resident; or
 3. Exigent circumstances existing regarding a resident in the facility.
- (2) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A that:
- (a) Set forth procedures for the designation of a family member, legal guardian, outside caregiver, friend, or volunteer as an essential compassionate care visitor;
 - (b) Require all essential compassionate care visitors to follow safety protocols required for staff, including testing for communicable disease, checking body temperature, health screenings, the use of appropriate personal protective equipment, social distancing, and any other requirement the facility deems appropriate in accordance with guidance from the Centers for Disease Control and Prevention. If testing of communicable disease is not provided by the facility, the essential compassionate care visitor shall be responsible for obtaining testing per protocol mandated by the facility;
 - (c) Restrict visitation of essential compassionate care visitors to one room in the facility to provide compassionate care to the resident;
 - (d) Provide that essential compassionate care visitors shall be exempt from any prohibitions on visitation at a facility subject to the provisions of this subsection;
 - (e) Provide that the facility may require a written agreement with the essential compassionate care visitor;
 - (f) Require that essential compassionate care visitors assume the risk for exposure to COVID-19 and other viruses, provided the facility is compliant with the Kentucky Department for Public Health guidelines; and
 - (g) Provide that facilities are not required to accept visitors, except as required by this section.

➔Section 2. (1) No later than October 1, 2021, the Cabinet for Health and Family Services shall assist and support established and additional COVID-19 antibody administration centers (CAACs) throughout the Commonwealth and develop protocols for appropriate patient eligibility criteria for receiving treatments and proper protocol for the administration of treatments.

- (2) CAACs shall:
- (a) Have at least one qualified treatment provider in each of the 15 Area Development Districts as permissible under federal law and guidance;
 - (b) Be equipped with therapeutic drugs to treat COVID-19 that have full use or emergency use authorization approval from the United States Food and Drug Administration (FDA), including but not limited to REGEN-COV (casirivimab and imdevimab, administered together) monoclonal antibodies or other FDA-approved equivalents, in order to treat COVID-19 positive patients 12 years of age and older;

- (c) Allow volunteer health practitioners providing health services under KRS 39A.350 to 39A.366 to administer the therapeutic drugs; and
 - (d) Not require prior authorization for administration of the therapeutic drugs.
- (3) CAACs shall operate until January 31, 2022, unless otherwise reauthorized by the General Assembly.

➔Section 3. No later than October 1, 2021, the Cabinet for Health and Family Services shall assist and support hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities in:

- (1) Acquiring sufficient COVID-19 tests;
- (2) Developing a plan for statewide distribution of the COVID-19 tests; and
- (3) Distributing for use all COVID-19 tests.

➔Section 4. No later than October 1, 2021, the Cabinet for Health and Family Services shall promulgate emergency administrative regulations in accordance with KRS Chapter 13A to implement Sections 2 and 3 of this Act.

➔Section 5. (1) Notwithstanding KRS 311A.170, until January 31, 2022, a paramedic may be employed by a hospital or nursing facility to work as a licensed paramedic in any department of a hospital or nursing facility subject to the following conditions:

- (a) The hospital or nursing facility in collaboration with the medical staff provides operating procedures and policies under which the paramedic operates that are consistent with the paramedic's scope of practice;
 - (b) A paramedic is permitted to render services only under the supervision of a medical director;
 - (c) A paramedic provides patient care services under the orders of a physician, physician assistant, or advanced practice registered nurse, or as delegated by a registered nurse; and
 - (d) The paramedic does not violate KRS 311A.175 or any other statute or administrative regulation relating to paramedics.
- (2) Subject to the provisions relating to the scope of practice of a paramedic, a hospital or nursing facility may require a paramedic to take additional training on any subject or skill which the paramedic may be required to perform in a hospital or nursing facility and demonstrate competency in the skill or subject to a competent evaluator.

➔Section 6. (1) The Cabinet for Health and Family Services shall by October 1, 2021, and until January 31, 2022, in partnership with any universities, colleges, and health care organizations in Kentucky:

- (a) Produce public service announcements providing information about the severe symptoms and effects of contracting COVID-19; and
 - (b) Develop and initiate a public awareness campaign encouraging Kentuckians to talk with their doctor about the benefits of receiving a COVID-19 vaccination.
- (2) Partnerships may include individual athletes, coaches, physicians, and nurses affiliated with or employed by universities, colleges, and health care organizations in Kentucky.

➔Section 7. (1) In order to improve access to the COVID-19 vaccination and address disparities in immunization by expanding distribution of the vaccine to primary care providers, as recommended by the Centers for Disease Control and Prevention, the Cabinet for Health and Family Services, by October 1, 2021, shall:

- (a) Develop and implement a plan to significantly increase the distribution of COVID-19 vaccines to providers of primary care as defined in KRS 164.925 and to provide technical assistance and support to primary care providers regarding the completion of necessary forms, vaccine administration, confidence, and access;
- (b) Create a singular form in accordance with federal law, to be used by providers of primary care who wish to be authorized, approved, or otherwise permitted to offer and administer COVID-19 vaccines to patients;
- (c) Make the form created pursuant to paragraph (b) of this subsection available on its Web site; and
- (d) Promulgate administrative regulations in accordance with KRS Chapter 13A for the storage of vaccines.

- (2) In developing and implementing a plan to significantly increase the distribution of COVID-19 vaccines to providers of primary care, the Cabinet for Health and Family Services may incorporate the federal Centers for Disease Control and Prevention's guidance on expanding COVID-19 vaccine distribution to primary care providers to address disparities in immunization published on April 14, 2021, and may seek technical assistance from the federal Centers for Disease Control and Prevention.

➔Section 8. KRS 205.636 is amended to read as follows:

- (1) As used in this section:

(a) "COVID-19 pandemic" means the *national emergency declaration concerning COVID-19 as declared by the President of the United States and the United States Department of Health and Human Services*~~[state of emergency declared by the Governor in response to COVID-19 on March 6, 2020, by Executive Order 2020-215]~~; and

(b) "Temporary COVID-19 personal care attendant" or "PCA" means a person who is employed and received training in a skilled nursing facility under a temporary accommodation made to address work load increases and staffing shortages caused by the COVID-19 pandemic by the ~~[Cabinet for Health and Family Services as authorized by KRS 214.020, Executive Order 2020-215, and the]~~suspension of federal regulatory and statutory provisions by the Centers for Medicare and Medicaid Services.

- (2) The Department for Medicaid Services shall accept the training requirements as included in the "Temporary COVID-19 Personal Care Attendant memorandum" issued April 14, 2020, by the Cabinet for Health and Family Services that are completed by a PCA who is in good standing with his or her employer~~[after the COVID-19 state of emergency is rescinded by the Governor]~~. The PCA shall be deemed a state registered nurse aide and shall be placed on the Kentucky Nurse Aide Registry if:

(a) A minimum of eighty (80) hours of PCA duties have been completed within a skilled nursing facility under the supervision of a licensed or registered nurse; and

(b) Competency has been established by the following:

1. Through an assessment in all areas of required nurse aide training as provided for in 42 C.F.R. sec. 483.152(b) by an instructor who is a licensed nurse confirmed by the facility to have completed instructor training required by the Department for Medicaid Services; and
2. Successful completion of the nurse aide examination.

- (3) The Department for Medicaid Services shall:

(a) Apply for any Medicaid waivers or state plan amendments necessary to implement subsection (2) of this section;

(b) Incorporate the provisions under subsection (2) of this section into the nurse aide training and competency evaluation program requirements; and

(c) Promulgate any administration regulation necessary to implement this subsection and subsection (2) of this section.

➔Section 9. KRS 214.036 is amended to read as follows:

- (1) Nothing contained in KRS 158.035, 214.010, 214.020, 214.032 to 214.036, and 214.990 shall be construed to require:

(a) The testing for tuberculosis or the immunization of any child at a time when, in the written opinion of his or her attending health care provider, such testing or immunization would be injurious to the child's health;

(b) The immunization of any child whose parents or guardian are opposed to medical immunization against disease, and who object by a written sworn statement to the immunization of such child based on religious grounds; or

(c) The immunization of any emancipated minor or adult who is opposed to medical immunization against disease, and who objects by a written sworn statement to the immunization based on religious grounds.

- (2) In the event of an epidemic in a given area, the Cabinet for Health and Family Services may require the immunization of all persons within the area of epidemic, against the disease responsible for such epidemic,

except that any administrative regulation promulgated pursuant to KRS Chapter 13A, administrative order issued by the cabinet *or a local public health department*, or executive order issued pursuant to KRS Chapter 39A requiring such immunization shall not include:

- (a) The immunization of any child or adult for whom, in the written opinion of his or her attending health care provider, such testing or immunization would be injurious to his or her health;
 - (b) The immunization of any child whose parents or guardians are opposed to medical immunization against disease and who object by a written sworn statement to the immunization based on religious grounds or conscientiously held beliefs; or
 - (c) The immunization of any emancipated minor or adult who is opposed to medical immunization against disease, and who objects by a written sworn statement to the immunization based on religious grounds or conscientiously held beliefs.
- (3) The cabinet shall:
- (a) Develop and make available on its Web site a standardized form relating to exemptions in this section from the immunization requirements; and
 - (b) Accept a completed standardized form when submitted.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly finds that 902 KAR 2:211E, Covering the Face in Response to Declared National or State Public Health Emergency, was found deficient and then later withdrawn by the agency on June 11, 2021, as evidenced by the records of the Legislative Research Commission.*
- (2) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative regulation referenced in subsection (1) of this section shall be null, void, and unenforceable as of the effective date of this Act.*
- (3) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, the administrative regulation referenced in subsection (1) of this section for a period beginning on the effective date of this Act and concluding on June 1, 2023.*
- (4) *The administrative regulation referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly finds that 902 KAR 2:212E, Covering the Face in Response to Declared National or State Public Health Emergency, was found deficient but remained effective notwithstanding the finding of deficiency pursuant to KRS 13A.330, on or after March 30, 2021, and before the effective date of this Act, as evidenced by the records of the Legislative Research Commission.*
- (2) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative regulation referenced in subsection (1) of this section shall be null, void, and unenforceable as of the effective date of this Act.*
- (3) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, the administrative regulation referenced in subsection (1) of this section for a period beginning on the effective date of this Act and concluding on June 1, 2023.*
- (4) *The administrative regulation referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.*

➔Section 12. Whereas, the General Assembly desires to ensure that the citizens of the Commonwealth are protected for a specific period of time and that all possible prevention, treatment, and health care provider options are available, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Veto overridden September 9, 2021.