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MEMORANDUM

TO: Florence Huffman, Executive Director, Kentucky Board of Social Work

FROM: Emily Caudill, Regulations Compiler

RE: Proposed Amendment or New Regulation – 201 KAR 023:150

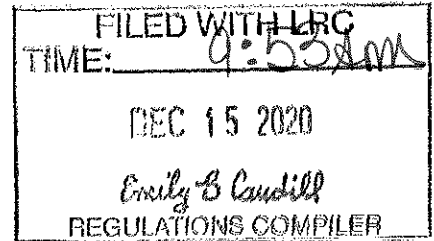
DATE: December 15, 2020

A copy of the administrative regulation listed above is enclosed for your files. This regulation is **tentatively** scheduled for review by the Administrative Regulation Review Subcommittee at its **March 2021** meeting. We will notify you of the date and time of this meeting once it has been scheduled.

Pursuant to KRS 13A.280, **if** comments are received during the public comment period, a Statement of Consideration or a one-month extension request for this regulation is due **by noon on March 15, 2021**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosures



1 GENERAL GOVERNMENT CABINET

2 Kentucky Board of Social Work

3 (New Administrative Regulation)

4 201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

5 RELATES TO: KRS 335.030, 335.070(1)(a), (2), (3), (4), (5), (6), (7), (8), 335.150, 335.155

6 STATUTORY AUTHORITY: KRS 335.070(3), 335.160

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1)(a) authorizes the board to
8 regulate the practice of social work and enforce the provisions of KRS 335.010 to 335.160 and
9 335.990. KRS 335.070(3) authorizes the board to promulgate and enforce reasonable
10 administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and 335.990.
11 KRS 335.070(2) and KRS 335.150 requires the board to regulate the conduct of licensees, to
12 investigate alleged violations, to promote the efficient and fair conduct of disciplinary
13 proceedings and take appropriate action. This administrative regulation establishes the
14 procedures to be followed in handling formal and informal disciplinary proceedings before the
15 board in the imposition of sanctions and disciplinary action of a licensee or applicant in
16 violation of KRS 335.030 or KRS 335.150.

17 Section 1. Complaint. (1) A complaint may be initiated by:

18 (a) An individual;

1 (b) An individual who is authorized to act on the behalf of an employer of a licensee or
2 applicant;

3 (c) A government agency; or

4 (d) The board.

5 (2) A complaint shall be:

6 (a) Made by a complainant in writing to the board on a Kentucky Board of Social Work
7 Complaint Form along with an Authorization for Release of Medical Records Form (if
8 applicable); and

9 (b) Received in the board office by mail, hand delivery, or by an online complaint submitted
10 through the board's website.

11 (3) The board may conduct an investigation on its own initiative without receipt of a written
12 complaint if the board has reasonable cause to believe that there may be a violation of KRS
13 335.010 to 335.160 or the administrative regulations of the board.

14 (4) A certified copy of a court record for conviction of a misdemeanor or felony shall be
15 considered a complaint against a licensee or temporary permit holder.

16 (5) Redaction.

17 (a) Upon recommendation of the complaint committee and consent by majority vote of the
18 board, the board may direct that a complaint be redacted of personal names, identification
19 numbers, and contact information.

20 (b) The board shall keep the original complaint free of redactions and store the document in
21 the complaint case file.

1 (c) The board shall send a redacted copy of a complaint to the respondent to meet the
2 requirements of Section (3)(1) of this administrative regulation. The original complaint that is
3 free of redactions may be viewed by the respondent upon written request submitted to the
4 board but shall not be released to the respondent or the public until final disposition of the
5 matter.

6 Section 2. Notice to Respondent. (1) The board shall notify a respondent in writing of the
7 receipt of a complaint and send a copy of the complaint to the respondent at his or her mailing
8 address or electronic mail address provided the board.

9 (a) The board may keep the complainant's name confidential until completion of the
10 investigation, if any.

11 (b) A respondent shall file a response to a complaint with the board within twenty (20) days
12 after receipt of notice of the complaint.

13 (c) Failure of a respondent to file a timely response to the complaint shall constitute a
14 violation of a board order or administrative regulation and shall be grounds for disciplinary
15 action under KRS 335.150(1)(f).

16 (2) Request for extension of time.

17 (a) A respondent or his or her legal representative may request an extension of time or
18 additional time to file a response by submitting a written request to the board on or before the
19 expiration of the twenty (20) day due date in subsection (3)(b).

20 Section 3. Recommendations of Complaint Committee. (1) Based on consideration of the
21 complaint and the response, the complaint committee may:

22 (a) Recommend that a complaint be dismissed and the matter closed where:

- 1 1. The board lacks jurisdiction over the person named in the complaint;
- 2 2. There is insufficient evidence to support the complaint;
- 3 3. There are no violations of laws, rules and regulations governing the practice of social
- 4 work; or
- 5 4. The conduct complained of does not warrant disciplinary or other remedial action.
- 6 5. Upon reaching a decision to dismiss a complaint, the board shall notify the
- 7 respondent and complainant of the disposition of the matter in writing, by personal service,
- 8 regular mail, or electronic mail address provided to the board.
- 9 6. Dismissal of a complaint shall be a final board action and shall not be subject to
- 10 further investigation by the board or appeal under KRS 335.155.
- 11 (b) Recommend further investigation of the complaint. If the board approves an
- 12 investigation, the board may be assisted by board staff, an agent of the board, the Office of the
- 13 Attorney General, or other appropriate local, state, or federal agency.
- 14 (c) Refer the complaint to another committee of the board.
- 15 (d) Request an Authorization for Release of Medical Records Form from a party.
- 16 (e) Resolve the complaint through informal proceedings pursuant to KRS 335.150(4).
- 17 1. At any time during the complaint process, the board may authorize the board attorney
- 18 or executive director of the board to enter into discussions or negotiations with a respondent
- 19 and his or her attorney, if any, for the purpose of settling and informally dispensing with the
- 20 complaint.
- 21 2. An agreed order or assurance of voluntary compliance shall be approved a majority
- 22 vote of the board and signed by the chairperson of the board, the respondent, and the

1 respondent's attorney, if any. Copies shall be placed in the licensee's file and provided to the
2 complainant.

3 3. The board may employ mediation as a method of resolving the matter informally.

4 4. A mediated agreement shall be handled in the same manner as an agreed order in
5 subsection 1 of this section.

6 (f) Issue a formal complaint and provide notice of hearing to the respondent in accordance
7 with KRS Chapter 13B and KRS 335.155.

8 (g) Refer the matter to another government agency.

9 (h) Initiate a proceeding in its own name in Franklin Circuit Court to restrain and enjoin a
10 violation in accordance with KRS 335.160.

11 (2) A complaint committee member having a conflict of interest shall disclose the existence
12 of the conflict to the complaint committee and may be excused by the board.

13 Section 4. Board Action upon Recommendation of Complaint Committee. (1) The board shall
14 review the committee's recommendations and shall approve or reject by majority vote the
15 recommendations in whole or in part.

16 (2) A board member having a known conflict of interest shall disclose the existence of the
17 conflict in writing to the board and may be excused, if warranted.

18 Section 5. Motion to Reconsider. (1) A respondent may file a motion to reconsider, modify,
19 or reverse the final disposition of a disciplinary hearing to the board.

20 (2) The motion to reconsider shall provide evidence of the following:

21 (a) Grounds and reasons for reconsideration, modification, or reversal;

22 (b) Rehabilitation or restitution, if applicable; and

1 (c) Status of probation, parole, or supervision by any state or federal government agency or
2 board.

3 (3) The complaint committee shall consider any such motion to reconsider at the next regularly
4 scheduled committee meeting and any change in disposition shall be approved by a majority vote of the
5 board.

6 (4) The board shall notify a respondent and complainant of the disposition of the
7 reconsideration in writing, by personal service, by the regular mail, or electronic mail address
8 provided to the board.

9 (5) The board shall consider no more than one (1) motion to reconsider from a respondent in
10 a final matter.

11 Section 6. Unlicensed Practice. (1) If the complaint committee concludes that a complaint is
12 substantiated to show that a person is practicing social work without a license, the committee
13 shall prepare a letter signed by the board chair or an authorized representative to notify the
14 person of the committee's belief that the person is practicing without a license and request
15 that the person voluntarily cease the practice without a license.

16 (2) Penalty. Any person who shall be found by the board, after hearing or by agreed order,
17 to have unlawfully engaged in the practice of social work shall be subject to a fine to be
18 imposed by the board not to exceed \$250 per day of unlicensed practice, and not to exceed the
19 total sum of \$2,500.

20 (3) The board may forward the complaint to the appropriate county attorney or
21 Commonwealth's attorney with a request that appropriate action be taken in accordance with
22 KRS 335.990.

1 (4) The board may initiate an action for injunctive relief in Franklin Circuit Court to restrain
2 and enjoin violations in accordance with KRS 335.160.

3 Section 7. Incapacity of Respondent. (1) If the board receives a complaint alleging that a
4 licensee or an applicant has been legally declared mentally incompetent or may be mentally
5 incapable of providing social work services in a competent, safe, ethical, or professional
6 manner, the board shall follow the procedures established in this administrative regulation;

7 (b) The board may order the licensee or applicant to submit to an examination by a
8 psychologist, physician, or certified alcohol and drug counselor designated by the board to
9 determine whether the licensee or applicant is capable of providing social work services in a
10 competent, safe, ethical, or professional manner in accordance with KRS 335.010 to 335.16 and
11 the administrative regulations as established by 201 KAR Chapter 23.

12 (c) The board shall pay the cost for an examination initiated and recommended by the board.
13 The respondent shall the cost of the examination if he or she seeks an independent
14 examination.


15 Section 8. Emergency Action. (1) Nothing in this administrative regulation shall be construed
16 to prevent the board from taking emergency action if authorized by KRS 13B.125.

17 Section 9. Incorporation by Reference. (1) The following material is incorporated by
18 reference:

19 (a) "KY Board of Social Work Complaint Form," 12/2020; and

20 (b) "Authorization for Release of Medical Records," 12/2020.

1 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,
2 at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601,
3 Monday through Friday, 8:00 a.m. to 4:30 p.m., subject to COVID-10 restrictions.

 Ph.D., CSW

Date: December 15, 2020

KY Board of Social Work
Jay Miller, Board Chairperson

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held virtually by Zoom on Feb. 22, 2021, at 9:00 a.m. ET, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601. A link to the virtual Zoom meeting shall be posted to the board's website at bsw.ky.gov and on the Facebook Page. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received within five days of the hearing date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of day (11:59 p.m.), on Feb. 28, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Florence Huffman, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, KY 40601. Main Line (502) 564-2350, Direct Line (502) 782-2856, and by email: florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

201 KAR 23:150: Complaint procedure, disciplinary action and reconsideration.

Contact Person: Florence Huffman, Board Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, KY 40601. Phone (502) 564-2350 or by email to florence.huffman@ky.gov.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for receiving and processing complaints against individuals regarding the practice of social work. The regulation sets the complaint procedures, hearing and appeal procedures, and reconsideration procedure for board disciplinary actions.

(b) The necessity of this administrative regulation: The regulation is necessary to establish uniform procedures for receiving and processing complaints. The regulation is necessary to establish a hearing and appeal and reconsideration procedure for board disciplinary actions.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 335 requires the board to enforce the provisions of the chapter. KRS 335.070 and 335.150 require the board to investigate allegations brought to its attention and prosecute violations of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will inform licensees and the public of the complaint procedures and hearing process for complaints.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. The regulation will create a uniform procedure for hearing and processing complaints and reconsidering the disposition of complaints. The regulation will allow the board to recover costs associated with disciplinary actions.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to create uniform procedures for complaints and reconsiderations. The regulation is necessary to help the board recover the costs of processing complaints.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070 and 335.150 require the board to enforce the provisions of KRS Chapter 335. KRS 335.070(1) allows the board to take disciplinary action against licensees that violation the terms of the statute and impose disciplinary fines and conditions.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will create uniform procedures for complaints and reconsiderations. This regulation will protect individuals that file complaints by creating a process to protect confidential information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 650 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

(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: This administrative regulation requires licensees to comply with the complaint procedures. This administrative regulation will allow the board to recover costs and fees in disciplinary actions and protect confidential information submitted by individual complainants as needed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and the public will benefit from uniform complaint procedures and a method to request that the board reconsider disciplinary actions. Individuals that file complaints will have confidential information protected by the board. The board can recover licensee fees used in the complaint process.

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

(a) Initially: The annual budget of this board for FY21 is \$425,300. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The estimated budget for the board is in excess of \$426,000. It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded solely by fees paid by the licensees and applicants.

(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: This administrative regulation does not require an increase in fees to implement the regulation.

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

(9) TIERING: Is tiering applied? No. Tiering is not necessary because the procedures for filing and reviewing complaints in this regulation will be applied to all individuals equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

201 KAR 23:150: Complaint procedure, disciplinary action and reconsideration.

Contact Person: Florence Huffman, Board Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, KY 40601. Phone (502) 564-2350, or by email to florence.huffman@ky.gov.

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Social Work is an administrative body created by KRS 335.030. The board does not anticipate that this regulation will impact state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.050, KRS 335.070(1); KRS 335.150; KRS 335.160.

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. None.

(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? None.

(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? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

Summary of Incorporated Material

201 KAR 23:150 incorporates by reference the "Kentucky Board of Social Work Complaint Form" 12/2020 that the board adopted in accordance with KRS Chapter 335. This form allows any individual to file a complaint with the board. The form consists of two (2) pages.

201 KAR 23:150 incorporates by reference the "Authorization for Medical and Hospital Records" 12/2020 that the board adopted in accordance with KRS Chapter 335. This form allows the board to request and receive protected medical information associated with professional complaints. The form consists of two (2) pages.

NEW FORMS
FOR
NEW COMPLAINT PROCEDURE
201 KAR 23:150

1. Complaint Form (12/2020)
2. Authorization for Release of Medical and Hospital Records (12/2020)

Complaint No: _____ Date Received: _____

KY BOARD OF SOCIAL WORK
125 Holmes Street, Ste. 310
Frankfort, KY 40601
502-564-2350
Bsw.ky.gov

12/2020 Complaint Form

Person Filing Complaint

Name: _____

Address: _____ City: _____ State: _____ Zip Code: _____

Day Telephone: () - _____ Evening Phone: () - _____
Best time to call: _____

Email address: _____

Client Information (if applicable)

Name: _____

Date of birth: _____

Address: _____ City: _____ State: _____ Zip Code: _____

Day Telephone: () - _____ Evening Phone: () - _____

Relationship to person filing complaint: _____

Information about the Social Worker

Name: _____ License Number: _____

Name of Agency or Employer _____ City: _____ State: _____ Zip Code: _____

Address: _____

Day Telephone: () - _____

Name and phone number of persons who may provide additional information

1. Name: _____ Telephone: () - _____ Email Relationship _____

2. Name: _____ Telephone: () - _____ Email Relationship _____

3. Name: _____ Telephone: () - _____ Email Relationship _____

4. Name: _____ Telephone: () - Email Relationship _____

Add additional sheets as needed.

Does the complaint involve a court case of any nature?

If yes, were you represented by an attorney?

Brief Summary of Complaint

Please be specific as possible regarding names, dates, locations, and action which you believe to be improper, unethical or unprofessional. Please attach copies of any documents or records pertinent to your complaint.

By signing this complaint form, I hereby attest that the information is complete and true to the best of my knowledge.

Signature: _____ Date: _____

If your complaint concerns your treatment by the social worker, please sign and enclose the "Client Agreement to Release Information" form.

KY BOARD OF SOCIAL WORK
125 Holmes Street, Suite 310, Frankfort KY 40601

Phone: (502) 564-2350

KY Board of Social Work
125 Holmes Street, Ste. 310
Frankfort, KY 40601
(502) 564-2350
Bsw.ky.gov

12/2020 Authorization for Release of Medical and Hospital Records

Name of client/patient: _____

DOB: _____ Last 4 of SSN _____

Is the client/patient a minor? _____ Yes _____ No

If yes, what is the name of the parent or legal guardian? Tel. and email address
If the client is an adult but has a legal guardian, what is the name of the legal guardian,
telephone number, and email address?

I, _____, the undersigned, authorize the full release of any and all medical records, mental health, psychological, and psychiatric information, progress notes, prescription and medication records, therapists' notes and records, insurance records, consent for treatment, statements of account and billing information, and investigation or complaint records to the Commonwealth of Kentucky, Board of Social Work, its agents and employees including board counsel and contract investigators from the following:

Provider Name(s) and address: _____

Tel.: _____ Email address: _____

Business Name and address: _____

Tel.: _____ Name of Contact at this office: _____

I understand that the records shall be used by the KY Board of Social Work in the investigation of a complaint alleging misconduct and shall be used in disciplinary proceedings under KRS Chapter 335.150.

I further understand that the board will make reasonable efforts to protect the confidentiality of my records under the administrative regulations promulgated by the board, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), KRS Chapter 61, KRS Chapter 13B, or any other applicable law.

A photocopy of this authorization is as valid as an original. This authorization shall be effective for two (2) years from the date of signing.

Signature of Patient, Guardian or Legal Representative

Date

Relationship to client if signed by Guardian or Legal Representative: _____
