STATEMENT OF EMERGENCY
501 KAR 2:080E

(1) This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)1. to meet an imminent threat to public health, safety, or welfare and (1)(a)2. to avoid an imminent loss of state funds. KRS 441.045(5)(a) requires the Department of Corrections ("DOC") to reimburse counties for the cost of "necessary medical, dental, or psychological care, beyond routine care and diagnostic services" for state inmates housed in county jails. In *Campbell Cty., Kentucky, et al. v. Kentucky Dep't of Corrections, et al.*, 23-CI-00068, the Franklin Circuit Court ruled that the Department's definition of "routine care" under KRS 441.045 is inadequate. KRS 441.045(10) defines "necessary care," but does not define "routine care." This emergency administrative regulation adopts the statutory definition of "necessary care" and establishes additional definitions, including definitions of "routine care" and "care beyond routine", criteria to distinguish routine care from care beyond routine, and processes for counties to seek reimbursement for care beyond routine and diagnostic services. This administrative regulation is being filed on an emergency basis to ensure the efficient provision of quality medical care to inmates and to avoid an imminent loss of state funds that would result from litigation costs that would occur if the changes created by the emergency administrative regulation do not immediately become effective.

(2) An ordinary administrative regulation is not sufficient because an ordinary regulation could not become effective before the need for routine care or care beyond routine of inmates arises and the state is exposed to litigation cost resulting from the Court's finding that Department's current definition is inadequate.

(3) This emergency administrative regulation will be replaced by an ordinary administrative regulation because the adopted definitions and criteria are new.

(4) The companion ordinary administrative regulation is identical to this emergency regulation.

(5) An emergency administrative regulation governing a portion of the same subject matter has not been filed within the previous nine months.

Andy Beshear, Governor
Commonwealth of Kentucky

Keith Jackson, Secretary
Justice and Public Safety Cabinet

Scott Jordan, Deputy Commissioner, on behalf of:
Cookie Crews, Commissioner
Department of Corrections

3. Surgical procedures, including outpatient surgery, that require general anesthesia, twilight sedation, or conscious sedation, or specialized surgical facilities or providers;

4. Specialty care requiring advanced or invasive treatment by specialists, including cardiology, oncology, neurology, or specialists in similar fields;

5. Dental treatment requiring specialized or extensive restorative, surgical, or other treatment that cannot reasonably be provided through routine dental services available within the correctional facility or through standard outpatient dental care;

6. Obstetrical or gynecological care requiring treatment or monitoring by a specialist for a diagnosed maternal or fetal condition that requires specialized testing, procedures, or a level of clinical monitoring beyond routine prenatal, postpartum, or gynecological care;

7. Advanced diagnostic services, including CT scans, MRIs, or other non-routine imaging or procedures;

8. High-cost or specialty pharmaceuticals, including biologics, chemotherapy agents, or medications requiring specialized administration or monitoring;

9. Long-term or intensive treatment, including dialysis, inpatient psychiatric care, or other services requiring sustained specialized intervention; and

10. Services that, based on professional clinical judgment, are not reasonably categorized as routine care under subsection (2) of this section.

(b) For purposes of this administrative regulation, services shall not be classified as care beyond routine solely because they were provided in an emergency department or hospital setting if, based on the clinical condition and treatment rendered, the care could have been safely and effectively provided within the jail or through standard outpatient services.

6. Follow-up care medically necessary based on the services described in this paragraph.

(c) Care shall not be classified as care beyond routine solely because:

1. The county or regional jail does not provide the service on site, its contracted healthcare provider does not offer the service, or the service is obtained from an outside provider; or

2. The county or regional jail's failure to timely provide routine care during the inmate's confinement resulted in the need for more extensive treatment that could reasonably have been prevented through timely provision of routine care.

Section 2. Reimbursement Criteria. For any state inmate held in the jail for which the county receives a per diem payment pursuant to KRS 532.100(7):

(1) Counties shall be responsible for the cost of routine care and diagnostic services.

(2) The Department shall reimburse counties for costs associated with necessary care beyond routine care and diagnostic services, consistent with KRS 441.045(5)(a).

(3) A county or regional jail seeking reimbursement under this administrative regulation shall submit a claim for reimbursement to the Department as follows:

(a) For reimbursement of costs associated with necessary care beyond routine and diagnostic services, a county or regional jail shall submit a Request for Authorization form as follows:

1. A county or regional jail shall submit a Request for Authorization form via email to the Department or its designated medical claims administrator at least seventy-two (72) hours before the medical service is scheduled, if feasible.

(b) Was submitted with an incomplete Request for Authorization form or a Request for Authorization form that lacks the required information; or

(c) Does not meet the criteria established in this administrative regulation.

(5) The Department may, at its discretion, take custody of a prisoner and hold that person in a state prison facility for the purpose of treating the medical conditions as set out in KRS 441.560.

Section 3. Review and Dispute Resolution.

(1) The Department shall review each submitted claim and issue a written determination approving, denying, or modifying the requested reimbursement.

(2) A county or regional jail may request reconsideration of a determination by submitting a written request to the Department within thirty (30) calendar days of the date the determination was issued.

(a) The request shall:

1. Identify the specific claim or portion of the claim in dispute;

2. State the basis for reconsideration, including any argument that the care qualifies as care beyond routine that is medically necessary; and

3. Include any additional supporting documentation not previously submitted.

(3) The Department shall review the request for reconsideration and any additional documentation submitted.

(a) The Department may request additional information from the county or regional jail as necessary to complete its review.

(b) The Department shall issue a written reconsideration decision within forty-five (45) calendar days of receipt of a complete request.

501 KAR 2:080E. Reimbursement for Medical Care Provided to State Inmates Housed in County and Regional Jails.

Approved: 8/16/25

Scott Jordan, Deputy Commissioner, on behalf of:
Cookie Crews, Commissioner
Department of Corrections

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

501 KAR 2:080E
Contact Person: Nathan Goens, Deputy General Counsel Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, KY 40601
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Email: Justice.RegsContact@ky.gov

Subject Headings: Corrections and Correctional Facilities, Prisons, Crimes and Punishments

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 441.045(5)(a) requires the Department of Corrections to reimburse counties for the cost of "necessary medical, dental, or psychological care, beyond routine care and diagnostic services" for state inmates housed in county jails. KRS 197.020(1)(b)2. requires the Department to promulgate administrative regulations for the preservation of the health of prisoners. KRS 441.045(10) defines "necessary care." This administrative regulation adopts the statutory definition, establishes additional definitions and criteria to distinguish routine care from care beyond routine, and creates a process for which counties can seek reimbursement for beyond routine care and diagnostic services, ensuring consistent application and alignment with legislative intent.

(b) The necessity of this administrative regulation: This administrative regulation is needed to provide clarity to counties regarding when they can seek reimbursement for beyond routine care and diagnostic services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 441.045(5)(a) requires the Department of Corrections to reimburse counties for the cost of "necessary medical, dental, or psychological care, beyond routine care and diagnostic services" for state inmates housed in county jails. KRS 197.020(1)(b)2. requires the Department to promulgate administrative regulations for the preservation of the health of prisoners. KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide clarity to counties regarding when they can seek reimbursement for beyond routine care and diagnostic services.

(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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

The regulation does not require counties to provide new categories of medical care; rather, it clarifies which medical costs remain the county's responsibility as routine care and diagnostic services and which costs may be submitted to the Department for reimbursement as care beyond routine care and diagnostic services.

State inmates housed in county and regional jails will not incur any cost to comply with this administrative regulation because the regulation does not require action by inmates and does not establish or increase any fee charged to inmates. The regulation addresses reimbursement between counties and the Department of Corrections for certain medical costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4): The regulation will allow for the efficient provision of quality medical care to inmates and for greater clarity for the Department of Corrections and county and regional jails as to what types of medical care for which the Department is responsible to counties for reimbursement.

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

(a) Initially: $12,000,000

(b) On a continuing basis: $12,500,000 - $13,000,000

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds

(8) 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: An increase in funding will be necessary.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish, directly or indirectly, any fees.

(10) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:
   For the first year: 0
   For subsequent years: 0
2. Revenues:
   For the first year: 0
   For subsequent years:0
3. Cost Savings:
   For the first year: 0
   For subsequent years:0

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: The Department of Corrections estimates that implementation of this administrative regulation will result in approximately $12,500,000 - $13,000,000 in additional reimbursement payments to county and regional jails for necessary medical, dental, or psychological care beyond routine care and diagnostic services provided to state inmates housed in county and regional jails.

County and regional jails may receive additional reimbursement from the Department for qualifying care beyond routine care and diagnostic services.

State inmates housed in county and regional jails will not experience a fiscal impact from this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: The fiscal cost estimate is based on claims processed at the Medicaid rate in FY23 through FY25 on behalf of jails by the Department's medical contractor. Please note that the estimates are dependent on the number of states inmates housed in county and regional jails each year.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14): Yes

(b) The methodology and resources used to reach this conclusion: The Department of Corrections estimates that implementation of this administrative regulation will result in approximately $12,000,000 to $13,000,000 in additional reimbursement payments to county and regional jails for necessary medical, dental, or psychological care beyond routine care and diagnostic services provided to state inmates housed in county and regional jails in the first year, with increasing payments in subsequent years. Cost estimate exceeds $500,000 per year, so the regulation will have a "major economic impact."

Request for Authorization for KYDOC-State Inmates

KY DOC Inmate Number:		Date of Service:
Jail or Detention Center:		
Address:		Phone:
Requestor Email:		Fax:
Patient Name: (First)	(Middle)	(Last)
DOB:	SSN #:	Gender: ☐ Male | ☐ Female
Requesting Provider:	Provider Signature:	

Service:

Surgery provider (Hospital & Physician name):

Diagnosis:

Previous treatment and response (Include medications):

History of Illness/Injury with date of onset:

Results of complaint directed physical exam with findings:

Procedure or surgery requested:

Current functional ability/ADLs:

Other:

Please allow at least 72 hours prior to appointment for authorization to be completed.
DO NOT SEND COPIES OF PATIENT'S MEDICAL RECORDS!

S.W.3d 471, 475 (Ky. Ct. App. 2011). The movant will only succeed by showing "with such clarity that there is no room left for controversy." *Steelvest, Inc. v. Scansteel Service Ctr.*, 807 S.W. 2d 476, 482 (Ky. 1991). "The inquiry should be whether, from the evidence on record, facts exist which would make it possible for the non-moving party to prevail. In the analysis, the focus should be on what is of record rather than what might be presented at trial." *Welch v. Am. Publ'g Co. of Kentucky*, 3 S.W.3d 724, 730 (Ky. 1999). In reviewing Motions for Summary Judgment, the Court views all facts in the light most favorable to the non-moving party and resolves all doubts in its favor. The Court will only grant summary judgment when the facts indicate that the nonmoving party cannot produce evidence at trial that would render a favorable judgment. *Steelvest*, 807 S.W. 2d at 480.

The Court recognizes that the summary judgment is a device that should be used with caution and is not a substitute for trial. "[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor." *Jones v. Abner*, 335 S.W.3d at 480. Thus, this Court finds that summary judgment will be proper when it is shown with clarity from the evidence on record that the adverse party cannot prevail, as a matter of law, under any circumstances.

ANALYSIS

I. KRS 532.100(8) and HB 1 – Timely Transfer State Inmates

Under Count I of the Complaint, Plaintiffs allege that Defendants have failed to follow the statutory guidelines as laid out in KRS 532.100(8) and HB 1. KRS 532.100(8) states: "State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in jails, shall be transferred to the state institution within forty-five (45) days of final

"Routine care" has not been defined by the legislature. The DOC has interpreted this phrasing in a way to mean medical, psychological, or dental care that does not require hospitalization or general anesthesia. The DOC's definition of "routine care", as presented to the Court, is arbitrary and contrary to legislative intent. When a statute is plain and unambiguous, its language is to be given effect as written. *Lynch v. Commonwealth*, 902 S.W.2d 813, 814 (Ky.1995). Further, KRS 446.080(4) requires that words used in a statute should be construed "according to the common and approved usage...." *Stephenson v. Woodward*, 182 S.W.3d 162, 172 (Ky.2005).

The Court believes that there are a variety of procedures that fall under the umbrella of "necessary care" that do not meet the qualifications that the DOC has given regarding "routine care", such as infected tooth extractions and cardiac catheterizations. Both of these procedures meet the definition of "necessary care" but do not fall under the DOC's current interpretation of "routine care" in that the procedures do not require general anesthesia and are typically

III. *The Chevron* Doctrine Does Not Protect the DOC's Definition of "Routine Services"

When the legislature has explicitly left a gap in a statute for an agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation, and any ensuing regulation is binding in the courts unless procedurally defective, arbitrary or capricious in substance, or manifestly contrary to the statute. *Chevron U.S.A. Inc., v. NRDC, Inc.*, 467 U.S. 837 (19 84). The Kentucky General Assembly did not explicitly delegate to the DOC the authority to interpret "routine services" and because the DOC's interpretation bears none of the touchstones of fairness

The DOC must remove all Class A, B, and some C designated state inmates from county facilities by the forty-sixth (46th) day, pursuant to KRS 532.100(8). If the county does not object to the additional housing period pursuant to HB 1, the DOC must remove all Class A, B, and some C designated state inmate county facilities by the ninety-first (91st) day on which the inmate received his or her final sentence from the court.

SO ORDERED, this 24th day of May, 2024.

/s/ HON. THOMAS DAWSON WINGATE
electronically signed
5/28/2024 11:08:11 AM ET

THOMAS D. WINGATE
Judge, Franklin Circuit Court