



Andy Beshear
GOVERNOR

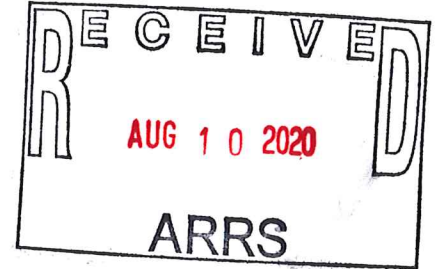
OFFICE OF THE GOVERNOR
Office of the General Counsel

The State Capitol
700 Capitol Avenue, Suite 108
Frankfort, Kentucky 40601
Phone: (502) 564-2611
Fax: (502) 564-6858

La Tasha Buckner
GENERAL COUNSEL

S. Travis Mayo
CHIEF DEPUTY GENERAL COUNSEL

August 10, 2020



Emily Caudill
Administrative Regulations Compiler
Administrative Research Commission
Legislative Research Commission
Capitol Annex Room 029
Frankfort, KY 40601

Re: 10 KAR 1:011

Dear Ms. Caudill:

After discussions with the Administrative Regulation Review Subcommittee staff of the issues raised by 10 KAR 1:011, the Office of the Governor proposes the attached staff-suggested amendment to 10 KAR 1:011.

Please contact me at travis.mayo@ky.gov if you have any questions or comments.

Sincerely,

/s/ S. Travis Mayo

S. Travis Mayo
Chief Deputy General Counsel
Office of the Governor

Subcommittee Substitute

GOVERNOR'S OFFICE
(New Administrative Regulation)

10 KAR 1:011. Defense of employees.

RELATES TO: KRS 12.211, 12.212~~[,]~~, 12.213, 12.215, 44.055

STATUTORY AUTHORITY: KRS 12.213

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.213 requires the Governor, with the advice of the Attorney General, to **promulgate [adopt]** administrative regulations governing the methods of defense of employees or former employees of the Commonwealth. **This administrative regulation establishes the methods for defense of employees or former employees of the Commonwealth.**

Section 1. Definitions. **[When used in this administrative regulation:]**

(1) "Claim" means a claim whether or not a suit has been filed.

(2) "Civil action" means a civil suit filed in a state or federal court.

(3) "Defendant" means an employee or former employee of the Commonwealth who has been sued in a civil action in his or her official or individual capacity~~[, or both,]~~ on account of an act or omission made in the scope and course of his or her employment as an employee of the Commonwealth and any of its agencies, **but does not include an employee or former employee of the Commonwealth being sued for negligence in the operation of a state vehicle.**

(4) "State agency" means any department, administrative body, division, or program cabinet acting for the Commonwealth, but does not include local units of government such **as [a]** school districts, counties, sewer districts, or other municipalities.

(5) "Acts and omissions liability insurance" means insurance to cover the cost of defending civil actions covered under this **administrative regulation [Act]** and paying judgments or settlements resulting therefrom.

Section 2. Notice of Claim; Investigation. An employee or former employee against whom a claim is made which may result in a civil action against him or her on account of an act or omission made in the course of his or her employment by a state agency **shall [should]** immediately report **the [said]** claim and the circumstances surrounding the claim to the Attorney General. The Attorney General~~[, if he or she thinks it warranted,]~~ may cause an investigation of the claim to be made by a regular or special investigator **employed by [of]** his or her office.

Section 3. Application for Defense; Response. (1) **An employee or former employee of the Commonwealth [Any person]** desiring the Attorney General to provide for his or her defense under this **administrative regulation [Act]** shall make a written request to the Attorney General and shall submit with the request a copy of the summons, complaint, and all other papers, documents, and exhibits pertaining to the action.

(2) **If the application for defense is received by the Attorney General at least ten (10) days before a pleading is due,** the Attorney General shall make a timely response to the court by filing an answer or motion for the defendant **[provided the application for defense is received by the Attorney General at least ten (10) days before a pleading is due]**. The filing of a pleading in the case shall not

commit the Attorney General to continue the defense if the Attorney General has not reached a final decision and notified the defendant that his or her defense will be provided.

(3) Upon receiving an application for defense, the Attorney General, after **any [such]** investigation and research **[as]** he or she deems necessary, taking into consideration **the [those]** factors set out in KRS 12.212, shall decide and notify the defendant whether defense will be provided~~[,]~~ and, if so, by **which [what]** method set out in Section 4 of this administrative regulation. ***Unless written acceptance of the defense has been made by the Attorney General, he or she [The Attorney General]*** shall not be responsible for the defense of a defendant ~~***[unless written acceptance of the defense has been made by the Attorney General]***~~.

(4) In every case where the Attorney General has made a general delegation of his or her discretionary power to decide **whether [when]** to provide defense ~~***[to other authority in state government], the delegated [such]***~~ authority shall make the decision **whether to provide defense. If the delegated authority provides legal counsel for the defense, the application for defense provided by this section shall not be filed with the Attorney General [and the application for defense provided by this section need not be made to the Attorney General, provided that in such cases the authority making the decision shall provide legal counsel for the defense]**. All settlements ~~***[made in such cases]***~~ shall~~[,] however,~~ be approved by the Attorney General as provided by Section 6 of this administrative regulation.

Section 4. Methods of Defense. (1) ***If [Except where] a [the]*** defendant is covered by insurance as provided in Section 5 of this administrative regulation, defense to a civil action may be provided in any of the following manners:

(a) The Attorney General may assign an assistant attorney general or a special assistant attorney general employed for that purpose to handle the case to conclusion by **[either]** settlement or final adjudication.

(b) The Governor, or any department with the approval of the Governor, may assign a regularly employed attorney **pursuant to [under]** KRS 12.210 or an attorney employed under a personal service contract to handle the case **to conclusion by settlement or final adjudication [as in paragraph (a) of this subsection]**.

(c) Any state agency may assign its employed counsel to handle the case.

(2) ***Except as provided in Section 6 of this administrative regulation, and*** regardless of the method of defense provided, **a [no]** settlement of litigation being defended under this administrative regulation shall **not** be made without the approval of the Attorney General~~[,] except as provided in Section 6 of this administrative regulation]~~.

(3) A defendant who has requested defense under this administrative regulation may elect to provide his or her defense by counsel employed by the defendant and **[in such case]** shall notify the counsel employed by the state of his or her election in writing.

Section 5. Insurance. (1) Any state agency, or class of state agencies, may be authorized by the Governor to purchase acts and omissions liability insurance for the protection of its employees and the benefit of the public.

(2) Any state agency **that [which]** believes it is economically feasible to purchase acts or omissions liability insurance may request the Governor for authority to do so. The agency's request shall be documented with data as to the history of claims, probable cost of the insurance, and any reasons it believes insurance is advisable **[for said agency]**.

(3) Any policy of acts and omissions liability insurance purchased by a state agency shall provide a maximum coverage of \$50,000 for each claim. Nothing in this administrative regulation shall be deemed to waive the sovereign immunity of the Commonwealth with respect to a claim covered by this administrative regulation or to authorize the payment of a judgment or settlement against a state employee in excess of the limit provided in any acts or omissions liability insurance purchased by a state agency.

~~[(4) KRS 44.055 authorizes state agencies to purchase policies of insurance covering vehicles owned by the state. For this reason "defendant," as defined in Section 1(3) of this administrative regulation, does not include a person being sued for negligence in the operation of a state vehicle.]~~

Section 6. Settlements. (1) Any counsel assigned by a state agency or the Attorney General may recommend to the Attorney General the settlement of a civil action against a defendant under this administrative regulation. If the Attorney General approves the **recommended** settlement, **[recommended]** he or she shall notify the Secretary of the Finance and Administration Cabinet by written memorandum and if the Secretary concurs in **the [this]** recommendation the Secretary shall issue a voucher to the State Treasurer for payment of the settlement. **A [No]** settlement shall **not** be made or paid without **[the]** prior approval of the Attorney General.

(2) Guidelines for settlements. **A [No]** settlement **shall not [should]** be recommended unless the assigned counsel believes:

(a) The claim is legally valid; **[]**

(b) There is a strong probability of a judgment being rendered against the defendant; **and []**

(c) The settlement is a reasonable compromise in light of the nature of the claim.

(3) Defense counsel shall document, **in writing,** the reasons for recommending a settlement **[in writing]** to the Attorney General and the documentation shall be a public record open to public inspection.

(4) This section shall not apply to any settlement reached by a defendant or his or her insurer which results in no cost to the Commonwealth.

Section 7. Cost of Administration. The Attorney General shall be reimbursed for the cost to his or her office for the administration of KRS 12.211 to 12.215 upon vouchers submitted by the Attorney General and approved by the Secretary of the Finance and Administration Cabinet.

CONTACT PERSON: S. Travis Mayo, Office of the Governor, 700 Capitol Avenue, Suite 106, Frankfort, Kentucky 40601; Phone: 502-564-2611; Fax: 502-564-6858; travis.mayo@ky.gov.



**Kentucky Council on
Postsecondary Education**

Andy Beshear
Governor

100 Airport Road, 2nd Floor
Frankfort, Kentucky 40601
Phone: 502-573-1555
<http://www.cpe.ky.gov>

Aaron Thompson, Ph.D.
President



August 6, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 13 KAR 1:050. Licensed out-of-state college's eligibility for Kentucky tuition grant

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 13 KAR 1:050, the Council on Postsecondary Education proposes the attached amendment to 13 KAR 1:050.

Sincerely,

A handwritten signature in black ink that reads "Travis Powell".

Travis Powell
Vice President and General Counsel

Subcommittee Substitute

Council on Postsecondary Education (Amendment)

13 KAR 1:050. Licensed out-of-state college's eligibility for Kentucky tuition grant.

RELATES TO: KRS 164.020(37), 164.785, 164.945, 164.946, 164.947, 164.992

STATUTORY AUTHORITY: KRS 164.785(7)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.785(7)(c) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement the requirement that, beginning with the 2011-2012 academic year, programs or campuses of any out-of-state postsecondary education college that is licensed by the Council on Postsecondary Education to operate in Kentucky and whose institutional programs are not composed solely of sectarian instruction, but in which accreditation by the Southern Association of Colleges and Schools is not an option, be reviewed and approved by the Council on Postsecondary Education based on accreditation criteria that mirrors Southern Association of Colleges and Schools accreditation criteria in order to qualify as an eligible institution in which a student may enroll and receive a Kentucky tuition grant.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) ~~["Diploma" is defined by KRS 164.946(3)].~~

~~(7)~~ "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

~~(7)~~~~(8)~~ "President" means the president of the Council on Postsecondary Education.

~~(8)~~~~(9)~~ "Regional accrediting association" is defined by KRS 164.740(18).

Section 2. General Requirements. (1) If an out-of-state college licensed by the Council on Postsecondary Education is seeking to qualify as an eligible institution in which a student may enroll and receive a Kentucky tuition grant, and if accreditation by the Southern Association of Colleges and Schools is not an option for the college, the college shall apply with the Council on Postsecondary Education.

(2)(a) Approval by the Council on Postsecondary Education shall be for the sole purpose of qualifying a Kentucky campus or campuses of a college as an eligible institution in which a Kentucky student may enroll and receive a Kentucky tuition grant, and shall not mean that the college is accredited by the Commission on Colleges of the Southern Association of Colleges and

Schools, the Council on Postsecondary Education, or any other agency.

(b) A college shall not represent its status as seeking or being accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Council on Postsecondary Education, or any other agency.

(3)(a) A college seeking eligibility shall submit the "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" for each licensed Kentucky program or instructional site to the president.

(b) A college seeking eligibility shall submit a complete and accurate "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" by [:

~~1. May 30, 2010 for those colleges seeking eligibility beginning with the 2011-2012 academic year; or~~

~~2.] May 30 of the year prior to the first academic year for which it seeks to be eligible.~~

(4) The college shall pay a nonrefundable fee of \$10,000 [~~\$1,000~~] to the Council on Postsecondary Education with the submission of the application. Review of the application shall not occur until the fee is paid by the college. [~~This fee shall be in addition to any costs associated with a site visit.~~]

(5) The president shall review the application and documentation submitted by the applicant college. [

~~(6) Site visits.~~

~~(a) Within ninety (90) working days of the receipt of a full and complete "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" or notification of a substantive change, the president may conduct, or may have conducted, a site visit.~~

~~(b) Personnel conducting a site visit shall possess the expertise appropriate to the type of college to be visited. In selecting personnel, the president shall consider the person's professional experience in higher education, experience conducting site visits at postsecondary education institutions, familiarity with current accreditation requirements of accrediting agencies including the Southern Association of Colleges and Schools, and graduate or professional degree from an accredited institution. The president shall use council staff or contract with external consultants using the state's Request for Proposal (RFP) process.~~

~~(c) The purpose of a site visit shall be to make an assessment of a licensed Kentucky campus or campuses of a college using the standards as established in this administrative regulation.~~

~~(d) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's eligibility under this administrative regulation.~~

~~(e) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for ineligibility.~~

~~(f)1. All costs associated with a site visit and necessary subsequent visits, including travel, meals, lodging, and consultant honoraria shall be paid by the applicant college.~~

~~2. The estimated cost of the site visit shall be paid by the college prior to the site visit, and final settlement regarding actual expenses incurred shall be paid no later than thirty (30) days following the completion of the site visit.~~

~~3. Failure to pay these costs shall result in ineligibility.]~~

Section 3. Integrity of College. (1) The college shall operate with integrity in all matters.

(2) The college shall be responsible for any of its agents and any individual who reports to the president on behalf of a college, either by virtue of his or her office or as delegated by the chief executive officer of the college, in all matters regarding institutional integrity.

(3) Failure to respond appropriately to the president's decisions and requests or to make complete, accurate, and honest disclosure shall be grounds for the president to impose a sanction, including ineligibility under this administrative regulation.

Section 4. Core Requirements. A college applying for approval by the Council on Postsecondary Education shall meet the standards established in this section.

(1) The college shall have a clearly defined, comprehensive, and published mission specific to the college and appropriate for higher education. The mission shall address teaching and learning, and where, applicable, research and public service.

(2) The college shall:

(a) Have degree-granting authority from its home state authorization agency;

(b) Be licensed by the Council on Postsecondary Education in accordance with 13 KAR 1:020 prior to seeking eligibility under this administrative regulation; and

(c) Be accredited by a regional accrediting association.

(3) The college shall have a governing board of at least five (5) members that:

(a) Is the legal body with specific authority over the college;

(b) Exercises fiduciary oversight of the college;

(c) Ensures that both the presiding officer of the board and a majority of other voting members of the board are free of any contractual, employment, personal, or familial financial interest in the college;

(d) Is not controlled by a minority of board members or by organizations or colleges separate from it; and

(e) Defines and regularly evaluates its responsibilities and expectations.

(4) The college shall have a chief executive officer selected and evaluated by the college's board whose primary responsibility is to the college and has ultimate responsibility for, and exercises appropriate control over, the college's educational, administrative, and fiscal programs and services.

(5) The college shall employ and regularly evaluate administrative and academic officers with appropriate experience and qualifications to lead the college.

(6) The college shall employ an adequate number of full-time faculty members to support the mission and goals of the college.

(7) The college shall engage in ongoing, comprehensive, and integrated research-based planning and evaluation processes that:

(a) Focus on institutional quality and effectiveness; and

(b) Incorporate a systematic review of institutional goals and outcomes consistent with its mission.

(8) The college shall:

(a) Identify, evaluate, and publish goals and outcomes for student achievement appropriate to the college's mission, the nature of the students it serves, and the kinds of programs offered; and

(b) Use multiple measures to document student success.

(9) The college shall identify expected outcomes, assess the extent to which it achieves **those** **[these]** outcomes, and provide evidence of seeking improvement based on analysis of the results in **[the areas below]**:

(a) Student learning outcomes for each of its educational programs;

(b) Student learning outcomes for collegiate-level general education competencies of its undergraduate degree programs; and

(c) Academic and student services that support student success.

(10) The college shall have educational programs that embody a coherent course of study, are compatible with the stated mission and goals of the college, and are based on fields of study appropriate to higher education.

(11) The college shall require the successful completion of a general education component at the undergraduate level that:

(a) Is based on a coherent rationale;

(b) Is a substantial component of each undergraduate degree program; and

(c) Ensures breadth of knowledge by having at least one **(1)** course from each of the following areas: humanities and fine arts, social and behavioral sciences, and natural science and mathematics, and the courses do not narrowly focus on skills, techniques, and procedures specific to a particular occupation or profession.

(12) The college shall:

(a) Publish, implement, and disseminate academic policies that adhere to principles of good education practice and that accurately represent the programs and services of the college;

(b) Make available to students and the public current academic calendars, grading policies, cost of attendance, and refund policies;

(c) Ensure the availability of archived official catalogs with relevant information for course and degree requirements; and

(d) Publish and implement policies on the authority of faculty in academic and governance matters, and places primary responsibility for the content, quality, and effectiveness of the curriculum with its faculty.

(13) The college shall:

(a) Publish admissions policies consistent with its mission;

(b) Have recruitment materials and presentations that accurately represent the practices, policies, and accreditation status of the college; and

(c) Ensure that independent contractors or agents used for recruiting purposes and for admission activities are governed by the same principles and policies as institutional employees.

(14) The institution **shall publish** policies for evaluating, awarding, and accepting credit not originating from the institution **that ensure** [~~The institution ensures~~]:

(a) The academic quality of any credit or coursework recorded on its transcript;

(b) An approval process with oversight by persons academically qualified to make the necessary judgments; and

(c) The credit awarded is comparable to a designated credit experience and is consistent with the institution's mission.

(15) The college shall:

(a) Provide adequate and appropriate library and learning and information resources, services, and support for its mission;

(b) Ensure an adequate number of professional and other staff with appropriate education or **experience [experiences]** in library or other learning or information resources to accomplish the mission of the college; and

(c) Provide **students and** faculty with access and user privileges to its library services, and access to regular and timely instruction in the use of the library and other learning or information resources.

(16) The college shall:

(a) Provide appropriate academic and student support programs, services, and activities consistent with its mission;

(b) Publish appropriate and clear procedures for addressing written student complaints, demonstrate that it follows the procedures when resolving **student complaints [them]**, and **maintain [maintains]** a record of **its** student complaints; and

(c) Provide information and guidance to help student borrowers understand how to manage their debt and repay their loans.

(17) The college shall have sound financial resources and a demonstrated, stable financial base to support the mission of the college and the scope of its programs and services.

(18) The college shall provide **[the following financial statements]:**

(a) An institutional audit for the most recent fiscal year prepared by an independent certified public accountant or appropriate governmental auditing agency employing the appropriate audit guide;

(b) A statement of financial position of unrestricted net assets, exclusive **of** plant assets **and [ad]** plant-related **debt [debit]**, which represents the change in unrestricted net assets attributable to operations for the most recent year; and

(c) An annual budget that is preceded by sound planning, is subject to sound fiscal procedures, and is approved by the governing board.

(19) The college shall:

(a) Be in compliance with its program responsibilities under Title IV of the most recent Higher Education Act as amended; and

(b) Audit financial aid programs as required by federal and state regulation.

(20) The college shall ensure adequate physical facilities and resources that appropriately serve the needs of the college's educational programs, support services, and other missions-related activities and take steps to provide a healthy, safe, and secure environment for all members of the campus community.[]

~~Section 4. Core Requirements. A college applying for approval by the Council on Postsecondary Education shall meet the requirements established in this section.~~

~~(1) Degree-granting authority. The college shall be licensed by the Council on Postsecondary Education in accordance with 13 KAR 1:020 prior to seeking eligibility under this administrative regulation.~~

~~(2) Accreditation. The college shall be accredited by a regional accrediting agency.~~

~~(3) Governing board.~~

~~(a) The college shall have a governing board of at least five (5) members which shall be the legal body with specific authority over the college.~~

~~(b) The board shall be an active policy-making body for the college and shall ultimately be~~

responsible for ensuring that the financial resources of the college are adequate to provide a sound educational program.

(c) Except as provided in paragraph (e) of this subsection, the board shall not be controlled by a minority of board members or by organizations or interests separate from it.

(d) Both the presiding officer of the board and a majority of other voting members of the board shall be free of any contractual, employment, or personal or familial financial interest in the college.

(e) A military college authorized and operated by the federal government to award degrees shall have a public board on which both the presiding officer and a majority of the other members are neither civilian employees of the military nor active or retired military.

1. The board shall have broad and significant influence upon the college's programs and operations, play an active role in policy-making, and ensure that the financial resources of the college are used to provide a sound educational program.

2. The board shall not be controlled by a minority of board members or by organizations or interests separate from the board except as specified by the authorizing legislation.

(4) Chief executive officer. The college shall have a chief executive officer whose primary responsibility is to the college and who is not the presiding officer of the board.

(5) Institutional mission. The college shall have a clearly defined, comprehensive, and published mission statement that is specific to the college and appropriate for higher education. The mission shall address teaching and learning and, if applicable, research and public service.

(6) Institutional effectiveness. The college shall engage in ongoing, integrated, and institution-wide research-based planning and evaluation processes that:

(a) Incorporate a systematic review of institutional mission, goals, and outcomes;

(b) Result in continuing improvement in institutional quality; and

(c) Demonstrate the college is effectively accomplishing its mission.

(7) Continuous operation. The college shall be in operation and shall have students enrolled in degree programs.

(8) Program length.

(a) The college shall offer one or more degree programs based on:

1. At least sixty (60) semester credit hours or the equivalent at the associate level;

2. At least 120 semester credit hours or the equivalent at the baccalaureate level; or

3. At least thirty (30) semester credit hours or the equivalent at the post-baccalaureate, graduate, or professional level.

(b) If a college uses a unit other than semester credit hours, the college shall provide an explanation for the equivalency.

(c) The college shall provide a justification for all degrees that include fewer than the required number of semester credit hours or its equivalent unit.

(9) Program content. The college shall offer degree programs that embody a coherent course of study that shall be compatible with its stated mission and shall be based upon fields of study appropriate to higher education.

(10) General education.

(a) In each undergraduate degree program, the college shall require the successful completion of a general education component at the collegiate level that is a substantial component of each undergraduate degree and ensures breadth of knowledge.

(b) The component shall constitute a minimum of:

1. Fifteen (15) semester hours or the equivalent for degree completion in associate programs;

or

2. Thirty (30) semester hours or the equivalent for degree completion in baccalaureate programs.

(c) These credit hours shall be drawn from and include at least one (1) course from each of the following areas:

1. Humanities and fine arts;

2. Social and behavioral sciences; and

3. Natural science and mathematics.

(d) The courses shall not narrowly focus on those skills, techniques, and procedures specific to a particular occupation or profession.

(e) The college shall provide a justification if it allows for fewer than the required number of semester credit hours or its equivalent unit of general education courses.

(11) Course work for degrees.

(a) The college shall provide instruction for all course work required for at least one (1) degree program at each level at which it awards degrees.

(b) If the college does not provide instruction for all course work and makes arrangements for some instruction to be provided by other accredited colleges or entities through contracts or consortia, or uses some other alternative approach to meeting this requirement, the arrangement or alternative approach shall be approved by the president.

(c) For either subsection (10)(a) or (b) of this section, the college shall demonstrate that it controls all aspects of its educational program.

(12) Faculty.

(a) The number of full-time faculty members shall be adequate to support the mission of the college and to ensure the quality and integrity of its academic programs.

(b) Upon application for eligibility, a college shall demonstrate that it meets the required faculty qualifications pursuant to Section 4(7) of this administrative regulation.

(13) Learning resources and services.

(a) The college, through ownership or formal agreements, shall provide and support student and faculty access and user privileges to adequate library collections and services and to other learning and information resources consistent with the degrees offered.

(b) Collections, resources, and services shall be sufficient to support all its educational, research, and public service programs.

(14) Student support services. The college shall provide student support programs, services, and activities consistent with its mission that promote student learning and enhance the development of its students.

(15) Financial resources.

(a) The college shall have a sound financial base and demonstrated financial stability to support the mission of the college and the scope of its programs and services.

(b) The college shall provide the following financial statements:

1. An institutional audit;

2. Written institutional management letter for the most recent fiscal year prepared by an independent certified public accountant;

~~3. A statement of financial position of unrestricted net assets, exclusive of plant assets and plant-related debt, which represents the change in unrestricted net assets attributable to operations for the most recent year; and~~

~~4. An annual budget that shall be preceded by sound planning, subject to sound fiscal procedures, and approved by the governing board.~~

~~(16) Physical resources. The college shall have physical resources to support the mission of the college and the scope of its programs and services in terms of size, fireproof quality, and conditions of all existing buildings and all buildings under construction.~~

~~Section 5. Comprehensive Standards. A college applying for approval by the Council on Postsecondary Education shall meet the standards established in this section.~~

~~(1) Institutional Mission. The college's mission statement shall:~~

~~(a) Be current and comprehensive;~~

~~(b) Accurately guide the college's operations;~~

~~(c) Be periodically reviewed and updated;~~

~~(d) Be approved by the governing board; and~~

~~(e) Be communicated to the college's constituencies.~~

~~(2) Governance and administration.~~

~~(a) The governing board of the college shall be responsible for the selection and the periodic evaluation of the chief executive officer.~~

~~(b) Governing board control. The legal authority and operating control of the college shall be clearly defined for the following areas within the college's governance structure:~~

~~1. College's mission;~~

~~2. Fiscal stability of the college;~~

~~3. Collegial policy, including policies concerning related and affiliated corporate entities and all auxiliary services; and~~

~~4. Related foundations for athletics, research, or other areas and other corporate entities whose primary purpose is to support the college and its programs.~~

~~(c) Board conflict of interest. The board shall have a policy addressing conflict of interest for its members.~~

~~(d) Board dismissal. The governing board shall have a policy whereby members can be dismissed only for appropriate reasons and by a fair process.~~

~~(e) Board and administration distinction. There shall be a clear and appropriate distinction, in writing and practice, between the policy-making functions of the governing board and the responsibility of the administration and faculty to administer and implement policy.~~

~~(f) Organizational structure. The college shall have a clearly defined and published organizational structure that delineates responsibility for the administration of policies.~~

~~(g) Qualified administrative and academic officers. The college shall have qualified administrative and academic officers with the experience, competence, and capacity to lead the college.~~

~~(h) Faculty and staff appointment. The college shall define and publish policies regarding appointment and employment of faculty and staff.~~

~~(i) Administrative staff evaluations. The college shall evaluate the effectiveness of its administrators on a periodic basis.~~

~~(j) Control of Intercollegiate athletics. The college's chief executive officer shall have ultimate responsibility for, and exercise appropriate administrative and fiscal control over, the college's intercollegiate athletics program.~~

~~(k) Fundraising activities. The college's chief executive officer shall control the college's fundraising activities exclusive of institution-related foundations that are independent and separately incorporated.~~

~~(l) Institution-related foundations.~~

~~1. Any institution-related foundation not controlled by the college shall have a contractual or other formal agreement that accurately describes the relationship between the college and the foundation, and describes any liability associated with that relationship.~~

~~2. The college shall ensure that the relationship is consistent with its mission.~~

~~(m) Intellectual property rights.~~

~~1. The college's policies shall be clear concerning ownership of materials, compensation, copyright issues, and the use of revenue derived from the creation and production of all intellectual property.~~

~~2. These policies shall apply to students, faculty, and staff.~~

~~(3) Institutional effectiveness. The college shall identify expected outcomes, assess the extent to which it achieves these outcomes, and provide evidence of improvement based on analysis of the results in each of the following areas:~~

~~(a) Educational programs, to include student learning outcomes;~~

~~(b) Administrative support services;~~

~~(c) Educational support services;~~

~~(d) Research within its educational mission, if appropriate; and~~

~~(e) Community and public service within its educational mission, if appropriate.~~

~~(4) All educational programs. For all educational programs including on-campus, off-campus, and distance learning programs and course work, the college shall meet the standards established in this subsection.~~

~~(a) Academic program approval. The college shall demonstrate that each educational program, including all on-campus, off-campus, and distance learning programs and course work, for which academic credit is awarded, is approved by the faculty and the administration.~~

~~(b) Continuing education and service programs. The college's continuing education, outreach, and service programs shall be consistent with the college's mission.~~

~~(c) Admissions policies. The college shall publish admissions policies that are consistent with its mission.~~

~~(d) Acceptance of academic credit.~~

~~1. The college shall have a defined and published policy for evaluating, awarding, and accepting credit for transfer, experiential learning, advanced placement, and professional certificates that is consistent with its mission and ensures that course work and learning outcomes are at the collegiate level and comparable to the college's own degree programs.~~

~~2. The college shall assume responsibility for the academic quality of any course work or credit recorded on a transcript of the college.~~

~~(e) Academic policies.~~

~~1. The college shall publish academic policies that adhere to principles of good educational practice.~~

~~2. The college's academic policies shall be disseminated to students, faculty, and other interested parties through publications that accurately represent the programs and services of the college.~~

~~(f) Practices for awarding credit. The college shall employ practices for determining the amount and level of credit awarded for courses, regardless of format or mode of delivery.~~

~~(g) Consortial relationships and contractual agreements. The college shall:~~

~~1. Ensure the quality of educational programs and courses offered through consortial relationships or contractual agreements;~~

~~2. Ensure ongoing compliance with the comprehensive requirements; and~~

~~3. Evaluate the consortial relationship and agreement against the purpose of the college.~~

~~(h) Noncredit to credit. The college shall award academic credit for course work taken on a noncredit basis only if there is documentation that the noncredit course work is equivalent to a designated credit experience.~~

~~(i) Academic support services. The college shall provide academic support services for its faculty and students, including:~~

~~1. Resource centers;~~

~~2. Tutoring;~~

~~3. Academic advising;~~

~~4. Counseling;~~

~~5. Disability services;~~

~~6. Library services;~~

~~7. Laboratories;~~

~~8. Information technology; and~~

~~9. Mentoring.~~

~~(j) Responsibility for curriculum. The college shall place primary responsibility for the content, quality, and effectiveness of the curriculum with its faculty.~~

~~(k) Academic program coordination.~~

~~1. For each major in a degree program, the college shall assign responsibility for program coordination, as well as for curriculum development and review, to persons academically qualified in the field who hold degree credentials or other qualifications appropriate to the degree offered.~~

~~2. In those degree programs for which the college does not identify a major, this requirement shall apply to a curricular area or concentration.~~

~~(l) Technology use.~~

~~1. The college's use of technology shall enhance student learning and shall be appropriate for meeting the objectives of its programs.~~

~~2. Students shall have access to and training in the use of technology.~~

~~(5) Undergraduate educational programs.~~

~~(a) College-level competencies. The college shall identify college-level general education competencies and the extent to which graduates have attained them.~~

~~(b) Institutional credits for a degree.~~

~~1. At least twenty-five (25) percent of the credit hours required for the degree shall be earned through instruction offered by the college awarding the degree.~~

~~2. In the case of undergraduate degree programs offered through joint, cooperative, or consortia arrangements, the student shall earn at least twenty-five (25) percent of the credits~~

required for the degree through instruction offered by the participating colleges.

~~(c) Undergraduate program requirements.~~

~~1. The college shall define and publish requirements for its undergraduate programs, including its general education components.~~

~~2. These requirements shall display a clear rationale, design, and goals of each program, with courses designed as introductions to the major, required courses, electives, and capstone courses.~~

~~(d) Terminal degrees of faculty. At least twenty-five (25) percent of the discipline course hours in each major at the baccalaureate level shall be taught by faculty members holding the terminal degree, the earned doctorate, in the discipline, or the equivalent of the terminal degree.~~

~~(6) Graduate and postbaccalaureate professional educational programs.~~

~~(a) Postbaccalaureate program rigor. The college's post-baccalaureate professional degree programs, including master's and doctoral degree programs, shall be progressively more advanced in academic content than its undergraduate programs.~~

~~(b) Graduate curriculum. The college shall structure its graduate curricula to include knowledge of the literature of the discipline and to ensure ongoing student engagement in research and appropriate professional practice and training experiences.~~

~~(c) Institutional credits for a degree.~~

~~1. The majority of credits toward a graduate or a post-baccalaureate professional degree shall be earned through instruction offered by the college awarding the degree.~~

~~2. In the case of graduate and postbaccalaureate professional degree programs offered through joint, cooperative, or consortial arrangements, the student shall earn a majority of credits through instruction offered by the participating colleges.~~

~~(d) Postbaccalaureate program requirements.~~

~~1. The college shall define and publish requirements for its graduate and postbaccalaureate professional programs.~~

~~2. These requirements shall display a clear rationale, design, and goals of each program, with courses designed as introductions to the major, required courses, electives, and capstone courses.~~

~~(7) Faculty.~~

~~(a) Faculty competence.~~

~~1. The college shall employ faculty members qualified to accomplish the mission and goals of the college.~~

~~2. When determining acceptable qualifications of its faculty, a college shall give primary consideration to the highest earned degree in the discipline.~~

~~3. The college shall consider competence, effectiveness, and capacity, including, as appropriate, undergraduate and graduate degrees, related work experiences in the field, professional licensure and certifications, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements that contribute to effective teaching and student learning outcomes.~~

~~4. For all cases, the college shall be responsible for justifying and documenting the qualifications of its faculty.~~

~~(b) Faculty evaluation. The college shall regularly evaluate the effectiveness of each faculty member in accord with published criteria, regardless of contractual or tenured status.~~

~~(c) Faculty development. The college shall provide ongoing professional development of faculty as teachers, scholars, and practitioners.~~

~~(d) Academic freedom. The college shall ensure adequate procedures for safeguarding and protecting academic freedom.~~

~~(e) Faculty role in governance. The college shall publish policies on the responsibility and authority of faculty in academic and governance matters.~~

~~(8) Library and other learning resources.~~

~~(a) Learning and information resources. The college shall provide facilities and learning and information resources that are appropriate to support its teaching, research, and service mission.~~

~~(b) Instruction of library use. The college shall ensure that users have access to regular and timely instruction in the use of the library and other learning and information resources.~~

~~(c) Qualified staff. The college shall provide a sufficient number of qualified staff with appropriate education or experiences in library and other learning and information resources to accomplish the mission of the college.~~

~~(9) Student affairs and services.~~

~~(a) Student rights. The college shall publish a clear and appropriate statement of student rights and responsibilities and shall disseminate the statement to the campus community.~~

~~(b) Student records. The college shall protect the security, confidentiality, and integrity of student records and maintain special security measures to protect and back up data.~~

~~(c) Qualified staff. The college shall employ qualified personnel to ensure the quality and effectiveness of its student affairs programs.~~

~~(10) Financial resources.~~

~~(a) Financial stability. The college's recent financial history shall demonstrate financial stability.~~

~~(b) Submission of financial statements.~~

~~1. The college shall provide financial profile information on an annual basis.~~

~~2. All information shall be presented accurately and appropriately and shall represent the total operation of the college.~~

~~(c) Financial aid audits. The college shall audit financial aid programs as required by federal and state regulations.~~

~~(d) Control of finances. The college shall exercise appropriate control over all its financial resources by maintaining accurate and up-to-date records of:~~

~~1. Policies related to purchasing, expenditures, and investments;~~

~~2. Physical inventory;~~

~~3. Internal audit reports;~~

~~4. Risk management reports related to financial and physical resources; and~~

~~5. Evidence of qualifications and job descriptions of the institution's fiscal officer and business office staff.~~

~~(e) Control of sponsored research and external funds. The college shall maintain financial control over externally funded and sponsored research and programs.~~

~~(11) Physical resources.~~

~~(a) Control of physical resources. The college shall exercise control over all its physical resources.~~

~~(b) Institutional environment. The college shall take reasonable steps to provide a healthy, safe, and secure environment for all members of the campus community.~~

~~(c) Physical facilities. The college shall operate and maintain physical facilities, both on and off campus, that appropriately serve the needs of the college's educational programs, support~~

services, and other mission-related activities.

(12) Compliance with federal requirements.

(a) Student achievement. The college shall evaluate success with respect to student achievement including, as appropriate, consideration of course completion, state licensing examinations, and job placement rates.

(b) Program curriculum. The college's curriculum shall be directly related and appropriate to the purpose and goals of the college and the diplomas, certificates, or degrees awarded.

(c) Publication of policies. The college shall make available to students and the public current academic calendars, grading policies, and refund policies.

(d) Student complaints. The college shall have adequate procedures for addressing written student complaints and shall be responsible for demonstrating that it follows those procedures when resolving student complaints.

(e) Recruitment materials. Recruitment materials and presentations shall accurately represent the college's practices and policies.

(f) Title IV program responsibilities. The college shall be in compliance with its program responsibilities under Title IV of the 1998 Higher Education Amendments, 20 U.S.C. 1070 and 34 C.F.R. Part 668.]

Section 5 [6]. Action on Application. Within six (6) months of the submission of an "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" [if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit,] the president shall do one (1) of the following:

(1) Approve the applicant college for status as an eligible institution in which a student may enroll and receive a Kentucky tuition grant for ten (10) years;

(2) Deny the applicant college for status as an eligible institution; or

(3) Notify the applicant college of deficiencies which shall be corrected before approval is granted.

Section 6. Renewal. (1) ***Beginning with the 2022-2023 academic year***, a college approved by the Council for eligibility ~~***beginning with the 2022-2023 academic year***~~ for ten (10) years shall seek renewal of eligibility by submitting the "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" by May 30 of the year prior to its eligibility expiration, and shall pay a nonrefundable fee of \$10,000 to the Council on Postsecondary Education with the submission of the application. Review of the application shall not occur until the fee is paid by the college.

(2) A college that was previously approved by the Council for eligibility beginning with the 2011-2012 academic year shall seek renewal of eligibility by submitting the "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" by May 30, 2021 in order to seek eligibility beyond the month and day of its initial eligibility for 2022, and shall pay a nonrefundable fee of \$10,000 to the Council on Postsecondary Education with the submission of the application. Review of the application shall not occur until the fee is paid by the college.

Section 7. Substantive Change. (1) Approval pursuant to this administrative regulation shall be

specific to a licensed college and based on conditions existing at the time of the most recent evaluation and shall not be transferable to other colleges or entities.

(2) An approved college shall notify the president within thirty (30) days of action by an accrediting agency that results in the college being placed on probationary status, a college losing accreditation, or a college being denied accreditation.

(3) The president shall be responsible for evaluating all substantive changes to assess the impact of the change on the college's compliance with this administrative regulation. ~~[The president may conduct, or may have conducted, a site visit in accordance with Section 2(6) of this administrative regulation.]~~

(4) A college's failure to comply with this section shall be grounds for ineligibility under this administrative regulation.

(5) If a college is unclear as to whether a change is substantive in nature, the college shall contact the Council on Postsecondary Education in writing for consultation.

(6) A substantive change shall include **[the following]**:

(a) Action by an accrediting agency that results in the college being placed on probationary status, a college losing accreditation, or a college being denied accreditation;[

~~(b) Initiating distance learning;]~~

~~(b) [(c)] Initiating a merger or consolidation;~~

~~(c) [(d)] Altering significantly the educational mission of the college;~~

~~(d) [(e)] Relocating a licensed Kentucky instructional site or principal location of the college;~~

~~(e) [(f)] Changing the college's governance, ownership, control, or legal status;~~

~~(f) [(g)] Changing the name of the college;~~

~~(g) [(h)] Altering significantly the length of a program;[~~

~~(i) Initiating degree completion programs;]~~

~~(h) [(j)] Adding a new instructional site or program licensed in accordance with 13 KAR 1:020;~~

~~(i) [(k)] Denial, suspension, or revocation of licensure by the Council on Postsecondary Education pursuant to 13 KAR 1:020; or~~

~~(j) [(l)] Closing the college, a Kentucky licensed instructional site, or a Kentucky licensed program and initiating teach out agreements.~~

(7) Within six (6) months of notification by the college of a substantive change ~~[if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit,]~~ the president shall do one (1) of the following:

(a) Approve the substantive change and continue approval under this administrative regulation without changing the approval period;

(b) Deny the substantive change and require that the college abandon and not proceed with the substantive change or else lose approval under this administrative regulation;

(c) Notify the college of deficiencies which shall be corrected before the substantive change is approved, and suspend or revoke approval under this administrative regulation; or

(d) Suspend or revoke approval under this administrative regulation.

Section 8. Site Visits. (1) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's eligibility under this administrative regulation.

(2) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for ineligibility.

(3) All costs associated with a site visit and necessary subsequent visits, including travel, meals, lodging, and consultant honoraria shall be paid by the applicant college.

(4) The estimated cost of the site visit shall be paid by the college prior to the site visit, and final settlement regarding actual expenses incurred shall be paid no later than thirty (30) days following the completion of the site visit.

(5) Failure to pay these costs shall result in ineligibility.

Section 9. [8:] Hearings and Appeals. (1) ***If the president has determined that there are sufficient grounds for ineligibility under this administrative regulation, he or she [The president] may, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing, consistent with the provisions of KRS Chapter 13B, in order to determine the facts [if the president has determined that there are sufficient grounds for ineligibility under this administrative regulation].***

(2) The ***chief administrative*** officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held, the president shall reach a determination and shall issue findings, in writing, to the Council and to the chief ***administrative [executive]*** officer of the college.

(4) A college may appeal the actions of the president regarding a college's ineligibility under this administrative regulation according to the following procedure:

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken;

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS Chapter 13B;

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal;

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation;

(e) Within fourteen (14) days, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education; and

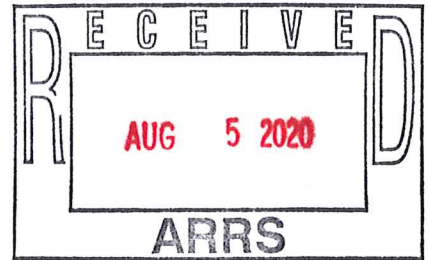
(f) Within thirty (30) working days of receipt of the report of the appeals officer, the president shall approve or not approve the college.

Section 10. [9:] Incorporation by Reference. (1) "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050", May 2020 [November 2009], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 100 Airport Road, 2nd Floor, [1024 Capital Center Drive, Suite 320,] Frankfort, Kentucky 40601.

CONTACT PERSON: Sarah Levy, Executive Director of Postsecondary Licensing, Council on

Postsecondary Education, 100 Airport Road, 2nd Floor, Frankfort, Kentucky 40601, phone 502.892.3034, email sarah.levy@ky.gov.



ANDREW G. BESHEAR
GOVERNOR

DEPARTMENT OF VETERANS AFFAIRS
Office of the Commissioner
1111 Louisville Road, Suite B
Frankfort, Kentucky 40601-6123
Phone (502) 564-9203
Fax (502) 564-9240
www.veterans.ky.gov

KEITH L. JACKSON
LIEUTENANT COLONEL (RET)
COMMISSIONER

August 5, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort, KY 40601

Re: 17 KAR 1:030 Nurse Loan Repayment Program

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 17 KAR 1:030, Nurse Loan Repayment Program, the Kentucky Department of Veterans Affairs proposes the attached amendment to 17 KAR 1:030.

I request to attend the hearing on this regulation now scheduled for August 11 at 1pm via videoconference.

Sincerely,

Dennis W. Shepherd, General Counsel
Kentucky Department of Veterans Affairs
1111B Louisville Road
Frankfort, Kentucky 40601
Phone: 502-782-5723



An Equal Opportunity Employer

SUGGESTED SUBSTITUTE
Final 8/5/2020 1:35 PM

GOVERNOR'S OFFICE
Kentucky Department of Veterans' Affairs
Office of Kentucky Veterans' Centers

17 KAR 1:030. Nurse Loan Repayment Program.

RELATES TO: KRS 18A.190, 40.320, 314.011

STATUTORY AUTHORITY: KRS 40.325~~(2)(4)~~, 40.327

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.325~~(2)(4)~~ authorizes state veterans' nursing homes. KRS 40.327(1) and (5) requires the Department of Veterans' Affairs (KDVA) and the Kentucky Higher Education Assistance Authority (KHEAA) to create a Veterans' Affairs Nurse Loan Repayment Program (VANLRPP) for registered nurses and licensed practical nurses within the Department's employ. KRS 40.327(6) requires administrative regulations necessary to operate this program. This administrative regulation establishes the eligibility requirements, the application process, the selection criteria, and the award process for the Nurse Loan Repayment Program.

Section 1: Definitions. (1) "Full time" means working at least a forty (40) hour work week every week of the year, except for authorized and approved leave and holidays as established in KRS 18A.190.

(2) "Licensed practical nurse" is defined by KRS 314.011(9).

(3) "Registered nurse" is defined by:

(a) KRS 314.011(5); and

(b) Does not include nurse practitioners.

(4) "Satisfactory employment" means employment in which the applicant does not have disciplinary or corrective actions during the year being certified and in which the applicant is not currently on a performance improvement plan at the time the application is submitted.

Section 2. Eligibility Requirements. To be eligible to apply for the program, an applicant shall:

(1) Have a current Kentucky license as a registered nurse (RN) or as a licensed practical nurse (LPN);

(2) Be currently employed as an RN or LPN on a full-time basis at a Kentucky Department of Veterans Affairs' state veteran nursing home;

(3) Be a classified employee with status under KRS ***Chapter*** 18A; and

(4) Have completed at least one (1) year of full-time, satisfactory employment performance as an RN or LPN at a KDVA's state veteran nursing home in the year preceding the application; and

(5) If applying for loan repayment more than once, each application shall be consecutive to the prior application up to a maximum of four (4) consecutive applications and up to a maximum loan repayment for four (4) successful, consecutive applications of no more than ***\$40,000***~~*[forty thousand (\$40,000) dollars]*~~.

(6) An applicant shall not have other unsatisfied contractual service obligations upon completing the Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs.

(7) An applicant shall not have an active military obligation.

Section 3. Application Process. Each eligible applicant shall complete a Veterans Affairs Nurse Loan Repayment Program (VANLRP) Application and submit:

(1) The Veterans Affairs Nurse Loan Repayment (VANLRP) Application between January 1 and March 31;**[and]**

(2) **Documentation required to be attached to the Veterans Affairs Nurse Loan Repayment (VANLRP) application, including:**

(a) A professional experience narrative;

(b) Educational loan debt information; and

(c) A copy of a current, valid Kentucky Nursing License;

(3) One (1) copy of the **KRS Chapter 18A** annual **performance** evaluation, if any, which the applicant received for the immediate prior calendar year.

Section 4. Selection Process. (1) The selection panel shall consist of the executive director of the Office of Kentucky Veterans Centers (OKVC), the deputy executive director of OKVC, and the administrator of the state veterans nursing home where the applicant is employed.

(2) Criteria for selection shall include:

- (a) Availability of funding;
- (b) The work performance of the applicant compared to other applicants; and
- (c) The needs for additional nurses at the applicant's state veteran nursing home compared to the needs of the other state veterans nursing homes.

Section 5. Award Process. (1) Upon the selection panel awarding an applicant a loan repayment, the Commissioner of the Kentucky Department of Veterans Affairs shall issue an Award Letter to the applicant. ~~;~~

(2) The Award Letter shall state the amount of loan repayment of up to twenty-five (25) percent of the applicant's loan balance up to a maximum of \$10,000 ~~[ten thousand (10,000) dollars]~~ per application year.

(3) KDVA and the applicant shall enter into a binding contract stating the terms of the loan repayment on the Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs document.

(4) OKVC shall notify the Kentucky Higher Education Assistance Authority to implement the repayment and the Personnel Cabinet to process the taxable amount through employee payroll.

Section ~~6~~5. Appeals. Denial by the selection panel shall not be considered a sanction and shall not be appealable.

Section ~~7~~6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs", 2020;

(b) "Veterans Affairs Nurse Loan Repayment Program (VANLRP) Application", 2020;
and

(c) "Award Letter", 2020.

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

502-429-3300
800-305-2042
Fax: 502-429-3353

KENTUCKY BOARD OF NURSING

312 Whittington Parkway, Suite 300
Louisville, Kentucky 40222-5172
kbn.ky.gov

Andy Beshear
Governor

July 24, 2020

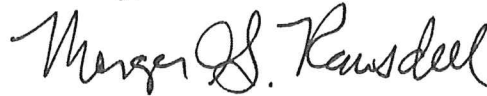
Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulations Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 201 KAR 20:065 (Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder)

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised regarding 201 KAR 20:065, the Kentucky Board of Nursing proposes the attached amendments to 201 KAR 20:065.

Sincerely,



Morgan G. Ransdell, General Counsel
Kentucky Board of Nursing
Direct dial: (502) 429-3339
Mobile: (502) 415-3964
Fax: (502) 429-3353
E-mail: morgan.ransdell@ky.gov

cc: Mr. Stacy Auterson

Subcommittee Substitute

BOARDS AND COMMISSIONS

**Board of Nursing
(Amendment)**

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

RELATES TO: KRS 314.011, 314.042, 21 U.S.C. 823

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing in Kentucky who prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Buprenorphine" means the controlled substances Buprenorphine-Mono-Product and Buprenorphine-Combined-with-Naloxone.

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe buprenorphine [**Buprenorphine**] for opioid use disorder unless that APRN possesses the minimum qualifications established in this section. (1) The APRN shall obtain and maintain in good standing a DATA 2000 waiver and registration as issued by the United States Drug Enforcement Administration (DEA) to prescribe buprenorphine [**Buprenorphine**] for the treatment of opioid use disorder.

(2) The APRN shall:

(a) Be a DEA-registered prescriber of buprenorphine [**Buprenorphine**]; and

(b) Have obtained medication assisted treatment education through completion of a Substance Abuse and Mental Health Services Administration (SAMHSA) sponsored course.

(3) The APRN shall provide to the board a copy of the DEA Controlled Substance Registration Certificate as required by 201 KAR 20:057, Section 6(4).

(4) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of buprenorphine [**Buprenorphine**]. This shall include the maximum number of patients, which may be seen by the APRN each year, and the inclusion of the special DEA identification number in addition to the regular DEA registration number on all prescriptions for opioid dependency treatment.

(5) It is not within the scope of practice for an APRN who does not hold a DATA 2000 waiver to conduct a focused examination required to prescribe buprenorphine [**Buprenorphine**] for the treatment of substance use disorders [**disorder**].

(6) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of controlled substances via telehealth for medication assisted treatment for opioid use disorder.

(7) DEA-registered APRNs acting within the United States, which include DATA 2000-waivered practitioners, are exempt from the in-person medical evaluation requirement as a prerequisite to prescribing or otherwise dispensing controlled substances via the Internet if the practitioner is engaged in the practice of telemedicine as defined under 21 U.S.C. § 802(54).

(8) The APRN who is at a remote location from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1395m(m) of Title 42, shall comply will applicable federal and state laws.

Section 3. Professional Standards for Prescribing Buprenorphine for Supervised Withdrawal or the Treatment of Opioid Use Disorder. (1) Buprenorphine may be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder in accordance with the standards established by this administrative regulation.

(2) Buprenorphine-Mono-Product shall not be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder, except:

(a) To a pregnant patient, as established in subsection (4)(b) of this section;

(b) To a patient with demonstrated hypersensitivity to naloxone; ~~[or]~~

(c) As ~~[an implant-delivered, injectable treatment]~~ administered under supervision~~[, or observed induction]~~ in an APRN's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

(d) To a patient transitioning from methadone to buprenorphine, limited to a period of no longer than one week.

(3)(a) Except as provided in paragraph (b) of this subsection, ***buprenorphine [Buprenorphine]*** shall not be prescribed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation of:

1. A physician certified in addiction medicine or psychiatry as required by 201 KAR 9:270;

2. An APRN who is certified in addiction therapy by the:

a. Addictions Nursing Certification Board;

b. American Academy of Health Care Providers in the Addictive Disorders; or

c. National Certification Commission for Addiction Professionals; or

3. A psychiatric-mental health nurse practitioner.

(b) An APRN may prescribe ***buprenorphine [Buprenorphine]*** to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address a documented ~~[an]~~ extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each APRN who prescribes ***buprenorphine [Buprenorphine]*** for supervised withdrawal or for the treatment of opioid use disorder shall ***[fully]*** comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall ***[at a minimum]*** include:

a. The patient's history of present illness;

b. The patient's history of drug use;

c. The patient's social and family history;

d. The patient's medical and psychiatric histories;

- e. A focused physical examination of the patient;
- f. Appropriate laboratory tests, which may include a complete blood count (CBC), a comprehensive quantitative drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology; and
- g. An evaluation by a mental health provider with expertise in addiction and compliance with the recommendations of the evaluator.

2. Obtain the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records, ***which shall require:***[.]

a. Upon receipt of the medical records, the APRN ***[shall]*** review and incorporate the information from the records into the evaluation and treatment of the patient; ***or***[.]

b. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN ***[shall]*** document those efforts in the patient's chart.

3. Obtain and review a KASPER or other prescription drug monitoring program (PDMP) report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives, the risks, and the benefits of treatment with ***buprenorphine*** ***[Buprenorphine]*** to the patient;[.]

5. Obtain written informed consent from the patient for treatment;[.]

6. Discuss and document the patient's treatment with the patient's other providers;

7. If the patient is a female of childbearing potential and age, meet the requirements of paragraph (b) of this subsection; and

8. Develop a treatment plan that incorporates objective behavior modification including counseling or a twelve (12) step program for the duration of the treatment.

(b) 1. Prior to initiating treatment, the APRN shall require that the patient ***[first]*** submit to a pregnancy test and, if pregnant, the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance ~~[patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy].~~

2. ***Prior to prescribing [An APRN who prescribes]*** ~~[shall not prescribe]~~ ***buprenorphine*** ***[Buprenorphine]*** to a patient who is pregnant or breastfeeding, ***an APRN*** shall ***[first]*** obtain and document ~~[unless the APRN first obtains and documents]~~ consultation with an obstetrician or a maternal-fetal medicine specialist who holds a DATA 2000 waiver that determines ~~[for an opinion as to whether]~~ the potential benefit of Buprenorphine use outweighs the potential risk of use.[

3. ~~The consultation shall be obtained from a physician or an APRN as established in subsection (3)(a) of this section.]~~

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with ***buprenorphine*** ***[Buprenorphine]***, the APRN shall comply with the following requirements:

1. The APRN shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the APRN shall conduct or supervise the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the APRN shall appropriately document the circumstances in the patient record and shall implement a SAMHSA-recognized or ASAM recognized home-based induction protocol.

2. The APRN shall document the presence of any opioid withdrawal symptoms before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The APRN shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists ~~[and is not improving]~~; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the APRN shall:

1. Document the previous history of withdrawal;

2. Educate the patient about the potential for precipitated withdrawal; ~~[and]~~

3. Continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection; and

4. Schedule visits at the same frequency as the previous treatment provider would have been required to or more frequently if deemed necessary by the APRN.

(e) After initial induction of **buprenorphine [Buprenorphine]**, the APRN shall prescribe to the patient an amount of **buprenorphine [Buprenorphine]** that:

1. Is necessary to minimize craving and opiate withdrawal;

2. Does not produce opiate sedation;

3. Is able only to supply the patient until the next visit, which shall be scheduled as required by this section; and

4. Does not exceed the FDA-approved dosage limit ~~[of twenty-four (24) milligrams per day]~~.

(f) The patient's visits shall be scheduled as follows:

1. The APRN shall ensure that [see] the patient is seen no later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction and at intervals of no more than fourteen (14) days for the second month after induction [at least weekly for the first two (2) months].

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, the ~~[APRN shall see the]~~ patient shall be seen at least once monthly thereafter for up to two (2) years.

3. If after two (2) years after initiation of treatment, the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, then the APRN may require that the patient be seen ~~[only by the APRN]~~ at least once every three (3) months. The APRN shall:

a. Evaluate the patient to determine whether the patient's dosage should be continued or modified; and

b. Appropriately document that evaluation and clinical judgment in the patient's chart.

4. The APRN shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

5. If extenuating circumstances arise that require a patient to unexpectedly reschedule a visit, the APRN shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

(g) The APRN shall review compliance with the recommendations of the treatment plan, including review of KASPER or other PDMP reports and drug screens to help guide the treatment plan at each visit.

1. The APRN shall:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and

b. Accurately document the same in the patient record.

2. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

a. At least two (2) of the drug screens shall be random and coupled with a pill count. At least one (1) of those two (2) drug screens shall be confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS).

b. Each drug screen shall ~~[at a minimum,]~~ screen for buprenorphine, methadone, ~~[oxycodone, other]~~ opioids, THC, benzodiazepines, amphetamines, alcohol, gabapentin, and cocaine.

c. If a drug screen indicates the presence of any of the drugs screened, the APRN shall:

(i) Incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment; and

(ii) Document in the patient record.[]

~~d. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment.]~~

(h) Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams ***buprenorphine*** [***Buprenorphine***] generic tablet per day, then the APRN who is not certified in addiction therapy shall:

1. Refer the patient for an evaluation by a physician or an APRN as established in subsection (3)(a) of this section for an opinion as to whether continued treatment and dosage is appropriate; and

2. Document the results of that evaluation in the patient chart.

(i) For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the APRN shall evaluate for and document every twelve (12) months the medical necessity for continued treatment at the established dose.

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which[:

~~4:] shall not provide for the automatic replacement of medication prior to the specified interval date[; and~~

2. If the APRN determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, the APRN shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies and require the patient to provide evidence to the APRN of having so reported].

(k) After initial induction, the APRN shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that shall include counseling or a twelve (12) step facilitation.

Section 4. Continuing Education. An APRN who has obtained a waiver and registration as issued by the ~~DEA~~ [Drug Enforcement Administration (DEA)] to prescribe **buprenorphine** [**Buprenorphine**] for the treatment of opioid use disorder shall complete the one and one-half (1.5) contact hours of continuing education required annually by 201 KAR 20:215, Section 5(1)(b) in addiction disorders.

Section 5. Use of Transmucosal Buprenorphine for Treatment of Opioid Use Disorder in an Emergency Situation or Inpatient Setting. (1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, an APRN may offer and initiate **buprenorphine** [**Buprenorphine**] treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 2 and 3 of this administrative regulation and to the extent permitted by federal law, if:

(a) The APRN has determined that the use of **buprenorphine** [**Buprenorphine**] will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;

(b) The APRN obtains and documents written informed consent from the patient specific to risks and benefits of **buprenorphine** [**Buprenorphine**] treatment; and

(c) The APRN provides the patient with written instructions and contact information for appropriate follow up care, including bridge-provider services, residential treatment providers, and outpatient treatment providers.

(2) The APRN shall initiate **buprenorphine** [**Buprenorphine**] treatment under an observed induction protocol with an initial dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which may be followed by subsequent doses, up to a maximum of twenty-four (24) milligrams buprenorphine generic tablet, if withdrawal persists and is not improving.

Section 6. Telehealth. Nothing in this administrative regulation shall be construed to prohibit prescribing buprenorphine via telehealth. The prescribing APRN shall follow the standards set by 201 KAR 20:520.

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, fax (502) 429-1248, email Morgan.Ransdell@ky.gov.

502-429-3300
800-305-2042
Fax: 502-429-3353

KENTUCKY BOARD OF NURSING

312 Whittington Parkway, Suite 300
Louisville, Kentucky 40222-5172
kbn.ky.gov

Andy Beshear
Governor

July 24, 2020

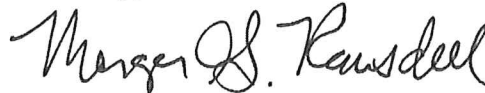
Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulations Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 201 KAR 20:411 (Sexual Assault Nurse Examiner Program standards and credential requirements)

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised regarding 201 KAR 20:411, the Kentucky Board of Nursing proposes the attached amendments to 201 KAR 20:411.

Sincerely,



Morgan G. Ransdell, General Counsel
Kentucky Board of Nursing
Direct dial: (502) 429-3339
Mobile: (502) 415-3964
Fax: (502) 429-3353
E-mail: morgan.ransdell@ky.gov

cc: Mr. Stacy Auterson

Subcommittee Substitute

BOARDS AND COMMISSIONS

**Board of Nursing
(Amendment)**

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.475, 403.707, 421.500-421.575, 431.600-431.660

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definitions. (1) "Adolescent" means a child who has reached the onset of physiologically normal puberty. [?]

(2) "Pediatric" means a child who has not reached the age of eighteen (18). [?]

(3) "SANE-A/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of an adult or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

(4) "SANE course" means the SANE-A/A course and the SANE-P/A course.

(5) "SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application.

(1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE-A/A course or a SANE-P/A course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

- (a) Position description and qualifications of the nurse administrator of the SANE course;
- (b) Qualifications and description of the faculty;
- (c) Course syllabus;
- (d) Course completion requirements;
- (e) Tentative course presentation dates;
- (f) Records maintenance policy; and
- (g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, a baccalaureate or higher

degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(3) Faculty qualifications. Faculty qualifications shall be consistent with the instructor qualifications set out in Sexual Assault Nurse Examiner (SANE) Education Guidelines. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees;

(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;

(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;

(d) Content as specified in subsection (6) of this section, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

(6) The SANE-A/A course and the SANE-P/A course content shall be consistent with Sexual Assault Nurse Examiner (SANE) Education Guidelines.

(a) In addition to that content, the SANE-A/A course and the SANE-P/A course shall include:

1. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;

2. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate;

3. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process;

and

4. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2), **[and]** (4),[;] and **(5) [5]**. The victim's bill of rights, KRS 421.500 through 421.575.

(b) In addition to the requirements of paragraph (a) of this subsection, the SANE-P/A course shall include:

1. Principles of child development;
2. Techniques for acute evaluations;
3. An overview of Kentucky Child Advocacy Centers; and
4. An overview of KRS 431.600 through 431.660 which shall include information about multidisciplinary teams and their functions, model protocols approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, and the role of peer review in child sexual abuse cases.

Section 3. Contact Hour Credit for Continuing Education. (1) The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

- (a) Provider name, date, and site of the course; and
- (b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:

- (a) Name of participant;
- (b) Title of course, date, and location;
- (c) Provider's name; and
- (d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course.

(1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed.

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE-A/A or SANE-P/A credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;

(b) Have completed a board approved SANE educational course or a comparable course, ***which the board or its designee shall:***;

1. ~~***The board or its designee shall***~~ Evaluate ~~***the applicant's course***~~ to determine its course comparability; and

2. ~~***The board or its designee shall***~~ Advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed.;

(c) Complete the Sexual Assault Nurse Examiner Application for Credential;

(d) Pay the fee established in 201 KAR 20:240;

(e) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(f) Use the FBI Applicant Fingerprint Card;

(g) Pay any required fee to the KSP and the FBI;

(h) Complete the criminal record check within six (6) months of the date of the application;

(i) Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(j) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the appropriate SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE-P/A or the SANE-A/A credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the appropriate SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

- (a) Submitting the Sexual Assault Nurse Examiner Application for Credential;
- (b) Paying the fee established in 201 KAR 20:240;
- (c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;
- (d) Providing a criminal record check by the KSP and FBI;
- (e) Using the FBI Applicant Fingerprint Card;
- (f) Paying any required fee to the KSP and the FBI;
- (g) Completing the criminal record check within six (6) months of the date of the application;
- (h) Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
- (i) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Initial or Continued SANE Course Approval", 10/2018[, Kentucky Board of Nursing];

(b) "Sexual Assault Nurse Examiner Application for Credential", 10/2018[, Kentucky Board of Nursing];

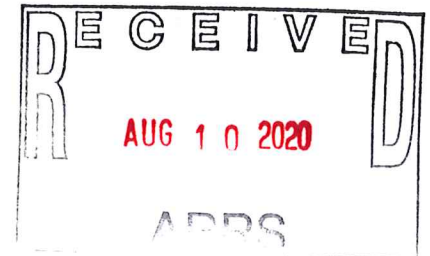
(c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 2/2020 [10/2018, Kentucky Board of Nursing];

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 2/2020 [10/2018, Kentucky Board of Nursing]; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2018 [2015], International Association of Forensic Nurses.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, fax (502) 429-1248, email Morgan.Ransdell@ky.gov.



KENTUCKY LABOR CABINET
Department of Workers' Claims

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-5550

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Robert L. Swisher
Commissioner

August 10, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: **803 KAR 025:010**, 803 KAR 025:070, 803 KAR 025:075, and 803
KAR 025:096

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803 KAR 025:096, the Department of Workers' Claims' proposes the attached amendments to 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803 KAR 025:096.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

Subcommittee Substitute

**LABOR CABINET
Department of Workers' Claims
(Amendment)**

803 KAR 25:010. Procedure for adjustments of claims.

RELATES TO: KRS 342.0011, 342.020, 342.033, 342.035, 342.040, 342.120, 342.1242, 342.125, 342.165, 342.185, 342.205, 342.260, 342.265, 342.267-342.275, 342.285, 342.290, 342.300-342.316, 342.320, 342.335, 342.340, 342.395, 342.610, 342.650, 342.710, 342.715, 342.730, 342.732, 342.760, 342.792

STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the commissioner to prescribe the format and content of written medical reports. KRS 342.285(1) requires the commissioner to promulgate an administrative regulation governing appeals to the Workers' Compensation Board. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" or "ALJ" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" is defined by KRS 342.0011(10).

(3) "BRC" means benefit review conference as described in Section 13 of this administrative regulation.

(4) "Civil Rule" or "CR" means the Kentucky Rules of Civil Procedure.

(5) "Claim" means any claims including injury, hearing loss, or occupational disease.

(6) "Commissioner" is defined by KRS 342.0011(9).

(7) "Date of filing" means the date that:

(a) A pleading, motion, or other document is electronically filed with the commissioner at the Department of Workers' Claims (DWC) in Frankfort, Kentucky;

(b) A pleading, motion, order, opinion, or other document is received by the commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except:

1. Documents delivered to the offices of the Department of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend, which shall be deemed filed the following business day; or

2. Documents transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers shall be deemed filed on the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

(8) "Employer" is defined by KRS 342.630.

(9) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(10) [~~"Guides to the Evaluation of Permanent Impairment" is defined by KRS 342.0011(37).~~

~~(11)~~ "Jurisdictional deadline" means a deadline set by statute or administrative regulation that the Department of Workers' Claims cannot extend or change.

~~(11)~~~~(12)~~ "Litigation Management System" or "LMS" means the electronic filing and document management system utilized in the filing and processing of workers' compensation claims in the Commonwealth of Kentucky.

~~(12)~~~~(13)~~ "Notice of Filing of Application" means the notice issued by the commissioner stating that a claim has been filed, scheduling the date and time of the benefit review conference, and stating the week during which a hearing is to be held.

~~(13)~~~~(14)~~ "Signature" means actual personal handwritten signatures, and includes electronic signatures, which shall be treated as a personal signature for purposes of CR 11.

~~(14)~~~~(15)~~ "Special defenses" means defenses that shall be raised by ~~[""]~~special answer~~[""]~~ filed in accordance with Section 7(2)(d) of this administrative regulation.

~~(15)~~~~(16)~~ "Technical failure" **means a failure of the Department of Workers' Claims hardware, software, or telecommunications facility that results in the impossibility for an external user to submit a filing electronically and does not include malfunctioning of an external user's equipment**[:

~~(a) Means a failure of the Department of Workers' Claims' hardware, software, and telecommunications facility that results in the impossibility for an external user to submit a filing electronically; and~~

~~(b) Does not include malfunctioning of an external user's equipment].~~

Section 2. Parties. (1) Any interested party may file an original application for resolution of claim pursuant to KRS 342.270 or 342.316. The injured workers, or survivors, shall be designated as ~~[""]~~plaintiff~~[""]~~. Adverse parties shall be designated as ~~[""]~~defendants~~[""]~~.

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.

(b) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. LMS Filings. (1) Except as provided by subsection (2)(a) and (b) of this section and Section 4 of this administrative regulation, all pleadings, notices, orders, and other documents pertaining to a claim for workers' compensation benefits shall be filed utilizing the LMS.

(2) A document submitted electronically shall be deemed filed on the date filing is completed within the time frames set forth in paragraph (a) of this subsection. The filing party shall receive an electronic notification of the time and date filed.

(a) Pleadings, motions, orders, or other documents may be filed utilizing the LMS at any time the LMS is available. Periods of unavailability shall be pre-announced by the department. Inability to file during periods that were previously announced shall not constitute an excuse for a failure to file during a period.

(b) On or after July 1, 2017, paper or written pleadings, motions, or orders shall not be accepted for filing except for parties representing themselves. ~~[Any documents filed on paper after the effective date of this administrative regulation and through June 30, 2017, may be mailed consistent with Section 1(6)(b) of this administrative regulation.]~~

(3) An electronically filed document using LMS shall bear the electronic signature of the filing party, if the party is representing himself or herself, or the filing party's attorney, as more fully described in paragraphs (a) and (b) of this subsection. The electronic signature of the filing party, if the party is representing himself or herself, or the filing party's attorney shall be treated as a personal signature and shall serve as a signature for purposes of CR 11, and all other purposes pursuant to the Kentucky Rules of Civil Procedure, and for any purpose for which a signature is required pursuant to this administrative regulation.

(a) An electronically filed document shall include a signature block setting forth the name, mailing address, phone number, fax number, and email address of the filing party, if the party is representing himself or herself, or the filing party's attorney.

(b) In addition, the name of the filing party, if the party is representing himself or herself, or of the filing party's attorney shall be preceded by an "/s/" and typed in the space where the signature would otherwise appear. A handwritten signature shall be required for any paper or written filing.

(c) Affidavits and exhibits to pleadings with original handwritten signatures shall be scanned and filed in PDF or PDF/A format.

(4) Signatures of more than one (1) party required. A document requiring signatures of more than one (1) party shall be filed either by:

(a) Representing the consent of the other parties on the document by inserting in the location where each handwritten signature would otherwise appear the typed signature of each person, other than the filing party, preceded by an "/s/" and followed by the words "by permission" (e.g., "/s/ Jane Doe by permission"); or

(b) Electronically filing a scanned document containing all necessary signatures.

(5) Signatures of judges, board members, and designees of the commissioner. If the signature of a judge, board member, or designee of the commissioner is required on a document, an electronic signature may be used. The electronic signature shall be treated as the judge's, board member's, or designee's personal signature for purposes of CR 11, all other Kentucky Rules of Civil Procedure, and for any purpose required by this administrative regulation.

(6) Documents required to be notarized, acknowledged, verified, or made under oath. The signature on any document required to be notarized, acknowledged, verified, or made under oath shall be handwritten and scanned into the LMS. The scanned document shall be maintained as the official record, and the filing party shall retain the originally executed copy. The original paper copy may be required to be produced if the validity of the signature is challenged.

(7) Challenging or disputing authenticity.

(a) A non-filing signatory or party who disputes the authenticity of an electronically filed document with a non-attorney signature, or the authenticity of that document or the authenticity of an electronically filed document containing multiple signatures shall file an objection to the

document within fourteen (14) days of service of the document. An objection to the document shall place the burden to respond on the non-objecting party and failure to do so shall result in the filing being stricken from the record.

(b) If a party wishes to challenge the authenticity of an electronically filed document or signature after the fourteen (14) day period, the party shall file a motion to seek a ruling, and show cause for the delayed challenge. If the challenge to authenticity is allowed, the non-moving party shall have the burden to prove authenticity. Failure to prove authenticity by the non-moving party shall result in the filing being stricken from the record.

(c) Challenges to authenticity filed without a valid basis shall be subject to sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation.

(8) Validity and enforceability of orders. All orders or opinions to be entered or issued shall ~~shall~~ ~~may~~ be filed electronically, and shall have the same force and effect as if the judge or board member had affixed a signature to a paper copy of the order in a conventional manner.

(9) Entry of orders or opinions. Immediately upon entry of an order or opinion, a notice shall be served electronically on all parties. A paper form of the order or opinion shall be served upon those parties not utilizing LMS.

Section 4. Technical Difficulty: Litigation Management System Unavailability. (1) Jurisdictional Deadlines. A jurisdictional deadline shall not be extended. A technical failure, including a failure of LMS, shall not excuse a failure to comply with a jurisdictional deadline. The filing party shall insure that a document is timely filed to comply with jurisdictional deadlines and, if necessary to comply with those deadlines, the filing party shall file the document conventionally accompanied by a certification of the necessity to do so in order to meet a jurisdictional deadline.

(2) Technical Failures.

(a) If a filing party experiences a technical failure, the filing party may file the document conventionally, if the document is accompanied by a certification, signed by the filing party, that the filing party has attempted to file the document electronically at least twice, with those unsuccessful attempts occurring at least one (1) hour apart.

(b) A filing party who suffers prejudice as a result of a technical failure as defined by Section 1(16) of this administrative regulation, or a filing party who cannot file a time-sensitive document electronically due to unforeseen technical difficulties, other than a document filed under a jurisdictional deadline, may seek relief from an administrative law judge. Parties may also enter into an agreed order deeming a document, other than one (1) filed under a jurisdictional deadline, timely filed.

Section 5. Pleadings. (1) An application for resolution of claim and all other pleadings shall be signed or electronically signed when using LMS, and submitted in accordance with this administrative regulation.

(a) For each claim, an applicant shall submit a completed application for resolution of claim. If the claim involves a fatality, the applicant shall also submit a Form F within fifteen (15) days of the applicant's submission of the application.

(b) The applicant may include, if appropriate, a request for vocational rehabilitation, interlocutory relief, or a request for imposition of a safety penalty pursuant to KRS 342.165. The

applicant shall also designate whether an interpreter will be required at the hearing, and shall specify the language and any specific dialect needed.

(2) The filing of an application and service through LMS shall satisfy all requirements for service pursuant to CR 5. All pleadings filed through the LMS shall be served upon all other parties electronically or by e-mail. If a party is represented, the pleading shall be served on that representative, at the party's or the representative's last known address. The parties, by agreement, may serve all pleadings upon each other by electronic means. A certificate of service indicating the date of service and electronically signed by the party shall appear on the face of the pleading. Notices of deposition, notices of physical examination, requests for and responses to requests for production of documents, and exchange of reports or records shall be served by e-mail upon the parties and shall not be filed with the commissioner.

(3) Documents filed or served outside of LMS.

(a) A document filed or served outside of LMS shall comply with this subsection.

(b) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail.

(c) All pleadings shall be served upon the commissioner through LMS or, if a party is unrepresented, by paper and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to the parties' representative, at the party's or representative's last known address or, if agreed to, by electronic means. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the commissioner.

(d) After the application for resolution has been assigned to an administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before Administrative Law Judge (name)". Upon consolidation of claims, the most recent claim number shall be listed first.

(e) 1. All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

2. Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing documents involved in an appeal.

Section 6. Motions. (1) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(2) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(3) Every motion, the grounds of which depend upon the existence of facts that the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(4) A response to a motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be filed within ten (10) days after the date of the filing of a motion. The administrative law judge shall rule on the motion no later than ten (10) days after the date for the filing of the response has passed.

(5)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;
2. An affidavit evidencing the grounds to support reopening;
3. A current medical report showing a change in disability established by objective medical findings;
4. A copy of the opinion and award, settlement, voluntary agreed order, or agreed resolution sought to be reopened;
5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed; or
6. A designation of evidence from the original record specifically identifying the relevant items of proof that are to be considered as part of the record during reopening.

(b)1. The designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.

2. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.

3. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(6)(a) The motion to reopen shall be served on all other parties consistent with the Kentucky Rules of Civil Procedure regarding service as provided under CR 4.01(a) or (b), by:

1. Registered mail or certified mail return receipt requested with instructions to the delivery postal employee to deliver to the addressee only and show the address where delivered and the date of delivery; or

2. Causing the motion to be transferred for service by any person authorized, other than as in subparagraph 1. of this paragraph, to deliver the document, who shall serve it and whose return endorsed thereon shall be proof of the time and manner of service.

(b) The motion to reopen shall contain a certification of the method of service.

1. Any response shall be filed within twenty (20) days of filing the motion to reopen.

2. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

3. An administrative law judge shall rule on the motion no sooner than five (5) days and no later than fifteen (15) days after the date for the filing of the response has passed.

(7) A motion for allowance of a plaintiff's attorney fee shall:

(a) Be made within thirty (30) days following the finality of the award, settlement, or agreed resolution upon which the fee request is based;

(b) Be served upon the adverse parties and the attorney's client;

(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and

(d) Be accompanied by:

1. An affidavit of counsel detailing the extent of the services rendered;

2. A signed and dated Form 109 as required by KRS 342.320(5); and

3. A copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant's attorney's fee shall be:

(a) Filed within thirty (30) days following the finality of the decision; and

(b) Accompanied by an affidavit of counsel detailing:

1. The extent of the services rendered; and

2. The total amount to be charged.

(9) Vocational rehabilitation benefits may be requested in the initial claim filing or by subsequent motion.

(10) If a plaintiff is deceased, a motion to substitute party and continue benefits shall be filed.

Section 7. Application for Resolution of a Claim and Response. (1) The applicant shall file an application for resolution of an injury, occupational disease, hearing loss, or interlocutory relief claim through the LMS. At the time of, **or within fifteen (15) days after the** ~~or within fifteen (15) days after the~~ filing of the application, the following shall be filed:

(a) Form 104, Plaintiff's Employment History, to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury; upon written certification, supported by claimant's counsel, that claimant does not seek a total disability award, the twenty (20) year work history need not be submitted;

(b) Form 105, Plaintiff's Chronological Medical History, to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the following:

1. A description of the injury that is the basis of the claim;

2. A medical opinion establishing a causal relationship between the work-related events or the medical condition that is the subject of the claim; and

3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder;

(e) Documentation substantiating the plaintiff's preinjury and post injury wages; and

(f) Documentation establishing additional periods for which temporary total disability benefits are sought.

(2)(a) Following the filing of an application for resolution of claim, or the sustaining of a motion to reopen, the commissioner shall issue a Notice of Filing of Application. Within forty-five (45) days of the date of the Notice of Filing of Application, each defendant shall file a notice of claim denial or acceptance. A notice of claim denial shall not be required to be filed by any party in a claim reopened pursuant to KRS 342.125.

(b) If a notice of claim denial is not filed, all allegations of the application shall be deemed admitted.

(c) The notice of claim denial shall set forth the following:

1. All pertinent matters that are admitted and those that are denied; and

2. If a claim is denied in whole or in part, a detailed summary of the basis for denial.

(d) In the notice of claim denial, a defendant shall if appropriate file a special answer to raise any special defenses in accordance with this paragraph. If a defendant raises the special defense under KRS 342.165, failure to comply with a safety law, administrative regulation, or rule, the defendant shall also file a completed Form SVE with the special answer and identify the safety device the employee failed to use or the lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public which was not complied with.

1. A ["]special answer["] shall be filed within:

a. The forty-five (45) days for filing the Notice of Claim Denial; or forty-five (45) days of the date of the order joining the defendant as a party, if joinder occurs after the filing of the application for the resolution of the claim; or

b. Ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence.

2. A special defense shall be waived if not timely raised.

3. A special defense shall be pleaded if the defense arises under:

a. KRS 342.035(3), unreasonable failure to follow medical advice;

b. KRS 342.165, failure to comply with safety laws;

c. KRS 342.316(7) or 342.335, false statement on employment application;

d. KRS 342.395, voluntary rejection of KRS Chapter 342;

e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;

f. KRS 342.710(5), refusal to accept rehabilitation services;

g. Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute; or

h. ["]Horseplay["].

(e) Within forty-five (45) days of the issuance of the Notice of Filing of Application, the parties shall file a notice of disclosure, which shall contain:

1. The names of all known witnesses and their addresses, if known, upon whom the party intends to rely except those already submitted into evidence;

2. For plaintiff, if requested by defendant, wage information and wage records for all wages earned by the plaintiff, if any, subsequent to the injury, including any wages earned as of the date of service of the notice of disclosure while employed for any employer other than the one (1) for whom he or she was employed at the time of the injury; Plaintiff may provide a release for the information or records in lieu of providing those records;

3. For plaintiff, a listing of each employer, address, and dates of any employment, subsequent to the injury, as well as the nature of the employment, including a description of any physical requirements of the subsequent employment;

4. For plaintiff, wage information for all wages earned, if any, for any employment for which the plaintiff was engaged concurrent to the time of the injury on a Form AWW-CON;

5. If the plaintiff alleges a safety violation by the employer, a Form SVC shall be filed;

6. For all parties, a list, with specificity, of all known and anticipated contested issues. Any subsequent addition of contested issues shall only be allowed upon motion to the ALJ establishing good cause as to why the issue could not have been listed earlier;

7. For plaintiff, all known unpaid bills to the parties, including travel for medical treatment, co-pays, or direct payments by plaintiff for medical expenses for which plaintiff seeks payment or

reimbursement. Actual copies of the bills and requests for reimbursement shall not be filed but shall be served upon opposing parties if requested;

8. For each defendant, a completed Form AWW-1, Average Weekly Wage Certification, and itemization of any medical bills or medical expenses known to be disputed by the defendant, any submitted bills being considered but unpaid, and a total for all medical expenses paid as of the date application for resolution of the claim or motion to reopen is filed.

a. Actual copies of the bills and requests for reimbursement shall not be filed but shall be served upon opposing parties if requested.

b. If the plaintiff has earned wages for a defendant after the injury that is the subject of the litigation, the defendant shall provide post-injury wage information records on a Form AWW-POST.

c. Any party required to file an AWW shall include actual pay records to the extent available.

d. Upon request by plaintiff, defendant shall provide to plaintiff any statement, surveillance video, photographs, or recording of plaintiff. Further, upon plaintiff's request, and a showing of relevance, defendant shall provide the employee's employment file and OSHA history as it relates to the plaintiff's injury.

e. In a reopened claim, a Form AWW-1 shall not be required to be filed if an ALJ made a finding establishing the average weekly wage in a previous decision or if the pre-injury average weekly wage was previously stipulated by the parties unless a party seeks and is relieved from the original stipulation;

9. For a newly joined party, except for a medical provider whose treatment or bills have been contested, within forty-five (45) days of the date of the order joining the new party, a notice of disclosure in accordance with the requirements in paragraph (e) of this subsection; and

10. For each employer, a copy of any written job description setting out the physical requirements of the job.

(f) All parties shall amend the notice of disclosure within ten (10) days after the identification of any additional witness, or receipt of information or documents that would have been disclosed at the time of the original filing had it then been known or available. Failure to comply may result in the exclusion of the witness.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date the commissioner issues the Notice of Filing of Application.

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the Notice of Filing of Application;

(b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and

(c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.

(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records and relevant portions of hospital or educational records shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge. Defendant employer may request Social Security, Armed Forces, VA records, vital statistics records,

and other public records upon a showing of relevance. Failure to comply with this subsection may constitute grounds for exclusion of the reports or records as evidence.

(4) All medical reports filed with the application for resolution of a claim shall be admitted into evidence without further order subject to the limitations of KRS 342.033 if:

- (a) An objection is not filed prior to or with the filing of the notice of claim denial; and
- (b) The medical reports comply with Section 10 of this administrative regulation.

Section 9. Vocational Reports. (1) One (1) vocational re-port may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.

(2) Vocational reports shall be signed by the individual making the report.

(3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.

(4) An objection to the filing of a vocational report shall:

- (a) Be filed within ten (10) days of the filing of the notice or motion for admission; and
- (b) State the grounds for the objection with particularity.

(5) The filing party may file a response to the objection within ten (10) days and the administrative law judge shall rule on the objection within ten (10) days after the response is filed, or, if no response is filed, when the response was due to be filed.

(6) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness in a timely manner as if on cross-examination at its own expense.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an administrative law judge.

(2) Medical reports submitted through the LMS may utilize the web form creating a Form 107 or Form 108 for electronic filing, except an administrative law judge may permit the introduction of other reports that substantially comply with this section and do not exceed twenty-five (25) pages.

(3) Medical reports shall be signed by the physician making the report, or the notice of filing shall be considered an affidavit from the physician or submitting party.

(4) Medical reports shall include, within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physicians index number in lieu of attaching qualifications along with a listing of the physician's specialty of practice.

(5) Narratives in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.

(6) Notices of filing or motions to file medical reports shall list the impairment rating assigned in the medical report or record in the body of the notice or motion.

(a) Upon notice, a party may file evidence from two (2) physicians in accordance with KRS 342.033, either by deposition or medical report, which shall be admitted into evidence without further order if an objection is not filed.

(b) An objection to the filing of a medical report shall be filed within ten (10) days of the filing of the notice or the motion for admission.

(c) Grounds for the objection shall be stated with particularity.

(d) The party seeking introduction of the medical report may file a response within ten (10) days after the filing of the objection.

(e) The administrative law judge shall rule on the objection within ten (10) days of the response or the date the response is due.

(7) Medical records that are not submitted under subsection (2) of this section may be submitted by notice that identifies the records, the person or medical facility that produced the records, and the relevance of the records to the claim. Records submitted in excess of twenty (20) pages shall provide an indexed table of contents generally identifying the contents of each page. Failure to provide an indexed table of contents shall result in rejection of the records, which shall not be filed or considered as evidence.

(8) If a medical report is admitted as direct testimony, an adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for hearing loss or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.

(2) In all other claims, the commissioner or an administrative law judge may direct appointment by the commissioner of a university medical evaluator.

(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical treatment records and diagnostic studies to the administrative law judge or to the commissioner for determination of relevancy and submission to the evaluator. The administrative law judge or the commissioner shall provide notice to the parties of the material submitted to the evaluator. This additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the administrative law judge or to the commissioner within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315 or KRS 342.316;

(b) Clearly legible;

(c) Indexed;

(d) Furnished in chronological order;

(e) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and

(f) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:

1. Identify the medical provider;

2. Include the date of medical services; and

3. Include the nature of medical services provided.

(4) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the commissioner shall provide copies of the

report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.

(6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, suspension of the claim pursuant to KRS 342.205(3), sanctions, or any combination of these penalties, unless good cause is shown for the failure.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) working days prior to the scheduled medical evaluation or to pay the cost of the exam within thirty (30) days of the receipt of a statement of charges for the exam may result in sanctions, payment of failure to appear charges, or unfair claims practice penalties unless good cause is shown for the failure or delay.

Section 12. Interlocutory Relief. **(1) A party may seek interlocutory relief at the time of the initial claim application or by motion requesting:**

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);

(b) Medical benefits pursuant to KRS 342.020; or

(c) Rehabilitation services pursuant to KRS 342.710.

(2) If interlocutory relief is requested prior to or at the time the application for resolution of claim is filed, the commissioner shall issue an order allowing the responding party twenty (20) days to respond to the request.

(a) Upon receipt of the response, the commissioner shall assign the claim to an ALJ for resolution of the request for interlocutory relief.

(b) The ALJ to whom the interlocutory relief request is assigned may schedule a hearing to be held within thirty-five (35) days of the order assigning the claim for resolution.

(c) The ALJ shall issue a decision regarding interlocutory relief within twenty (20) days after the date of the hearing.

(d) If no hearing is held, the ALJ shall issue a decision within twenty (20) days after the date the response is filed, or twenty (20) days after the date the response is due if no response is filed.

(e) If the request for interlocutory relief is denied, the claim shall be referred to the commissioner for reassignment of the claim for resolution by another ALJ.

(f) If the request for interlocutory relief for income benefits is granted, the claim shall be placed in abeyance. The plaintiff shall provide a status report every sixty (60) days, or sooner if circumstances warrant or upon order by the ALJ, updating his or her current status. Upon motion and a showing of cause, or upon the ALJ's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. Failure to file a timely status report may constitute cause to terminate interlocutory relief. Interlocutory relief, once awarded, shall continue until the ALJ issues an order of termination of interlocutory relief. The order terminating interlocutory relief shall also contain a provision for referral to the commissioner for reassignment of the claim for resolution by another ALJ.

(3)(a) If a motion for interlocutory relief is filed after the claim is assigned to an ALJ, he or she shall within ten (10) days issue an order requiring a response to the request for

interlocutory relief be served within twenty (20) days from the date of the order, and refer it to the commissioner for assignment to an ALJ for the sole purpose of considering the request for interlocutory relief.

(b) Upon receipt of the response, the ALJ may schedule a hearing to be held within thirty-five (35) days of receipt of the response. The hearing may be held telephonically, by video, or by other electronic means, if the parties agree or a party demonstrates good cause as to why the party cannot appear at the hearing in person.

(c) Upon completion of the hearing, an ALJ shall issue a decision within twenty (20) days.

(d) If the hearing is waived, an ALJ shall issue a decision within twenty (20) days after the date the response is filed, or twenty (20) days after the response is due if no response is filed.

(4)(a) Entitlement to interlocutory relief shall be established by means of affidavit, deposition, hearing testimony, or other means of record demonstrating the requesting party:

1. Is eligible under KRS Chapter 342;

2. Will suffer immediate and irreparable injury, loss, or damage pending a final decision on the application; and

3. Is likely to succeed on the merits based upon the evidence introduced by the parties.

(b) Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) Benefits awarded pursuant to an interlocutory order shall not be terminated except upon entry of an order issued by an administrative law judge. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory order without prior approval of the ALJ [All] shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act at KRS 342.267, and for sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation, unless good cause is shown for failure to do so.

(6) If interlocutory relief is requested in the application for benefits, an assignment to an ALJ shall not be made on other issues and a scheduling order shall not be issued until a ruling has been made on the interlocutory relief request, unless the requesting party shows that delay will result in irreparable harm.

(7) An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney. ~~[(1) A party may seek interlocutory relief at the time of the initial claim application, or by motion requesting:~~

~~(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);~~

~~(b) Medical benefits pursuant to KRS 342.020; or~~

~~(c) Rehabilitation services pursuant to KRS 342.710.~~

~~(2) Upon motion of any party, an informal conference:~~

~~(a) Shall be held to review the plaintiff's entitlement to interlocutory relief; and~~

~~(b) May be held telephonically.~~

~~(3) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter, the request shall be ripe for a decision.~~

~~(4)(a) Entitlement to interlocutory relief shall be shown by means of affidavit, deposition, or other evidence of record demonstrating the requesting party:~~

~~1. Is eligible under KRS Chapter 342;~~

~~2. Will suffer irreparable injury, loss or damage pending a final decision on the application; and~~

~~3. Is likely to succeed on the merits based upon the evidence introduced by the parties.~~

~~(b) Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.~~

~~(5) If interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance. The plaintiff shall provide a status report every sixty (60) days, or sooner if circumstances warrant or upon order by the ALJ, updating his or her current status. Upon motion and a showing of cause, or upon the ALJ's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. Failure to timely file a status report may constitute cause to terminate interlocutory relief. Interlocutory relief, once awarded, shall continue until the ALJ issues an order of termination of interlocutory relief. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory award without prior approval of the ALJ shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act at KRS 342.267, and for sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation, unless good cause is shown for the failure to do so.~~

~~(6) An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.] [(1) A party may seek interlocutory relief at the time of the initial claim application or by motion requesting:~~

~~(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);~~

~~(b) Medical benefits pursuant to KRS 342.020; or~~

~~(c) Rehabilitation services pursuant to KRS 342.710.~~

~~(2) If interlocutory relief is requested prior to or at the time the application for resolution of claim is filed, the commissioner shall issue an order allowing the responding party twenty (20) days to respond to the request.~~

~~(a) Upon receipt of the response, the commissioner shall assign the claim to an ALJ for resolution of the request for interlocutory relief.~~

~~(b) The ALJ to whom the interlocutory relief request is assigned may schedule a hearing to be held within thirty five (35) days of the order assigning the claim for resolution.~~

~~(c) The ALJ shall issue a decision regarding interlocutory relief within twenty (20) days after the date of the hearing.~~

~~(d) If no hearing is held, the ALJ shall issue a decision within twenty (20) days after the date the response is filed, or twenty (20) days after the date the response is due if no response is filed.~~

~~(e) If the request for interlocutory relief is denied, the claim shall be referred to the commissioner for reassignment of the claim for resolution by another ALJ.~~

~~(f) If the request for interlocutory relief for income benefits is granted, the claim shall be placed in abeyance. The plaintiff shall provide a status report every sixty (60) days, or sooner if circumstances warrant or upon order by the ALJ, updating his or her current status. Upon motion and a showing of cause, or upon the ALJ's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. Failure to file a timely status report may constitute cause to terminate interlocutory relief. Interlocutory relief, once awarded, shall continue until the ALJ issues an order of termination of interlocutory relief. The order terminating interlocutory relief shall also contain a provision for referral to the commissioner for reassignment of the claim for resolution by another ALJ.~~

~~(3)(a) If a motion for interlocutory relief is filed after the claim is assigned to an ALJ, he or she shall within ten (10) days issue an order requiring a response to the request for interlocutory relief be served within twenty (20) days from the date of the order, and refer it to the commissioner for assignment to an ALJ for the sole purpose of considering the request for interlocutory relief.~~

~~(b) Upon receipt of the response, the ALJ may schedule a hearing to be held within thirty five (35) days of receipt of the response. The hearing may be held telephonically, by video, or by other electronic means, if the parties agree or a party demonstrates good cause as to why the party cannot appear at the hearing in person.~~

~~(c) Upon completion of the hearing, an ALJ shall issue a decision within twenty (20) days.~~

~~(d) If the hearing is waived, an ALJ shall issue a decision within twenty (20) days after the date the response is filed, or twenty (20) days after the response is due if no response is filed.~~

~~(4)(a) Entitlement to interlocutory relief shall be established by means of affidavit, deposition, hearing testimony, or other means of record demonstrating the requesting party:~~

~~1. Is eligible under KRS Chapter 342;~~

~~2. Will suffer immediate and irreparable injury, loss, or damage pending a final decision on the application; and~~

~~3. Is likely to succeed on the merits based upon the evidence introduced by the parties.~~

~~(b) Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.~~

~~(5) Benefits awarded pursuant to an interlocutory order shall not be terminated except upon entry of an order issued by an administrative law judge. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory order without prior approval of the ALJ shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act at KRS 342.267, and for sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation, unless good cause is shown for failure to do so.~~

~~(6) If interlocutory relief is requested in the application for benefits, an assignment to an ALJ shall not be made on other issues and a scheduling order shall not be issued until a ruling has been made on the interlocutory relief request, unless the requesting party shows that delay will result in irreparable harm.~~

~~(7) An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief~~

~~may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.]~~

Section 13. Benefit Review Conferences. (1) The purpose of the BRC shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) The BRC shall be an informal proceeding.

(3) The date, time, and place for the BRC shall be stated on the Notice of Filing of Application issued by the commissioner.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the BRC.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier or self-insured employer with settlement authority shall be present or available by telephone during the BRC. Failure to comply with this provision may result in the imposition of sanctions.

(6) The administrative law judge may upon motion waive the plaintiff's attendance at the BRC for good cause shown.

(7) A transcript of the BRC shall not be made.

(8) Representatives of all parties shall have authority to re-solve disputed issues and settle the claim at the BRC.

(9)(a) The plaintiff shall bring to the BRC copies of known unpaid medical bills not previously provided and documentation of out-of-pocket expenses including travel for medical treatments. Absent a showing of good cause, failure to do so may constitute a waiver to claim payment for those bills.

(b) Each defendant shall bring copies of known medical bills not previously provided and medical expenses presented to them, their insurer or representative known to be unpaid or disputed including travel expenses. Absent a showing of good cause, failure to do so may constitute a waiver to challenge those bills.

(10) A party seeking postponement of a BRC shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(11) If at the conclusion of the BRC the parties have not reached agreement on all the issues, the administrative law judge shall:

(a) Prepare a final BRC memorandum and order including stipulations and identification of all issues, which shall be signed by all parties or if represented, their counsel, and the administrative law judge; and

(b) Schedule a final hearing.

(12) Only contested issues shall be the subject of further proceedings.

(13) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the BRC and the date of the hearing and may limit the number of witnesses to be presented at the hearing.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2)(a) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of:

1. Hospital records, which shall be limited to emergency room records, history, physical and discharge summary, operative notes, and reports of specialized testing; and

2. Educational, Office of Vital Statistics, Armed Forces, Social Security, and other public records.

(b) An opinion of a physician that is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

(c) If the records or reports submitted exceed twenty (20) pages, the party attempting to file those records or reports into evidence shall include an indexed table of contents generally identifying the contents.

(d) An appropriate release shall be included to permit opposing parties the ability to obtain complete copies of the records.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction.

(2) A motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended.

(3) The motion or supporting affidavits shall set forth:

(a) The efforts to produce the evidence in a timely manner;

(b) Facts which prevented timely production; and

(c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(4) In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.

(5) The granting of an extension of time for completion of discovery or proof shall:

(a) Enlarge the time to all:

1. Plaintiffs if the extension is granted to a plaintiff; and

2. Defendants if an extension is granted to a defendant;

(b) Extend the time of the adverse party automatically except if the extension is for rebuttal proof; and

(c) Be limited to the introduction of evidence cited as the basis for the requested extension of time.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts that are not genuinely in issue shall warrant imposition of sanctions as established in Section 26 of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.

(3) Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Kentucky Rules of Civil Procedure 26 to 37, except for Rules 27, 33, and 36, which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) Whether opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.

(3) A party seeking a subpoena from an ALJ shall prepare a subpoena or subpoena duces tecum, and provide it to the ALJ to whom the case is assigned, or if no assignment has been made then it shall be sent to the chief administrative law judge. Except for good cause shown, a subpoena shall be requested a minimum of ten (10) days prior to the date of the appearance being requested. A motion shall not be filed. A subpoena shall be served in accordance with Kentucky Rules of Civil Procedure 5.02, 45.03, or 45.05, whichever is applicable.

(4) The commissioner shall establish a medical qualifications index.

(a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.

(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.

(c) Qualifications shall be revised or updated by submitting revisions to the commissioner.

(d) A party may inquire further into the qualifications of a physician.

(e) If the physician's qualifications have not previously been filed into the index maintained by the commissioner, the filing party shall provide sufficient information containing the physician's qualifications, and request the physician be included in the index and a number issued.

(5) Discovery requests and responses to the requests shall not be submitted into the record.

Section 18. Informal Conference. Prior to the hearing, the ALJ may conduct an informal conference either at a hearing site, telephonically, or by other electronic means to inquire about remaining contested issues, and who will testify at the hearing.

Section 19. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the administrative law judge may hold oral arguments, order briefs, or proceed to final decision.

(3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.

(4) The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.

(5) A decision shall be rendered no later than sixty (60) days following the hearing.

(6) The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the date of filing of the written opinion.

(7) An opinion or other final order of an administrative law judge shall not be deemed final until the administrative law judge opinion is entered into LMS, or, if mailed, by certificate of service from the Office of the ALJ or Department of Workers' Claims with a certification that mailing was sent to:

(a) An attorney who has entered an appearance for a party; or

(b) The party if an attorney has not entered an appearance.

(8) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission as of the date of the order allowing the waiver of hearing. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

Section 20. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a decision, order, or award of an administrative law judge and clearly state the patent error that the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 21. Settlements. (1) Unless the settlement agreement is completed and tendered to the ALJ for immediate approval at the BRC, informal conference, or hearing, or unless the ALJ orders otherwise, the party drafting the settlement agreement shall provide the signed original to the adverse party no later than fifteen (15) days after the date the parties agree to settle. The agreement shall be signed by all parties and tendered to the ALJ for approval no later than thirty (30) days after the date the parties agreed to settle absent a showing of good cause.

(2) Payment shall be made within twenty-one (21) calendar days after the date of the order approving settlement. Payment for settlements and past due benefits shall be mailed to the last known address of plaintiff's counsel, if represented.

(3) Failure to satisfy the time requirements in subsection (2) of this section, if the defendant or defendant's counsel is primarily at fault, may result in the addition of twelve (12) percent interest per annum on all benefits agreed upon in the settlement for any period of delay beyond the time prescribed in subsection (2) of this section.

(4) Parties who settle future periodic payments in a lump sum shall use the discount factor computed in accordance with KRS 342.265(3).

(5) Parties who reach an agreement pursuant to KRS 342.265 shall file the agreement on the applicable form as listed in this subsection and, if not filed electronically, that form shall include the original signatures of the parties:

- (a) Form 110-F, Agreement as to Compensation and Order Approving Settlement- Fatality; or
- (b) Form 110-I, Agreement as to Compensation and Order Approving Settlement;[.]
- (c) Form 110-ODHLCWP, Agreement as to Compensation and Order Approving Settlement.
- (6) A settlement agreement that contains information or provisions that are outside the provisions and purview of KRS Chapter 342 shall not be approved and shall be returned to the parties.

Section 22. Review of Administrative Law Judge Decisions. (1) General.

(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) ~~Parties shall insert~~~~[All appeals to the Workers' Compensation Board shall be filed through LMS, with the exception of those permitted to be filed manually pursuant to Section 3(2)(a), Section 3(3) and Section 4 of 803 KAR 25:010. Any documents filed manually, including the Notice of Appeal, shall contain]~~~~[Parties shall insert]~~ the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.

(2) Time and format of notice of appeal.

(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers' Compensation Board.

(b) As used in this section, a final award, order, or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

(c) The notice of appeal shall:

1. Denote the appealing party as the petitioner;
2. Denote all parties against whom the appeal is taken as respondents;[;][. ~~"Et al." and "etc." are not proper designations of parties;~~]
3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;
4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent;
5. Include the claim number; and
6. State the date of the final award, order, or decision appealed.

~~[7. Failure to denote or designate all parties against whom the appeal is taken, failure to name an indispensable party to the appeal, or failure to designate the decision or order from which the appeal is taken, shall result in dismissal of the appeal.]~~

(d) Cross-appeal.

1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.

2. A cross-appeal shall designate the parties as stated in the notice of appeal.[

~~3. Failure to denote or designate all parties against whom the cross-appeal is taken, failure to name an indispensable party to the cross-appeal, or failure to designate the decisions or order from which the cross-appeal is taken, may result in dismissal of the cross-appeal.]~~

(e) Failure to file the notice within the time allowed shall require dismissal of the appeal.

(3) Format of petitioner's brief.

(a) Petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.

(b) Petitioner's brief shall be filed with the commissioner of the Department of Workers' Claims.

(c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

(4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the manner established in this subsection.

(a)1. The name of each petitioner and each respondent shall be included in the brief.

2. The petitioner shall specifically designate as respondents all adverse parties.

3. The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.

(b) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.

(c) The petitioner's brief shall state the date of entry of the final award, order, or decision by the administrative law judge.

(d) The petitioner's brief shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.

(e) The petitioner's brief shall include a statement of the "Need for Oral Argument", designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.

(f) The petitioner's brief shall include a "Statement of Benefits Pending Review", which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.

(g) The organization and contents of the petitioner's brief for review shall be as established in this paragraph.

1. A brief "Introduction" shall indicate the nature of the case.

2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.

3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.

4. An "Argument" shall:

a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and

b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

5. A "Conclusion" shall set forth the specific relief sought from the board.

6. An "Appendix" shall contain:

a. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and

b. Copies of prior board opinions in accordance with subsection (10) of this section.

7. Civil Rule 76.28(4)(c) shall govern the use of unpublished opinions of the Court of Appeals or Supreme Court.

(5) Respondent's brief, combined brief, or cross-petitioner's brief.

(a) Each respondent shall file an original brief, or combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on which the petitioner's brief was filed with the commissioner of the Department of Workers' Claims.

(b) Respondent's brief shall include a statement of the "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.

(c) The respondent's brief shall include a "Statement of Benefits Pending Review" similar to the statement required of the petitioner by subsection (4)(f) of this section.

(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

(6) Reply brief.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index or contents page shall not be required.

(c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

(7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith, or if not filed through LMS, bear an original signature of each party or his counsel with a written certification the statements contained in the document are true and made in good faith, and that service has been made upon opposing parties with identification of the manner of service.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.

(a) Before filing a notice of appeal, cross-appeal, or any brief with the commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, or electronically as set forth in this administrative regulation, a copy of the document on each adverse party.

(b) Every brief filed in an appeal to the Workers' Compensation Board shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made in conformity to this administrative regulation. The statement shall identify by name each person served.

(c) The name of each attorney, or an unrepresented party, submitting a document to the Workers' Compensation Board along with a current address, email address, and telephone number shall appear following its "conclusion".

(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief that shall address issues raised by the cross-appeal.

(e) If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

(9) Except for good cause shown, any motion for extension of time to file a brief shall be filed not later than five (5) days prior to the date the brief is due.

(10) Form of citations.

(a) All citations to Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

(b) All citations to Kentucky unpublished decisions shall conform to the requirements of Civil Rule 76.28(4)(c).

(c) Citations to prior decisions of the board shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

(11) Number of Pages.

(a) The petitioner's brief and the respondent's brief shall be limited to twenty (20) total pages, including those items required by this section. The appendix shall not count against the page limit.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) total pages, including those items required by this section. The appendix shall not count against the page limit.

(d) The parties shall make every effort to comply with the above page limitations.

(e) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(12) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation, [~~failure of a party to respond to a show cause order,~~] or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Rejection of a brief that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refile occurs, the filing shall date back to the date of the original filing;

(c) Striking of an untimely response;

(d) A fine of not more than \$500; or

(e) Dismissal.

(13) Motions.

(a) A motion, response, or objection shall be filed with the commissioner of the Department of Workers' Claims in accordance with Section 3 of this administrative regulation, and shall bear the designation of Appeals Branch or Workers' Compensation Board.

(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts that the moving or responding party believes are shown in the evidence or are admitted by the

pleadings, shall make reference to the place in the record where that evidence or admission is found.

(f) Before filing a motion or pleading with the commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02 or as set forth in this administrative regulation, a copy of the document on each adverse party.

(g) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.

(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(14) Oral arguments.

(a) Upon motion of a party or within its discretion, the board may order an oral argument on the merits in a case appealed from a decision, award, or order of an administrative law judge.

(b) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(15) Continuation of benefits pending appeal.

(a) Benefits awarded by an administrative law judge that are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing:

1. The probability of the existence in fact of:

a. Financial loss;

b. Privation, suffering, or adversity resulting from insufficient income; or

c. Detriment to the moving party's property or health if payment of benefits is not instituted;

and

2. That there exists a reasonable likelihood that the moving party will prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief by the moving party and responses shall be shown by:

1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or

2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(16) Decisions.

(a) The board shall:

1. Enter its decision affirming, modifying, or setting aside the order appealed from; or

2. Remand the claim to an administrative law judge for further proceedings.

(b) Motions for reconsideration shall not be permitted.

(c) The decision of the administrative law judge shall be affirmed if:

1. A board member is unable to sit on a decision; and

2. The remaining two (2) board members cannot reach an agreement on a final disposition.

(17) Appeal from board decisions. If applicable, pursuant to KRS 342.290, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

(18) If the parties agree to settle a claim while it is on appeal to the board, the original agreement signed by all parties, along with a motion to place the appeal in abeyance and to remand to the ALJ, shall be filed. An action shall not be taken by an ALJ until an order is issued by the board holding the appeal in abeyance, and remanding the claim to the ALJ for approval of the settlement agreement. Once the settlement agreement is approved, the appeal shall be removed from abeyance, and dismissed if all issues on appeal have been resolved. If issues remain for decision subsequent to the approval of the settlement agreement, the board shall remove the appeal from abeyance and establish a briefing schedule.

Section 23. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 24. Withdrawal of Records and Disposition of Exhibits. (1) A portion of any original record of the office shall not be withdrawn except upon an order of the commissioner, an administrative law judge, or a member of the board.

(2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final except x-rays filed in coal workers' pneumoconiosis claims, which shall be returned to the party who filed the x-ray.

(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.

(c)1. If an unclaimed exhibit has no money value, it shall be destroyed.

2. If an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus property.

3. If an unclaimed exhibit has a value of less than \$100, it shall be donated to the appropriate state agency.

4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 25. Time for Payment of Benefits in Litigated Claims. (1) If a disputed claim is litigated and an opinion, order, or award is entered awarding benefits to a claimant and no appeal is taken that prevents finality of the opinion, order, or award, payment shall be made in accordance with this subsection.

(a) All past benefits due under the award shall be paid no later than twenty-one (21) days after expiration of the last appeal date unless otherwise ordered by an ALJ.

(b) Any attorney fee shall be paid no later than thirty (30) days after the date of the administrative law judge's order approving the fee unless otherwise ordered by an ALJ.

(c) If plaintiff is represented by counsel, payment for past due benefits shall be mailed to the last known address of plaintiff's attorney.

(2) If an appeal is taken from an opinion, order, or award awarding benefits to a claimant, any benefits shall be paid no later than twenty-one (21) days after the decision becomes final and no further appeal can be taken. Any attorney fee shall be paid no later than thirty (30) days after the decision becomes final, or the date of the ALJ's order approving fee, whichever is later unless otherwise ordered by an ALJ.

(3) Failure to comply with this section may be grounds for sanctions pursuant to Section 26 of this administrative regulation, unless good cause is shown for the failure.

Section 26. Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon a determination that the proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.

(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 27. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and

(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award;

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of bene-fits by the Special Fund or Coal Workers' Pneumoconiosis Fund.

Section 28. Forms. The Department of Workers' Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative

regulation. Outdated applications or forms submitted may be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the commissioner. Otherwise, the date of the second receipt shall be the filing date.

Section 29. Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund. (1) Following a final award or order approving settlement of a claim that is eligible for participation by the Kentucky Coal Workers' Pneumoconiosis Fund pursuant to KRS 342.1242(1)~~[for coal workers' pneumoconiosis benefits pursuant to KRS 342.732]~~, the employer shall file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within thirty (30) days and shall serve copies of the request on all other parties.

(2) A written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund shall be in writing and include the following documents:

- (a) Plaintiff's application for resolution of claim;
- (b) Defendant's notice of resistance, notice of claim denial or acceptance, and any special answer;
- (c) All medical evidence upon which the award or settlement was based;
- (d) The notice of consensus issued by the commissioner, if rendered;
- (e) Final opinion or order of an administrative law judge determining liability for benefits or settlement agreement and order approving settlement agreement;
- (f) If an administrative law judge's award was appealed, the appellate opinions; and
- (g) If the request for participation includes retraining incentive benefits under KRS 342.732, a certification by the requesting party that the plaintiff meets the relevant statutory criteria.

(3) If the request for participation is based upon the settlement of a claim, the employer shall submit a settlement agreement that represents liability exclusively for coal workers' pneumoconiosis benefits, and does not include any sums for other claims that the plaintiff may have against the employer.

(4) In claims arising under KRS 342.792, if the employer fails to submit a request for participation within thirty (30) days of the final award or order approving settlement, the plaintiff or an administrative law judge may file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within sixty (60) days of the final award or order approving settlement.

(5) Within thirty (30) days following receipt of a completed request for participation, the director of the Kentucky Coal Workers' Pneumoconiosis Fund shall notify the employer and all other parties of acceptance or denial of the request.

(6) A denial shall be in writing and based upon any of the following findings by the director:

- (a) Failure to file a written request for participation within the time limits specified in this administrative regulation without good cause;
- (b) The employer failed to defend the claim;
- (c) The employer entered into a settlement agreement not supported by the medical evidence, or that includes sums for claims other than coal workers' pneumoconiosis or that was procured by fraud or mistake; or

(d) The award or settlement was for retraining incentive benefits and the request for participation did not include the training or education certification required by this administrative regulation.

(7) Denial of a request for participation may be appealed by any party to an administrative law judge within thirty (30) days following receipt of the denial.

(8) The administrative law judge shall:

(a) Determine if the denial was arbitrary, capricious, or in excess of the statutory authority of the director; and

(b) Not reexamine the weight assigned to evidence by an administrative law judge in an award.

(9) Except in claims under KRS 342.792, the employer shall promptly commence payment on all of the liability pursuant to the award or order and shall continue until the liability of the Kentucky Coal Workers' Pneumoconiosis Fund is established.

(a) This duty of prompt payment shall continue during pendency of an appeal from denial of a request for participation.

(b) In claims arising from KRS 342.792, the Kentucky Coal Workers' Pneumoconiosis Fund shall promptly commence payment upon its acceptance of the claim.

(10)(a) Except in claims under KRS 342.792, upon an appeal from the denial of a request for participation, if the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, it shall reimburse the employer for its proportionate share of the liability with interest accrued from the date of denial.

(b) In an appeal of a denial in a claim arising under KRS 342.792, in which the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, the fund shall commence payment pursuant to the opinion and award or order approving settlement with interest accrued from the date of the denial. All interest shall be paid at the rate established in KRS 342.040.

Section 30. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Resolution of a Claim - Injury", February 2020 [~~October 2016~~];

(b) "Application for Resolution of a Claim - Occupational Disease", February 2020 [~~October 2016~~];

(c) "Application for Resolution of a Claim - Hearing Loss", February 2020 [~~October 2016~~];

(d) "Application for Resolution – Interlocutory Relief", October 2016;

(e) Form 104, "Plaintiff's Employment History", October 2016;

(f) Form 105, "Plaintiff's Chronological Medical History", October 2016;

(g) Form 106, "Medical Waiver and Consent", July 2003;

(h) Form 107, "Medical Report – Injury/Hearing Loss/Psychological Condition", October 2016;

(i) Form 108, "Medical Report – Occupational Disease", October 2016;

(j) Form 109, "Attorney Fee Election", March 15, 1995;

(k) Form 110-I, "Agreement as to Compensation and Order Approving Settlement", February 2020 [~~October 2016~~];

(l) Form 110-ODHLCWP, "Agreement as to Compensation and Order Approving Settlement", February 2020;

(m)[~~(h)~~] Form 110-F, "Agreement as to Compensation and order Approving Settlement - Fatality", October 2016;

(n)[~~(m)~~] "Notice of Claim Denial or Acceptance", October 2016;

(o) Form 112, "Medical Dispute", February 2020;

(p)~~(#)~~ Form AWW-1, "Average Weekly Wage Certification", October 2016;

(q)~~(#)~~ Form AWW-CON, "Average Weekly Wage Certification - Concurrent", October 2016;

(r)~~(#)~~ Form AWW-POST, "Average Weekly Wage Certification – Post Injury", October 2016;

(s)~~(#)~~ Form F, "Fatality", October 2016;

(t)~~(#)~~ Form SVC, "Safety Violation Alleged by Plaintiff/Employer", October 2016; and

(u)~~(#)~~ Form SVE, "Safety Violation Alleged by Department/Employer", October 2016;[-]

(v) Form MTR, "Motion to Reopen", February 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlin Avenue] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Scott C. Wilhoit, Special Assistant, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4532, fax (502) 564-0682, Scottc.wilhoit@ky.gov.



KENTUCKY LABOR CABINET
Department of Workers' Claims

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-5550

Larry L. Roberts
Secretary

Robert L. Swisher
Commissioner

August 10, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 803 KAR 025:010, **803 KAR 025:070**, 803 KAR 025:075, and 803
KAR 025:096

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803 KAR 025:096, the Department of Workers' Claims' proposes the attached amendments to 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803 KAR 025:096.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

Subcommittee Substitute

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:070. Charges for attorneys.

RELATES TO: KRS 342.320

STATUTORY AUTHORITY: KRS 342.260, **342.320**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner [~~Workers' Compensation Board~~] to ***promulgate*** [~~prepare such rules and~~] administrative regulations as he [~~it~~] considers necessary to carry on ***the*** [~~its~~] work ***of the department*** and for carrying out the provisions of KRS Chapter 342. For injuries occurring or disabilities arising on or after July 15, 1982 and prior to April 4, 1994, KRS 342.320 requires an administrative law judge [~~the Workers' Compensation Board~~] to approve the payment of the attorney's fee in any case involving benefits under KRS Chapter 342 and to commute the final payments of benefits payable under the award to a lump sum for that purpose. KRS Chapter 342.120, as effective prior to April 4, 1994, provided [~~provides~~] the method by which an employer or its insurance carrier and the Special Fund shared [~~share~~] liability for awards for injuries occurring and disabilities arising on or after July 15, 1982, and prior to April 4, 1994. [~~The function of~~] This administrative regulation ***establishes*** [~~is to establish~~] a mechanism for crediting the above referenced parties for the payment of attorneys' fees in these cases.

Section 1. Credit for Lump Sum Payment of Charges by Attorneys. A party defendant shall be entitled, without further order of the administrative law judge [~~board~~], to credit for the lump sum value of any attorney's fee paid. The procedure for payment of attorney fees and the impact of such payment on weekly benefits shall be as follows:

(1) The Labor Cabinet [~~Department of Labor~~], Department [~~Office~~] of Workers' Claims, Division of the Workers' Compensation Funds, shall calculate the credit for attorney's fee as follows:

(a) Number of weeks as awarded due in future (do not include payments payable prior to attorney fee award) = X weeks.

(b) Obtain a lump sum of X (X weeks on lump sum table) = Y [~~Z~~] weeks.

(c) Divide amount of attorney fee by amount due per week = Z weeks.

(d) Y weeks minus Z weeks = A [~~Z~~] weeks.

(e) Look in table on lump sum and find A weeks in the Present Work column of the chart and then take the figure in the weeks column of the chart = B weeks, the total number of weeks of actual remaining award payments by parties defendant before the credit causes cessation of award payment checks.

(f) X minus B = C weeks, the number of weeks of benefit cessation required to equal the statutory credit.

(2) The Labor Cabinet [~~Department of Labor~~], Department [~~Office~~] of Workers' Claims, Division of Workers' Compensation Funds, shall calculate the employer's credit for attorney's fee as follows:

(a) Number of weeks due from employer or insurance carrier in future pursuant to KRS 342.120 (do not include payments payable prior to attorney fee award) = X₁.

(b) Obtain a lump sum of X_1 (X_1 weeks on lump sum table) = Y_1 weeks.

(c) Divide amount of attorney fee by amount due per week = Z weeks.

(d) Multiply Z weeks by employer's percentage of award = Z_1 weeks.

(e) Y_1 weeks minus Z_1 weeks = A_1 weeks.

(f) Look in table on lump sum and find A_1 weeks in the Present Worth column of the chart and then take the figure in the weeks column of the chart = B_1 weeks, the number of weeks yet to be paid by the employer or the insurance carrier before the Special Fund begins to pay disability benefits.

(3) The calculations set forth in subsections (1) and (2) of this section shall be completed by the Division of the Workers' Compensation Funds and the results forwarded to the other payers, as well as the plaintiff. Any disagreements as to the application of the formula shall be resolved by an administrative law judge [~~the board~~] upon motion by any party. Special Fund's notice shall include the following information:

(a) Attorney fee to be paid by each party. The period of time for which each party defendant will be responsible for disability benefit payment and, in cases involving lifetime benefits, the date upon which benefits payments will be reinstated by the Special Fund after taking credit for the amount advanced to pay the attorney's fee in a lump sum.

(4) When any payer other than the Special Fund [~~the defendant payor or payers~~] has fulfilled its obligation [~~obligations~~] as reduced pursuant to subsection (2) of this section, payments will commence by the Special Fund (there will be no stoppage to recover advance attorney fee payments at this time). The Special Fund shall continue weekly benefit payments until such time as the number of weeks remaining in the specified benefit period or the life expectancy as determined by mortality tables approved by the Commissioner [~~Workers' Compensation Board~~], multiplied by the weekly benefit rate is equal to the total attorney fee and discount paid by all payers on behalf of the injured worker. In claims where benefits are payable for a lifetime, the weekly benefit payments will be reinstated by the Special Fund at such time as the payer [~~payor~~] surpasses the life expectancy as determined by the mortality table approved by the Commissioner [~~Workers' Compensation Board~~] and shall continue until terminated by death or order of an administrative law judge [~~the Workers' Compensation Board~~].

(5) No part of this section should be viewed as a limitation on the party's right to negotiate a settlement subject to statutory approval by an administrative law judge [~~the Workers' Compensation Board~~].

CONTACT PERSON: Scott C. Wilhoit, Special Assistant, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4532, fax (502) 564-0682, email, Scottc.wilhoit@ky.gov.



KENTUCKY LABOR CABINET
Department of Workers' Claims

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-5550

Larry L. Roberts
Secretary

Robert L. Swisher
Commissioner

August 10, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 803 KAR 025:010, 803 KAR 025:070, **803 KAR 025:075**, and 803
KAR 025:096

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803 KAR 025:096, the Department of Workers' Claims' proposes the attached amendments to 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803 KAR 025:096.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dale Hamblin, Jr.", written over a light blue horizontal line.

B. Dale Hamblin, Jr.
Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

Subcommittee Substitute

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:075. Attorney fee discount.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260, 342.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate [~~prepare~~] administrative regulations as he considers necessary to carry on the work of the department [~~office~~] and the work of the administrative law judges. KRS 342.320 requires the administrative law judges to approve the payment of the attorney's fee in any case involving benefits under KRS Chapter 342, and KRS 342.120, as effective between April 4, 1994 and December 12, 1996, provides the method by which an employer or its insurance carrier and the Special Fund share liabilities for awards or injuries occurring after April 4, 1994. [~~The function of~~] This administrative regulation establishes [~~is to establish~~] a mechanism for crediting the employer, the employer's insurance carrier, and the Special Fund for the payment of attorneys' fees for injuries occurring and disabilities arising after April 4, 1994, and prior to December 12, 1996, when the claimant elects to repay an attorney's fee through the reduction of weekly benefits.

Section 1. Employer's Calculation. For injuries occurring and disabilities arising on or after April 4, 1994, and prior to December 12, 1996, the employer or the insurance carrier making payment on behalf of the employer shall be entitled to credit for the lump sum value of any attorney's fee paid. The following formula shall be used:

- (1) Employer weeks awarded - weeks paid = R [~~remaining~~] weeks.
- (2) R weeks = P weeks (present worth).
- (3) Employer [~~EMP %~~] share of attorney fee divided by [~~+~~]P weeks = Y rate.
- (4) [~~R weeks x Y rate = employer attorney fee and discount.~~
- (5) ~~EMP attorney fee and discount - EMP attorney fee = EMP discount.~~
- (6) Weekly rate - Y rate = Employer reduced rate.

Section 2. Special Fund Credit. The Labor Cabinet, Department of Workers' Claims [~~Department of Labor, Office of Workplace Standards,~~] Division of Workers' Compensation Funds shall calculate its lump sum credit for attorney's fees in cases involving injuries occurring and disabilities arising on or after April 4, 1994, and prior to December 12, 1996, as follows:

- (1) Employer weeks awarded - weeks paid = R [~~remaining~~] weeks.
- (2) R weeks = P weeks (present worth).
- (3) Total weeks awarded - weeks paid = total remaining (TR) weeks.
- (4) TR weeks = PW weeks (present worth).
- (5) PW weeks - P weeks = SF (Special Fund) weeks.
- (6) SF [~~%~~] share of attorney fee divided by [~~+~~]SF weeks = SF rate reduction. [

~~(7) SF rate reduction x SF weeks owed = SF attorney fee and discount.
(8) SF attorney fee and discount – SF attorney fee = SF discount.]~~

Section 3. Procedure. The calculations set forth in Sections 1 and 2 of this administrative regulation shall be completed by the Division of Workers' Compensation Funds and the results forwarded to the other payers, as well as to the plaintiff, when the plaintiff elects to repay an attorney's fee through the reduction of weekly benefits. Any disagreements as to the application of the formula shall be resolved by the administrative law judge upon motion by any party.

CONTACT PERSON: Scott C. Wilhoit, Special Assistant, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4532, fax (502) 564-0682, Scottc.wilhoit@ky.gov.



**KENTUCKY LABOR CABINET
Department of Workers' Claims**

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-5550

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Robert L. Swisher
Commissioner

August 10, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803
KAR 025:096

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803 KAR 025:096, the Department of Workers' Claims' proposes the attached amendments to 803 KAR 025:010, 803 KAR 025:070, 803 KAR 025:075, and 803 KAR 025:096.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

Subcommittee Substitute

**LABOR CABINET
Department of Workers' Claims
(Amendment)**

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the **department** [~~office~~] under KRS Chapter 342. KRS 342.735 requires the commissioner [~~executive director~~] to promulgate administrative regulations to expedite the payment of medical expense benefits. This administrative regulation regulates the selection of physicians and provides for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Designated physician" means the physician selected by the employee for treatment pursuant to KRS 342.020~~(4)~~~~(5)~~.

(2) "Emergency care" means:

(a) ~~Those~~ Medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to a serious physical or mental disability or death; or

(b) Medical services which are immediately necessary to alleviate severe pain.

(3) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond ninety (90) days;

(b) Medical treatment that continues for a period of more than ninety (90) days; or

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(4) "Physician" is defined in KRS 342.0011(32).

(5) "Statement for services" means:

(a) For a nonpharmaceutical bill, a completed Form HCFA 1500, or for a hospital, a completed Form UB-92, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other supporting documentation for the billed medical treatment, procedure, or hospitalization; and

(b) For a pharmaceutical bill, a bill containing the identity of the prescribed medication, the number of units prescribed, the date of the prescription, and the name of the prescribing physician.

(6) "Treatment plan" means a written plan that:

(a) May consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of

diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency, and duration of treatment;

(b) Shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results; and

(c) May be amended, supplemented or changed as conditions warrant.

Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation Designation and Medical Release Card (Form 113). Within ten (10) days following receipt of notice of a work injury or occupational disease causing lost work time or necessitating continuing medical treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed, postage prepaid envelope for returning the Form 113. Failure by the medical payment obligor to timely mail the form shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the form.

Section 3. Employee Selection of Physician. (1) Except for emergency care, treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the medical payment obligor of the identity of the designated physician by tendering the completed Form 113, including a written acceptance by the designated physician, within ten (10) days after treatment is commenced by that physician.

(2) Within ten (10) days following receipt of a Form 113 designating a treating physician, the medical payment obligor shall tender a card to the employee, which shall be presented to a medical provider each time that a medical service is sought in connection with the work-related injury or occupational disease.

(3) The card shall serve as notice to a medical provider of the identity of the designated physician, who shall have the sole authority to make a referral to a treatment facility or to a specialist.

(a) The card shall bear the legend "First Designated Physician-Workers' Compensation" and shall further contain the following information:

1. Name and telephone number of the first designated physician;
2. Name, Social Security number, date of birth, and date of work injury or occupational disease and last exposure of the employee; and
3. Name and telephone number of the medical payment obligor.

(b) The reverse side of the first designated physician card shall contain:

1. A notice that treatment shall be performed by or on referral from the first designated physician; and
2. Shall further contain space for the identification and notification of a change of designated physician.

(4) Failure by the medical payment obligor to timely mail the "First Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) The unreasonable failure of an employee to comply with the requirements of this section may suspend all benefits payable under KRS Chapter 342 until compliance by the employee and receipt of the Form 113 by the medical payment obligor has occurred.

Section 4. Change of Designated Physician. (1) Following initial selection of a designated physician, the employee may change designated physicians once without authorization of the employer or its medical payment obligor. Referral by a designated physician to a specialist shall not constitute a change of designated physician unless the latter physician is specifically selected by the employee as the second designated physician.

(2) Within ten (10) days of a decision to change the designated physician, the employee shall complete the back of the first designated physician card and return the card with the name of the second designated physician, including a written acceptance by the second designated physician, to the medical payment obligor, which shall issue a second card within ten (10) days.

(3) The card shall bear the legend "Second Designated Physician-Workers' Compensation" and shall further contain the information required on the first designated physician card. The reverse side of the card shall contain a notice that:

(a) Treatment shall be performed by or on referral from the second designated physician; and

(b) A further change of designated physician shall require the written consent of the employer, its medical payment obligor, arbitrator, or the administrative law judge.

(4) Failure by the medical payment obligor to timely mail the "Second Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) If an employee's two (2) choices of designated physician have been exhausted, he shall not, except as required by medical emergency, make an additional selection of a physician without the written consent of the employer, its medical payment obligor, arbitrator, or the administrative law judge. This consent shall not be unreasonably withheld.

(6) If the employer provides medical services through a managed health care system, it may establish alternate methods for provider selection within the managed health care plan.

Section 5. Treatment Plan. (1) A treatment plan shall be prepared if:

(a) Long-term medical care is required as a result of a work-related injury or occupational disease;

(b) The employee has received treatment with passive modalities, including electronic stimulation, heat or cold packs, massage, ultrasound, diathermy, whirlpool, or similar procedures for a period exceeding sixty (60) days. The treatment plan shall detail the need for the passive treatment, the benefits, if any, derived from the treatment, the risks attendant with termination of the treatment, and the projected period of future treatment; or

(c) An elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program is recommended. The treatment plan shall set forth specific and measurable performance goals for the employee through the surgery, work hardening, or medical rehabilitation program.

(2) The designated physician shall provide a copy of the treatment plan to the medical payment obligor seven (7) days in advance of an elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program. In all other instances when a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days following a request by the medical payment obligor. An amendment, supplement, or change to a treatment plan shall be furnished within fifteen (15) days following a request.

(3) Preparation of a treatment plan shall be a necessary part of the care to be rendered and shall be an integral part of the fee authorized in the medical fee schedule for the underlying services. An additional fee shall not be charged for the preparation of a treatment plan or progress report, except for the reasonable cost of photocopying and mailing the records.

Section 6. Tender of Statement for Services. If the medical services provider fails to submit a statement for services as required by KRS 342.020 ~~(4)~~ without reasonable grounds, the medical bills shall not be compensable.

Section 7. Written Denial of Statement for Services Prior to the Resolution of Claim. (1) Prior to resolution of a workers' compensation claim by opinion or order of an [arbitrator or] administrative law judge, the medical payment obligor shall notify the medical provider and employee of its denial of a specific statement for services, or payment for future services from the same provider, in writing within thirty (30) days following receipt of a completed statement for services.

(2) A copy of the denial shall be mailed to the employee, employer, and medical service provider.

(3) The denial shall:

(a) Include a statement of the reasons for denial and a brief synopsis of available utilization review or medical bill audit procedures with relevant telephone contact numbers; and

(b) Be made for a good faith reason.

(4) Upon receipt of a denial from a medical payment obligor, a medical provider may tender a statement for services to another potential payment source or to the patient.

Section 8. Payment or Challenge to Statement for Services Following Resolution of Claim. (1) Following resolution of a claim by an opinion or order of an arbitrator or administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with an appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement for services.

(2) The thirty (30) day period provided in KRS 342.020 ~~(4)~~ shall be tolled during a period in which:

(a) The medical provider submitted an incomplete statement for services. The payment obligor shall promptly notify the medical provider of a deficient statement and shall request specific documentation. The medical payment obligor shall tender payment or file a medical fee dispute within thirty (30) days following receipt of the required documentation;

(b) A medical provider fails to respond to a reasonable information request from the employer or its medical payment obligor pursuant to KRS 342.020(4);

(c) The employee's designated physician fails to provide a treatment plan if required by this administrative regulation; or

(d) The utilization review required by 803 KAR 25:190 is pending. The thirty (30) day period for filing a medical fee dispute shall commence on the date of rendition of the final decision from the utilization review. A medical fee dispute filed thereafter shall include a copy of the final utilization review decision and the supporting medical opinions.

(3) An obligation for payment or challenge shall not arise if a statement for services clearly indicates that the services were not performed for a work-related condition.

Section 9. Payment Pursuant to Fee Schedules. (1) If the statement for services contains charges in excess of those provided in the applicable fee schedule established in 803 KAR 25:089, 803 KAR 25:091, and 803 KAR 25:092, the medical payment obligor shall make payment in the scheduled amount and shall serve a written notice of denial setting forth the rea-son for refusal to pay a greater amount.

(2) Following receipt of a final medical bill audit reconsideration decision pursuant to 803 KAR 25:190, the medical provider shall file within thirty (30) days a medical fee dispute in accordance with 803 KAR 25:012 to dispute the amount of payment.

Section 10. Patient Billing. (1) A medical provider may tender a statement for services to a patient once it has received:

- (a) A written denial from the medical payment obligor; or
- (b) An opinion by an [arbitrator or] administrative law judge finding that the services were unrelated to a work injury or occupational disease.

(2) The medical provider shall not bill a patient for services which have been found to be unreasonable or unnecessary by an [arbitrator or] administrative law judge, if the medical provider has been joined as a party to a workers' compensation claim or to a medical fee dispute and has had an opportunity to present contrary evidence.

(3) The medical provider shall not bill a patient for services which have been denied by the payment obligor for failure to submit bills following treatment within forty-five (45) days as required by KRS 342.020 and Section 6 of this administrative regulation.

Section 11. Request for Payment for Services Provided or Expenses Incurred to Secure Medical Treatment. (1) If an individual who is not a physician or medical provider provides compensable services for the cure or relief of a work injury or occupational disease, including home nursing services, the individual shall submit a fully completed Form 114 to the employer or medical payment obligor within sixty (60) days of the date the service is initiated and every sixty (60) days thereafter, if appropriate, for so long as the services are rendered.

(2) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall be submitted to the employer or its medical payment obligor within sixty (60) days of incurring of the expense. A request for payment shall be made on a Form 114.

(3) Failure to timely submit the Form 114, without reasonable grounds, may result in a finding that the expenses are not compensable.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form 113, "Notice of Designated Physician", (March 12, 2003 Edition), Department [Office] of Workers' Claims; and

(b) Form 114, "Request for Payment for Services or Reimbursement for Compensable Expenses", (October 30, 2017 Edition~~[August 15, 1996 Edition]~~), Department ~~[Office]~~ of Workers' Claims.

(2) This material may be inspected, copied, or obtained at the Department ~~[Office]~~ of Workers' Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following locations:

(a) Mayo-Underwood Building, 3rd Floor, 500 Mero Street, ~~[Prevention Park, 657 Chamberlin Avenue,]~~ Frankfort, Kentucky 40601;

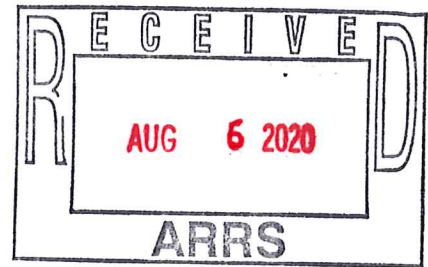
~~(b) [410 West Chestnut Street, Louisville, Kentucky 40202;~~

~~(c) 220B North 8th Street, Paducah, Kentucky 42001; or~~

~~(d) Uniplex Building, Suite 304, 126 Trivette Drive, Pikeville, Kentucky 41501 [107 Coal Hollow Road, Pikeville, Kentucky 41501];~~ **or**

(c) Online at "<https://labor.ky.gov/comp/Pages/default.aspx>".

CONTACT PERSON: Scott C. Wilhoit, Special Assistant, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4532, fax (502) 564-0682, email Scottc.wilhoit@ky.gov.



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

275 East Main Street, 5W-A
Frankfort, KY 40621
502-564-7042
502-564-7091
www.chfs.ky.gov

Eric C. Friedlander
Secretary

August 5, 2020

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
029, Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601

Re: 907 KAR 1:604. Recipient cost-sharing.

Dear Regulations Compiler:

After discussions with various stakeholders relating to the issues raised by 907 KAR 1:604, the Department for Medicaid Services proposes the attached agency amendment to 907 KAR 1:604.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs
Cabinet for Health and Family Services

AGENCY AMENDMENT

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services**

907 KAR 1:604. Recipient cost-sharing.

Page 1

RELATES TO

Line 6

After "334A.020," insert the following:

2018 Ky. Acts ch. 171, sec. 127, 2018 Ky. Acts ch. 207, sec. 135,

Page 1

STATUTORY AUTHORITY

Line 11

After "205.6485(1)," insert the following:

2018 Ky. Acts ch. 171, sec. 127, 2018 Ky. Acts ch. 207, sec. 135,

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 17

After "Medicaid recipients," insert the following:

2018 Ky. Acts ch. 171, sec. 127 and 2018 Ky. Acts ch. 207, sec. 135 establish that the department may impose copayments for services rendered to Medicaid recipients.



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

275 East Main Street, 5W-A
Frankfort, KY 40621
502-564-7042
502-564-7091
www.chfs.ky.gov

Eric C. Friedlander
Secretary

August 5, 2020

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 907 KAR 3:300. Enhanced and suspended Medicaid services and requirements if there is a declared national or state emergency.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 3:300, the Department for Medicaid Services proposes the attached suggested amendments to 907 KAR 3:300.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

A handwritten signature in black ink that reads "Donna Little".

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs
Cabinet for Health and Family Services

SUGGESTED SUBSTITUTE

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations**

907 KAR 3:300. Enhanced and suspended Medicaid services and requirements if there is a declared national or state emergency.

RELATES TO: KRS Chapter 39A, 194A.060, 205.510(15), 205.559, 205.560~~], KRS Chapter 39A]~~

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), the Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the requirements for enhancing or suspending certain Medicaid services and requirements if there is a declared national or state emergency.

Section 1. General Provisions Relating to a Declared Emergency. (1) In accordance with all applicable federal law, the department shall respond to a declared national or state emergency that is related to or rationally related to healthcare or public health by temporarily enhancing, expanding, or suspending Medicaid services and requirements as necessary to respond to the declared emergency.

(2) The department shall provide information about specific expanded services via the use of the department's Web site, electronic provider letters, or other reliable methods of communication with members, providers, and stakeholders.

(3) The department may target any activity undertaken pursuant to this administrative regulation to a subpopulation based on criteria that include:

- (a) Geography;
- (b) Age;
- (c) Condition; or
- (d) Disease.

Section 2. Enhanced or Expanded Medicaid Benefits. Medicaid services and requirements that may be enhanced or expanded include:

(1) Any appropriate health service related to or rationally related to the declared emergency;

(2) Telehealth services, which may include:

(a) Those services that are otherwise designated as face-to-face only throughout KAR Title 907~~[KAR]~~;

(b) The use of equipment, such as a telephone, that would not customarily be allowable for a telehealth service pursuant to KAR Title 907~~[KAR]~~; or

(c) Expanded use of asynchronous telehealth or store-and-forward telehealth, including:

1. Remote patient monitoring, as appropriate; or

2. Any other telehealth service for which an evidence base exists to justify the safety and efficacy of the service iffwhen provided as asynchronous telehealth;

(3) The introduction or expansion of any appropriate telecommunication or electronically mediated health service as allowable pursuant to federal law; or

(4) "Telehealth" or "telehealth service" or "telehealth consultation" as it is defined throughout KAR Title 907~~[Title KAR]~~, which shall be equivalent to an in-person service or a service requiring physical presence.

Section 3. Eligibility. Pursuant to Section 1 of this administrative regulation, the department may:

(1) Temporarily expand eligibility to include individuals with higher income than currently allowed pursuant to 907 KAR 20:100;

(2) Temporarily suspend the requirement that a beneficiary eligible pursuant to 42 U.S.C. 1396a(a)(10)(A)(ii)(V) be institutionalized for at least thirty (30) days;

(3) Implement a simplified electronic or paper application for use by designated providers; or

(4) Extend the availability of presumptive eligibility to additional groups than allowed pursuant to 907 KAR 20:050.

Section 4. Temporary Enhancement of Rate or Rate Methodology. The department may temporarily enhance rates or rate methodology relating to a declared national or state emergency.

Section 5. Provider Enrollment. (1) In response to a declared national or state emergency, the department may:

(a) Simplify any existing provider enrollment process to meet an existing or anticipated demand for health services; or

(b) Reenroll retired or previously enrolled providers.

(2) Any enrollment or reenrollment process utilized pursuant to subsection (1) of this section shall exercise discretion when enrolling or not enrolling providers with a history of disenrollment for good cause or other negative criminal or registry record.

Section 6. Women, Infants, and Children (WIC) Program Services. (1) The department or any other agency of the Cabinet for Health and Family Services shall facilitate the provision of all appropriate WIC services via telehealth or as a telecommunications or other electronically mediated health service to the full extent allowable by federal or state law.

(2) For the purposes of all WIC services administered by the Cabinet for Health and Family Services, any requirement that a service be "face-to-face", "in-person", or "physically present" shall include a synchronous telehealth or telecommunication or other electronically mediated health service.

Section 7. Federal Financial Participation. A policy established in this administrative regulation may be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the policy; or
- (2) Disapproves the policy.

Section 8. If any policy stated in another administrative regulation within KAR Title 907 ~~[of the Kentucky Administrative Regulations]~~ contradicts a policy stated in this administrative regulation, the policy stated in this administrative regulation shall supersede the policy stated elsewhere within KAR Title 907.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: March 19, 2020

FILED WITH LRC: March 19, 2020

CONTACT PERSON: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.