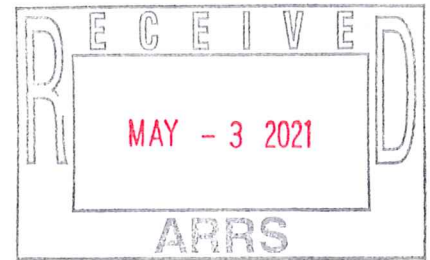




**Kentucky Council on
Postsecondary Education**



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May 3, 2021

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 1:020**, Private college licensing

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 13 KAR 1:020, the Council on Postsecondary Education proposes the attached amendment to 13 KAR 1:020.

Sincerely,

Travis Powell
Vice President and General Counsel

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 13B.005-13B.170, 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320, 20 U.S.C. 1001 et. seq.

STATUTORY AUTHORITY: KRS 164.020(38), 164.947(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

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) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Net tuition and fees" means the total of tuition and mandatory fee revenue less institutional scholarships and fellowships.

(9) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

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

(11) "President" means the president of the Council on Postsecondary Education.

(12) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

(13) "Unrestricted cash" means any cash or cash equivalents held by a college which are available to cover payments to students for any unearned tuition.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection or subsection (7) of this section, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2)(a) An out-of-state college shall be licensed separately for each instructional site in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(c) Licensure shall not be required for an out-of-state college if the college:

1. Is only operating and soliciting under Section 1(9)(b) of this administrative regulation solely due to a faculty member residing in Kentucky and providing online instruction to Kentucky students; and

2. Has less than one (1) percent of its faculty members residing in Kentucky.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious

education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice Doctorate, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and wherever the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11) of this administrative regulation.

(g)1. The institution shall disclose to each prospective student:

a. A statement of the purpose of the institution, its educational programs, and curricula;

b. A description of its physical facilities;

c. Its status regarding licensure;

d. Its fee schedule and policies regarding retaining student fees if a student withdraws;

e. Its refund policy on tuition and other instructional charges; and

f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures. (1) An application for a license shall be submitted on the form entitled:

(a) Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or

(b) Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college.

(2) An application shall be accompanied by a copy of the ***[following]***:

(a) College charter;

(b) College catalog;

(c) College constitution and bylaws;

(d) Student enrollment application;

(e) Student contract or agreement;

(f)1. Documentation of accreditation, licensure, or approval by appropriate state, federal, and accrediting agencies; and

2. Disclosure of any prior loss or denial of:

a. Accreditation with the dates and reason for the loss or denial; or

b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or denial; ***and***

(g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) 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 compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits. (a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days after receipt of the invoice.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;

(b) Deny the application for a license;

(c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or

(d) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure when the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application and fee, as required by Section 15 of this administrative regulation, to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at an instructional site.

(e) A Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent of the course requirements for a degree program.

(f) A college shall submit a Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020 at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020 within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;
2. A college losing accreditation or licensure; or
3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The

president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. (1) Within sixty (60) working days of the submission of a complete supplementary application 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 supplementary application and amend the current license without changing the renewal date;

(b) Deny the supplementary application without amendment to the college's license;

(c) Suspend or revoke the college's license;

(d) Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended; or

(e) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure when the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall amend the current license in accordance with subsection (1)(a) of this section.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, **which shall include [including the following]:**

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;

2. An audit report prepared by an independent certified public accountant for each corporation of the college; and

3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs

administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents if acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) Except as provided in paragraph (d) of this subsection, an in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted cash reserve equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond:

1. That is:

a. Equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; and

b. At least \$10,000;

2. Executed by a surety company qualified and authorized to do business in Kentucky; and

3. Made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) An in-state college licensed continuously by the council for:

1. Five (5) to ten (10) years shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for ten (10) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year; or

2. Ten (10) years or more shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for five (5) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year.

(e) A college shall provide a letter from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted cash reserve or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted cash reserve or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(c) A college shall notify the president within ten (10) days of the college receiving written notice from the U.S. Department of Education of placement on heightened cash monitoring status

or calculation of college's financial responsibility composite score at below 1.0. If an in-state college is using unrestricted cash reserve to satisfy subsection (3) of this section, it shall within thirty (30) days of either event:

1. Obtain a surety bond or letter of credit in the required amount until the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education or the college's financial responsibility composite score is 1.0 or higher; or

2. Transfer the unrestricted cash reserve to the Council in the required amount to be held on behalf of the college, which the Council shall return once the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education, the college's financial responsibility composite score is 1.0 or higher, or once all unearned tuition claims have been paid.

(d) Upon notice to the college, the Council may call in a letter of credit upon any valid claim of unearned tuition in the amount of the claim, or for the full amount of the letter if necessary to protect access to those funds. If the full amount of the letter is called, the Council shall return any funds remaining after claims have been paid, either to the bank or the college, as appropriate, after one (1) year from the date of closure of the college.

(e) A college shall notify the president within ten (10) days of the college receiving notice from an accrediting agency or any state or federal agency that the college is the subject of any investigative action or disciplinary matter with the accrediting agency or state or federal agency.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members.

1. For a course or program licensed by the council prior to January 1, 2014:

- a. Effective until December 31, 2015, faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels.

- b. Effective beginning on January 1, 2016, faculty members shall meet the requirements established in paragraph (d) of this subsection.

2. For a course or program not licensed by the council prior to January 1, 2014, faculty members shall meet the requirements established in paragraph (d) of this subsection when the course or program is licensed.

(d) Faculty member qualifications.

1. Each degree possessed by a faculty member shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

2. To teach a certificate or diploma course, a faculty member shall have:

- a. A bachelor's degree; or

- b. A high school diploma or GED along with one (1) or more of the following:

- (i) Completed a training or degree program in the applicable occupational area;

- (ii) Demonstrated outstanding professional experience;

- (iii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iv) Professional licensure or certification in the field.

3. To teach an associate degree course not designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A bachelor's degree in the discipline being taught; or

b. An associate's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

4. To teach a general education course, a faculty member shall hold:

a. A master's degree in the discipline being taught; or

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught.

5. To teach a baccalaureate course or an associate course designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A master's degree in the discipline being taught;

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or

c. A baccalaureate degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

6. To teach a graduate course, a faculty member shall hold:

a. An earned doctorate or terminal degree in the discipline being taught or in a related discipline; or

b. A master's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

(e) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(f) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories consistent with accrediting and licensing requirements.

(7) Library resources. The library shall ~~to~~ support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president with the license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The library shall provide a safe and secure physical and virtual environment conducive to study and research.

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;

2. 120 student credit hours for a baccalaureate degree; or

3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is: a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

(i) Licensed by the Council on Postsecondary Education; or

(ii) A Kentucky state-supported postsecondary education institution.

(d) A majority of the student credit hours required for a graduate degree may be met through

a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and
2. Either:
 - a. Licensed by the Council on Postsecondary Education; or
 - b. A Kentucky state-supported postsecondary education institution.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include:

- (a) Adequate supervision by the college; and
- (b) Instructional support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form, based on which statement is applicable to the college:

1. "(Name of College) is licensed by the Kentucky Council on Postsecondary Education."; or
2. "(Name of College) has a religious exemption from the Kentucky Council on Postsecondary Education to operate or solicit in Kentucky."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

- (a) The college's policies on grades, attendance, and conduct;
- (b) A description of the instructional program;

- (c) A detailed schedule of all charges, rentals, and deposits;
- (d) The schedule of refunds of all charges, rentals, and deposits; and
- (e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent unless dually enrolled in high school.

(b) The college shall provide academic counseling by faculty or staff to each student when admitted and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes. By January 1, 2022, the college shall maintain all student records in an electronic format that is searchable and readily transferable consistent with industry standards. For a college not licensed by the Council prior to January 1, 2020, the college shall meet this requirement when the college is licensed.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records if the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies. (a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies, including:
 - a. Policy on class attendance;
 - b. Description of grading system;
 - c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and
 - d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2.a. Except as provided in clause b. of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2. of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License. (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer

the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 to the president by April 1 of each year.

(a) In an odd numbered year, the application shall contain the following information:

1. Financial Information:

a. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

b. A letter prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation;

c. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year.

2. Institutional information:

a. Name and address of college;

b. Chief executive officer's name, title, address, phone number, fax number, and email address;

c. Institutional liaison's name, title, address, phone number, fax number, and email address;

d. A current list of the college's agents;

e. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last two (2) years; and

f. A copy of each articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last two (2) years;

3. Accreditation status:

a. If the college is accredited by an accrediting agency, verification of the college's accreditation status and documentation of any notice of disciplinary action, warning, or probation from any state, federal, or accrediting agency within the past two (2) years; or

b. If an in-state college is not accredited by an accrediting agency, a statement indicating its intention to receive accreditation and its timeline for attainment.

4. Tuition for the current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

5. A copy of the college's current catalog;

6. For an in-state college, a list of all licensed instructional sites away from the main campus of the in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

7. Program information:

a. Changes, if any, in program requirements for each program within the last two (2) years including admission requirements, courses required, and the number of credit hours required for the program or major;

b. Results of the most recent program evaluation;

c. Methods used to assess student achievement;

d. Results of the most recent assessment of student achievement; and
e. A list of programs withdrawn within the last two (2) years in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

8. Faculty information: Faculty credentials for each program faculty member employed within the last two (2) years;

9. Facilities information: Verification of compliance with all applicable local, state, and federal safety and fire codes; and

10. Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

(b) In an even numbered year, the application shall only contain the information required by paragraphs (a)1.b. and d., and (a)2.a., b., and c., of this subsection. An institution shall provide any other information listed in paragraph (a) of this subsection upon request of the council.

(2) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative regulation.

(3) Within ninety (90) working days of the submission of a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

(a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;

(b) Deny maintenance or renewal of the college's license;

(c) Maintain the college's license without changing the college's license renewal date;

(d) Renew the college's license to June 30 of the next year; or

(e) Issue a conditional license in accordance with subsection (4) of this section if the college has:

1. Not met all of the standards for licensure when the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed one (1) year.

(4) A conditional license shall not exceed a period of one (1) year and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall renew the license in accordance with subsection (3)(d) of this section.

(5) A college's failure to submit a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the

college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the Licensure Compliance Reporting Manual.

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating or soliciting shall comply with Section 8(13)(f) of this administrative regulation and KRS 164.020(23).

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed. (1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing within thirty (30) working days of notice in order to determine the facts if the president has determined that:

(a) There is sufficient cause for a suspension, a revocation of a license, or placement of a college's license in a probationary status, based upon the college's failure to comply with this administrative regulation; or

(b) A college which is subject to this administrative regulation fails to apply for a license.

(2) The 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 or if the college fails to appear for the hearing, the president shall reach a determination and shall issue findings, in writing, to the council

and to the chief executive officer of the college.

(4) If it is determined that the public interest requires that sanctions be imposed, the president shall:

(a) Impose one (1) of the following sanctions:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year; or

3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(5) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(6) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(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 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(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) Upon completion, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

1. Issue a license;

2. Renew the license;

3. Impose one (1) of the sanctions authorized in this section; or

4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the Kentucky Licensure Fee Schedule.

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 ~~[June 2013]~~;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 ~~[June 2013]~~;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", February 2021 ~~[June 2013]~~;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];

(g) "Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~July 2019~~];

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", [~~June 2013~~];

(k) "Licensure Compliance Reporting Manual", September 8, 2009;

(l) "Kentucky Licensure Fee Schedule", February 2021 [~~June 2013~~]; and

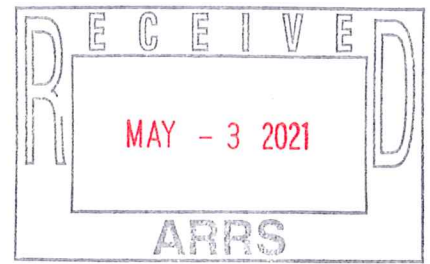
(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", February 2021 [~~September 2012~~].

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

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, fax (502) 573-1535, email sarah.levy@ky.gov.



**Kentucky Council on
Postsecondary Education**



Andy Beshear
Governor

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Aaron Thompson, Ph.D.
President

May 3, 2021

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 4:010**. State Authorization Reciprocity Agreement

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 13 KAR 4:010, the Council on Postsecondary Education proposes the attached amendment to 13 KAR 4:010.

Sincerely,

Travis Powell
Vice President and General Counsel

**COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS)**

13 KAR 4:010. State Authorization Reciprocity Agreement.

RELATES TO: KRS 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320-165A.450

STATUTORY AUTHORITY: KRS 164.540(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.540(3) authorizes the Council on Postsecondary Education to promulgate an administrative regulation to enter into the State Authorization Reciprocity Agreement, which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states. KRS 164.540(3) also authorizes the council to serve as the lead or portal agency on behalf of the Commonwealth's public and private postsecondary institutions seeking to offer distance education in member states. This administrative regulation establishes the mechanism by which Kentucky institutions may join the State Authorization Reciprocity Agreement and sets forth the process by which non-resident students can file complaints against Kentucky member institutions.

Section 1. Definitions. (1) "Commission" means the Kentucky Commission on Proprietary Education.

(2) "Council" means the Kentucky Council on Postsecondary Education.

(3) "Degree" means an award conferred at the associate level or higher by an institution as official recognition for the successful completion of a program of studies.

(4) "Institution" means a Kentucky degree-granting postsecondary entity.

(5) "NC-SARA" means the National Council for State Authorization Reciprocity Agreements.

(6) "President" means the President of the Kentucky Council on Postsecondary Education.

(7) "State Authorization Reciprocity Agreement," or "SARA," means the agreement among member states, districts, and U.S. territories that establishes comparable national standards for interstate offering of degrees through distance education and authorizes institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

Section 2. Initial Application Procedures. (1) ~~[In-order]~~ To participate in SARA, an institution shall submit the following items to the president for review and action:

(a) The current NC-SARA Application and Approval Form for Institutional Participation in SARA, in electronic format; and

(b) The fees due to the Council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 3. Renewal Application Procedures. (1) ~~[In-order]~~ To continue participating in SARA, an institution shall submit the following items to the president for review and action at least sixty (60) days before the anniversary date of the institution's initial approval:

- (a) The current NC-SARA Application for Institutional Renewal to Participate in SARA, in electronic format; and
- (b) The fees due to the council, in accordance with Section 6 of this administrative regulation.
- (2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 4. Standards for Approval. ~~[In-order]~~ To participate in SARA, an institution shall ~~[comply with the following]:~~

- (1) Maintain authorization to operate in Kentucky through one (1) of the following:
 - (a) Creation by Kentucky Revised Statutes;
 - (b) Licensure by the council; or
 - (c) Licensure by the commission; and
- (2) Meet the current minimum requirements to participate in SARA.

Section 5. Consumer Complaints. (1) After first exhausting the institution's internal procedure for complaint resolution, a non-resident student may file a complaint against the institution for failure to comply with any SARA standard within two (2) years of the incident about which the complaint is made.

(2) ~~[In-order]~~ To be considered, a complaint shall be submitted by the student in writing and include ~~[the following information]:~~

- (a) ~~The~~ name, address, email address, and phone number of ~~the~~ student;
- (b) ~~The~~ name of ~~the~~ institution;
- (c) ~~The~~ location of ~~the~~ institution;
- (d) ~~The~~ dates of attendance;
- (e) An explanation of the steps taken to exhaust the institution's grievance process;
- (f) A full description of the issue and any relevant documentation supporting the complaint; and
- (g) The desired resolution of the complaint.
- (3) Complaints regarding student grades or student conduct violations shall not be considered.
- (4) The president shall forward the complaint by email to the institution and require a written response no later than thirty (30) days from the date of transmittal.
- (5) After review of information and materials provided by the student and the institution, the president may request additional information from either party.
- (6) After review of all relevant information and materials, the president shall facilitate a resolution of the complaint. The relief provided the student, if any, shall be commensurate with the circumstances.
- (7) Resolution of a complaint by the president shall be final, except in instances where the subject matter of the complaint may violate any other applicable laws.
- (8) The president shall provide to the executive director of the commission, for reference purposes, a copy of:
 - (a) Any complaint initiated against an institution licensed by the commission;
 - (b) The resolution; and
 - (c) Any related materials.

Section 6. Fees. The council shall charge an initial and annual renewal fee to institutions based on all enrolled full-time equivalent students, which shall be due at **the** time of application. Applications shall not be reviewed without receipt of fee payment. Failure to pay a fee on or before the date of application shall be sufficient grounds for denial of an application. Fees shall be in addition to any fees charged by NC-SARA and shall be in accordance with the following schedule:

- (1) Under 2,500 [~~—\$3,000~~] full-time equivalent students — \$4,500;
- (2) 2,500 [~~—9,999—\$5,000~~] full-time equivalent students — 9,999 — \$7,500; or
- (3) 10,000 [~~—\$7,000~~] or more full-time equivalent students — \$10,500.

Section 7. Appeals. ~~[(1)]~~ An institution denied approval for an initial or renewal application may request an appeal of that decision in accordance with the terms of this subsection.

~~(1)[(a)]~~ The institution shall notify the president of the intent to appeal the decision within seven (7) days of the receipt of the notice of denial.

~~(2)[(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 13B.005-13B.170.

~~(3)[(c)]~~ The appeal shall be presented in writing no later than thirty (30) days following the receipt of notification of intent to appeal.

~~(4)[(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.

~~(5)[(e)]~~ Upon completion, the report of the appeals officer shall be forwarded to the institution and to the president.

~~(6)[(f)]~~ Within thirty (30) working days of receiving the report of the appeals officer, the president shall either uphold the decision or approve the application.

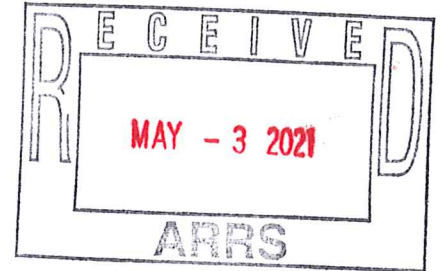
CONTACT PERSON: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 100 Airport Road, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 892-3034, email sarah.levy@ky.gov.

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GERINA D. WHETHERS
SECRETARY



May 3, 2021

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: 101 KAR 2:095. Classified service general requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 101 KAR 2:095 and E, the Personnel Cabinet proposes the attached amendment to 101 KAR 2:095 and E.

Sincerely,

/s/ Rosemary G. Holbrook

Rosemary G. Holbrook
Assistant General Counsel
Office of Legal Services

PERSONNEL CABINET
(As Amended at ARRS)

101 KAR 2:095 and E. Classified service general requirements.

RELATES TO: KRS 18A.030(2), 18A.110, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Definitions. (1) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

- (a) Qualify as exempt voluntary charitable organizations pursuant to 26 U.S.C. 501(c)(3); and
- (b) Have a substantial Kentucky presence.

(2) "Designated nonprofit agency" means an organization with proof of tax-exempt status pursuant to 26 U.S.C. 501(c)(3) written in on a pledge card by a state employee as a choice to receive contributions.

(3) "State employee" means a person, including an elected public official, who is employed by a department, board, agency, or branch of state government, except one ~~[(4)]~~ relating to a state college or university.

(4) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 2(2) of this administrative regulation.

Section 2. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

- (a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;
- (b) Ensure accountability for participants in regard to the funds raised;
- (c) Encourage the involvement of state employees as responsible citizens;
- (d) Give recognition to state employee volunteers; and
- (e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

- (a) Services shall be available to state employees in the local community.
- (b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.
- (c) Services shall consist of:
 - 1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies; or
3. Assistance to those who are impoverished and in need of food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

- (a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);
- (b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;
- (c) Proof of financial responsibility, including:
 1. Adoption of a detailed annual budget;
 2. Use of generally accepted accounting principles and procedures;
 3. The board of directors' approval for deviations from the approved budget; and
 4. An annual financial audit;
- (d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;
- (e) A written nondiscrimination policy;
- (f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and
- (g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A charitable federation may apply on behalf of all its ~~[their]~~ member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on ~~[the following]~~:

(a) ~~The~~ designation of a campaign administrator who shall ~~[-]~~

1. ~~[The campaign administrator shall]~~ Serve for a minimum period of two (2) years; and ~~[-]~~
2. ~~[The campaign administrator shall]~~ Be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employees Charitable Campaign;

(b) The establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved charitable federation;

(c) The format of the brochure, pledge card, or other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be:

1. Detailed in the budget; and

2. Borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall apply by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign, which includes preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 3. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from an official [a] work station or alternate work station.

Section 4. Official Work Station, Alternate Work Station, and Temporary Assignment. (1) Each employee shall be assigned an official [a] work station and may be assigned one (1) or more additional alternate work stations by the appointing authority.

(2) An official [A] work station or alternate work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different official work station or alternate work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different official work station or alternate work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with prior approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 5. Dual Employment. An employee holding a full-time position covered under KRS Chapter 18A shall not hold another KRS Chapter 18A position except upon recommendation of the appointing authority and the written approval of the secretary.

Section 6. Notice of Resignation and Retirement. (1) An employee who decides to terminate his or her service shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's notice shall be attached to the separation personnel action and placed in the personnel files maintained by the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;
2. Appropriate for the situation; and
3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 7. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

- (b) The secretary shall provide a Personnel Action Notification to the appointing authority.
- (c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.
- (2) The secretary shall maintain a leave record showing for each employee:
 - (a) Annual leave earned, used and unused;
 - (b) Sick leave earned, used and unused;
 - (c) Compensatory leave earned, used and unused; and
 - (d) Special leave or other leave with or without pay.

Section 8. Telecommuting. (1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual official work station or alternate work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall not require advance notice by the employer.

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Pay to State Employees. (1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday, as defined in KRS 18A.190, pay shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) "Personnel Action Notification", PAN, August 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

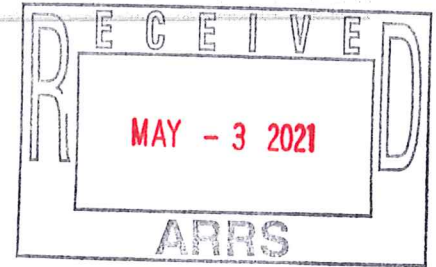
CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.



State Board of Accountancy

332 W. Broadway, Suite 310
Louisville, KY 40202
Phone: (502) 595-3037
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May 3, 2021



Joseph P. Donohue
Executive Director

VIA ELECTRONIC MAIL

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: 201 KAR 1:100. Continuing professional education requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 1.100, the Kentucky State Board of Accountancy proposes the attached amendment to 201 KAR 1.100.

Please let me know if you have any questions or need anything further on this.

Sincerely,

A handwritten signature in black ink that reads "Joe Donohue".

Joseph P. Donohue, Executive Director
Kentucky State Board of Accountancy
332 W. Broadway, Suite 310
Louisville, KY 40202

Enc.

BOARDS AND COMMISSIONS
Kentucky State Board of Accountancy
(As Amended at ARRS)

201 KAR 1:100. Continuing professional education requirements.

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(4)(a), (7)(b)1.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(4) and (7)(b)1 require the board to promulgate administrative regulations to establish the continuing professional education requirements for certified public accountants. This administrative regulation establishes the continuing professional education requirements a certified public accountant shall satisfy to renew a license.

Section 1. Definitions. (1) "Continuing professional education hour" or "CPE hour" means a fifty (50) minute period excluding meals, breaks, and business sessions.

(2) "Technical standards courses" means continuing education courses if the subject matter area of the courses are accounting, auditing, business law, economics, finance, information technology, management services, professional ethics, statistics, securities, tax, and specialized areas of industry, all of which shall contribute directly to the professional competence of a licensee.

(3) "Worked" means hours devoted by a licensee that are documented as billable and nonbillable hours to a public accounting firm or client.

Section 2. Requirements for Continuing Professional Education Credit. (1) **A [Each]** licensee who worked 3,000 hours or more in a public accounting firm licensed with the board during the two (2) calendar years prior to the renewal date of his or her license shall complete eighty (80) CPE hours. The eighty (80) hours shall be completed during the preceding two (2) calendar years. All other licensees shall complete sixty (60) CPE hours.

(a) Beginning January 1, 2021, fifty (50) percent of the eighty (80) hours and sixty (60) hours shall include technical standards courses.

(b) Beginning January 1, 2021, licensees who worked in a public accounting firm licensed with the board during the two (2) calendar years prior to the renewal date of his or her license and who perform **attest services, as defined in KRS 325.220, or compilation or preparation of financial statement engagements subject to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services (SSARS)**

~~[1. Attest services, as defined in KRS 325.220; or~~

~~2. Compilation or preparation of financial statement engagements subject to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services (SSARS)]~~ [prepare audits, reviews, compilations, or the preparation of financial statements] shall complete eight (8) hours of CPE in the subject matter area of auditing or accounting each calendar year for a total of sixteen (16) hours per reporting period.

(c) Beginning January 1, 2021, licensees required to obtain eighty (80) hours of CPE may include eight (8) hours of personal development courses toward the required hours, and licensees required to obtain sixty (60) hours of CPE may include up to twelve (12) hours of personal development courses in the required hours. An acceptable personal development course shall be limited to a course intended to improve the time management, leadership, team building, goal setting, and similar soft skills related to working in an office or professional setting.

(2) ~~A~~ **[Each]** licensee shall complete two (2) CPE hours in professional ethics. These two (2) hours shall be included as part of the eighty (80) or sixty (60) CPE hours a licensee is required to complete to renew his or her license.

(3)(a) A certified public accountant who, for the two (2) calendar years prior to renewal of his or her license, did not operate or work in an office in this state shall satisfy the requirements of this section by complying with the continuing professional education requirements for renewal of his or her license:

1. In the state in which the licensee's principal office is located; or
2. In the state in which the office is located where the licensee worked a majority of the time.

(b) If the state designated by paragraph (a) of this subsection does not have continuing professional education requirements for renewal of a license, the licensee shall comply with all continuing professional education requirements for renewal of a license in this state.

Section 3. ~~A~~ **[Each]** licensee who held a license for less than a full two (2) calendar year period shall obtain two (2) CPE hours for each full month a license was held not to exceed the total number of required hours for the reporting period. The two (2) hours in professional ethics shall not be required to be part of the CPE hours completed in this time period.

Section 4. Waivers from Continuing Professional Education. (1) A reduction or waiver may be granted by the board if the licensee:

(a) Establishes that he or she is temporarily physically or psychologically unable to complete the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form with each request and a written statement:

1. From a licensed physician or other appropriate licensed health care provider that substantiates the physical or psychological claim of the licensee; and

2. That describes the licensee's working status during the time the licensee was unable to complete the continuing education, the licensee's current working status, and if the licensee plans to return to work;

(b) Has encountered a temporary extreme hardship, which was so severe that it was extremely difficult or impossible to meet the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form **with each request** and a written statement **that [with each request]**:

1. ~~[That]~~ Describes in detail the facts associated with the extreme hardship; and

2. **Provides** documentation to substantiate the extreme hardship; or

(c) Is completely retired from practice and is fifty-five (55) years of age or older. To be considered completely retired, the licensee shall not perform accounting services in the practice of public accounting (which includes the preparation of tax returns), education, government, or industry except for management of personal assets or investments.

- (2) The board shall advise a licensee in writing whether the request is approved or denied.
- (3) A licensee granted a waiver shall reaffirm the basis of the waiver when the license is next renewed by completing the:
- (a) License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form; or
 - (b) License Renewal - CPE Retirement Waiver form.
- (4) A licensee completing the License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form shall submit with the form updated medical documentation to support that the basis of the waiver continues to limit the licensee's ability to meet the CPE requirements.
- (5) If the circumstances which form the basis of the waiver change, the licensee shall notify the board within thirty (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.
- (6) If the waiver request is granted, the licensee shall pay the license renewal fee listed in 201 KAR 1:065 on or before August 1.

Section 5. Courses that Qualify. (1) The overriding consideration in determining whether a specific course qualifies as acceptable continuing professional education shall be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state.

- (2) Continuing professional education courses may qualify only if:
- (a) An outline of the course is prepared in advance and preserved;
 - (b) The course is at least one (1) CPE hour in length. Credit shall be awarded for a course less than fifty (50) minutes in length if it is part of a continuing professional education program where at least one (1) fifty (50) minute course is also being offered;
 - (c) The course is conducted by a qualified instructor. A qualified instructor or discussion leader shall be anyone whose background training, education, or experience makes it appropriate for him or her to lead a discussion on the subject matter of the particular course;
 - (d) A record of registration or attendance is maintained;
 - (e) A course completion document is given to each attendee; and
 - (f) The course topic is an acceptable field of study.
- (3) Acceptable fields of study.
- (a) The following fields of study shall be considered acceptable if the courses satisfy all of the criteria established in subsections (1), (2), and (5) of this section:
- 1. Any of the courses defined in Section 1(2) of this administrative regulation;
 - 2. Business communications; **or [and]**
 - 3. Marketing.
- (b) The responsibility for substantiating that a particular course is acceptable and meets the requirements of this administrative regulation shall be the obligation of the licensee.
- (4) Acceptable programs. The following programs qualify for credit if they meet the standards specified in subsections (1), (2), (3), and (6) of this section:
- (a) Professional education and development programs of national, state, and local accounting organizations;
 - (b) University or college courses:**[-]**
- 1. Credit and not for credit courses completed at or through a university or college that is accredited by one (1) of the (6) six regional accrediting associations listed in 201 KAR 1:190,

Section 5;

2. Documentation to verify completion of a course shall be issued by the appropriate representative of the university or college; ~~and~~ [.]

3. Each unit of credit for a university or college course shall be equal to the following CPE hours:

a. One (1) semester hour equals fifteen (15) CPE hours; and

b. One (1) quarter hour equals ten (10) CPE hours; ~~or~~ [and]

(c) Formal in-firm education programs. Portions of a program devoted to firm administrative, financial, and operating matters shall not qualify.

(5) Formal individual study courses, Web casts, and online learning courses.

(a) The amount of credit allowed for any individual study course shall be recommended by the course sponsor.

(b) A licensee claiming credit for an individual study course shall obtain evidence of satisfactory completion of the course from the course sponsor.

(c) Credit shall be assigned to the reporting period in which the provider indicates the course was completed.

(6) Service as lecturer, discussion leader, or speaker.

(a) Instructors, discussion leaders, and speakers may claim continuing professional education credit for both preparation and presentation time.

(b) Credit may be claimed for actual preparation time up to two (2) times the class contact hours. (c) Credit as an instructor, discussion leader, or speaker may be claimed if the presentation is one which would meet the requirements of this section.

(d) Credit shall not be granted for repetitious presentations of courses unless it can be demonstrated that the course content was substantially changed and the change required significant additional study or research.

(e) Maximum credit for preparation and teaching shall not exceed sixty (60) percent of the renewal period requirement.

(7) Published articles and books.

(a) A licensee may be awarded credit for articles or books the licensee writes if:

1. The subject matter of the article or book contributes directly to the professional competence of the licensee; and

2. Prior to publication, the licensee submits a final draft of the article or book to the board to review and determine the amount of credit to be awarded.

(b) Credit for preparation of the article or book shall not exceed twenty-five (25) percent of the total CPE hours required.

(c) The board shall make the final determination of the amount of credit to be granted.

(8) Certifications and licenses. Licensees who receive a certification or license from a nationally organized business organization or a federal governmental entity following successful completion of an exam in one (1) of the fields of study listed in subsection (3) of this section shall receive credit only for the length of time assigned by the organization or governmental entity to complete the examination.

Section 6. Programs that deal with the following subject areas shall not be considered acceptable continuing education:

(1) Self-realization;

- (2) Spirituality;
- (3) Personal health or fitness;
- (4) Sports and recreation;
- (5) Foreign languages or cultures; and
- (6) Any other subjects that do not contribute directly to the professional competence of the licensee.

Section 7. Reporting and Controls. (1) ~~A~~ **[Each]** licensee shall obtain the appropriate documentation to establish that he or she completed the continuing professional education requirements.

(2) ~~The~~ **[This]** documentation shall be retained by ~~the~~ **[each]** licensee for a period of five (5) years.

(3) The board shall conduct annually a random audit to verify a certain percentage of licensees completed the amount of continuing professional education hours required to renew his or her license. A licensee who misrepresented that he or she completed the sixty (60) or eighty (80) CPE hours at the time the licensee renewed his or her license shall not be eligible for a retirement, medical, or extreme personal hardship waiver after being selected to participate in an audit.

(4) Course completion evidence shall consist of a document prepared by the course sponsor indicating the licensee completed a formal program of learning. A document shall include the: (a) Names of the licensee and program sponsor;

(b) Title and field of study;

(c) Dates attended; and

(d) Number of CPE hours awarded.

(5) A licensee who completed continuing professional education courses that complied with the requirements of this administrative regulation and were presented by or on behalf of his or her employer may submit to the board a list of the courses completed if the list contains the:

(a) Information described in subsection (4) of this section; and

(b) Signature of the person at the licensee's place of employment who verifies the accuracy of the information for a third party.

Section 8. Continuing Professional Education Sponsors. (1) Sponsors shall not be required to be preapproved by the board.

(2) Detailed records of each program shall be kept by the sponsor and shall include:

(a) The date of the program presentation;

(b) The name of each instructor or discussion leader;

(c) A listing of licensees attending each program presentation; and

(d) A written agenda of the program presentation.

(3) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "Initial Request for Waiver of CPE Requirements", September 2016;

(b) "License Renewal-CPE Waiver Due to Medical or Extreme Personal Hardship", September 2016; and

(c) "License Renewal-CPE Retirement Waiver", September 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

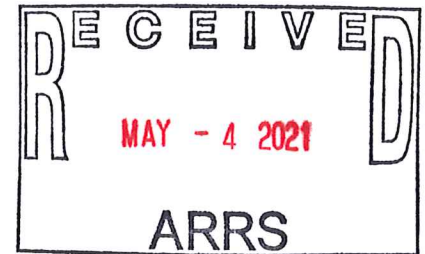
CONTACT PERSON: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email joep.donohue@ky.gov.



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LARRY A. HADLEY, R.PH.

May 4, 2021

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

RE: 201 KAR 2:380; Board Authorized Protocols

Dear Co-Chairs West and Hale

After discussion with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:380, Board Authorized Protocols, the Board of Pharmacy proposes the attached amendment to 201 KAR 2:380.

Sincerely,

Larry A Hadley, R.Ph.
Executive Director
Kentucky Board of Pharmacy

Final 5-03-2021

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 2:380. Board authorized protocols.

RELATES TO: KRS 315.010(25), 315.191(1)(a), (f)

STATUTORY AUTHORITY: KRS 315.010(25), 315.191(1)(a), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.010(25) defines a prescription drug order, which includes orders issued through protocols authorized by the board. KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations that are necessary to control the dispensing of prescription drug orders. This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or other professional services.

Section 1. Definition. "Prescriber" means any individual authorized to prescribe a legend drug.

Section 2. Procedures. A pharmacist may initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services under the following conditions:

(1) A prescriber-approved protocol that meets the minimum requirements in Section 3 of this administrative regulation is in place, and is dated and signed by the prescriber and pharmacist authorized to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services;

(2) The protocol directs the care, based on current clinical guidelines, for conditions listed in Section 5 of this administrative regulation;

(3) The protocol has been approved by the board, who provides notice to the prescriber's licensure board within ten (10) business days of approval by the board;

(4) The pharmacist documents the dispensing event in the pharmacy management system, including:

(a) Documentation as required by 201 KAR 2:170 for the dispensing of prescription medication; and

(b) Documentation that the individual receiving the medication or other professional service was provided with education pursuant to Section 4 of this administrative regulation; and

(5) A pharmacist shall request the individual's primary care provider's information, provided one exists, and shall provide notification to the primary care provider within two (2) business days.

Section 3. Minimum Requirements of Protocol. Protocols shall contain the following elements:

(1) Criteria for identifying persons eligible to receive medication therapies or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or treatment is contraindicated;

(2) A list of the medications, including name, dose, route, frequency of administration, and refills authorized to be dispensed under the protocol;

- (3) Procedures for how the medications are to be initiated and monitored, including a care plan implemented in accordance with clinical guidelines;
- (4) Education to be provided to the person receiving the dispensed medications, including aftercare instructions, if appropriate;
- (5) Procedures for documenting in the pharmacy management system all medications dispensed, including notification of the prescriber signing the protocol, if requested;
- (6) Length of time protocol is in effect;
- (7) Date and signature of prescriber approving the protocol;
- (8) Dates and signatures of pharmacists authorized to initiate dispensing of medications or other professional services under the protocol; and
- (9) The date, and education or training of the pharmacist as referenced in Section 4 of this administrative regulation.

Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the Accreditation Council for Pharmacy Education or by a comparable provider approved by the board. Documentation of education shall be provided to the board upon request. Education shall be obtained prior to initiating care under the protocol.

Section 5. Authorized Conditions. Board-authorized protocols may be established for the following conditions:

- (1) Acute influenza **infection pursuant to recommendations by the Centers for Disease Control and Prevention (CDC)**~~[infection pursuant to recommendations by the Centers for Disease Control and Prevention (CDC)]~~;
- (2) Acute streptococcal pharyngitis infection;
- (3) Acute, uncomplicated urinary tract infection;
- (4) Acute **cutaneous or/**~~or~~ mucocutaneous fungal infection;
- (5) Alcohol use disorder **utilizing naltrexone-based therapy pursuant to recommendations from the American Psychiatric Association**;
- (6)~~[5]~~ Allergic rhinitis;
- (7)~~[6]~~ Anaphylaxis;
- (8) Colorectal cancer prevention and screening;
- (9) HCV infection screening;
- (10) HIV infection prophylaxis, pre-~~exposure~~ and post-exposure **pursuant to recommendations by the CDC**;
- (11) HIV infection screening **pursuant to recommendations by the CDC**;
- (7) HIV infection prevention through pre-exposure prophylaxis pursuant to recommendations by the CDC;
- (12)~~[8]~~ Nutritional supplementation with vitamins and minerals;
- (13)~~[9]~~ Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;
- (14)~~[40]~~ Tobacco use disorder;
- (15)~~[44]~~ Traveler's health pursuant to recommendations by the CDC;
- (16)~~[42]~~ Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC; and
- (17)~~[43]~~ Self-care conditions appropriately treated with over-the-counter medications and products.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

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KENTUCKY BOARD OF NURSING

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Andy Beshear
Governor

May 5, 2021

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

Re: LRC Staff Recommended Amendments to 201 KAR 20:065, 201 KAR 20:370, 201 KAR 20:411 and 201 KAR 20:660

Dear Co-Chairs West and Hale:

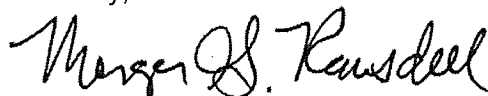
After discussions with Legislative Research Commission staff of the issues raised regarding 201 KAR 20:065, 201 KAR 20:370, 201 KAR 20:411 and 201 KAR 20:660, the Kentucky Board of Nursing (KBN) proposes the attached amendments to these four (4) regulations.

In addition, KBN has added two words to the Regulatory Impact Analysis related to 201 KAR 20:065. In specific, the reference to a required pregnancy test has been revised to state that what is required is a pregnancy test recommendation:

"requires a pregnancy test recommendation, but only as to female patients of child bearing age and ability, which brings the regulation into greater harmony with 201 KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder;"

The revised Regulatory Impact analysis for 201 KAR 20:065 is attached. Please notify me if anything further is needed, or if you have any questions or concerns.

Sincerely,



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

cc: Ms. Carrie Nichols

Final, 4-29-2021

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Board of Nursing

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

RELATES TO: KRS 218A.010, 218A.170, 314.011, 314.042, ~~[218A.010, 218A.170,]~~ 21 U.S.C. 823, 42 U.S.C. 1395

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.

(3) "Consultation" means the process by which an APRN directs the patient to a physician, APRN, or other specialist, as required by Section 3(3)(a), Section 3(4)(b) ~~2.[(2)],~~ or Section 3(4)(g) ~~2.[(2)]~~ of this administrative regulation to render an opinion with regard to the prescribing of Buprenorphine to the patient, ***and includes the requirements as established in Section 8 of this administrative regulation. [Consultation does not require an in-person visit. It may include a discussion by the APRN and the consultant by telephone or other appropriate electronic communication. The consultant may recommend further evaluation which may be either in-person, by telehealth, or a records review. It is the responsibility of the APRN to initiate a consultation and to communicate clearly to the consultant that the APRN is seeking a consultation. A consultation may involve the consultant providing advice and information to the APRN or patient. It is the responsibility of the APRN to provide all relevant client records to the consultant, including a written summary of the client's history and presenting problem, as deemed appropriate by the consultant. Consultation shall be fully documented by the APRN in the patient's record, including the consultant's name, date of service, and the consultant's findings, opinions, and recommendations. The APRN shall discuss the consultant's recommendations with the patient.]*** ["Mental health counseling" means the provision of guidance, by a qualified health professional as defined at KRS 202A.011(12), to the individual through the utilization of methodologies such as the collection of case history data, valid and reliable screening tools, and psychological techniques such as the personal interview.]

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe 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 for the treatment of Opioid Use Disorder.

(2) The APRN shall:

- (a) Be a DEA-registered prescriber of 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), via the APRN Update online portal at https://kbn.ky.gov/aprn_practice/Pages/aprn_update.aspx.
- (4) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of 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 for the treatment of substance use disorders.
- (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) 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 42 U.S.C. 1395m(m)~~[section 1395m(m) of Title 42]~~, shall comply with 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 administered under supervision 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 (1) week.
- (3)(a) Except as provided in paragraph (b) of this subsection, 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 to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address a documented extraordinary and acute medical need not to exceed a combined period of thirty (30) days.
- (4) Each APRN who prescribes buprenorphine for supervised withdrawal or for the treatment of opioid use disorder shall 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, ~~[and]~~ which shall 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; and

f. Appropriate laboratory tests, which ~~may~~shall include a complete blood count (CBC), a comprehensive quantitative drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology[;]. If an appropriate justification for initiation of treatment in advance of the review of laboratory tests is documented by the APRN, this subsection shall be satisfied though the documentation of a plan for obtaining and reviewing the laboratory tests required by this subsection within thirty (30) days of initiating treatment.

2. Document a plan to obtain ~~[Obtain]~~ the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records within thirty (30) days of initiating treatment, 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 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 the patient's participation in a behavioral modification program, which may include counseling or a twelve (12) step facilitation~~[an evaluation by a qualified mental health professional as defined at KRS 202A.011(12), with expertise in addiction, and compliance with the recommendations of the evaluator with ninety (90) days initiating treatment, and objective behavior modification including mental health counseling or a twelve (12) step program for the duration of the treatment]~~.

(b) 1. Prior to initiating treatment, the APRN shall recommend ~~[require]~~ that female patients of child bearing age and ability ~~[the patient]~~ 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. The APRN shall document a patient's decision to decline to take a pregnancy test and the stated rationale for the patient's decision.

2. Prior to prescribing buprenorphine to a patient who is pregnant or breastfeeding, an APRN who is not an obstetrical care provider shall have a plan to obtain and document consultation with an obstetrical care provider to co-manage the patient's care. The APRN shall document a patient's decision to decline consultation referenced in this subsection, and the stated rationale for the patient's decision~~[obstetrician or a maternal fetal medicine specialist who holds a DATA 2000 waiver that determines the potential benefit of Buprenorphine use outweighs the potential risk of use]~~.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with 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 ~~[or absence]~~ 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

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;

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, the APRN shall prescribe to the patient an amount of 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.

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

1. The APRN shall ensure that 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.

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, 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 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 non-compliance 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) After initial induction of Buprenorphine, the APRN shall review compliance with the recommendations of the treatment plan and drug screen results at each visit to help guide the treatment plan. Current ~~[, including review of]~~ KASPER and ~~[or]~~ other relevant PDMP reports shall be obtained no less frequently than once every three (3) months, [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 of continued Buprenorphine prescribing shall include documented consideration of initial laboratory test results as specified in subsection (4)(a)(i)(1)(f) of this section, subsequent laboratory test results, and the patient's prior medical records.~~1~~ Appropriate evaluation of continued Buprenorphine prescribing shall also include, if appropriate and relevant, ~~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, if weaning is clinically appropriate.
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 screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, ~~alcohol, gabapentin,~~ and cocaine.
 - c. The two (2) drug screens confirmed by gas chromatography/ mass spectrometry (GC/MS) or liquid chromatography/ mass spectrometry (LC/MS) shall screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, alcohol, gabapentin, and cocaine.
 - d. 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.
 - (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 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 shall not provide for the automatic replacement of medication prior to the specified interval date. Replacement medication shall not be authorized by the APRN in the absence of an individual assessment, specific consideration of all prior instances of lost or stolen medication, and documented discussion ~~consultation~~ with the patient.
 - (k) After initial induction, the APRN shall:
 1. Implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification plan shall include the patient's participation in a behavioral modification program that shall include counseling or a twelve (12) step facilitation.~~shall include the patient's participation in a behavioral modification program that shall include mental health counseling or a twelve (12) step facilitation;~~ and
 2. ~~Require the patient to obtain an evaluation by a qualified mental health professional as defined in KRS 202A.011(12), with expertise in addiction, within ninety (90) days of initiating treatment, and to comply with the evaluator's recommendations.]~~

Section 4. Continuing Education. An APRN who has obtained a waiver and registration as issued by the DEA to prescribe buprenorphine for the treatment of Opioid Use Disorder shall complete a total of four (4) hours annually in addiction disorders, including the one and one-half (1.5) contact hours in pharmacology as defined by 201 KAR 20:215, Section 5(1)(c). The pharmacology hours ~~shall~~**must** be on the dual subjects of addiction disorders and pharmacology.

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 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 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 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 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.

Section 7. Documented Deviation from Professional Standards for Prescribing Buprenorphine. If an APRN is unable to conform to professional standards for prescribing Buprenorphine as set forth in this administrative regulation due to circumstances beyond the APRN's control, or the APRN makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the APRN shall document those circumstances in the patient's record and only prescribe Buprenorphine to the patient if the patient record appropriately justifies the prescribing under the circumstances and in accordance with SAMHSA guidelines.

Section 8. Consultation Requirements.

(1) Consultation shall not require an in-person visit.

(2) It may include a discussion by the APRN and the consultant by telephone or other appropriate electronic communication.

(3) The consultant may recommend further evaluation which may be either in-person, by telehealth, or a records review.

(4) It is the responsibility of the APRN to initiate a consultation and to communicate clearly to the consultant that the APRN is seeking a consultation.

(5) A consultation may involve the consultant providing advice and information to the APRN or patient.

(6) It is the responsibility of the APRN to provide all relevant client records to the consultant, including a written summary of the client's history and presenting problem, as deemed appropriate by the consultant.

(7) Consultation shall be fully documented in writing by the APRN in the patient's record, including the consultant's name, date of service, and the consultant's findings, opinions, and recommendations.

(8) The APRN shall discuss the consultant's recommendations with the patient.

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

At the time that it files this staff suggested amendment the agency needs to file **one (1) corrected copy** of its REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT that makes the following change:

- Change language for consistency with Section 3(4)(b)1. of this administrative regulation that says a pregnancy test is recommended, by clarifying in the RIA that a pregnancy test recommendation is what is required, not the pregnancy test itself

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No. 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.

Agency Contact Person: Morgan Ransdell, General Counsel (Morgan.Ransdell@ky.gov), (502) 415-3964

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for advanced practice registered nurses (APRN) who are authorized by federal law to prescribe buprenorphine for treatment of opioid use disorder.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish standards for APRN prescribing of Buprenorphine for the treatment of opioid use disorder in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for APRN prescribing of Buprenorphine for the treatment of opioid use disorder in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes several changes to update the standards:

- abolishes the mental health evaluation requirement, which brings the regulation into greater harmony with 201 KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder;
- relaxes the regulation requirement as to who may serve as a mental health counselor for an APRN's opioid use disorder patients, which will bring the regulation into greater harmony with 201 KAR 9:270, and which will allow other licensed professionals such as LCADCs and CADCs to participate in the implementation of objective behavioral modification;
- provides a definition of consultation which clarifies the APRNs regulatory obligations when prescribing Buprenorphine in three (3) contexts: (i) in conjunction with other sedative hypnotics, stimulants or other opioids; (ii) when prescribing Buprenorphine to pregnant/breastfeeding patients; (iii) when prescribing a daily dose of greater than sixteen (16) mg daily dose of buprenorphine Buprenorphine on an ongoing basis;
- requires that laboratory test results be completed and reviewed within thirty (30) days of induction, instead of prior to induction;
- requires patient consent for the release of prior medical records to be obtained within thirty (30) days of induction;
- requires a pregnancy test recommendation, but only as to female patients of child bearing age and ability, which brings the regulation into greater harmony with 201 KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder;

- relaxes the obstetrical consult requirement for pregnant or breastfeeding patients by, among other things, allowing the patient to decline the consult;
- reduces the number of drug/alcohol screens that specifically test for gabapentin and alcohol from eight (8) each year to two (2) each year;
- brings the regulation into conformity with 201 KAR 20:057 §9(5) by requiring a review of patient KASPER data every 90 days, instead of at every visit;
- modifies the objective behavioral modification requirement to bring the regulation into greater harmony with 201 KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder; and
- provides instructions on what a buprenorphine prescriber should do when the prescriber determines that is necessary and appropriate to deviate from the requirements of the regulation in the treatment of an opioid use disorder patient.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to keep the standards current and to bring the regulation into greater harmony with 201 KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set standards governing APRN prescribing of Buprenorphine.

(d) How the amendment will assist in the effective administration of the statutes: By having current and appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Nursing currently licenses 571 APRNs who are authorized to prescribe of controlled substances in the treatment of substance use disorder.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky APRNs who prescribe Buprenorphine in the treatment of opioid use disorder will be required to comply with the new standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For APRNs who prescribe Buprenorphine in the treatment of opioid use disorder, these amendments do not impose any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the new standards.

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

(a) Initially: The upfront programming costs already incurred in the creation of the APRN Update portal, which allows electronic submission of documents, was \$2,850.00. No additional costs will result from the proposed amendments to the regulation.

(b) On a continuing basis: No additional ongoing costs are directly attributable to the amendments to this regulation; however, enforcement of this regulation are anticipated to necessitate audits, investigations, administrative hearing processes; and judicial appeals. These enforcement costs are necessary, and are impossible to predict with any degree of specificity.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds derived primarily from licensure fees, and also, but to a lesser extent, from civil penalties assessed against licensees and applicants who have been found to have violated Kentucky nursing laws.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in licensure fees is anticipated at this time.

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 201 KAR 20:065

Contact Person: Morgan Ransdell

Email address: Morgan.Ransdell@ky.gov

Phone number: (502) 415-3964

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The upfront programming costs already incurred in the creation of the APRN Update portal, which allows electronic submission of documents, was \$2,850.00. This cost was not entirely attributable to 201 KAR 20:065, as the APRN Update portal also facilitates APRN compliance with 201 KAR 20:057. No additional costs will result from the proposed amendments to the regulation.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Final 4-29-2021

SUGGESTED SUBSTITUTE

**BOARDS AND COMMISSIONS
Board of Nursing**

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(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 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for [nursing] licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

- (1) Submit the completed application form to the board office, for:
 - (a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;
 - (b) RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;
 - (c) Licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;
 - (d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;
 - (e) Licensure as an RN and as an APRN, Application for RN and APRN Licensure;
 - (f) Retired licensure status, Application for Retired Status;
 - (g) APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);
 - (h) APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or
 - (i) In addition to any other renewal form, for APRN renewal, APRN Practice Data;
- (2) Submit the current application fee, as required by 201 KAR 20:240;
- (3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;
- (4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;
- (5) Have paid all monies due to the board;
- (6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;
- (7) Submit additional information as required by the board in 201 KAR Chapter 20;
- (8) Meet the additional requirements for:
 - (a) Licensure by examination established by 201 KAR 20:070;
 - (b) Licensure by endorsement established by 201 KAR 20:110;
 - (c) Licensure by reinstatement established by 201 KAR 20:225;

- (d) Licensure by renewal established by 201 KAR 20:230;
- (e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or
- (f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;
- (9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and
- (10) Notify the board upon establishment of a new mailing address.

Section 2. An application shall lapse and the fee shall be forfeited if the application is not completed:

- (1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;
- (2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or
- (3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Licensure", 1/2016, Kentucky Board of Nursing;
- (b) "Annual Licensure Renewal Application: RN or LPN", 02/2021 [2/2020], Kentucky Board of Nursing;
- (c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016, Kentucky Board of Nursing;
- (d) "Annual Licensure Renewal Application: RN and APRN", 02/2021 [2/2020], Kentucky Board of Nursing;
- (e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;
- (f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;
- (g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 02/2021 [2/2020], Kentucky Board of Nursing;
- (h) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2021 [2/2020], Kentucky Board of Nursing; and
- (i) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(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, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.**

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

Final 4-29-2021

SUGGESTED SUBSTITUTE

**BOARDS AND COMMISSIONS
Board of Nursing**

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

RELATES TO: KRS 216B.400(2), (4), (5), 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, ti-

tle, 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). 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. Evaluate to determine its course comparability; and
 - 2. 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;
- (b) "Sexual Assault Nurse Examiner Application for Credential", 10/2018;
- (c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 02/2021 [2/2020];
- (d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 02/2021 [2/2020]; and
- (e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2018, 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. ~~**[Amended Administrative Regulation, 201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.]**~~ **This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.**

(3) The material in subsection 1(e) of this Section may be obtained at https://cdn.ymaws.com/www.forensicnurses.org/resource/resmgr/education/2018_sane_edguidelines.pdf.

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

Final, 4-29-2021

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Board of Nursing

201 KAR 20:660. Licensed certified professional midwives duty to report.

RELATES TO: KRS 61.878(1)(i), 213.046, Chapter 209A, 314.400 – 314.414, [61.871(1)(i),]
45 C.F.R. Part 164

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

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 314.404(10) requires[authorizes][requires] the board to promulgate an administrative regulation to require licensed certified professional midwives to report to the board annually as specified by the board information regarding cases in which the licensed certified professional midwife provided services when the intended place of birth at the onset of care was in an out-of-hospital setting. KRS 314.404(11) requires[authorizes][requires] the board to promulgate an administrative regulation to require licensed certified professional midwives to report to the board, within thirty (30) days of the occurrence, a case of newborn or maternal death attended by a licensed certified professional midwife at the discovery of death. ***This administrative regulation establishes reporting requirements for licensed certified professional midwives and for the review of those reports.*** ~~[This administrative regulation establishes reporting requirements for licensed certified professional midwives and for the review of those reports.]~~

Section 1. Pursuant to KRS 314.404(11), within thirty (30) days ~~[of the occurrence]~~ of a case of newborn or maternal death, the attending LCPM shall report the occurrence to the Board of Nursing on LCPM Incident Form.

Section 2. Pursuant to KRS 314.404(10), an LCPM shall report the following information ***on the LCPM Annual Report Form*** to the Board of Nursing on or before September 1 of each year for the period July 1 through June 30 preceding:

- (1) The total number of clients served;
- (2) The number of live births;
- (3) The number of cases of fetal demise, newborn deaths, and maternal deaths;
- (4) The number, reason for, and outcome of each ~~[referral,]~~ transfer, or transport of a client in the antepartum, intrapartum, or immediate postpartum periods;
- (5) The number and reason for each referral of a client in the antepartum, intrapartum, or immediate postpartum periods;
- (6) A brief description of any complications resulting in the morbidity or mortality of a mother or a newborn for the first six (6) weeks; and
- (7) ~~[(6)]~~ The planned location of the delivery and the actual location of the delivery if it is different.

Section 3. The LCPM Advisory Council shall review all reports.

Section 4. (1) The LCPM shall comply with the requirements of KRS 213.046 regarding the reporting of birth.

(2) The LCPM shall comply with the requirements of KRS Chapter 209A regarding reporting of suspected domestic violence.

Section 5. (1) **Each** LCPM Incident **Form[forms]** and LCPM Annual Report **Form[forms]** submitted for LCPM Advisory Council review in accordance with Sections 1 ~~through~~-3 of this administrative regulation shall be regarded as correspondence with private individuals, not notice of the final action of a public agency, and shall not be disclosed to the public.

(2) The Kentucky Board of Nursing shall make public aggregate incident and annual report data that does not identify individual licensees or information that would violate the confidentiality of information or knowledge concerning any patient, except as authorized or required by law such as pursuant to the Health Insurance Portability and Accountability Act ~~[(HIPPA)]~~ of 1996 **(HIPAA)**, Pub. L. No. 104-191, 110 Stat. 1936.

Section 6. Incorporation by Reference. (1) The following **material is[forms are]** incorporated by reference:

(a) "LCPM Incident Form", 1/2020~~[-is incorporated by reference-]; and~~

(b) "LCPM Annual Report Form", 12/2020.

(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, Monday through Friday, 8:00 a.m. to 4:30 p.m. **This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.**

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

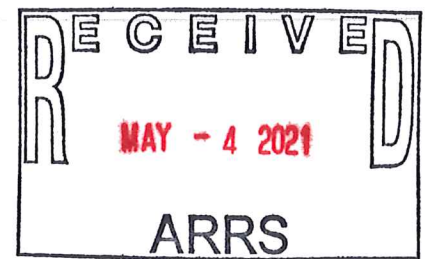


**KENTUCKY LABOR CABINET
Department of Workers' Claims**

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

May 3, 2021

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: 803 KAR 25:092 Workers' Compensation Pharmacy Fee Schedule

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 25:092, the Department of Workers' Claims proposes the attached amendment to 803 KAR 25:092.

Sincerely,

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

SUGGESTED SUBSTITUTE to Amended After Comments Version

Final Version 3/26/2021 9:10 AM

**LABOR CABINET
Department of Workers' Claims**

803 KAR 25:092. Workers' compensation pharmacy fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.270, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the commissioner [~~Workers' Compensation Board~~] to [periodically] promulgate administrative regulations to establish[adopt] a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable, and limited to that paid for similar treatment of other patients in the same community. KRS 342.035(1) authorizes the commissioner to consider the increased security of payment afforded by KRS Chapter 342 in determining what constitutes a reasonable fee~~[The Workers' Compensation Act may be taken into consideration in determining what fees are reasonable]~~. KRS 342.735 requires the commissioner [~~board~~] to establish administrative regulations to expedite the payment of medical expense benefits. ~~[The function of]~~ This administrative regulation establishes[is to regulate] charges for pharmaceuticals provided pursuant to KRS 342.020~~[,]~~ and expedites[to expedite] the payment of this class of medical expense benefits.

Section 1. Definitions. (1) "Brand drug" means a drug product identified as a brand by Medi-span or any other drug product commercially available from only one (1) source. ["Brand name" has the meaning set forth in KRS 217.814(1).]

(2) "Compound" is defined by[in] 803 KAR 25:270, Section 1(3).

(3) ~~[(2)]~~ "Equivalent drug product" is defined by[has the meaning set forth in] KRS 217.814(5).

(4) ~~[(3)]~~ "Generic drug" means a drug that is not a brand drug. ["Generic name" has the meaning set forth in KRS 217.814(6)][(2).]

(5) ~~[(4)]~~ "Hospital" is defined by[has the meaning set forth in] 803 KAR 25:091, Section 1(1).

(6) "Medical payment obligor" is defined by[in] 803 KAR 25:260, **Section 1(10)**.

(7) "Medical provider" is defined by[in] 803 KAR 25:260(11).~~[(5)]~~ "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.

~~(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.]~~

(8) "NDC number" means the unique eleven (11) digit, three (3) segment~~[11][10][digit, 3-segment]~~, number assigned to a drug product and maintained in the NDC Directory published by the U.S. Food and Drug Administration.

(9) "Pharmacist" is defined by[in] 803 KAR 25:270, **Section 1**~~[260]~~(15).

(10) "Pharmacy benefit manager" means an entity licensed pursuant to KRS 304.9-053 that, on behalf of a medical payment obligor:

(a) Contracts directly or indirectly with pharmacies to provide prescription drugs to individuals;

(b) Administers a prescription drug benefit;

(c) Processes or pays pharmacy claims;

(d) Makes or assists in making prior authorization determinations on prescription drugs; or

(e) Establishes a pharmacy network.

(11) "Prescription drug" is defined **by/in** 803 KAR 25:270, **Section 1**(18).

(12) "Repackage" means the act of taking a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug.

(13) "Usual and customary" means the charge a provider would apply to an otherwise uninsured patient.

Section 2. Payment for Pharmaceuticals. (1) Reimbursement shall be determined on the date of service. The maximum allowable reimbursement for prescription drugs shall be a dispensing fee of five (5) dollars and the lesser of:

(a) The provider's usual and customary charge for the drug;[

~~(b) The amount the medical payment obligor has agreed to pay under its contract with a pharmacy benefit manager or other pharmacy service provider, in which case, upon request, the medical payment obligor shall certify or otherwise disclose the applicable reimbursement provision contained in the contract;]~~

(b) [(c)] If it is a generic drug, eighty-five (85) percent [(85%)] [sixty percent (60%)] of the average wholesale price of the lowest priced equivalent drug product; or

(c) [(d)] If it is a brand [name] drug, ninety (90) percent [(90%)] [eighty-five percent (85%)] of average wholesale price.

(2) Average wholesale price shall be determined from the publication in effect on the date of service. The publication to be used **shall be/is**:

(a) Medi-Span, produced by Wolters-Kluwer; or

(b) If the drug is not included in Medi-Span, then the Red Book, produced by Micromedex, shall be used.

(3) The usual and customary charge of the provider for the prescription drug **shall[must]** be included on each statement for services.

(4) A generic drug **shall[must]** be substituted for a brand [name] drug unless there is no equivalent drug product available or the prescribing medical provider indicates **on the prescription** that substitutions are prohibited ~~[by including the words "Dispense as Written" or "No Substitution Allowed" along with a statement that the brand name drug is medically necessary].~~

(5) If a claimant chooses a brand [name] drug **and[when]** a generic drug is available and allowed by the medical provider, the claimant shall pay the difference in price between the brand [name] and the generic drug as determined pursuant to subsection (1) of this section.

(6) A dispensing provider that is not a pharmacist shall be reimbursed the same as a pharmacist, but shall not receive a dispensing fee.[;]

(7) Repackaged or Compounded Drugs

(a) Pharmaceutical bills submitted for repackaged or compounded drugs ~~shall~~**[must]** include the NDC Number of the original manufacturer registered with the U.S. Food and Drug Administration.

(b) Reimbursement shall be determined using the original manufacturer's NDC number for the product or ingredient, calculated on a per unit basis, as of the date of service. The maximum reimbursement limitations ~~established~~**[provided]** in subsection (1) of this section ~~shall~~ apply to each product or ingredient contained in the repackaged or compounded drug.

(c) An NDC number obtained for a repackaged or compounded drug shall not be considered the original manufacturer's NDC Number.

(d) If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the average wholesale price of the lowest priced equivalent drug product, calculated on a per unit basis.

(e) A single compounding ~~[dispensing]~~ fee of ~~twenty (20) dollars~~**[\$20]** shall ~~[may]~~ be reimbursed for a ~~[repackaged or]~~ compounded drug ~~[when applicable]~~.

~~(1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.~~

~~(2) Any duly licensed pharmacist dispensing pharmaceuticals pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.~~

~~[(8)][(3)] [If an employee's prescription is marked "Do Not Substitute," the employee shall receive a brand name drug.] [the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]~~

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation ~~may~~ **[shall]** be resolved pursuant to 803 KAR 25:012 ~~or 803 KAR 25:110, Section 10[25:110(10)]~~.

(2) This administrative regulation shall apply to prescriptions dispensed to a workers' compensation patient by a hospital pharmacy if the patient is not otherwise being treated or obtaining medical care from the hospital.

(3) This administrative regulation shall not apply to prescriptions dispensed by a hospital pharmacy, of a hospital regulated pursuant to 803 KAR 25:091, to a workers' compensation patient receiving medical treatment or care from the hospital on an inpatient or outpatient basis.

(4) Any insurance carrier, self-insured employer, ~~[or]~~ group self-insured employer, ~~or pharmacy benefit manager~~ may enter into an agreement ~~with any pharmacy or other provider~~ **[with any pharmacy]** to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing. ~~(1) A~~**[No]** pharmacy filling a prescription covered under KRS 342.020 shall **not** knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge in excess of that permitted under this administrative regulation, except as **established**~~**provided**~~ in Section 2~~(2)~~**[(1)]** of this administrative regulation.

(2) This prohibition **shall be**~~**is**~~ applicable to prescriptions filled pursuant to KRS 342.020 and any prescription ~~**which is**~~ denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.



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April 23rd, 2021

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: 806 KAR 14:121. Minimum standards for the readability and intelligibility of insurance contracts.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 14:121, the Department of Insurance proposes the attached agency amendments to 806 KAR 14:121.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

Final, 4-23-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care

806 KAR 14:121. Minimum standards for the readability and intelligibility of insurance contracts.

RELATES TO: KRS 304.14-130, 304.14-420-304.14-450

STATUTORY AUTHORITY: KRS 304.2-110, 304.14-420, 304.14-450(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. ~~[KRS 304.2-110 provides that the Executive Director of Insurance may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.]~~ KRS 304.14-420(2) requires the Commissioner ~~[Executive Director]~~ of Insurance to promulgate administrative regulations to establish [the] minimum standards for ~~[the]~~ the readability and intelligibility of insurance contracts. KRS 304.14-450(1) requires the Commissioner ~~[Executive Director]~~ of Insurance to promulgate administrative regulations establishing a list of type face styles acceptable for use in insurance contracts. ~~[The function of]~~ This administrative regulation establishes[is to establish] the list of type face styles acceptable for ~~[the]~~ use in insurance contracts, and the minimum standards for readability and intelligibility of insurance contracts.

Section 1. Definitions. ~~[As used in this administrative regulation:]~~

(1) "Amended" or "renewed" does not include changes or an extension of the term that are contractually granted and exercised by the policyowner or insured under the provisions of the policy;

(2) "Commissioner" is defined by KRS 304.1-050(1); ~~["Executive director" means the Executive Director of the Kentucky Office of Insurance;]~~

~~(3) [(2)]~~ "Personal lines insurance" means those personal lines of insurance established ~~[designated]~~ in KRS 304.14-420(1); and

~~[(3) "Amended" or "renewed" do not include changes or extension of term that [which] are contractually granted and exercised by the policyowner or insured under the provisions of the policy;]~~

(4) "Text" means all printed matter, except:

- (a) 1. The name and address of the insurer;;
- 2.[,] The name, number, or title of the policy;;
- 3.[,] The table of contents or index;;
- 4.[,] Captions and subcaptions;;
- 5.[,] Specification or declarations pages;;
- 6.[,] Schedules;[,] or
- 7. Tables; and

(b) Any policy language that ~~[which]~~ is drafted to conform to the requirements of any federal law, administrative regulation, or agency interpretation, any medical terminology, and any policy language required by law or administrative regulation, but the insurer shall certify that the language is entitled to be excepted from the definition of "text" as established[set forth] in this paragraph.

Section 2. Scope.

(1) This administrative regulation shall apply [~~applies~~] to all personal lines insurance policies delivered, issued for delivery, amended, or renewed in Kentucky on and after one (1) year from the effective date of this administrative regulation.

(2) This administrative regulation shall not apply to policies issued for conversion from policies not subject to this administrative regulation.

Section 3. Minimum Standards for Legibility. ~~A/No~~ personal lines insurance policy shall not be delivered, issued for delivery, amended, or renewed in Kentucky unless it is printed, except for specification or declarations pages, schedules, and tables, in not less than ten (10) point type, one (1) point leaded.

Section 4. (1) The following type face styles shall be acceptable for personal lines insurance policies:

- (a) Aldus;
- (b) Alternate Gothic No. 3;
- (c) American Typewriter Light;
- (d) American Typewriter Medium;
- (e) Americana;
- (f) Andover (Palatino);
- (g) Antique Olive Light;
- (h) Aster;
- (i) Auriga;
- (j) Avant Garde Light;
- (k) Avant Garde Book;
- (l) Baskerville;
- (m) Bembo;
- (n) Benguiat Book;
- (o) Bodoni;
- (p) Bodoni Book;
- (q) Bookman;
- (r) Caledonia;
- (s) Candida;
- (t) Caslon Old Face No. 2;
- (u) Century Expanded;
- (v) Century Schoolbook;
- ~~(w)~~[(x)] Chelmsford (Optima);
- ~~(x)~~[(y)] Clarendon Light;
- ~~(y)~~[(z)] Clearface;
- ~~(z)~~[(aa)] Crown (Century);
- ~~(aa)~~[(bb)] Egyptian;
- ~~(bb)~~[(cc)] Egyptian Light;
- ~~(cc)~~[(dd)] Electra;
- ~~(dd)~~[(ee)] Eurostile;
- ~~(ee)~~[(ff)] Fairfield Medium;
- ~~(ff)~~[(gg)] Friz Quadrata;
- ~~(gg)~~[(hh)] Garamond;
- ~~(hh)~~[(ii)] Garamond No. 3;
- ~~(ii)~~[(jj)] Goudy Oldstyle;
- ~~(jj)~~[(kk)] Hanover (Melior);

~~(kk)(ll)~~ Helvetica Light;
~~(ll)(mm)~~ Helvetica;
~~(mm)(nn)~~ Helvetica Condensed;
~~(nn)(oo)~~ Highland (Calendonia);
~~(oo)(pp)~~ Iridium;
~~(pp)(qq)~~ Italia Book;
~~(qq)(rr)~~ Janson;
~~(rr)(ss)~~ Korinna;
~~(ss)(tt)~~ Megaron Light (Helvetica Light);
~~(tt)(uu)~~ Megaron Medium (Helvetica Medium);
~~(uu)(vv)~~ Melior;
~~(vv)(ww)~~ Memphis Light;
~~(ww)(xx)~~ Memphis Medium;
~~(xx)(yy)~~ Monticello;
~~(yy)(zz)~~ News Gothic;
~~(zz)(aaa)~~ Optima;
~~(aaa)(bbb)~~ Orion;
~~(bbb)(ccc)~~ Palatino;
~~(ccc)(ddd)~~ Primer;
~~(ddd)(eee)~~ Quorum Light;
~~(eee)(fff)~~ Quorum Book;
~~(fff)(ggg)~~ Rotation;
~~(ggg)(hhh)~~ Sabon;
~~(hhh)(iii)~~ Schoolbook;
~~(iii)(iii)~~ Serif Gothic Light;
~~(iii)(kkk)~~ Souvenir;
~~(kkk)(lll)~~ Souvenir Light;
~~(lll)(mmm)~~ Stymie Medium;
~~(mmm)(nnn)~~ Stymie Light;
~~(nnn)(ooo)~~ Tiffany Light;
~~(ooo)(ppp)~~ Tiffany Medium;
~~(ppp)(qqq)~~ Times Roman;
~~(qqq)(rrr)~~ Trade Gothic Light;
~~(rrr)(sss)~~ Trade Gothic;
~~(sss)(ttt)~~ Trade Gothic Condensed;
~~(ttt)(uuu)~~ Trade Gothic Extended;
~~(uuu)(vvv)~~ Triumvirant;
~~(vvv)(www)~~ Trump;
~~(www)(xxx)~~ Trump Medieval;
~~(xxx)(yyy)~~ Univers Light;
~~(yyy)(zzz)~~ Univers Medium;
~~(zzz)(aaaa)~~ Univers No. 45;
~~(aaaa)(bbbb)~~ Univers No. 46;
~~(bbbb)(cccc)~~ Univers No. 55;
~~(cccc)(dddd)~~ Univers No. 56;
~~(dddd)(eeee)~~ Univers No. 57; **and**
~~(eeee)(ffff)~~ Univers 45 Light.

(2) ~~[This list is not intended to be exhaustive, but is an indication of the legibility of a type face style that is required.]~~ Any type face style selected other than those listed in subsection (1) of this section shall not be used unless approved by the commissioner ~~[executive director]~~. Extreme type styles including ~~[such as]~~ "Old English" or heavy block shall ~~[are]~~ not be acceptable.

(3) Italics, bold face, and contrasting styles may be used to emphasize important or technical terms and for captions. ~~if[When]~~ two (2) or more type face styles are used, ~~these[they]~~ shall be visually compatible.

Section 5. Minimum Standards for Intelligibility.

(1) A ~~[No]~~ personal lines insurance policy shall not be delivered, issued for delivery, amended, or renewed in this state unless the text achieves a minimum score of forty (40) on the Flesch reading ease test, or an equivalent score on any other reading test approved by the commissioner ~~[executive director]~~ for use as an alternative that is comparable in result to the Flesch reading ease test. ~~[if it is comparable in result to the Flesch reading ease test.]~~

(2) For the purposes of this section, a Flesch reading ease test score shall be measured by the following method:

(a) For policy forms containing 10,000 words or less of text, the entire policy form shall be analyzed. For policy forms containing more than 10,000 words, the readability of two (2) 200 word samples per page may be analyzed instead of the entire policy form. The samples shall be separated by at least twenty (20) printed lines. Any endorsement made a part of the policy may, at the determination[discretion] of the insurer ~~[insurer's option]~~, be scored separately or as part of the policy.

(b) The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of 1.015.

(c) The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of 84.6.

(d) The sum of the figures computed under paragraphs (b) and (c) of this subsection subtracted from 206.835 equals the Flesch reading ease score for the policy form.

(e) For the purposes of paragraphs (b), (c), and (d) of this subsection, the following procedures shall be used:

1. A contraction, hyphenated word, or numbers and letters, ~~if[when]~~ separated by spaces, shall be counted as one (1) word;

2. A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as one (1)[a] sentence; and

3. A syllable means a unit of spoken language consisting of one (1) or more letters of words as divided by an accepted dictionary. ~~if[Where]~~ the dictionary shows two (2) or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(3) ~~Each[All]~~ policy form ~~filing[filings]~~ subject to this administrative regulation shall be accompanied by a certificate signed by an officer of the insurer or other insurer representative authorized by the board of directors stating that the policy form meets the minimum reading ease score on the test used, or stating that the score is lower than the minimum required, but the policy form may be approved in accordance with subsection (4) of this section. ~~[To confirm the accuracy of any certification, the executive director may require the submission of further information to verify the certification in question.]~~

(4) The commissioner ~~[executive director]~~ may approve a policy form filing ~~[authorize]~~ with a lower reading ease test score than the Flesch reading ease score required in subsection (1) of this section if ~~[whenever in his sole discretion,]~~ he or she finds that a lower score:

(a) Will provide a more accurate reflection of the readability of a policy form;

(b) Is warranted by the nature of a particular policy form, or type or class of policy forms; or

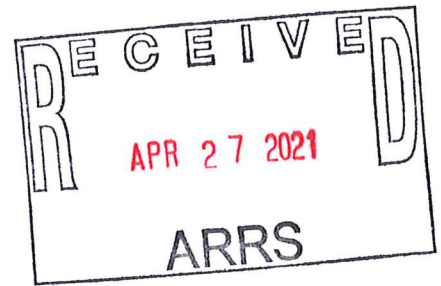
(c) Is caused by certain policy language that ~~[which]~~ is drafted to conform to the requirements of any federal or state law, administrative regulation, or agency interpretation.[]

~~Section 6. Severability; Effective Date. (1)] If any provision of this administrative regulation or the application of this administrative regulation to any person or circumstance is for any reason~~

~~held to be invalid, the remainder of the administrative regulation and the application of such provision to other persons or circumstances shall not be affected thereby.~~

~~(2) This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]~~

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.



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April 27th, 2021

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: **806 KAR 15:050. Reporting and general requirements for settlement providers and brokers.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 15:050, the Department of Insurance proposes the attached agency amendments to 806 KAR 15:050.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS)

806 KAR 15:050. Reporting and general requirements for settlement providers and brokers.

RELATES TO: KRS 304.12-020, 304.14-120, ~~304.14-440~~ ~~[304.14-450]~~, 304.14-450, 304.15-020, 304.15-035, 304.15-700-304.15-725, 304.99-020

STATUTORY AUTHORITY: KRS 304.15-715(2), ~~304.15-719~~, 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a commissioner.]~~ KRS 304.15-715 requires a request for verification of coverage to be made on a form approved by the commissioner ~~[executive director]~~. KRS 304.15-720 authorizes the commissioner ~~[executive director]~~ to promulgate administrative regulations ~~[to]~~ implementing the provisions of~~[implement]~~ KRS 304.15-700 to 304.15-720. ~~[The function of]~~ This administrative regulation establishes ~~[is to establish]~~~~[establishes]~~ the standards~~[standards]~~ for life settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to life settlement contracts, life settlement providers, and life settlement brokers.

Section 1. Definitions. ~~[As used in this administrative regulation:]~~ (1) "Commissioner" is ~~[means the Commissioner of the Department of Insurance as]~~ defined by KRS 304.1-050(1) ~~[means the Commissioner of the Department of Insurance]~~.

(2) "Department" is ~~[means the Department of Insurance as]~~ defined by KRS 304.1-050(2) ~~[means the Department of Insurance]~~.

(3) "Individual identification data" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Security number, or other information that is likely to lead to the identification of the insured.

(4) "Insured" means the person covered under the policy being considered for settlement.

(5) "Insurer" is defined by ~~[in]~~ KRS 304.1-040.

(6) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be settled can be expected to live as utilized by the life settlement provider pursuant to the life settlement contract considering medical records and appropriate experiential data.

(7) "Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.

(8) "Owner" is defined by ~~[in]~~ KRS 304.15-020(19).

Section 2. General Rules. (1) A life settlement provider shall not unfairly discriminate in making life settlements on the basis of race, age, sex, national origin, creed, religion, occupation, or marital or family status.

(2) A life settlement provider shall not unfairly discriminate between an owner with a dependent and an owner **without a** ~~**[with no]**~~ dependent.

(3) A life settlement provider shall not solicit investors who may influence the treatment of the illness of the insured whose coverage would be the subject of the investment.

(4) Within three (3) days of execution of the life settlement contract, the life settlement provider shall mail to the owner **a copy** ~~**[copies]**~~ of ~~**[the following]**~~:

- (a) The executed life settlement contract;
- (b) The application for the life settlement contract; and
- (c) The statement from the licensed attending physician that the owner is of sound mind and not under undue influence or constraint.

(5) Payment of the proceeds of a life settlement pursuant to KRS 304.15-710 (1)(g) shall be by means of wire transfer to an account designated by the owner or by certified check or cashier's check.

(6) Payment of the proceeds to the owner pursuant to a life settlement shall be made in a lump sum, except the life settlement provider may purchase an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. The life settlement provider or escrow agent shall not retain a portion of the proceeds not disclosed or described in the life settlement contract without written consent of the owner.

(7) A life settlement provider or life settlement broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any insured's physician, or to an attorney, accountant, or other person providing medical, legal, or financial planning services to the owner, or to any other person acting as an agent of the owner, other than a life settlement broker, with respect to the life settlement.

(8) If a life settlement provider enters into a life settlement that allows the owner to retain an interest in the insurance policy, the life settlement contract shall contain ~~**[the following provisions]**~~:

(a) A provision that the life settlement provider will affect the transfer of the amount of the death benefit only to the extent or portion of the amount settled. Benefits in excess of the amount settled shall be paid directly to the owner's beneficiary by the insurance company;

(b) A provision that the life settlement provider ~~**[shall]**~~, upon acknowledgment of the completion of the transfer, ~~**shall**~~~~**[either]**~~:

1. Advise the owner, in writing, that the insurance company has confirmed the owner's interest in the policy; or

2. Send, to the owner, a copy of the instrument sent from the insurance company to the life settlement provider that acknowledges the owner's interest in the policy; and

(c) A provision that apportions the premiums to be paid by the life settlement provider and the owner, **which** provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.

(9) If the insured is a minor child, disclosures to and permission of a parent or legal guardian **that** satisfy the requirements **of** KRS 304.15-700 through KRS 304.15-720 and this administrative regulation.

Section 3. Life Settlement Contract and Form Approval. (1) A life settlement form submitted to the commissioner for approval shall:

- (a) Be filed in accordance with KRS 304.14-120;
 - (b) Provide space for identifying the parties;
 - (c) Provide space for including the amount of the proceeds payable to the owner; and
 - (d) Provide that the contract ~~shall~~~~[is to]~~ be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party.
- (2) Each life settlement contract or other form submitted for approval shall:
- (a) Be accompanied by the filing fee prescribed by 806 KAR 4:010;
 - (b) Have a form number in the lower left corner;
 - (c) Meet the readability standards established by KRS 304.14-440; and
 - (d) Meet the legibility standards established by KRS 304.14-450, except the disclosures required by KRS 304.15-710 shall be in at least twelve (12) point type.
- (3) The commissioner may review any previously approved life settlement contract or other form for compliance with KRS 304.15-700 to 304.15-725 and this administrative regulation.

Section 4. Filing Requirements for Advertising of Life Settlements. (1) This section shall apply to advertising of life settlement contracts, or related products or services intended for dissemination in Kentucky, including Internet advertising viewed by persons located in Kentucky.

(2) A life settlement licensee shall establish and maintain a system of control over the content, form, and method of dissemination of advertisements of its contracts, products, and services. A system of control shall include routine notification, at least once a year, to persons authorized by the life settlement licensee to disseminate advertisements, of the requirements and procedures for review by the department prior to the use of any advertisements not furnished by the life settlement licensee.

(3) A life settlement licensee shall provide a copy of any advertising for life settlements intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with KRS 304.12-020.

(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement shall be sufficiently complete and clear ~~[so as]~~ to avoid deception. It shall not have the capacity or tendency to mislead or deceive. ~~If [Whether]~~ an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so **as to [it shall not]** ~~[as to]~~ be confusing or misleading.

(6) The following rules shall govern the advertisement of life settlements:

(a) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving owners~~[,]~~ as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. It shall not be a remedy of misleading statements to make the life settlement contract available for inspection prior to completion of the sale, or offering to

refund the payment if the owner is not satisfied, or including in the life settlement contract a "free look" period that satisfies or exceeds legal requirements.

(b) An advertisement shall not use the name or title of a life insurer or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or a service, may state that a charge is included in the payment, or may use other similar language.

(e) When a testimonial, appraisal, **endorsement**, or analysis is used in an advertisement, the testimonial, appraisal, **endorsement**, or analysis shall:

1. Be genuine;
2. Represent the current opinion of the author;
3. Be applicable to the life settlement contract product or service advertised;
4. Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonial, appraisal, analysis, or endorsement;

5. Prominently disclose in the advertisement if the individual making the testimonial, appraisal, analysis, or endorsement has a financial interest in the life settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit other than required union scale wages; and

6. Not state or imply that a life settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(f) In using testimonials, appraisals, **endorsements**, or analysis, the life settlement licensee **shall make [makes]** as its own all the statements contained therein, and the statements **shall be [are]** subject to all the provisions of this section.

(g) If an endorsement refers to benefits received under a life settlement contract, all pertinent information shall be retained for a period of not less than five (5) years following creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

(h) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(i) An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, insurance producers, policies, services, or methods of marketing.

(j) The name of the life settlement licensee shall be identified in all advertisements about the licensee or its life settlement contracts, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified **[either]** by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

(k) An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device, or reference without disclosing the name of the life settlement licensee~~[,]~~ if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee~~[,]~~ or ~~[to]~~ create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.

(l) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency, or otherwise appear to be of such a nature, that they tend to mislead prospective owners into believing that the solicitation is in some manner connected with a government program or agency.

(m) An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears ~~if~~ ~~[, provided]~~ it does not exaggerate that fact or suggest or imply that competing life settlement licensees may not be so licensed. The advertisement may ask the audience to consult the licensee's Web site or contact the department to find out if Kentucky requires licensing and, if so, whether the life settlement provider or life settlement broker is licensed.

(n) An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by a government entity.

(o) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, group designation, name of an affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have responsibility for the financial obligation of the licensee.

(p) An advertisement shall not create the impression that a division or agency of the state or ~~[of the]~~ U. S. government endorses, approves, or favors:

1. A life settlement licensee or its business practices or methods of operation;
2. The merits, desirability, or advisability of a life settlement contract;
3. A life settlement contract; or
4. A life insurance policy or life insurer.

(q) If the advertiser emphasizes the speed with which the settlement will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

(r) If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percent of face value obtained by owners contracting with the licensee during the past six (6) months.

Section 5. Standards for Evaluation of Reasonable Payments for Terminally or Chronically-Ill Insureds. ~~[In order]~~ To ensure that owners receive a reasonable return for settling an insurance

policy, the return for settling a policy shall be no less than the following payouts for insureds that are terminally or chronically ill:

(1) If an insured's life expectancy is less than six (6) months, eighty (80) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(2) If an insured's life expectancy is at least six (6) months, but less than twelve (12) months, seventy (70) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(3) If an insured's life expectancy is at least twelve (12) months, but less than eighteen (18) months, sixty-five (65) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(4) If an insured's life expectancy is at least eighteen (18) months but less than twenty-five (25) months, sixty (60) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner; and

(5) If an insured's life expectancy is twenty-five (25) months or more, the owner shall receive at least the greater of the cash surrender value or accelerated death benefit in the policy.

Section 6. Prohibited Practices. (1) Except for a subpoena issued by the commissioner, if a life settlement provider or broker is served with a subpoena compelling the life settlement provider or broker to produce records containing individual identification data, the life settlement provider or broker shall notify the owner and the insured within five (5) business days after receiving notice of the subpoena. Notice shall be sufficient if delivered to the last known address of the owner and the insured.

(2) A life settlement broker shall not seek or obtain any compensation from the owner in connection with a life settlement transaction prior to performing any services.

Section 7. Insurance Company Practices. (1) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a life settlement provider or a life settlement broker within thirty (30) calendar days of the date a request is received, subject to the receipt of the Verification of Coverage for Life Insurance Policies Form VOC, which has been completed by the life settlement provider or the life settlement broker in accordance with the instructions on the form.

(2) A life insurance company shall not charge a fee for responding to a request for information from a life settlement provider or life settlement broker in compliance with this section in excess of any usual and customary charges to policyholders or certificate holders for similar services.

(3) The life insurance company shall send an acknowledgement of receipt of the request for verification of coverage to the policyholder or certificate holder. The acknowledgment shall contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

(4) A life insurance company shall not require the owner to sign any request for change in a policy or a group certificate from a life settlement provider that is the owner or assignee of the insured's insurance coverage, unless the owner has ownership, assignment, or irrevocable beneficiary rights under the policy. **If the owner has ownership, assignment, or irrevocable beneficiary rights under the policy [In that situation,]** the life settlement provider shall provide

timely notice to the owner that a settlement transaction on the policy has occurred. Notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.

Section 8. Disclosure. (1) The life settlement broker shall provide a copy of the life settlement disclosure Form LS 7 and the "Kentucky Consumer Guide to Understanding Life Settlements" to the owner on or before the date that the life settlement broker offers or advertises the availability of the owner's life insurance policy, introduces the owner to a life settlement provider, or offers or attempts to negotiate a life settlement between an owner and a life settlement provider.

(2) If there is no life settlement broker involved in the life settlement transaction, the life settlement provider shall provide the life settlement disclosure Form LS 7 and the "Kentucky Consumer Guide to Understanding Life Settlements" to the owner on or before the date that the **life [viatical]** settlement contract is signed by each party to the contract.

Section 9. Reporting Requirement. (1) On or before March 1 of each calendar year, the licensed life settlement provider shall submit **[the following]**:

(a) A report of the life settlement transactions related to Kentucky insureds, which shall be submitted on Form LS 1;

(b) A report of the individual mortality of Kentucky insureds, which shall be submitted on Form LS 2;

(c) A report of the life settlement transactions in all states and territories, which shall be submitted on Form LS 3; and

(d) A certification of the information contained in the reports, which shall be submitted on Form LS 6 and shall be filed with the reports.

(2) The information reported pursuant to subsection (1) of this section shall include the total number of policies for the previous calendar year that were:

(a) Reviewed for consideration by a life settlement provider;

(b) Offered for purchase to an owner of a life insurance policy; and

(c) Purchased by an owner of a life insurance policy.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Consumer Guide to Understanding Life Settlements", 3/2020 edition [~~7/2008 edition~~];

(b) Form LS 1, "Life Settlement Provider Report - Kentucky Insureds Only", 7/2008 edition [~~7/2008 edition~~];

(c) Form LS 2, "Individual Mortality Report - Kentucky Insureds Only", 7/2008 edition [~~7/2008 edition~~];

(d) Form LS 3, "Life Settlement Provider Report - All States and Territories", 7/2008 edition [~~7/2008 edition~~];

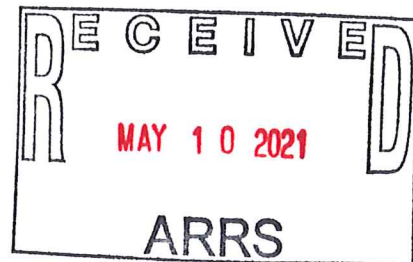
(e) Form LS 6, "Life Settlement Provider Certification Form", 7/2008 edition [~~7/2008 edition~~]; and

(f) Form LS 7, "The Kentucky Life Settlement Disclosure Form - Notice Regarding Life Settlement Contracts", 3/2021 edition [~~3/2020 edition~~] [~~7/2008 edition~~]; and

(g) Form VOC, "Verification of Coverage for Life Insurance Policies Form", 7/2008 edition [~~7/2008 edition~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street~~[215 West Main Street]~~, Post Office Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance Internet Web site at <http://insurance.ky.gov>~~[http://doi.ppr.ky.gov]~~.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.



CABINET FOR HEALTH AND FAMILY SERVICES
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Eric C. Friedlander
Secretary

May 10, 2021

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

RE: Suggested Substitute for 900 KAR 6:030

Dear Co-Chairs West and Hale:

After discussion with Administrative Regulation Review Subcommittee staff of the issues raised by 900 KAR 6:030, the Office of Inspector General proposes the enclosed suggested substitute.

If you have any questions regarding the matter, please contact Kara Daniel, Office of Inspector General, at KaraL.Daniel@ky.gov.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need

900 KAR 6:030. Certificate of Need expenditure minimums.

RELATES TO: KRS 216B.015

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4, 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. Price Index. ~~[(4)]~~ The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130. [

~~(2) The change in the price index for the twelve (12) month period ending December 31, 2013, represents a 3.43 percent increase.]~~

Section 2. **Expenditure Minimums Based on 2013 Change in Price Indexes. (1) The capital expenditure minimum established in KRS 216B.015(8) shall be \$2,913,541.**

(2) The major medical equipment minimum established in KRS 216B.015(17) shall be \$2,913,541.

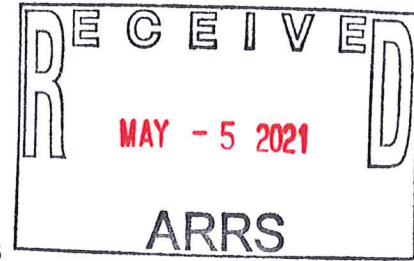
~~Section 3. [Expenditure Minimums Based on 2013 Change in Price Indexes. (1) The capital expenditure minimum established in KRS 216B.015(8) shall be \$2,913,541.~~

~~(2) The major medical equipment minimum established in KRS 216B.015(17) shall be \$2,913,541.~~

~~Section 3.] Annual Adjustments of Expenditure Minimums. (1) **Beginning July 1, 2015,** [Beginning July 1, 2015,] the cabinet shall annually adjust the capital expenditure minimum and the major medical equipment expenditure minimum [minimums] on July 1 based on the change in the price index referenced in Section 1~~[(4)]~~ of this administrative regulation for the previous twelve (12) month period ending December 31.~~

~~(2) The annual adjustments of the expenditure minimums shall be available by July 1 for the previous twelve (12) month period on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [<https://chfs.ky.gov/agencies/os/oig/dcn/Pages/en.aspx>].~~

CONTACT PERSON: Donna Little, Deputy Executive Director, 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.



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Eric C. Friedlander
Secretary

May 5, 2021

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

RE: 900 KAR 6:055 – Agency Amendment

Dear Co-Chairs West and Hale:

After discussion with Administrative Regulation Review Subcommittee staff of issues raised by 900 KAR 6:055, the Office of Inspector General proposes the attached amendment to 900 KAR 6:055. If you have any questions, please feel free to contact Kara Daniel at KaraL.Daniel@ky.gov.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

Agency Amendment

Cabinet for Health and Family Services Office of Inspector General Division of Certificate of Need

900 KAR 6:055. Certificate of need forms.

Page 3

Section 2(13)

Line 7

After "health care", insert the following:

center operated by the hospital and licensed pursuant to 902 KAR 20:074

Delete "clinic listed on the hospital's license"

Page 3

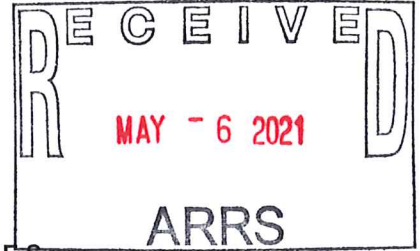
Section 2(13)

Line 9

After "health care", insert the following:

center operated by the hospital and licensed pursuant to 902 KAR 20:074

Delete "clinic listed on the hospital's license"



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Eric C. Friedlander
Secretary

May 6, 2021

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

RE: 900 KAR 6:065 – Agency Amendment

Dear Co-Chairs West and Hale:

After discussion with Administrative Regulation Review Subcommittee staff of issues raised by 900 KAR 6:065, the Office of Inspector General proposes the attached amendment to 900 KAR 6:065. If you have any questions, please feel free to contact Kara Daniel at KaraL.Daniel@ky.gov.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

Agency Amendment

Cabinet for Health and Family Services Office of Inspector General Division of Certificate of Need

900 KAR 6:065. Certificate of need application process.

Page 2

Section 1(7)

Line 7

After "(7)", insert the following:

"Person" is defined by KRS 216B.015(22).

Renumber the remaining subsections.

Page 2

Section 2(3)

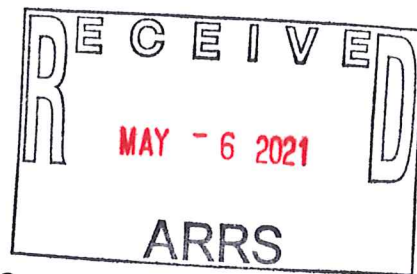
Line 21

After "(3)", insert the following:

(a) For the purpose of completing the application, neither the geographic area the applicant proposes to serve nor the health service area in which the project is proposed to be located shall include any area that is located outside of the Commonwealth of Kentucky.

(b) A person located and residing solely outside of the Commonwealth of Kentucky shall not qualify as an affected person for the purpose of opposing an application.

Renumber the remaining subsections.



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May 6, 2021

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

RE: 900 KAR 6:090 – Agency Amendment

Dear Co-Chairs West and Hale:

After discussion with Administrative Regulation Review Subcommittee staff of issues raised by 900 KAR 6:090, the Office of Inspector General proposes the attached amendment to 900 KAR 6:090. If you have any questions, please feel free to contact Kara Daniel at KaraL.Daniel@ky.gov.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

Agency Amendment

Cabinet for Health and Family Services Office of Inspector General Division of Certificate of Need

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

Page 4

Section 3(4)

Line 6

After "(4)", insert the following:

(a) By motion, pursuant to 900 KAR 6:065, Section 2(3), an applicant may challenge the standing of any person to request a hearing or participate in a public hearing.

(b) If a motion challenging the standing of a person is filed by an applicant, the hearing officer shall conduct an evidentiary hearing on the matter and obtain sworn testimony from the person. The applicant shall have the right to cross-examine the person.

(c) If the hearing officer determines that the person is located and residing solely outside of the Commonwealth of Kentucky, the hearing officer shall prohibit further participation by the person in the proceedings on the application at issue.

(d) If the hearing officer determines that the person is acting as a surrogate for another person who does not qualify as an affected person, the hearing officer shall prohibit further participation by the person in the proceedings on the application at issue.

Renumber the remaining subsections.

Page 4

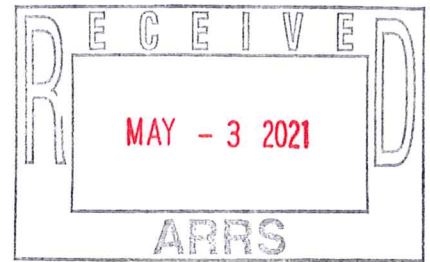
Section 3(4)

Line 9

After "each", delete "affected".

After "person", insert the following:

who has been determined to be acting as a surrogate for another person or



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Eric C. Friedlander
Secretary

May 4, 2021

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: Suggested Substitute for **900 KAR 6:100**

Dear Co-Chairs West and Hale:

After discussions with the Administrative Regulation Review Subcommittee staff of the issues raised by 900 KAR 6:100, the Office of Inspector General proposes the enclosed suggested substitute.

If you have any questions regarding this matter, please contact Kara Daniel, Office of Inspector General, at (502) 564-2888, ext. 3306.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Certificate of Need

(Amendment)

900 KAR 6:100. Certificate of need standards for implementation and biennial review.

RELATES TO: KRS 216B.015, **216B.086**

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1, 216B.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.086 authorizes the revocation of certificate of need, or portion thereof, for failure to implement the project in accordance with timetables and standards established by administrative regulation. This administrative regulation establishes the required timetables and standards for implementation as well as requirements for biennial reviews for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015~~(6)~~~~(5)~~.

(2) "Days" means calendar days, unless otherwise specified.

(3) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(4) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(5) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the CON[OHP] - Form 8, Certificate of Need Six Month Progress Report, incorporated by reference in 900 KAR 6:055, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall determine:

(a) If the required elements have been completed; and

(b) If the required elements have not been completed, whether~~if~~ sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete if:

(a) The project has been approved for licensure or occupancy by the Office of Inspector General;

(b) A final cost breakdown has been submitted; and

(c) The required progress report fee pursuant to Section 3 of this administrative regulation has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for a long-term care bed proposal~~proposals~~, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period if the holder of the certificate of need establishes that the failure was due to circumstances that:

(a) Could not reasonably be anticipated and avoided by the holder; or

(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (6) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for any project~~all projects~~ other than long-term care beds shall include:

(a) For a project~~projects~~ for the addition of new services or expansion of existing services that does~~de~~ not involve construction, renovation, or the installation of equipment: plans for implementation of the project;

(b) For a project~~projects~~ for the purchase of equipment only:~~;~~ a copy of the purchase order;

(c) For a project~~projects~~ involving the acquisition of real property:~~;~~ evidence of an option to acquire the site; or

(d) For a construction or renovation project:~~;~~ evidence that schematic plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare.

(10) For a project~~projects~~ other than long-term care beds not deemed complete, a second progress report shall include:

(a) For a project~~projects~~ converting beds:~~;~~ documentation that all beds are licensed;

(b) For a project~~[projects]~~ for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment:~~[:]~~ documentation of approval for licensure and occupancy by the Office of Inspector General, Division of Healthcare, or the Kentucky Board of Emergency Medical Services; or

(c) For a construction or renovation project~~[projects]~~:~~[:]~~ the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For a project~~[projects]~~ other than long-term care beds not deemed complete, a third progress report shall include:

(a) For a construction or renovation project~~[projects]~~:

1. A copy of the deed or lease of land;
2. Documentation of the final enforceable financing agreement, if applicable;
3. Documentation that final plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare; and
4. An enforceable contract with a construction contractor; or

(b) For a project~~[projects]~~ for purchase of equipment only:~~[:]~~ evidence of approval for licensure and occupancy by the Office of Inspector General, Division of Healthcare.

(12) For a project~~[projects]~~ other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare, and evidence that construction has begun.

(13) For a project~~[projects]~~ other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For a project~~[projects]~~ other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General, Division of Healthcare, and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For a project~~[projects]~~ other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For a project~~[projects]~~ involving long-term care beds, the progress reports required by this subsection shall be submitted.~~[:]~~

(a) The first progress report shall include:

1. A copy of the deed or lease of land for a project~~[projects]~~ requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare.

(b) For a project~~[projects]~~ involving long-term care beds not deemed complete, a second progress report shall include:

1. For a conversion of bed project~~[projects]~~~~:/~~ documentation that the beds in the project are licensed; or

2. For a construction project~~[projects]~~:

a. A schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare; and

d. An enforceable construction contract.

(17) For a project~~[projects]~~ involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For a project~~[projects]~~ involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Office of Inspector General, Division of Healthcare.

(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown if the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.

(20) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(21) If the Office of Inspector General, Division of Healthcare, discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with 900 KAR 6:090, Section 4.

Section 3. Progress Report Fee. (1) ~~[Upon the effective date of this administrative regulation,]~~ A progress report fee in the amount of \$100.00 or one (1) percent of the application fee assessed pursuant to 900 KAR 6:020, whichever amount is greater, shall be submitted by the certificate of need holder with each semi-annual progress report filed for each certificate of need that has been issued for more than three (3) years.

(2) A certificate of need shall be revoked for failure to submit the progress report fee.

Section 4. Voluntary Revocation of a Certificate of Need. If a certificate of need holder requests revocation of a certificate of need or a portion of a certificate of need ~~[within six (6) months of the effective date of this administrative regulation]~~ and submits a new application for the same proposed health facility or service within five (5) years from the date of revocation, the cabinet shall apply the application fee ~~that~~which was submitted for the revoked certificate of need or portion of a certificate of need toward the fee assessed pursuant to 900 KAR 6:020 for the new application.

Section 5. Biennial Review. (1) A certificate of need ~~holder~~holders may be subject to biennial review to determine if ~~the holder is~~they are in compliance with the terms as listed on ~~the~~their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

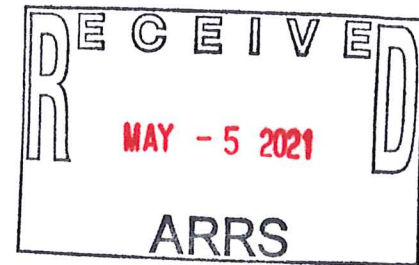
(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for a response to the request for information.

(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of, and any sanctions for, this violation shall be conducted in accordance with 900 KAR 6:090, Section 4.



**CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF INSPECTOR GENERAL**

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Eric C. Friedlander
Secretary

May 5, 2021

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

RE: 900 KAR 6:110 – Agency Amendment

Dear Co-Chairs West and Hale:

After discussion with Administrative Regulation Review Subcommittee staff of issues raised by 900 KAR 6:110, the Office of Inspector General proposes the attached amendment to 900 KAR 6:110. If you have any questions, please feel free to contact Kara Daniel at KaraL.Daniel@ky.gov.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

Agency Amendment

Cabinet for Health and Family Services Office of Inspector General Division of Certificate of Need

900 KAR 6:110. Certificate of need notification of the addition or establishment of a health service, or notification of the reduction or termination of a health service, or reduction of bed capacity, or notice of intent to acquire a health facility or health service.

Page 2

Section 4

Line 20

After "health care", insert the following:

center operated by the hospital and licensed pursuant to 902 KAR 20:074

Delete "clinic listed on the hospital's license"

Page 3

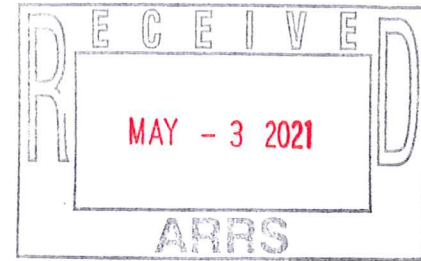
Section 5

Line 2

After "categories," insert the following:

including an outpatient health care center operated by the hospital and licensed pursuant to 902 KAR 20:074

Delete "including within an outpatient health care clinic listed on the hospital's license"



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

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Eric C. Friedlander
Secretary

May 3, 2021

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: **902 KAR 95:040**. Radon contractor registration program.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 95:040, the Department for Public Health proposes the enclosed suggested substitute to 902 KAR 95:040.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Krista Quarles
Policy Analyst
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 95:040. Radon Contractor Registration~~[Certification]~~ Program.

RELATES TO: KRS Chapter 13B, 211.180(1)(a), 211.9101, 211.9107, 211.3113, 211.9119
~~[211.9135]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.9109, 211.9111, 211.9115, 211.9121, 211.9125~~[211.9127]~~, 211.9135(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135. This administrative regulation establishes requirements for the registration~~[certification]~~ of an individual or laboratory to perform radon measurement, radon mitigation, or laboratory analysis.

Section 1. Registration~~[Definitions]~~. (1) ~~"AARST" means the American Association of Radon Scientists and Technologists.~~

~~(2) "ANSI" means the American National Standards Institute.~~

~~(3) "ASTM" means the American Society for Testing and Materials International.~~

~~(4) "Mitigation system" is defined by KRS 211.9101(21).~~

~~(5) "NRPP" means the National Radon Proficiency Program.~~

~~(6) "NRSB" means the National Radon Safety Board.~~

~~(7) "Picocuries per liter" or "pCi/L" means a unit of radioactivity corresponding to one (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or 0.037 decays per second in every liter of air.~~

Section 2. Certification Requirements. (1) A person seeking registration~~[shall be eligible to be certified]~~ as a radon measurement contractor or a radon mitigation contractor shall submit~~[if the individual]~~:

~~(a) Submits] to the cabinet:~~

~~(a)[1.] A completed DFS-375, Application for~~ Registration~~[Certification]~~ for Radon Contractors and Laboratories;

~~(b)[2. Verification of completion of a cabinet-approved course and exam pursuant to Section 5(3) of this administrative regulation;~~

~~3.] The fee established in Section 2(2)[3(2)] of this administrative regulation; and~~
~~(c)[4. A quality control program plan that meets the requirements established in Section 4(1) or (2) of this administrative regulation; and~~

~~5.] Evidence of financial responsibility in accordance with KRS 211.9109 (1)(b)[(f)] or 211.9111(1)(b)[(f)]; and~~

~~(b) Adheres to the requirements established in KRS 211.9123 if the individual is a non-resident of Kentucky].~~

(2) A radon laboratory seeking registration shall submit~~[be eligible for certification if the entity:~~

~~(a) Employs a minimum of one (1) individual who is a Kentucky certified radon measurement contractor;~~

~~(b) submits] to the cabinet:~~

~~(a)[4.] A completed DFS-375, Application for Registration[Certification] for Radon Contractors and Laboratories;~~

~~(b)[2.] The fee established in Section 2(2)[3(2)] of this administrative regulation; and~~

~~(c) Evidence of financial responsibility in accordance with KRS 211.9115(2)(b)[3. A quality control program plan as established in Section 4(3) of this administrative regulation; and~~

~~(c) Adheres to the requirements established in KRS 211.9123 if the entity is a non-resident analytical laboratory that is seeking reciprocity].~~

(3) A contractor with a dual certification as a radon measurement contractor and a radon mitigation contractor shall submit~~:~~

~~(a) maintain] a separate registration[certificate] for each discipline.~~

(4)(a) All potential registrants as a radon measurement or radon mitigation contractor shall have a background check performed by:

1. The Administrative Office of the Courts; and

2. The Division of Protection and Permanency within the Cabinet for Health and Family Services.

(b) The required background check results shall be submitted directly to the cabinet.

(c) The cabinet shall review the Kentucky Sex Offender Registry prior to the registration of a radon measurement or radon mitigation contractor.

(d) In accordance with KRS 211.9125(1)(a) the cabinet may refuse or revoke a registration based on the results of the background check]; and

~~(b) Adhere to the limitations established in KRS 211.9117(1) and (2).~~

~~(4) Only radon measurements performed by a certified radon measurement contractor shall be reported or disclosed to another party].~~

(5) A registered~~[certified]~~ radon measurement contractor employee working exclusively for a registered~~[certified]~~ radon laboratory shall not be required to meet:

(a) The insurance [and quality control program] requirements established in subsection (1) of this section; and

(b) The background check requirements established in subsection (4) of this section.

Section ~~2~~³. Schedule of Fees. (1) The fees required by subsection (2) of this section shall be:

(a) Nonrefundable;

(b) Submitted with an application for initial registration or registration~~[certification or certification]~~ renewal; and

(c) Made payable to the Kentucky State Treasurer.

(2)(a) The fee for initial registration~~[certification]~~ shall be \$~~500~~²⁵⁰. **The initial registration shall be valid for two (2) years.**

(b) The ~~biennial~~^{annual} renewal fee shall be \$~~500~~²⁵⁰.

(c) ~~[The annual fee for reciprocity meeting the requirements of KRS 211.9123 shall be \$250.]~~

~~(d) The fee for a duplicate certificate shall be twenty (20) dollars.~~

~~(e)] The fee for late renewal shall be \$~~500~~¹⁰⁰.~~

~~(d)[(f)] The [annual] fee for inactive registration~~^[certification] status shall be \$~~200~~¹⁰⁰.

The inactive registration status shall be valid for two (2) years.

Section 3. Registration Renewal. (1) Each registration shall be renewed every odd-numbered year.

(2) An individual seeking registration renewal shall submit to the cabinet:

(a) A completed renewal application on DFS-375, Application for Registration for Radon Contractors and Laboratories;

(b) Proof of compliance with a proficiency program in accordance with KRS 211.9109(2)(a) or 211.9111(2)(a);

(c) The background checks required under Section 1(4) of this administrative regulation;

(d) The fee established in Section 2 of this administrative regulation; and

(e) Evidence of financial responsibility in accordance with KRS 211.9109(2)(b) or 211.9111(2)(b).

(3) A laboratory seeking registration renewal shall submit to the cabinet:

(a) A completed renewal application on DFS-375, Application for Registration for Radon Contractors and Laboratories;

(b) Proof of compliance with a proficiency program in accordance with KRS 211.9115(2)(a);

(c) The fee established in Section 2 of this administrative regulation; and

(d) Evidence of financial responsibility in accordance with KRS 211.9115(2)(b).

(4) A registration not renewed within thirty (30) days after the renewal date shall lapse and may only be reinstated:

- (a) By meeting the requirements of subsections (2) or (3) of this section; and
- (b) Payment of the late renewal fee required by Section 2(2)(c) of this administrative regulation.

Section 4. [Quality Control Program Plan and Standard Operating Procedures. (1) A person certified as a radon measurement contractor shall submit for cabinet approval a quality control program plan that includes:

- (a) A statement committing to provide quality work;
- (b) A listing of personnel and personnel qualifications and training;
- (c) A description of types of radon measurements performed and other related services offered;
- (d) A description of measurement types and devices the measurement contractor will utilize in conducting measurements;

(e) A statement of compliance with cabinet-approved standard operating procedures pursuant to Section 5(3) of this administrative regulation; and

- (f) The location where records are retained in accordance with KRS 211.9131(3).

(2) A person certified as a radon mitigation contractor shall submit to the cabinet a quality control program plan that includes:

- (a) A statement committing to provide quality work;
- (b) A listing of personnel and personnel qualifications and training;
- (c) A description of all types of radon mitigation methods performed and other related services offered;
- (d) A description of diagnostic testing methods utilized in designing mitigation systems; and

(e) A statement of compliance with cabinet-approved standard operating procedures pursuant to Section 5(3) of this administrative regulation.

(3) A certified radon laboratory shall submit to the cabinet a quality control program plan that includes:

- (a) A statement committing to provide quality work;
- (b) A listing of personnel and personnel qualifications and training;
- (c) A description of laboratory services performed and other related services offered;
- (d) Documentation of enrollment and good standing within an independent laboratory accreditation program; and

(e) A requirement that all radon laboratory analyses shall be conducted in compliance with applicable state and federal laws.

(4) A mitigation system shall achieve a radon level below the U.S. Environmental Protection Agency's action level of four and zero tenths (4.0) picocuries per liter for all post mitigation testing.

~~(5) Failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter shall require additional radon mitigation and testing until the level is as low as reasonably achievable (ALARA).~~

~~(6) Prior to mitigation, educational material about radon levels shall be provided to the client.~~

~~(7) Upon modification to a component of the quality control program plan, the radon measurement or mitigation contractor shall resubmit the plan to the cabinet.~~

~~(8) If a deviation from cabinet approved standard operating procedures occurs, the radon measurement or mitigation contractor shall document the reason for the deviation in the inspection report provided to the client.~~

~~Section 5. Training and Continuing Education Requirements. (1) Continuing Education.~~

~~(a) Measurement contractors shall acquire eight (8) hours of continuing education credits per year.~~

~~(b) Mitigation contractors shall acquire eight (8) hours of continuing education credits per year.~~

~~(c) A certified person shall be responsible for submitting proof of continuing education in accordance with KRS 211.9109, 211.9111, 211.9115, or 211.9127.~~

~~(d) A person dually certified as a radon measurement and mitigation contractor shall acquire sixteen (16) hours of continuing educational credits per year.~~

~~(e) Continuing education units shall be obtained from a cabinet approved course in accordance with subsection (3) of this section.~~

~~(2) Certification Courses.~~

~~(a) Measurement contractor initial certification courses shall be a minimum of sixteen (16) hours of in-person instruction.~~

~~(b) Mitigation contractor initial certification courses shall:~~

~~1. Be a minimum of sixteen (16) hours of in-person instruction; and~~

~~2. Include an additional four (4) hours of hands-on field work at a mitigation site.~~

~~(3) A radon training course, exam, or standard operating procedure shall be cabinet-approved if issued by the:~~

~~(a) AARST;~~

~~(b) ANSI;~~

~~(c) ASTM;~~

~~(d) NRPP; or~~

~~(e) NRSB.~~

~~Section 6. Renewal of Certification. (1) Each annual certification shall expire on June 30.~~

~~(2) A person seeking renewal of certification shall:~~

~~(a) Meet the requirements in accordance with Section 2 of this administrative regulation; and~~

~~(b) Submit to the cabinet a minimum of thirty (30) calendar days prior to certification expiration:~~

~~1. A completed renewal application on DFS-375, Application for Certification for Radon Contractors and Laboratories;~~

~~2. The fee established in Section 3 of this administrative regulation;~~

~~3. Proof of fulfillment of continuing education requirements as established in Section 5(1) of this administrative regulation;~~

~~4. An updated quality control program plan that meets the applicable requirements established in Section 4 of this administrative regulation; and~~

~~5. Evidence of financial responsibility in accordance with KRS 211.9109(1)(f) or 211.9111(1)(f).~~

~~(3) A certification not renewed within thirty (30) days after the renewal date shall pay a late renewal fee as established in Section 3(2)(e) of this administrative regulation.~~

~~(4) A certification not renewed within ninety (90) days after the renewal date shall lapse and may only be reinstated in accordance with KRS 211.9121(3).~~

Section—7.] Termination of Registration[Certification] and Inactive Registration[Certification]. (1) A registered[certified] radon measurement contractor or radon mitigation contractor shall notify the cabinet in writing upon electing to terminate registration[certification].

(2) A person previously registered with[certified by] the cabinet and not engaged in radon measurement or mitigation in the Commonwealth but desiring to maintain registration[certification] may request and be granted inactive status.

(a) If inactive status is granted, the person shall:

~~1.] pay the registration[certification] fee established in Section 2(2)(d)[3(2)(f)] of this administrative regulation; and~~

~~2. Be exempt from the continuing education requirements].~~

(b) A registered[certified] radon measurement contractor or radon mitigation contractor on inactive status may petition the cabinet for renewal of active registration[certification]. If a registered[certified] radon measurement contractor or radon mitigation contractor on inactive status wishes to renew active registration[certification], the petitioner shall meet the requirements of this administrative regulation.

Section 5[8]. Registration[Certification] Denial, Suspension, or Revocation. A registration[certification] shall be subject to denial, suspension, or revocation in accordance with KRS 211.9125.

Section 6[9]. Reporting Requirements. (1) A person, business entity, or analytical laboratory shall submit a report to the cabinet on an annual basis for each~~[a semi-annual basis after a]~~:

- (a) Radon measurement activity ~~[or radon progeny test];~~
- (b) Radon mitigation activity; or
- (c) Laboratory analysis~~[Modification to any component of the radon contractor's quality control program plan; or~~
- ~~(d) Request from the cabinet].~~

(2) The result of each measurement activity conducted shall include:

- (a) The location of the building;
- (b) The result of the measurement in picocuries per liter (pCi/L) of radon gas;
- (c) The start and end date of the measurement activity;
- (d) The type of measurement activity conducted;
- (e) The registrant responsible for supervising the measurement; and
- (f) The type of building measured, including the foundation type.

(3) The result of each mitigation activity conducted shall include:

- (a) The location of the building;
- (b) The result of the post-mitigation measurement in picocuries per liter (pCi/L) of radon gas;

(c) The date of the mitigation activity;

(d) The type of mitigation conducted;

(e) The registrant responsible for supervising the mitigation; and

(f) The type of building mitigated, including the foundation type.

(4) The result of each laboratory analysis conducted shall include:

(a) The location of the building;

(b) The result of the measurement in picocuries per liter (pCi/L) of radon gas;

(c) The date of the measurement activity and laboratory analysis;

(d) The type of laboratory analysis conducted;

(e) The registrant responsible for supervising the measurement and laboratory analysis;

and

(f) The type of building measured, including the foundation type~~[The report shall include the:~~

~~(a) ZIP Code or location of the building; and~~

~~(b) Results of tests performed.~~

~~(3) The results for each measurement conducted shall include the:~~

~~(a) Results of the test or tests in picocuries per liter (pCi/L) of radon gas;~~

~~(b) Date on which the test or tests were conducted; and~~

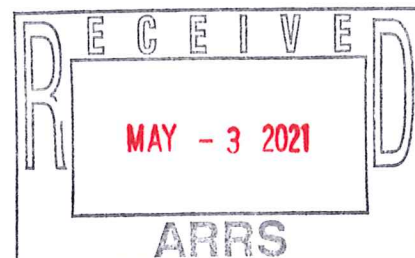
~~(c) Type of structure measured].~~

Section 7~~[10]~~. Administrative Hearings. A person, business entity, or analytical laboratory shall be afforded an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 8~~[11]~~. Penalties. The cabinet may assess civil penalties in accordance with KRS 211.9125 against any individual in violation of any cabinet administrative regulation pertaining to radon measurement, mitigation, or laboratory analysis.

Section 9~~[12]~~. Incorporation by Reference. (1)"DFS-375, Application for Registration~~Certification~~ for Radon Contractors and Laboratories", 7/2020~~[8/2017]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

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Eric C. Friedlander
Secretary

May 3, 2021

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 7:020**. Home and community based services waiting list and waiting list placement appeal processes.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 7:020 the Department for Medicaid Services proposes the attached suggested amendments to 907 KAR 7:020.

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,

Krista Quarles
Policy Analyst
Office of Legislative and Regulatory Affairs
Cabinet for Health and Family Services

For Filing 5-3-2021

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

907 KAR 7:020. 1915(c) Home and community based services waiting list and waiting list placement appeal processes.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 431 Subpart E, 441 Subpart G, ~~[42 C.F.R. 431 Subpart E,]~~ 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: 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 policies governing 1915(c) waiver waiting lists, and governs the circumstances under which an appeal will be granted if emergency status is not granted for a waiting list for the Supports for Community Living waiver.

Section 1. Definitions.

(1) "1915(c) waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services.

(3) "Emergency category of need" means an order of waiting list placement, including the placement described in 907 KAR 12:010, Section 12(3)(b), for the Supports for Community Living (SCL) waiver.

(4) "Good cause" means a circumstance that:

(a) Is beyond the control of an individual and affects the individual's ability to access funding or services; and

(b) Includes:

1. An illness or hospitalization of the individual that is expected to last sixty (60) days or less;

2. The required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed, but is expected to be completed in two (2) weeks or less; or

3. The individual or his or her guardian has made diligent contact with a potential provider to secure placement or access services, but has not been accepted within the sixty (60) day time period.

(5) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal administered by the department, **located at:**

<https://chfs.ky.gov/agencies/dms/Pages/mwma.aspx>.

(6) "Slot" means an allocation of funding available for placing an individual in a 1915(c) waiver program.

Section 2. Waiting Lists. (1) Notwithstanding other provisions established in KAR Title 907, the provisions of this section and Section 3 of this administrative regulation shall control in relation to the department's policy relating to 1915(c) waiting lists and appeals relating to waiting list placement.

(2) As appropriate, each 1915(c) waiver program shall maintain a statewide waiting list.

(3) If an applicant for a 1915(c) waiver program meets that waiver's criteria for waiting list placement and there are no available slots at the time, the applicant shall be placed on the waiting list for that waiver.

(4) The department shall send a written notification of placement on the waiting list to the applicant, the applicant's legal guardian, or authorized representative.

(5) At least annually, the department shall contact each individual, the individual's legal guardian, or authorized representative, on any 1915(c) waiver waiting list program to verify:

(a) The accuracy of the individual's information; and

(b) Whether the individual wishes to continue to pursue enrollment in the applicable waiver program.

(6) The department shall remove an individual from a waiting list if:

(a) The individual is deceased;

(b) A review of documentation reveals that the individual does not have a diagnosis that qualifies for the applicable 1915(c) waiver;

(c) The individual has relocated to a primary residence outside of the Commonwealth of Kentucky; or

(d) The department notifies the individual, the individual's legal guardian, or authorized representative of potential funding approved to enroll the individual in the applicable waiver program and the individual, individual's legal guardian, or authorized representative:

1. Within sixty (60) calendar days of the potential funding notice, declines the potential funding for enrollment in the program:

a. Expressly;

b. By not completing the enrollment process, or

c. By not asking for a good cause extension to complete the enrollment process within sixty (60) calendar days of the potential funding notice date; and

2. Does not request to remain on the waiting list.

(7) After being notified by the department of potential funding approved to enroll the individual in the waiver program, the individual shall maintain his or her current position on the waiting list if the individual and, if applicable, the individual's legal guardian or authorized representative:

(a) Declines the potential funding; and

(b) Requests to remain on the waiver waiting list.

(8) If the department denies a request for emergency category of need, the department shall send written notice of the denial, including a notice of appeal rights, in accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

(a) The individual and, if applicable, the individual's legal guardian or authorized representative; and

(b) The individual's case manager, waiver case manager, or participant directed services case manager if the individual has a waiver case manager or participant directed services case manager.

(9) The removal of an individual from a 1915(c) waiting list shall not preclude the individual from applying for participation with any 1915(c) waivers in the future.

(10) If the department removes an individual from a 1915(c) waiver program waiting list, the department shall send written notice of the removal, including a notice of appeal rights in accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

(a) The individual, and, if applicable, the individual's legal guardian or authorized representative; and

(b) The individual's waiver case manager or participant directed services case manager if the individual has a waiver case manager or participant directed services case manager.

(11)(a) If requested the department shall grant an appeal regarding an application of this administrative regulation.

(b) All appeals shall, as appropriate, be in accordance with 907 KAR 1:563.

(12) The hearing shall be conducted in accordance with 907 KAR 1:563.

Section 3. Waiting List Emergency Category Within the Supports for Community Living Waiver. An individual shall be placed on the waiting list for the Supports for Community Living waiver in the order of receipt of application in the MWMA. An individual on a waiting list shall be categorized as established in this section.

(1)(a) Notwithstanding the emergency criteria established in 907 KAR 12:010, Section 12(3)(b), an individual's category of need shall be in the emergency category if the supporting documentation requirements and request for emergency category of need in the 1915(c) waiver program submitted to the department, indicate that an immediate service is needed due to any of the following, if all other applicable and appropriate service options have been exhausted or **determined as[deemed]** inappropriate:

1. Abuse, neglect, or exploitation of the individual as substantiated by the Department of Community Based Services;

2. The death of the individual's primary caregiver and lack of an alternative primary caregiver;

3. The lack of appropriate living arrangement placement due to:

a. Loss of housing;

b. Loss of funding sources including 1915(c) waiver funding sources; or

c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's inability to provide all care needed due to the primary caregiver's:

a. Physical health status; or

b. Mental health status;

5. Imminent or threat of imminent institutionalization if 1915(c) home and community based waiver program services are not provided; or

6. Present institutionalization and the applicant is not opposed to community placement in the most integrated setting appropriate to the applicant's needs; and

(b) The individual:

1. Does not have a combination of care needs beyond the capability of the supports for community living waiver program; or

2. Does not pose a serious potential danger to the health, safety, and welfare of the individual, other participants, or staff.

(2) An individual on the waiting list who does not meet the requirements for the emergency category of need pursuant to subsection (1) of this section shall be placed in the future planning or urgent category of the Supports for Community Living waiting list, in accordance with 907 KAR 12:010.

(3) Priority on a waiting list shall first be given to those on the emergency category, then to others on the waiting list. However, within each category, the order shall remain the same, based on when the recipient applied for Supports for Community Living waiver services.

Section 4. Federal Approval and Federal Financial Participation. The department's coverage of any services established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation; and

(2) Centers for Medicare and Medicaid Services' approval.

CONTACT PERSON: Donna Little, Deputy Executive Director, 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.



CABINET FOR HEALTH AND FAMILY SERVICES

Andy Beshear
Governor

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Eric C. Friedlander
Secretary

May 4, 2021

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: 922 KAR 1:490E agency amendment.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 1:490E and incorporated material, the Department for Community Based Services proposes the attached amendment. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Executive Staff Advisor
Office of Legislative and Regulatory Affairs

Enclosure

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services

____ Adolescent Check
____ Out of State Check
____ Initial w/fingerprints
____ Initial wo/fingerprints
____ Re-evaluation

**BACKGROUND CHECK REQUEST FOR FOSTER OR ADOPTIVE APPLICANTS AND
ADOLESCENT OR ADULT HOUSEHOLD MEMBERS**

922 KAR 1:490 requires each applicant or foster or adoptive parent, and each adult household member not enrolled in KARES, to submit to a child abuse or neglect check, criminal records check, and sex offender registry check. 922 KAR 1:490 requires that adolescent members of households (age 12 through 17) submit to a child abuse or neglect check. Checks shall be completed prior to initial approval and annually thereafter. Please indicate if the check is initial or annual in the box above and check the appropriate category below.

- ☐ DCBS Foster/Adoptive Parent or Applicant
- ☐ Adolescent or Adult Household Member of DCBS Foster/Adoptive Parent or Applicant
- ☐ Child-Placing Agency – Foster/Adoptive Parent or Applicant
- ☐ Child-Placing Agency – Adolescent or Adult Household Member of Foster/Adoptive Parent or Applicant
- ☐ Child-Placing Agency – Foster/Adoptive Parent or Applicant (Not required to be enrolled in KARES)
- ☐ Respite Care Provider
- ☐ Out of State Request
- ☐ Out of State Request for Non-Kentucky Resident (Adam Walsh Check)

Personal information regarding the individual submitting a check.

Please list your addresses for the last (5) five years. Use another sheet of paper, if necessary.

Name: _____
(first) (middle) (maiden/nickname) (last)

Sex: _____ Race: _____ Date of Birth: _____ Social Security Number: _____

Present Address: _____
(street address) (city) (state) (zip code)

Previous Address: _____
(street address) (city) (state) (zip code)

Previous Address: _____
(street address) (city) (state) (zip code)

Previous Address: _____
(street address) (city) (state) (zip code)

Use another sheet of paper, if necessary.



**BACKGROUND CHECK FOR FOSTER OR ADOPTIVE
APPLICANTS AND ADOLESCENT OR ADULT HOUSEHOLD MEMBERS**

Initial application requirements:

I hereby authorize the Cabinet for Health and Family Services to complete a check of the Kentucky Central Registry (child abuse or neglect), Criminal Records Check, and an address check of the Sexual Offender Registry and provide the results to the agency listed below. I further authorize the Cabinet for Health and Family Services to complete a fingerprint Criminal Records Check (adults only). Fingerprints submitted will be used to check the criminal history records of the Federal Bureau of Investigation (FBI). I understand I have the right to inspect my criminal history record and to request correction of any inaccurate information. If I do not exercise that right, I agree to hold harmless the Kentucky State Police and its employees from any claim for damages arising from the dissemination of inaccurate information. I also release the Cabinet for Health and Family Services, its officers, agents, and employees, from any liability or damages resulting from the release of this information.

Procedures for obtaining a copy of an FBI criminal history record are set forth at 28 C.F.R. 16.30-16.33 or go to the FBI website at <http://www.fbi.gov/about-us/cjis/background-checks>. Procedures for obtaining a change, correction, or updating of FBI criminal history records are set forth at 28 C.F.R. 16.34.

Annual application requirements:

I hereby authorize the Cabinet for Health and Family Services to complete a check of the Kentucky Central Registry (child abuse or neglect), Criminal Records Check, and an address check of the Sexual Offender Registry and provide the results to the agency listed below. I understand I have the right to inspect my record and to request correction of any inaccurate information. I also release the Cabinet for Health and Family Services, its officers, agents, and employees, from any liability or damages resulting from the release of this information.

The information provided is complete and true to the best of my knowledge. I understand if I give false information or do not report all of the information needed, I may be subject to prosecution for fraud.

Signature of the individual (or parent/guardian of household member age 12-17) requesting the check (date)*

Signature of witness (date)

FOR COMPLETION BY THE CHILD-PLACING AGENCY or CABINET STAFF

Name of child placing agency or DCBS office: _____

Name and title of representative: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Fax: _____

Email Address to Receive Encrypted Results: _____

Signature: _____
(representative requesting information) (date)

Send the completed form to: **Email: CHFSDCBS.RMS@ky.gov**
Cabinet for Health and Family Services
Department for Community Based Services
Records Management Section
275 E. Main St., 3E-G
Frankfort, KY 40621

* Authorization provided by applicant signature expires in 60 days

**BACKGROUND CHECK FOR FOSTER OR ADOPTIVE
APPLICANTS AND ADOLESCENT OR ADULT HOUSEHOLD MEMBERS**

Results of Child Abuse or Neglect Check

(Required of applicant and all household members age 12 and over, at initial and annual application or out-of-state requests)

- ☐ No reportable incident found in accordance with 922 KAR 1:490
- ☐ Substantiated child abuse found Date of finding: _____
- ☐ Substantiated child neglect found Date of finding: _____

The substantiated abuse or neglect finding relates to sexual abuse, sexual exploitation, a child fatality, near fatality, or involuntary termination of parental rights: ☐ Yes ☐ No

- ☐ A matter subject to administrative review found in accordance with 922 KAR 1:470

Results of Kentucky Criminal Records Check

(Required of applicant and all adult household members at initial and annual application)

- ☐ No reportable incident was found in accordance with 922 KAR 1:490.
- ☐ A reportable incident was found in accordance with 922 KAR 1:490.

Results of the address check of the Sexual Offender Registry

(Required of applicant and all adult household members at initial and annual application)

- ☐ Address was not matched to an address on the sex offender registry.
- ☐ Address was matched with an address associated with a registered sex offender.

Results of the Check of the Criminal History Records of FBI

(Required of applicant and all adult household members at application only)

- ☐ No reportable incident found in accordance with 922 KAR 1:490.
- ☐ A reportable incident was found, and in accordance with 922 KAR 1:490, Section 3(4), the applicant shall not be approved.
- ☐ A reportable incident was found, and in accordance with 922 KAR 1:490, Section 7(2), approval shall be handled on a case-by-case basis with consideration given to the nature of the offense, length of time that has elapsed since the event, and the applicant's life experiences during the ensuing period of time. A criminal records check revealed that the applicant or adult member of the applicant's household has been convicted of a nonviolent felony or misdemeanor (alcohol/drug or other) in the state of _____.

Reviewed by: _____

Records Management Staff Personnel

Date of Check



CABINET FOR HEALTH AND FAMILY SERVICES

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

May 5, 2021

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: 922 KAR 1:540 suggested substitute

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 1:540, the Department for Community Based Services proposes the attached LRC suggested substitute. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Krista Quarles
Policy Analyst
Office of Legislative and Regulatory Affairs

Enclosure

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency

922 KAR 1:540. Registration of a foreign adoption.

RELATES TO: KRS 199.011(4), 199.470, 199.475, 199.585, 213.056(2), 8 U.S.C. 1201-1204, 1421-1458, **42 U.S.C. 14901-14954**, 22 C.F.R. Part 42[, ~~42 U.S.C. 14901-14954~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.585(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires [authorizes] the cabinet to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.585(1) and (2) require the cabinet to register, through a certified notice, an original decree, judgment, or final order of adoption of a child approved for United States citizenship issued by a court or another governmental authority with appropriate jurisdiction in a foreign country. KRS 199.472 mandates that the cabinet establish criteria for the adoption of children by administrative regulation. This administrative regulation establishes a certified notice registering a foreign adoption in Kentucky.

Section 1. Definitions. (1) "Child" is defined by KRS 199.011(4).

(2) "Foreign adoption" means a decree, judgment, or final order of adoption as established [specified] in KRS 199.585(1).

(3) "IH3" or "IR3" means an immigration visa classification that indicates that [classifies] the holder is [as] an immediate relative of a [an] United States citizen in accordance with 8 U.S.C. 1204 and 22 C.F.R. 42.11.

Section 2. Requirements for Certified Notice. (1) In accordance with KRS 199.585, the cabinet shall issue a certified notice registering a foreign adoption in Kentucky[,] if the adoptive parent presents the following items in hardcopy:

(a) The adopted child's:

1. Certificate of citizenship in accordance with 8 U.S.C. 1431; [or]
2. Proof of the child's IR3; or
3. Proof of the child's IH3;

(b)1. A copy of the original decree, judgment, or final order of the child's adoption; or

2. A translated copy of the original decree, judgment, or final order of the child's adoption, if the copy of the original decree, judgment, or final order of the child's adoption is not in English; and

(c) The "DPP-188, Application for Registration of Foreign Adoption".

(2)[~~(a)~~] The adoptive parent shall submit the items required by [in] subsection (1) of this section by mail to the Department for Community Based Services[:]

1. By certified or registered mail; and

2. To the secretary in care of the Commissioner of the Department for Community Based Services; and

(b) The return receipt of certified or registered mail shall be proof of the filing of the items required in subsection (1) of this section for a certified notice registering a foreign adoption in Kentucky.

(3) The cabinet shall not issue a "DPP 188A, Foreign Adoption Certificate of Registration" until all items required by subsection (1) of this section are received [return to the sender an application if:

(a) The sender's return address is provided; and

- ~~(b) The application for a certified notice registering a foreign adoption in Kentucky:~~
~~1. Does not contain the items required in subsection (1) of this section; and~~
~~2. Was not submitted in the manner specified in subsection (2) of this section].~~

Section 3. Limitations and Restrictions. (1) In accordance with KRS 199.585(3), a petition for adoption shall be:

(a) Required for a foreign adoption without an item included in Section 2(1) of this administrative regulation; and

(b) Filed in the circuit court with the appropriate jurisdiction in accordance with KRS 199.470 or 199.475.

(2)(a) The certified notice registering a foreign adoption in Kentucky shall be distinguished from a record of foreign birth; and

(b) An individual may apply for a record of foreign birth in accordance with KRS 213.056(2) through the Office of Vital Statistics.

Section 4. Record of Registered Foreign Adoptions. (1) The cabinet shall issue the "DPP-188A, Foreign Adoption Certificate of Registration" as the certified notice registering a foreign adoption in Kentucky.

(2) The DPP-188A shall have the same force and effect as a legal adoption finalized in a circuit court of the Commonwealth of Kentucky.

(3) The cabinet shall maintain a copy of each certified notice registering a foreign adoption in Kentucky and supporting documentation in accordance with KRS 199.585(2).

(4) Within existing appropriations, the cabinet shall make up to three (3) additional copies of the DPP-188A available to an adoptive parent who:

(a) Made an application in accordance with Section 2 of this administrative regulation; and

(b) Resubmits the DPP-188 to request an additional copy of the DPP-188A.

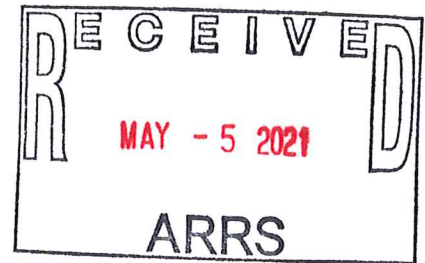
Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-188, Application for Registration of Foreign Adoption", 02/21 ~~[edition date 12/05]~~; and

(b) "DPP-188A, Foreign Adoption Certificate of Registration", 02/21 ~~[edition date 12/05]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. **This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.**

CONTACT PERSON: Donna Little, Deputy Executive Director, 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.



CABINET FOR HEALTH AND FAMILY SERVICES

Andy Beshear
Governor

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Eric C. Friedlander
Secretary

May 5, 2021

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: 922 KAR 1:580 agency amendment.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 1:580, the Department for Community Based Services proposes the attached amendment. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Lucie Estill
Executive Staff Advisor
Office of Legislative and Regulatory Affairs

Enclosure

Agency Amendment

Cabinet for Health and Family Services Department for Community Based Services Division of Protection and Permanency

922 KAR 1:580. Standards for children's advocacy centers.

Page 6

Section 3(5)(a)3.a.

Line 13

After "mental health", insert the following:

, education, human services, or criminal justice field

Delete "discipline".

Page 6

Section 3(5)(a)3.c.

Line 15

After "experience", insert "working with".

Delete "interviewing".

Page 9

Section 4(5)(a)

Line 18

After "Section", insert "3(5)(a)3".

Delete "3(5)(a)(3)".