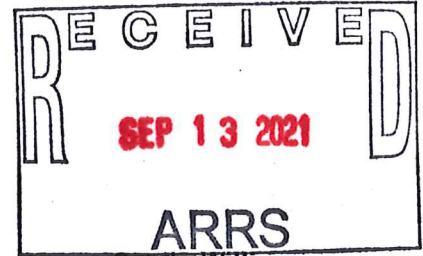




KENTUCKY INFRASTRUCTURE AUTHORITY

100 Airport Road  
Frankfort, Kentucky 40601  
(502) 573-0260  
kia.ky.gov

**Andy Beshear**  
Governor



**Sandy Williams**  
Deputy Executive Director

September 13, 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: 200 KAR 17:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 200 KAR 17:110E, the Kentucky Infrastructure Authority proposes the attached amendment to 200 KAR 17:110E.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Keene".

Dennis Keene, Chair  
Kentucky Infrastructure Authority  
100 Airport Road, 3<sup>rd</sup> Floor  
Frankfort, KY 40601

9/9/21

**SUGGESTED SUBSTITUTE**

**KENTUCKY INFRASTRUCTURE AUTHORITY**

**200 KAR 17:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.**

RELATES TO: KRS 45.031, 151.601, 151.605, 224A.011, 224A.020, 224A.035, 224A.040, 224A.050 -224A.314

STATUTORY AUTHORITY: KRS 224A.040, 224A.070(1), 224A.113, 224A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available, and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon. Senate Bill 36, 2021 Regular Session Acts of the General Assembly, Chapter 195, requires the Authority to promulgate administrative regulations to ensure that project approvals are based on rational criteria and include a project's readiness to proceed and the project's social, economic, and environmental benefits. This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions.

(1) "Applicant" means a governmental agency that has submitted an application to the Authority for a grant from Authority funds.

(2) "Application" means the project information contained within the Water Resource Information System Project Profile and designated by an applicant as applying for a grant from the Drinking Water and Wastewater Grant Program funds.

(3) "Authority" means the Kentucky Infrastructure Authority, which is created by KRS Chapter 224A.

(4) "Conditional commitment letter" means a letter delivered to the applicant stating the Authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.

(6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system established in KRS 224A.306, which is used by a water or wastewater system seeking or using funds of the Authority if an alternative accounting system has not been approved by the Authority.

(7) "Project" means an infrastructure project related to drinking water or wastewater.

(8) "Unserved" means a customer who does not have access to publicly available potable drinking water or a properly functioning wastewater system.

Section 2. Eligible Projects.

(1) Funds available to the Authority shall be used to fund Projects.

(2) Only water or wastewater projects addressing one (1) or more of the conditions established in paragraphs (a) through (h) of this subsection shall be eligible for funding:

(a) The proposed project shall provide drinking water services to unserved rural customers.

(b) The proposed project shall address provisions in a federal consent decree related to water or wastewater.

(c) The proposed project shall address the provisions of KRS 224A.300 - 224A.314.

(d) The proposed project shall address an emergency situation.

(e) The proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community.

(f) The proposed project shall promote social, economic, or environmental benefits; but with respect to industrial sites funds may only be awarded if the site has committed occupants.

(g) Funds are needed to complete a funding package previously awarded by the Authority.

(h) Funds are needed to cover cost overrun for a project previously awarded by the Authority.

(3) Project applications meeting the guidelines established in subsection (2) shall be funded based on the Project's:

(a) Readiness to proceed;

**(b) Social, economic, and environmental benefits;** and

**(c) [(b)]** Receipt of a Project approval from a water management planning council as created in KRS 151.601.

### Section 3. Applications.

(1) Each applicant shall submit an application to the Authority by requesting that the water service coordinator, as established in KRS 151.605, designate the project for funding. If a water service coordinator is not available, the request may be made directly to the Authority in writing and mailed.

(2) The Authority shall request additional information about the project or the applicant if needed to comply with local, state, or federal laws.

(3) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Drinking Water and Wastewater Grant Program.

### Section 4. Project Priority. Eligible projects shall be funded subject to:

**(1)** A project's readiness to proceed;

**(2) A project's social, economic, and environmental benefits;**

**(3) [(c)]** The water management council's approval; [(c)] and

**(4)** The availability of funds.

### Section 5. Additional Conditions to Project Funding.

(1) A water supply and distribution system seeking funding for a Project shall agree, in writing, to adopt and utilize the Kentucky Uniform System of Accounting and to charge rates for services based on the actual cost of that service.

(2) Before funds shall be disbursed to an applicant whose Project has been approved for funding, the applicant shall demonstrate to the Authority that the project:

(a) Has been reviewed through the Kentucky State Clearinghouse process; and

(b) Is in compliance with applicable state and federal requirements.

### Section 6. Terms of Financial Assistance.

(1) An application for funding shall be:

(a) Subject to financial viability review by Authority staff; and

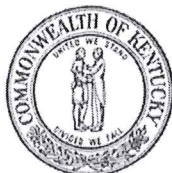
(b) Referred to the Authority chair for final action.

(2) A project shall be funded if approved by the Authority chair and reviewed by the Legislative Research Commission's Capital Projects and Bond Oversight Committee.

(3) Upon approval of an application for funding of a project, the Authority shall issue a conditional commitment letter to the applicant establishing the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

- (a) Accounting standards or financial reporting conditions;
  - (b) Rate covenants;
  - (c) Other federal or state legal requirements relating to the project or the applicant;
  - (d) Engineering or technical requirements; and
  - (e) Receipt of additional funding commitments from other sources.
- (4) Financial assistance by the Authority shall be made available only upon:
- (a) Execution of an assistance agreement; and
  - (b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.
- (5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved without further action if:
- (a) Requested by an applicant; and
  - (b) The staff of the Authority finds that:
    - 1. The additional requested amount is needed for the project; and
    - 2. Adequate funds are available.
- (6) The Authority shall monitor the assistance agreements and require that financial reports be made available to the Authority by the applicant.
- (7) The Authority may collect an administrative fee of one-half (1/2) of one (1) percent charged on the principal grant amount, as allowed by law. This fee shall be applied to the administrative processing servicing costs of the grants and necessary operating expenses of the program.

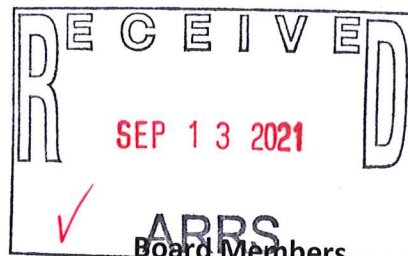
CONTACT PERSON: Bill Pauley, Staff Attorney, Department for Local Government, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone 502-330-6359, fax 502-227-8691, email [Bill.Pauley@ky.gov](mailto:Bill.Pauley@ky.gov).



Andy Beshear  
Governor

**KENTUCKY BOARD OF PHARMACY**

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Peter P. Cohron, R.Ph.  
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Ron Poole, R.Ph.  
Jill Rhodes, Pharm.D.

**Executive Director**  
Larry A. Hadley, R.Ph.

September 13, 2021

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

Re: 201 KAR 2:270

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:270, the Board of Pharmacy proposes the attached amendment to 201 KAR 2:270.

Sincerely,

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

**Subcommittee Substitute**

**BOARDS AND COMMISSIONS**

**Board of Pharmacy  
(As Amended at ARRS)**

**201 KAR 2:270. Expungement.**

RELATES TO: KRS 315.121(6), 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.121(6), 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to subject matters governed by KRS Chapter 315.~~[pharmacists.]~~ KRS 315.121(6) requires the board to promulgate administrative regulations to establish violations that are considered minor and subject to expungement. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.

Section 1. Definition. **(1)** "Expungement" means ~~[that]:~~

~~(a) [(1)]~~ The affected records shall be sealed;

~~(b) [(2)]~~ The proceedings to which they refer shall be deemed not to have occurred; and

~~(c) [(3)]~~ The affected party may properly represent that no record exists regarding the matter expunged.

Section 2. Minor Violations and Expungement Procedure. (1) The following violations ~~to]~~ **shall [are** be considered minor in nature:

(a) Any unlicensed~~[-unregistered]~~ or unpermitted practice occurring no more than seven (7) days after the expiration of the license ~~[registration,]~~ or permit due to failure to timely renew a license~~[-registration,]~~ or permit;

(b) Failure to timely obtain required continuing education; and

(c) Failure to comply with any provisions of 201 KAR 2:106 for licensed or permitted facility ~~[pharmacy, manufacturer, or distributor]~~ closures; **or [-]**

(d) At the discretion of the board, any other offense:

1. Not involving the diversion of controlled substances;

2. Not demonstrating a serious inability to practice the profession or to assist in the practice of pharmacy;

3. Not adversely affecting public health, safety, or welfare;

4. Not resulting in economic or physical harm to a person; and

5. Not creating a significant threat of economic or physical harm.

(2) **In accordance with KRS 315.121(6),** a licensee, registrant, or permit holder seeking expungement of a record of a disciplinary action resulting from a violation designated in subsection (1) of this section shall ~~[-in accordance with KRS 315.121(6)]:~~

(a) Not have been the subject of a subsequent violation of the same nature for a period of three (3) years after the date of completion of disciplinary sanctions imposed for the violation sought to be expunged; and

(b) Submit a written request to the board.

(3) The board shall consider each request and shall, if the conditions of subsection (2) of this section are satisfied, expunge every record under its custody relating to the subject disciplinary order.

(4) The expungement of a record under this **administrative** regulation is limited to the removal of records in the board's custody and **shall [does]** not guarantee expungement of a record previously reported to the National Practitioner's Data Bank.

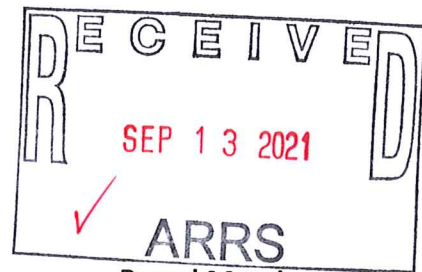
CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email [Larry.Hadley@ky.gov](mailto:Larry.Hadley@ky.gov).



Andy Beshear  
Governor

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**Board Members**

Peter P. Cohron, R.Ph.  
Jody Forgy, Consumer  
John Fuller, R.Ph.  
Craig Martin, Pharm D.  
Ron Poole, R.Ph.  
Jill Rhodes, Pharm.D.

**Executive Director**

Larry A. Hadley, R.Ph.

September 13, 2021

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

Re: 201 KAR 2:360

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:360, the Board of Pharmacy proposes the attached amendment to 201 KAR 2:360.

Sincerely,

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



**Staff-suggested Amendment**

**8/27/2021**

**BOARDS AND COMMISSIONS  
Kentucky Board of Pharmacy**

**201 KAR 2:360. Naloxone dispensing.**

**Material Incorporated by Reference**

**Form 1**

**Edition date**

Insert "6", delete "5".

## Subcommittee Substitute

### BOARDS AND COMMISSIONS Board of Pharmacy (As Amended at ARRS)

#### 201 KAR 2:360. Naloxone dispensing.

RELATES TO: KRS 217.186

STATUTORY AUTHORITY: KRS 217.186, KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.186 requires the Board of Pharmacy to promulgate administrative regulations governing dispensing of naloxone by a pharmacist pursuant to a physician-approved protocol. This administrative regulation establishes the minimum requirements for the pharmacist to be able to dispense naloxone pursuant to a physician-approval protocol.

Section 1. Certification. (1) A pharmacist desiring to achieve certification to initiate the dispensing of naloxone shall complete and submit an Application for Pharmacist Certification for Naloxone Dispensing, Form 1, with the board and provide the following:

- (a) Name;
- (b) Address;
- (c) Phone number; and
- (d) Pharmacist license number. ~~]; and]~~

~~[(e)] [Proof of education and training in the use and dispensing of naloxone for treatment of opioid overdose pursuant to Section 5 of this administrative regulation.]~~

(2) The board shall issue the certification to a pharmacist ~~[who meets the requirements of subsection (1) of this section]~~ within thirty (30) days of the receipt of the application.

Section 2. Procedures for Dispensing of Naloxone. A pharmacist may initiate the dispensing of naloxone under the following conditions:

- (1) The pharmacist has met the requirements of Section 1 of this administrative regulation;
- (2) The pharmacist has received his or her certification;
- (3) The pharmacist has a physician-approved protocol that meets the minimum requirements of Section 3 of this administrative regulation; and
- (4) The pharmacist documents the dispensing event in the pharmacy management system including:

(a) Documentation as required in 201 KAR 2:~~171~~~~[470]~~ for the dispensing of prescription medication; and

(b) Documentation that the individual receiving naloxone was provided with the required training and education pursuant to Section 4 of this administrative regulation, unless the recipient of the Naloxone is a person or agency operating a harm reduction program.

(5) A [The] pharmacist may dispense naloxone to any person or agency who provides training on the mechanism and circumstances for the administration of naloxone to the public as part of a harm reduction program, regardless of whom the ultimate user of the naloxone may be. The

documentation of the dispensing of naloxone to any person or agency operating a harm reduction program shall satisfy any general documentation or recording requirements.

Section 3. Protocol Minimum Requirements. A physician-approved protocol authorizing a pharmacist to initiate the dispensing of naloxone shall contain:

- (1) Criteria for identifying persons or agencies eligible to receive naloxone under the protocol;
- (2) Naloxone products authorized to be dispensed, including:
  - (a) Name of product;
  - (b) Dose; and
  - (c) Route of administration;
- (3) Specific education to be provided to the person whom the naloxone is dispensed;
- (4) Procedures for documentation of naloxone dispensation, including procedures for notification of the physician authorizing the protocol, if desired by the physician in accordance with KRS 217.186(5)(b)3;
- (5) The length of time the protocol is in effect;
- (6) The date and signature of the physician approving the protocol; and
- (7) The names and work addresses of pharmacists authorized to initiate dispensing of naloxone under the protocol.

Section 4. Education to be Provided to Person Receiving Naloxone Prescription Under Protocol. A pharmacist dispensing naloxone to a person or agency not operating a harm reduction program shall provide verbal counseling and written educational materials ~~[,]~~ appropriate to the dosage form of naloxone dispensed ~~[, including:~~

- ~~(1) Risk factors of opioid overdose;~~
- ~~(2) Strategies to prevent opioid overdose;~~
- ~~(3) Signs of opioid overdose;~~
- ~~(4) Steps in responding to an overdose;~~
- ~~(5) Information on naloxone;~~
- ~~(6) Procedures for administering naloxone; and~~
- ~~(7) Proper storage and expiration of naloxone product dispensed].~~

Section 5. ~~[Pharmacist Education and Training Required for Certification. A pharmacist who applies for certification to initiate dispensing of naloxone shall have received education and training related to the safe dispensing of opioids and use of naloxone as rescue therapy for opioid overdose, including:~~

- ~~(1) Risk factors for opioid abuse and overdose;~~
- ~~(2) Opioid overdose prevention;~~
- ~~(3) Recognizing and responding to opioid overdoses;~~
- ~~(4) Indications for use of naloxone as rescue therapy;~~
- ~~(5) Contraindications for use of naloxone;~~
- ~~(6) Administration of naloxone;~~
- ~~(7) Adverse effects associated with naloxone rescue therapy;~~
- ~~(8) Identification of a patient who meets the criteria for provision of naloxone;~~
- ~~(9) Required education to provide to persons receiving naloxone;~~

- ~~(10) Required elements of protocol to initiate dispensing of naloxone; and~~  
~~(11) Required documentation when initiating dispensing of naloxone.~~

~~Section 6.]~~ Incorporation by Reference. (1) "Application for Pharmacist Certification for Naloxone Dispensing", Form 1, 6/2021 [~~7/2015~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, [~~Suite 300, 125 Holmes Street,~~] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ Web \_\_\_\_\_ site \_\_\_\_\_ at: <https://pharmacy.ky.gov/Documents/APPLICATION%20FOR%20PHARMACIST%20CERTIFICATION%20FOR%20NALOXONE%20DISPENSING.pdf>.

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](mailto:Larry.Hadley@ky.gov).

FOR OFFICE USE ONLY  
Approved by \_\_\_\_\_  
Date \_\_\_\_\_

Kentucky Board of Pharmacy  
State Office Building Annex, Suite 300  
125 Holmes Street  
Frankfort, KY 40601  
Email: [pharmacy.board@ky.gov](mailto:pharmacy.board@ky.gov)



Phone: 502-564-7910

Fax: 502-696-3806

## APPLICATION FOR PHARMACIST CERTIFICATION FOR NALOXONE DISPENSING

Incomplete or illegible applications will be returned to applicant for correction.

Name \_\_\_\_\_ RPh License No \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail Address \_\_\_\_\_ Home Phone \_\_\_\_\_

Birthdate \_\_\_\_\_ Social Security Number XXX-XX-\_\_\_\_\_

~~PLEASE INCLUDE YOUR PROOF OF EDUCATION AND TRAINING IN THE USE AND  
DISPENSING OF NALOXONE SET FORTH IN 201 KAR 2:360.~~

THE APPLICATION MUST BE DATED AND SIGNED.

\_\_\_\_\_

DATE

\_\_\_\_\_

SIGNATURE

FOR OFFICE USE ONLY

Approved by \_\_\_\_\_

Date \_\_\_\_\_

Kentucky Board of Pharmacy  
State Office Building Annex, Suite 300  
125 Holmes Street  
Frankfort, KY 40601  
Email: [pharmacy.board@ky.gov](mailto:pharmacy.board@ky.gov)



Phone: 502-564-7910

Fax: 502-696-3806

## APPLICATION FOR PHARMACIST CERTIFICATION FOR NALOXONE DISPENSING

Incomplete or illegible applications will be returned to applicant for correction.

Name \_\_\_\_\_ RPh License No \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail Address \_\_\_\_\_ Home Phone \_\_\_\_\_

Birthdate \_\_\_\_\_ Social Security Number XXX-XX- \_\_\_\_\_

THE APPLICATION MUST BE DATED AND SIGNED.

\_\_\_\_\_  
DATE

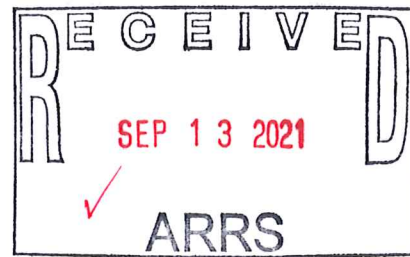
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SIGNATURE



**Andy Beshear**  
Governor

**KENTUCKY BOARD OF PHARMACY**

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**Board Members**

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**Executive Director**

Larry A. Hadley, R.Ph.

September 13, 2021

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

Re: 201 KAR 2:420

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:420, the Board of Pharmacy proposes the attached amendment to 201 KAR 2:420.

Sincerely,

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

**Subcommittee Substitute**

**BOARDS AND COMMISSIONS**

**Board of Pharmacy  
(As Amended at ARRS)**

**201 KAR 002:420. Administration of Vaccines.**

RELATES TO: KRS 315.010, **315.050**, [KRS] 315.136[, ~~KRS 315.050~~]

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to pharmacists, pharmacist interns, and pharmacy technicians. This administrative regulation authorizes pharmacist interns~~[,]~~ and pharmacy technicians to administer vaccinations pursuant to requirements. This **administrative** regulation **shall [does]** not change the authorization for pharmacists to administer vaccinations pursuant to KRS 315.010(22).

Section 1. Definitions. (1) "Administer" is defined by KRS 315.010(1).

(2) "Pharmacist" is defined by KRS 315.010(17).

(3) "Pharmacist intern" is defined by KRS 315.010(18).

(4) "Pharmacy technician" is defined by KRS 315.010(21).

Section 2. Pharmacist Requirements. A pharmacist may administer a vaccine to an individual pursuant to the Advisory Committee on Immunization Practices (ACIP) standard immunization schedule in accordance with KRS 315.010(22).

Section 3. Pharmacist Intern Requirements. A pharmacist intern under the general supervision of a pharmacist may administer a vaccine to an individual if the pharmacist intern:

(1) Completes, or has completed as part of pharmacy school curriculum, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

(2) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 4. Pharmacy Technician Requirements. A pharmacy technician may administer a vaccine under the general supervision of a pharmacist to an individual if the pharmacy technician:

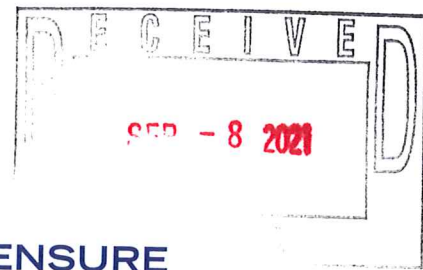
(1) Completes a minimum of two (2) hours of immunization-related continuing education accredited by the Accreditation Council for Pharmacy Education (ACPE) per each state registration period;

(2) Completes, or has completed, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

(3) Possesses a current certificate in basic cardiopulmonary resuscitation.



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](mailto:Larry.Hadley@ky.gov).

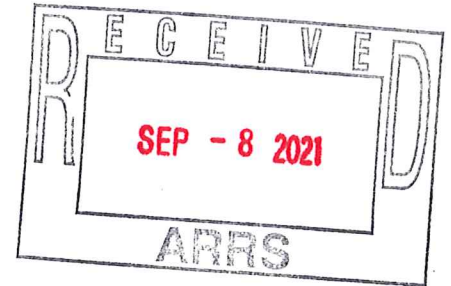


## KENTUCKY BOARD OF MEDICAL LICENSURE

Andy Beshear  
Governor

Hurstbourne Office Park  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222

www.kbml.ky.gov  
(502) 429-7150



September 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: 201 KAR 9:270. Professional standards for prescribing, dispensing or administering Buprenorphine-Mono-Product and Burprenorphine-Combined-with-Naloxone.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 9:270, the Kentucky Board of Medical Licensure proposes the attached amendments to 201 KAR 9:270.

Sincerely,

  
Leanne K. Diakov  
General Counsel

TEAM  
KENTUCKY™

An Equal Opportunity Employer M/F/D

Final Version: 9/2/21  
SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS  
Kentucky Board of Medical Licensure

**201 KAR 9:270. Professional standards for prescribing, [øf] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.**

RELATES TO: KRS 218A.205, 311.530-311.620, ~~311.840-311.862~~, 311.990[, ~~311.840-311.862~~]

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 218A.205(3)(a) and (b) require the board to establish mandatory prescribing and dispensing standards related to controlled substances. KRS 311.842(1)(b) requires that the board promulgate administrative regulations establishing professional standards for prescribing and administering controlled substances by physician assistants. This administrative regulation establishes the professional standards for any board licensee [physicians practicing in Kentucky] who prescribes, [øf] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky. **Nothing within this administrative regulation shall be interpreted to grant physician assistants authority to dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone, unless otherwise authorized by KRS 311.842 [311.824].**

Section 1. Minimum Qualifications for Prescribing, [øf] Dispensing, or Administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. Except as provided in Section 3 of this administrative regulation, a licensee [licensed physician] shall not prescribe, [øf] dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that licensee [physician] possesses the minimum qualifications established in this section.

(1) The licensee [physician] shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid use disorder in the Commonwealth of Kentucky.

(2) The licensee [physician] shall successfully complete the approved educational programs required by this subsection.

(a) The prescribing licensee [physician] shall be a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone and shall have obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course.

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education certified in Category I specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310 and 201 KAR 9:360.

(3) The licensee [physician] shall enroll in the Kentucky Health Information Exchange to the extent necessary to query and pull information from the Kentucky Health Information Exchange. The licensee [physician] shall not report the prescribing, [øf] dispensing, or administering [øf] Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-

supervised withdrawal or as maintenance treatment for a patient diagnosed with opioid use disorder into the Kentucky Health Information Exchange unless otherwise required by law.

Section 2. Professional Standards for Prescribing, ~~[or]~~ Dispensing, or Administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised Withdrawal or the Treatment of Opioid Use Disorder.

(1)(a) Except as provided in paragraph (b) of this subsection, transmucosal Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed, ~~[or]~~ dispensed, or administered for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder.

(b) Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be used for the treatment of pain or any other condition, unless delivered in a Federal Drug Administration (FDA) approved form and for an FDA approved purpose.

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

(a) To a pregnant patient;

(b) To a patient with demonstrated hypersensitivity to naloxone;

(c) As administered under supervision in a physician's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

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

(3)(a) Except as provided in paragraph (b) of this section, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be prescribed, ~~[or]~~ dispensed, or administered to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry.

(b) A licensee ~~[physician]~~ may prescribe, ~~[or]~~ dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Except as provided in Section 3 of this administrative regulation, each licensee ~~[licensed physician]~~ who prescribes, ~~[or]~~ dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of opioid use disorder shall fully comply with the professional standards established in this subsection.

(a) Prior to or at least within two (2) weeks of initiating treatment, the prescribing, ~~[or]~~ dispensing, or administering licensee ~~[physician]~~ shall:

1. Obtain and record a complete and appropriate evaluation of the patient which shall at a minimum include:

a. The patient's history of present illness;

b. The patient's history of substance use;

c. The patient's social and family history;

d. The patient's past medical and psychiatric histories;

e. A focused physical examination of the patient;

f. Screening for HIV and hepatitis serology; and

g. Arranging appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to obtain the patient's prior medical records.

a. Upon receipt of the medical records, the prescribing, [or] dispensing, or administering licensee [physician] shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the prescribing, [or] dispensing, or administering licensee [physician] is unable, despite best efforts, to obtain the patient's prior medical records, the licensee [physician] shall document those efforts in the patient's chart;

3. Obtain and review a KASPER 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 and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, meet the requirements of paragraph (b) of this subsection.

(b) Except as provided in Section 3 of this administrative regulation, the requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.

1. Prior to initiating treatment, the licensee [physician] shall require that the patient submit to a pregnancy test and, if pregnant, the licensee [physician] shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance.

2.a. Unless the licensee is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or an obstetrician or maternal-fetal medicine specialist, a licensee [physician] who prescribes, [or] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is pregnant or breastfeeding shall first obtain and document consultation with another independent physician that the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.

b. The consultation shall be obtained from a physician who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the licensee [prescribing or dispensing physician] shall comply with the requirements of this paragraph.

1. The licensee [prescribing or dispensing physician] shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the licensee [prescribing or dispensing physician] shall supervise the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the licensee [prescribing or dispensing physician] shall appropriately record the circumstances in the patient chart.

2. The licensee [prescribing or dispensing physician] shall document the presence of opioid withdrawal 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 licensee [~~prescribing or dispensing physician~~] 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 licensee [~~prescribing or dispensing physician~~] shall:

1. Document that fact;
2. Educate the patient about the potential for precipitated withdrawal; and
3. Continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the licensee [~~prescribing or dispensing physician~~] shall meet the requirements established in this paragraph.

1. If the licensee [~~physician~~] prescribes, [or] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the licensee [~~physician~~] shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The licensee [~~physician~~] shall prescribe, [or] dispense, or administer to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

- a. Is necessary to minimize craving and opiate withdrawal;
- b. Does not produce opiate sedation;
- c. Except as provided in subclauses (i) through (iv) of this clause, is to be taken no more frequently than once daily;
  - (i) If the patient is pregnant, is to be taken no more than twice daily;
  - (ii) If the patient is receiving a daily dosage of less than 16mg, is to be taken no more than twice daily;
  - (iii) If the patient is simultaneously engaged in cancer treatment, hospice or palliative care, is to be taken bid or tid; or
  - (iv) If the patient is undergoing a major surgery, being any operative or invasive procedure or delivery, or has suffered a significant physical trauma, being any acute, blunt, blast or penetrating bodily injury that has a risk of death, physical disability or impairment, is to be taken bid or tid for up to fourteen (14) days; and

d. Is able only to supply the patient until the next licensee [~~physician~~] visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.a. The licensee [~~prescribing or dispensing physician~~] shall ensure that the patient is seen:

- (i) 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
- (ii) At intervals of no more than fourteen (14) days for the second month after induction.

b.(i) If the patient demonstrates objective signs of positive treatment progress, the licensee [~~prescribing or dispensing physician~~] shall ensure that the patient is seen at least once monthly thereafter.

(ii) If two (2) years after initiation of treatment, the patient is being prescribed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid use disorder and 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 for at least two (2) years, then the licensee [~~prescribing or dispensing physician~~] may require that the patient be seen only by the licensee [~~prescribing or dispensing physician~~] at least once every three (3) months.

(iii) The licensee [~~prescribing or dispensing physician~~] shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the licensee [~~prescribing or dispensing physician~~] shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. At least every three (3) months after initiation of treatment, the licensee [~~prescribing or dispensing physician~~] shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the licensee [~~prescribing or dispensing physician~~] shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any abnormal findings, the licensee [~~prescribing or dispensing physician~~] shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength, adjustment of frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

c. 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 and the licensee [~~prescribing or dispensing physician~~] is not certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry, then the licensee [~~prescribing or dispensing physician~~] shall obtain a consultation from a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart.

d. The licensee [~~prescribing or dispensing physician~~] shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the licensee [~~prescribing or dispensing physician~~] shall evaluate for and document the medical necessity for continued treatment at the established dose.

f. The licensee [~~prescribing or dispensing physician~~] shall ensure that the patient is drug tested. A patient in early stages of treatment shall be tested at least once weekly and as the patient becomes more stable in treatment, the frequency of drug testing may be decreased, but shall be performed at least on a monthly basis. Individual consideration may be given for less frequent testing if a patient is in sustained remission. If the patient returns to substance use after a period of abstinence, the licensee [~~prescribing or dispensing physician~~] shall resume the early treatment testing schedule, in conjunction with an adapted or intensified treatment plan.

(i) Each drug screen shall at a minimum screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, and cocaine.

(ii) If a drug screen indicates any abnormal findings, the licensee [~~prescribing or dispensing physician~~] shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

(iii) Appropriate clinical reasoning may include adjustment of dose strength, adjustment of frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

6. The licensee [~~prescribing or dispensing physician~~] shall document a plan for handling any lost or stolen medication, which shall not provide for the automatic replacement of medication prior to the specified interval date.

Section 3. Use of transmucosal buprenorphine-mono-product or buprenorphine-combined-with-naloxone 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, licensees [~~physicians~~] may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 1 and 2 of this administrative regulation and to the extent permitted by federal law, if:

(a) The licensee [~~physician~~] has determined that the use of buprenorphine-mono-product or buprenorphine-combined-with-naloxone 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 licensee [~~physician~~] obtains and documents written informed consent from the patient specific to risks and benefits of buprenorphine treatment; and

(c) The licensee [~~physician~~] 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 licensee [~~physician~~] 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 4. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes, and Monitoring.

(1) Each licensee [~~physician~~] prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the licensee [~~physician~~] is conforming to professional standards for prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone and other relevant professional standards.

(2) If a licensee [~~physician~~] is unable to conform to professional standards for prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone as set forth in this administrative regulation due to circumstances beyond the licensee's [~~physician's~~] control, or the licensee [~~physician~~] 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 licensee [~~physician~~] shall document those circumstances in the patient's record and only prescribe, [or] dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone to the patient if the patient record appropriately justifies the prescribing, [or] dispensing, or administering of Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone under the circumstances and in accordance with SAMHSA guidelines **as set forth in: Substance Abuse and Mental Health Services Administration, [.] Medications for Opioid Use Disorder, [.] Treatment Improvement Protocol (TIP) Series 63, [.] Publication No. PEP20-02-01-006, [.] Rockville, MD: Substance Abuse and Mental Health Services Administration, 2020.**

Section 5. Violations. Failure to comply with or a violation of the professional standards established in Sections 2, 3 and 4 of this administrative regulation shall constitute a "departure



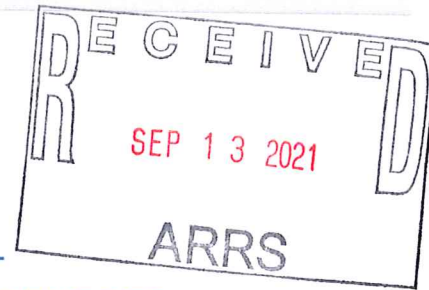
from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.850(1)(p) and (s), KRS 311.595(12) and (9), as illustrated by KRS 311.597(4), and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensee [~~licensed physician~~] to sanctions authorized by KRS 311.595 and 311.850.

**Section 6. Incorporation by Reference. (1) Substance Abuse and Mental Health Services Administration, "Medications for Opioid Use Disorder, Treatment Improvement Protocol (TIP) Series 63, Publication No. PEP20-02-01-006", 2020.**

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**(3) This material may also be obtained on the board's Web site at [kbml.ky.gov](http://kbml.ky.gov).**

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7943, fax (502) 429-7118, email [Leanne.Diakov@ky.gov](mailto:Leanne.Diakov@ky.gov).



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

**Andy Beshear**  
Governor

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Frankfort, Kentucky 40601  
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**Mike Berry**  
Secretary

**Rich Storm**  
Commissioner

September 10, 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: 301 KAR 1:012. Boating, swimming and water skiing and other activities on department-owned or controlled lakes.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:012, the Boating, swimming and water skiing and other activities on department-owned or controlled lakes proposes the attached amendment to 301 KAR 1:012.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Staff-suggested Amendment**

**9/10/2021**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources**

**301 KAR 1:012. Boating, swimming and water skiing and other activities on department-owned or controlled lakes.**

**Page 1**

**Section 2**

**Line 17**

After "Water skiing", insert "shall be".

Delete "is".

**Page 2**

**Section 2**

**Line 3**

After "skiing", insert "shall be".

Delete "is".

**Page 2**

**Section 3**

**Lines 4 and 8**

After "water skiers", insert "shall be".

Delete "is".

After "water skier", insert "shall be".

Delete "is".

**Page 2**

**Section 4**

**Line 10**

After "tubing", insert "shall be".

Delete "are".

**Page 2**

**Section 5**

**Line 11**

After "of a boat", insert "shall be prohibited".

Delete "is not permitted".

**Page 2**

**Section 5**

**Lines 14 and 15**

After "skiing period, shall", insert "L".

After "of any lake", insert "L".

After "as defined in", insert the following:

Section 1 of this administrative regulation

Delete the following:

subsection (1) of this section

**Page 2**

**Section 6**

**Line 18**

After "Wildlife Resources", insert "shall be".

Delete "is".

**Page 3**

**Section 7**

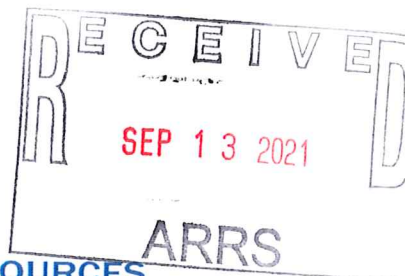
**Line 1**

After "Camping", insert "shall be".

Delete "is".



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**



**Andy Beshear**  
Governor

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Frankfort, Kentucky 40601  
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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: 301 KAR 1:016. Use of lands and waters on lakes owned or controlled by the department.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:016, Use of lands and waters on lakes owned or controlled by the department, proposes the attached amendment to 301 KAR 1:016.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Subcommittee Substitute**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS)**

**301 KAR 1:016. Use of lands and waters on lakes owned or controlled by the department.**

RELATES TO: KRS 150.090, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation governs all private structures on property owned or controlled by the department, the private use of public lake water, and permitted and prohibited activities on department-owned or controlled land surrounding department-owned waters.

Section 1. Definitions. (1) "Adjacent ***landowner*** [~~*property owner*~~]" means the owner of real property that shares a common boundary with department property.

(2) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(3) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers, and is permanently affixed to an approved boat dock so that it is visible from the lake.

(4) "Department property" means lands or waters controlled by the department through ownership, lease, license, easement, or cooperative agreement at the department-owned lakes listed in Section 2 of this administrative regulation.

(5) "Existing structure" means ~~an exempted~~[~~a grandfathered~~] access or nonaccess structure built on department property prior to the effective date of this administrative regulation.

(6) "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(7) "Permanent dwelling" means a private residence on an adjacent landowner's land that is both fixed in location and of durable permanent construction, but does not include tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(8) "Rebuild" means to totally reconstruct.

(9) "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

Section 2. Boat Docks, Boat Dock Applications, and Boat Dock Construction Approval. (1) A boat dock may be constructed on department property by an adjacent landowner if the adjacent property:

(a) Shares at least a fifty (50) foot boundary with the department property if the adjacent boundary lines were extended to the water's edge; and

(b) Is located at one (1) of the following lakes:

1. Beaver Lake;
2. Boltz Lake;
3. Bullock Pen Lake;
4. Carpenter Lake;
5. Corinth Lake;
6. Elmer Davis Lake;
7. Guist Creek Lake;
8. Kincaid Lake;
9. Kingfisher Lakes; or
10. Lake Malone.

(2) Prior to constructing a boat dock, an adjacent landowner shall submit a completed Boat Dock Application to the department, accompanied by the permit fee for the dock as established in 301 KAR 3:022, except that the fee shall be prorated for every year remaining in the ten (10) year permit period.

(3) Boat dock construction shall not begin until:

(a) An on-site inspection by an authorized department employee has been completed; and

(b) The applicant has obtained written approval from the department to begin construction.

(4) Boat dock construction approval shall be valid for one (1) year from the date of issuance.

(5) A boat dock applicant shall:

(a) Report to the department when construction of a new boat dock is complete, an existing boat dock has been rebuilt, or an existing dock has been brought into compliance; and

(b) Allow inspection of the boat dock by an authorized department employee.

(6) An adjacent landowner with an existing boat dock on Bullock Pen Lake shall be required to obtain a Boat Dock Permit, but shall not be required to pay the permit fee until 2018.

Section 3. Boat Dock Permits. (1) The department shall issue a Boat Dock Permit and Boat Dock Tag to an adjacent landowner:

(a) Who has satisfied the boat dock application requirements in Section 2 of this administrative regulation;

(b) Who has a boat dock that has passed a final inspection by an authorized department employee;

(c) Whose permit has not been revoked pursuant to Section 8 of this administrative regulation; and

(d) Who remains compliant with all the provisions of this administrative regulation.

(2) The Boat Dock Tag issued with the boat dock permit shall be affixed to the front edge of the dock facing the lake.

(3) A Boat Dock Permit shall:

(a) Be valid for a ten (10) year period, with the current permit period expiring December 31, 2017 and the next permit period beginning January 1, 2018;

(b) Be renewed within ninety (90) days of the termination date by:

1. Paying the fee as established in 301 KAR 3:022; and

2. Submitting an affidavit that no unauthorized addition or modification has been made to the boat dock;

(c) Be transferable at no additional cost, if ownership changes, for the remainder of the ten (10) year period; **[and]**

(d) Not be renewed by the department if the boat dock is out of compliance, except as established in Section 4 or Section 7 of this administrative regulation; **and**

(e) Prohibit the permittee from renting, leasing, or licensing the dock to another person for any purpose.

(4) An adjacent landowner who owns multiple contiguous properties adjacent to department property shall:

(a) Not be issued more Boat Dock Permits than the number of completed permanent dwellings on those properties; or

(b) Qualify for one (1) Boat Dock Permit if there is no completed permanent dwelling on any of the contiguous properties.

(5) An adjacent landowner shall only be eligible for one (1) Boat Dock Permit per adjacent property.

Section 4. Boat Dock Specifications and Requirements. (1) A boat dock constructed or rebuilt after the effective date of this administrative regulation shall not exceed:

(a) Eight (8) by sixteen (16) feet in dimension; and

(b) A surface area of more than 128 square feet.

(2) The longest dimension of the boat dock shall be positioned perpendicular to the shore.

(3) A boat dock shall not have more than one (1) walkway connecting the boat dock to the shore that shall:

(a) Be positioned perpendicular to the shore;

(b) Be anchored to department property by:

1. A concrete pad no larger than ten (10) square feet; or

2. Two (2) metal posts on each side of the walkway.

(c) Not be wider than four (4) feet;

(d) Be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or

2. Twenty (20) feet in length.

(e) Not be used for boat mooring.

(4) The flotation for a boat dock shall be made from materials manufactured for marine use.

(5) All wooden material on a boat dock shall be kiln-dried lumber that has been commercially pressure-treated with a wood preservative and shall not be painted.

(6) A boat dock shall moor no more than:

(a) Two (2) boats; or

(b) One (1) boat and up to two (2) personal watercraft on Lake Malone and Guist Creek Lake only.

(7) A personal watercraft mooring system that is attached to an approved boat dock at Lake Malone and Guist Creek Lake shall:

(a) Be a commercially manufactured floating system;

(b) Not exceed:



1. Six (6) feet in width and fifteen (15) feet in length if mooring a single personal watercraft; or  
2. Twelve (12) feet in width and fifteen (15) feet in length if mooring two (2) personal watercraft;  
and

(c) Be attached to one (1) side of the boat dock, but not the front.

(8) An additional johnboat, canoe, or personal watercraft may be stored on top of a boat dock, except a personal watercraft shall only be stored on top if a commercially manufactured self-loading ramp is used.

(9) The following items shall be prohibited on boat docks:

(a) An enclosed structure;

(b) An unenclosed structure; and

(c) Any other items, structures, or deviations not identified in a previously obtained waiver, pursuant to Section 7 of this administrative regulation.

(10) A boat dock that was constructed prior to the effective date of this administrative regulation shall be exempt from the requirements established in subsections 1 through 6 of this section for the life of the boat dock.

(11) A boat dock owner who rebuilds an existing dock, including those exempted by subsection 10 of this section, shall reapply and meet all the requirements established in this section, except as established in Section 7 of this administrative regulation.

(12) A boat dock permit holder who applies to rebuild an existing, legally permitted boat dock during the ten (10) year permit period shall be exempt from paying the permit fee until permit renewal.

(13) A private community boat dock or a private multi-slip boat facility shall not be allowed except as approved by the Finance and Administration Cabinet prior to January 1, 2010.

Section 5. Access Structures and Shoreline Use Permits. (1) A shoreline use permit shall only be issued for the following lakes:

(a) Beaver Lake;

(b) Carpenter Lake;

(c) Corinth Lake;

(d) Elmer Davis Lake;

(e) Guist Creek Lake;

(f) Kincaid Lake; and

(g) Lake Malone.

(2) Shoreline Use Permits shall be valid for a fifteen (15) year period beginning January 1, 2010.

(3) An adjacent landowner with an existing structure shall apply for a Shoreline Use Permit within ninety (90) days following the effective date of this administrative regulation.

(4) Prior to constructing a new access structure, rebuilding an existing access structure, or permitting an existing structure, an adjacent landowner shall submit to the department:

(a) A completed Shoreline Use Permit Application; and

(b) The appropriate permit fee if applicable, as established in 301 KAR 3:022, except that the fee shall be prorated to the nearest five (5) year interval that remains in the fifteen (15) year permit period.

(5) An adjacent landowner shall not begin construction of a new access structure or begin rebuilding an existing access structure until:

(a) An authorized department employee conducts an on-site visit and determines the type of access structure necessary for safe passage to the lake; and

(b) The adjacent landowner receives written approval from the department.

(6) Access structure construction approval shall be valid for one (1) year from the date of approval.

(7) A Shoreline Use Permit shall not be issued unless all shoreline structures have passed final inspection by an authorized department employee.

(8) A new access structure shall only include the following:

(a) A ground level pathway that shall:

1. Only have pretreated lumber or railroad ties as edging;
2. Not consist of asphalt, concrete, or any other permanent surface;
3. Only consist of crushed stone, wood chips, or other removable material as fill between the edging, except that local natural stones or rocks may be used as steps;
4. Not exceed five (5) feet in width including the edging; and
5. Follow the natural contour of the land if possible.

(b) A raised ground level pathway that shall:

1. Not exceed eight (8) inches in height; ~~and~~
2. Not exceed forty (40) steps, with each step not exceeding five (5) feet in width and eight (8) feet in length;
3. Only consist of pretreated, unpainted lumber; and
4. Follow the natural contour of the land if possible.

(c) A raised staircase that shall:

1. Not exceed four (4) feet in width;
2. Not have more than one (1) landing that does not exceed four (4) feet in width and four (4) feet in length;
3. Not have more than twenty (20) steps if a landing is not used;
4. Not have more than thirty (30) steps if a landing is used;
5. Only consist of pretreated, unpainted lumber; and
6. Conform to prevailing building code standards for stairs for the county of record or, if **those** ~~such~~ standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established by 815 KAR 7:120; or

(d) A foot bridge that shall:

1. Not exceed four (4) feet in width and twelve (12) feet in length;
2. Not use a tree as an anchoring device; and
3. Only consist of pretreated, unpainted lumber.

(9) An adjacent landowner who has an existing access structure that was constructed prior to the effective date of this administrative regulation, shall be exempt from the requirements of subsection (8) of this section for the life of the structure, if the landowner applies for and maintains a valid Shoreline Use Permit.

(10) An adjacent landowner who rebuilds an existing access structure, including those grandfathered in subsection (9) of this section, shall be exempt from the requirements established in subsection 8 of this section provided the landowner maintains a valid Shoreline Use Permit.

(11) An existing access structure:

- (a) May be adequately maintained to extend the life of the structure;

(b) May be rebuilt with less than or equal to the same number of steps in the original structure;  
(c) May be rebuilt with necessary landings not to exceed 4 ft. x 8 ft. in dimension; and  
(d) Shall conform to prevailing building code standards for the county of record or, if ***those*** ***[such]*** standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(12) A Shoreline Use Permit shall:

(a) Be renewed every fifteen (15) years within ninety (90) days of the termination date by:

1. Paying the fee established in 301 KAR 3:022; and  
2. Submitting an affidavit that an unauthorized addition or modification has not been made to a permitted structure.

(b) Be transferable at no additional cost, if ownership changes, for the remainder of the fifteen (15) year period; and

(c) Not be renewed if the access structure is out of compliance, except if the access structure was built prior to the effective date of this administrative regulation.

(d) Be extended, by written request to the department, for an additional twelve (12) months if the property is transferred or the landowner dies during year fifteen (15) of the permit period.

(13) An existing noncompliant access structure, pursuant to Section 8 of this administrative regulation, shall be removed at the owner's expense.

(14) Nonaccess structures, such as gazebos or storage buildings, excluding existing permanent dwellings, shall be:

(a) Itemized in the adjacent landowner's Shoreline Use Permit; and

(b) Allowed to be kept and maintained by an adjacent landowner for the life of the structure provided the landowner maintains a valid Shoreline Use Permit.

(15) The Shoreline Use Permit fee, as established in 301 KAR 3:022, shall be based on the types of access structures established in subsection (8) of this section, and consist of the following three (3) tiers:

(a) A Tier I permitted structure shall include:

1. All compliant access structures pursuant to subsection (8) of this section;  
2. An existing access structure with fifteen (15) or less steps that is not compliant, pursuant to subsection (8) of this section;  
3. An existing footbridge; or  
4. A new footbridge that is compliant, pursuant to subsection 8 of this section.

(b) A Tier II permitted structure shall include:

1. An existing access structure having thirty (30) or less concrete steps; or  
2. An existing access structure that does not comply with the requirements established in subsection (8) of this section, and having sixteen (16) to thirty (30) steps.

(c) A Tier III permitted structure shall include:

1. An existing access structure, including a concrete access structure, that does not comply with the requirements established in subsection 8 of this section, and having more than thirty (30) steps;

2. A new access structure that does not comply with the requirements established in subsection (8) of this section, and requires a waiver pursuant to the requirements of Section 7 of this administrative regulation.

3. An existing staircase that has one (1) or more landings that exceed a four (4) feet in width or four (4) feet in length; or

4. An existing nonaccess structure, such as a storage shed or gazebo.

(16) If an adjacent landowner applies for a Shoreline Use Permit for multiple structures that cover more than one (1) tier, **[then]** a single permit will be issued at the highest tier level for which the applicant qualifies.

(17) A concrete access structure shall not be rebuilt.

Section 6. Other Activities on Department Property. (1) A person shall not be permitted to take water from the lakes listed in Section 2 of this administrative regulation, except for:

(a) Residential use by adjacent landowners;

(b) Temporary use in a time of emergency drought; or

(c) An adjacent landowner who has been given the right to do so by deed.

(2) A person, without **[first]** obtaining written permission from the department, shall not:

(a) Place or build any unpermitted object or structure;

(b) Plant any vegetation;

(c) Place or use any mechanical equipment;

(d) Take water from any lake listed in Section 2 of this administrative regulation;

(e) Cut, clear, burn, damage, or kill trees or shrubs greater than two (2) inches in diameter measured at ground level; or

(f) Moor a boat to the shoreline for more than forty-eight (48) hours.

Section 7. Waivers. (1) An adjacent landowner shall **[first]** obtain a waiver from the department for any deviation to the specifications established in this administrative regulation by:

(a) Submitting a written request to the department; and

(b) Providing a detailed plan to the department of any planned deviation.

(2) A person shall not begin construction on a project that includes a planned deviation until the department has approved a waiver.

(3) The department, in deciding whether to grant a waiver for a new access structure, shall consider if:

(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;

(b) The deviation poses a potential safety hazard;

(c) Topographical or other physical features of the land necessitate a deviation;

(d) The waiver request exceeds the staircase landing dimension or step limit by more than twenty (20) percent; and

(e) A new staircase will conform to prevailing building code standards for the county of record or, if those standards do not exist, complies with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(4) The department, in deciding whether to grant a waiver for a boat dock, shall consider if:

(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;

(b) The deviation poses a potential safety hazard; and

(c) Topographical or other physical features of the land necessitate a deviation.

(5) An adjacent landowner, either individually or as a director or high managerial agent of a business organization, who violates any provision of this administrative regulation shall be denied a waiver for a new or rebuilt structure for a period of two (2) years from the date of the citation, with the waiver denial applying to:

- (a) The individual; and
- (b) Any business for which the person is a director or high managerial agent.

Section 8. Noncompliance, Permit Revocation, and Appeals. (1) The department shall revoke each Boat Dock Permit and Shoreline Use Permit issued to a person if that permit holder:

(a) Without department approval rebuilds an existing:

1. Boat dock;
2. Access structure; or
3. Nonaccess structure.

(b) Constructs or places a new nonaccess structure on department property;

(c) Fails to:

1. Maintain the boat dock, boat dock walkway, access structure, or nonaccess structure in a structurally sound condition; or

2. Renew the Boat Dock or Shoreline Use Permit within ninety (90) days of expiration.

(2) An adjacent landowner who has a noncompliant boat dock, boat dock walkway, access structure, or nonaccess structure shall be notified in writing by the department that the landowner has sixty (60) days to come into compliance, to remove the boat dock, walkway, or structure, or to make an appeal as established in subsection 6 of this section.

(3) If the requirements of subsection (2) of this section are not met within sixty (60) days, the department shall have the authority to remove the noncompliant structure at the owner's expense and the structure shall become the property of the department.

(4) If an adjacent landowner, either individually or as a director or high managerial agent of a business organization, violates any provision of this administrative regulation for a second time, **[then]** the department shall revoke for a period of three (3) years from the date of the second citation all Boat Dock Permits and Shoreline Use Permits issued to:

(a) The adjacent landowner;

(b) Any business organization for whom the individual adjacent landowner is a director or high managerial agent; and

(c) Any director or high managerial agent of the adjacent landowner who is a business organization.

(5) The following shall apply for any adjacent landowner whose permit is revoked pursuant to subsection (4) of this section:

(a) All structures shall be removed at the owner's expense within thirty (30) days of revocation if an appeal is not filed.

(b) If the structures are not removed by the owner within thirty (30) days and no appeal is filed, **[then]** the department shall have the authority to remove the structure at the owner's expense; and

(c) All structures removed pursuant to paragraph (b) of this subsection shall become the property of the department.

(6) An adjacent landowner whose waiver request is denied or whose permit is denied or revoked may appeal the decision in accordance with the provisions of KRS Chapter 13B.

(a) The department shall appoint a hearing officer and conduct the hearing in accordance with the provisions of KRS Chapter 13B;

(b) The hearing officer shall make a recommendation to the Department of Fish and Wildlife Resources' Commission;

(c) The commission shall make a decision by majority vote; and

(d) An appeal of the Commission's decision shall be in accordance with the provisions of KRS Chapter 13B; and

(e) At the conclusion of all appeals or at the expiration of any appeal period for which an appeal has not been made:

1. The owner shall remove any unauthorized structure within ten (10) days, at the owner's expense;

2. An unauthorized structure that has not been removed by the owner within ten (10) days shall be removed by the department at the owner's expense; and

3. Each structure removed pursuant to subparagraph (2) of this paragraph shall become the property of the department.

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

(a) "Boat Dock Permit Application, 2010"; and

(b) "Shoreline Use Permit Application, 3/2010".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Fisheries Division, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov)



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

**Andy Beshear**  
Governor

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**Mike Berry**  
Secretary

**Rich Storm**  
Commissioner

September 10, 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: 301 KAR 1:018. Use of boating access areas.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:018, Use of boating access areas, proposes the attached amendment to 301 KAR 1:018.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Staff-suggested Amendment**

**9/10/2021**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources**

**301 KAR 1:018. Use of boating access areas.**

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY paragraph**

**Lines 7, 8, and 9**

After "KRS 150.620", insert "authorizes".

Delete "grants".

After "the department", delete "authority".

After "KRS 235.280", insert "requires".

Delete "authorizes".

**Page 2**

**Section 1(2)**

**Line 3**

After "motor home", insert ",<sup>4</sup>".

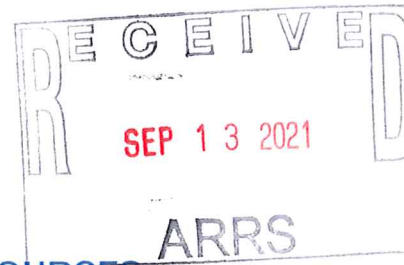
**Page 2**

**Section 2(6)(b)**

**Line 18**

After "Advertise;", delete "or".





**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

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**Rich Storm**  
Commissioner

September 10, 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: 301 KAR 1:019. Cedar Creek Lake.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:019, Cedar Creek Lake, proposes the attached amendment to 301 KAR 1:019.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Staff-suggested Amendment**

**9/10/2021**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources**

**301 KAR 1:019. Cedar Creek Lake.**

**Page 1**

**STATUTORY AUTHORITY paragraph**

**Line 6**

After "150.025", insert "150.620".

**Page 1**

**Section 2**

**Line 13**

After "Buffer Zone.", insert "A person".

Delete "No one".

After "shall", insert "not".

**Page 2**

**Section 2(4)**

**Line 1**

After "turnarounds", insert ",".

**Page 2**

**Section 3**

**Line 14**

After "width", insert "shall be".

Delete "are".

**Page 2**

**Section 4**

**Line 17**

After "Cedar Creek Lake", insert "shall be".

Delete "is".

**Page 2**

**Section 5(1)**

**Line 19**

After "Swimming", insert "shall be".

Delete "is".

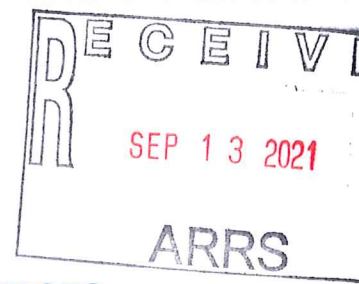
**Page 3**

**Section 5(2)**

**Line 1**

After "tubing", insert "shall be".

Delete "are".



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

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**Rich Storm**  
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September 9, 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: 301 KAR 1:031. Land Between the Lakes provisions.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:031, Land Between the Lakes provisions, proposes the attached amendment to 301 KAR 1:031.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



## Subcommittee Substitute

### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS)

#### 301 KAR 1:031. Land Between the Lakes provisions.

RELATES TO: KRS 150.025, 150.090, 150.170, 150.175, 150.250, 150.340, 150.360, 150.370, 150.470

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas, ~~[- KRS 150.025 also authorizes the department to]~~ establish seasons for the taking of fish and wildlife, ~~[to]~~ regulate creel limits and methods of take, and to make these requirements apply to a limited area. The U.S. Forest Service has requested the Kentucky Department of Fish and Wildlife Resources to enforce its special fishing administrative regulations on the Land Between the Lakes National Recreation Area waters. This administrative regulation establishes the conditions and provisions under which fishing is permitted in the Land Between the Lakes area, ~~[and]~~ provides for enforcement by state conservation officers, ~~[and]~~ ~~**This administrative regulation**~~ provides compliance with the U.S. Forest Service.

Section 1. Fishing shall be permitted in Land Between the Lakes in accordance with the following requirements:

(1) Energy Lake.

(a) Fishing from a boat or the bank shall be permitted year-round except in the waterfowl refuge area.

(b) The waterfowl refuge area shall be the western one-third (1/3) of the lake and it shall be open to fishing from March 16 through October 31.

(2) Honker Lake.

(a) Fishing from a boat or the bank shall be permitted from March 16 through October 31.

(b) Fishing shall be permitted year-round in the portion of Honker Lake which extends from near the end, as indicated by signs, of the Long Creek Walk handicap trail to the base of the Hematite Lake spillway.

(3) Hematite Lake.

(a) Fishing from a boat or the bank shall be permitted from March 16 through October 31.

(b) ~~[Fishing from a boat shall be permitted from March 16 through October 31.~~

~~(c)]~~ Gas-powered motors shall not be permitted.

(4) Farm ponds. Farm ponds shall be open to fishing year-round unless posted.

(5) Lake Barkley and Kentucky Lake.

(a) Fishing shall be open year-round unless posted.

(b) Bank fishing and frogging from the shoreline shall be permitted except in areas that are posted as closed for waterfowl refuges and other special uses.

(c) Frogging shall be by gigging only.

Section 2. Frogs may be taken in farm ponds and Energy and Honker Lakes by gigs only from May 15 through May 31. Hematite Lake and other areas as posted shall be closed to frogging.

Section 3. (1) Boats shall operate at "no wake" speed on Energy and Honker Lakes.

(2) A federal permit shall not be required for fishing or frogging.

(3) All administrative regulations pertaining to fishing and limits shall apply.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov)



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**



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Secretary

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September 10, 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: 301 KAR 1:050. Small state-owned lakes, special administrative regulations of.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:050, Small state-owned lakes, special administrative regulations of, proposes the attached amendment to 301 KAR 1:050.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Subcommittee Substitute**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS)**

**301 KAR 1:050. Small state-owned lakes, special administrative regulations of.**

RELATES TO: KRS ~~[150.025,]~~150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS ~~[13A.350,]~~ 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. ~~[The purpose of]~~ This administrative regulation ***establishes notice of the department's authority [is]*** to set ***special*** creel, possession, and size limits on fishes ~~[. It is necessary]~~ to protect the fish population in small state-owned lakes.

Section 1. The Commissioner of the Department of Fish and Wildlife Resources with the concurrence of the Department of Fish and Wildlife Resources Commission declares that from time to time special creel limits, possession limits, and size limits on fishes may be necessary because of unique ~~[and/]~~ or special needs to protect the fish populations of the smaller state-owned lakes.

Section 2. These special ***limits shall [administrative regulations will]*** be conspicuously posted on the premises of these lakes. It ***shall be [is]*** the responsibility of each individual ~~[fisherman]~~ fishing these lakes to become familiar ~~[familiarize himself]~~ with these special ***limits [administrative regulations]*** and to abide by them.

Section 3. Failure of any person to comply with the posted special limits ***shall [will]*** be a violation of this administrative regulation.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.





**TOURISM, ARTS AND HERITAGE CABINET**  
**KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**



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September 10, 2021

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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: 301 KAR 1:082. Frog season; limits.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:082, Frog season; limits, proposes the attached amendment to 301 KAR 1:082.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Subcommittee Substitute**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS)**

**301 KAR 1:082. Frog season; limits.**

RELATES TO: KRS [~~150.025,~~] 150.175, 150.360

STATUTORY AUTHORITY: KRS [~~13A.350,~~]150.025(1)

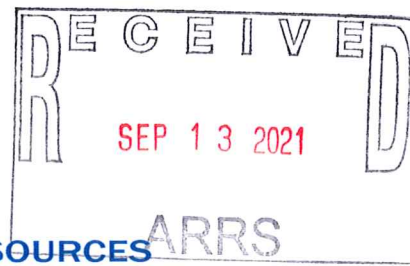
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. This administrative regulation **establishes** ~~[it] [is necessary to regulate]~~ the season, time, bag limit, and manner of taking for bullfrogs **[in order]** to utilize and conserve the **bullfrog** population **[thereof]**. ~~[This amendment is necessary to change the opening day and time and to bring Section 3 of this administrative regulation in compliance with the gigging season.]~~

Section 1. The open season on bullfrogs shall begin at 12 noon on the 3rd Friday in May and continue until 12 midnight October 31. The daily creel limit shall be fifteen (15) bullfrogs with a possession limit of thirty (30) bullfrogs after two (2) or more days frogging. Each day for taking bullfrogs shall begin at 12 noon and end at 12 noon the following day. **A person shall not [No person may]** have more than fifteen (15) bullfrogs in his possession while in the field.

Section 2. Bullfrogs may be taken with gig, by hand, bow and arrow, firearm, or hook and line from public and private waters ~~[, and an appropriate license is required]~~. If bullfrogs are taken with firearm or bow and arrow, a hunting license is required. If bullfrogs are taken by use of a pole and line, a fishing license is required. If bullfrogs are taken with hand or by use of a gig, **[then either]** a fishing license or a hunting license is valid.

Section 3. ~~It [Except as provided in Section 3 of 301 KAR 1:075, it] shall be illegal to possess a gig, of any type, while in a boat, or on [;] or in a stream [;] or lake, from [between] November 1 through [and] the last day of January of the following year [; both dates inclusive].~~

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

**Andy Beshear**  
Governor

#1 Sportsman's Lane  
Frankfort, Kentucky 40601  
Phone (502) 564-3400  
Fax (502) 564-0506

**Mike Berry**  
Secretary

**Rich Storm**  
Commissioner

September 10, 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: 301 KAR 1:120. Live fish sales and handling; licensure.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:120, Live fish sales and handling; licensure, proposes the attached amendment to 301 KAR 1:120.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Subcommittee Substitute**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS)**

**301 KAR 1:120. Live fish sales and handling; licensure.**

RELATES TO: KRS ~~[450.025,]~~ 150.175, ~~[450.480,]~~ 150.190, 150.235, 150.485

STATUTORY AUTHORITY: KRS ~~[43A.350,]~~ 150.025(1), 150.180(6)

NECESSITY, FUNCTION, AND CONFORMITY: 150.025(1) authorizes the department to promulgate administrative regulations to regulate buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. This administrative regulation **is being promulgated [is necessary in order]** to control the flow of live fish from and into natural waters and commercial channels to prevent the spread of disease or undesirable species. ~~[This amendment is necessary to eliminate unnecessary and confusing wording.]~~

Section 1. All individuals or companies who sell live fish retail or wholesale **shall [must]** have a live fish and bait dealers license issued in the name of the individual or company that is transacting business in this commonwealth. This license, or an exact copy thereof, **shall [must]** be in the possession of the individual~~[persons]~~ who is~~[are]~~ transporting, selling, or possessing live fish for sale in Kentucky.

Section 2. **[Those]** Individuals or companies transporting live fish from one (1) state to another state through Kentucky without conducting any type of business in this commonwealth **shall not be [are not]** required to have a live fish and bait dealers license, but **shall [must]** have a valid transportation permit.

Section 3. Valid holders of commercial propagation permits and **[those]** individuals or companies who sell fish for food in establishments licensed by another state agency to sell retail or wholesale food stuffs **shall not be [are not]** required to have a live fish and bait dealers license.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**



**Andy Beshear**  
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Commissioner

September 10, 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: 301 KAR 1:125. Transportation of fish.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:125, Transportation of fish, proposes the attached amendment to 301 KAR 1:125.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Subcommittee Substitute**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(Amendment)**

**301 KAR 1:125. Transportation of fish.**

RELATES TO: KRS 150.010, ~~[150.025,]~~ 150.170, ~~[150.180, 150.235,]~~ 150.235, 150.485

STATUTORY AUTHORITY: KRS ~~[13A.350,]~~ 150.025(1)(c), ~~[(1)(h),]~~ 150.180(6), ~~[150.235, EO 2008-516]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. ~~[EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.]~~ This administrative regulation provides for control of the transportation of fish, fish eggs, live bait, and other aquatic organisms into, through, and within the state ***[in order]*** to protect the resident fish population.

Section 1. Definitions. (1) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) "APHIS-approved laboratory" means a laboratory authorized by a state, tribal, or federal primacy authority to analyze aquatic animal health and perform assays for the detection of the VHS virus.

(3) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and not stocked into waters of the Commonwealth.

(4) "Certified VHS free facility" means a fish-rearing facility that has been certified VHS free by an APHIS approved laboratory.

(5) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(6) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

(7) "VHS positive state" means any state in the United States, or any Canadian province, listed on the APHIS Web site [www.aphis.usda.gov](http://www.aphis.usda.gov) as being positive for Viral Hemorrhagic Septicemia (VHS).

(8) "VHS-regulated fish species" means any species of fish deemed susceptible to VHS and listed on the APHIS Web site at [www.aphis.usda.gov](http://www.aphis.usda.gov).

Section 2. A Fish Transportation Permit ***shall not be required [is not needed]***:

(1) By an individual to transport aquarium species;

(2) By permitted Kentucky fish propagators as established in 301 KAR 1:115, except if transporting fish into Kentucky from outside of Kentucky~~[another state or country]~~;

(3) By individuals with a sport or commercial fishing license to transport legally caught bait or fish;

- (4) By individuals transporting fish purchased from a licensed live bait dealer for stocking in private waters;
- (5) By agents of the department while performing their normal duties; or
- (6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

Section 3. Live Fish, Live Bait, or Other Aquatic Organisms. (1) All individuals, corporations, or other business entities that transport any live fish, live bait as defined in 301 KAR 1:132, Section 1, or other live aquatic organism, except those individuals listed in Section 2 of this administrative regulation, into, within, or through Kentucky shall have in possession a:

(a) Fish Transportation Permit issued in the name of the individual, corporation, or other business entity transacting the business; and

(b) Bill of lading showing the origin and destination of the organisms being transported.

(2) An individual shall also possess a Live Fish and Bait Dealers License, as established in 301 KAR 1:132, if the organisms **will [shall]** be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free and **any** prohibited species listed in 301 KAR 1:122 shall not be present.

(4) If any VHS-regulated fish species from a VHS positive state are transported and unloaded in Kentucky, in addition to the requirements established in subsections (1), (2), and (3) of this section **[of this administrative regulation]**, the following requirements shall apply:

(a) If the origin of the VHS-regulated fish species is from a certified VHS free facility, the individual shall possess a copy of the documentation showing that the facility is VHS free.

(b) If the origin of the VHS-regulated fish species is from a non-certified VHS free facility **[then]**:

1. The VHS-regulated fish species shall only be unloaded at a state inspected fish-processing plant or research and diagnostic laboratory;

2. The individual shall possess a copy of the APHIS VS 1-27 permit for Movement of Restricted Animals issued by an APHIS Veterinary Services office or by a state, tribal, or federal accredited veterinarian **[shall also be in possession]**; and

3. Water from the fish transportation tank shall only be discharged into a municipal sewage system that includes waste water disinfection or into a nondischarging settling pond devoid of fish.

(5) If the origin of the VHS-regulated fish species is from a VHS positive state and are only being transported through Kentucky then only the requirements established in subsections (1) and (3) of this section and Section 4 of this administrative regulation shall apply.

(6) VHS-regulated fish species being transported from a known VHS positive state into, within, or through Kentucky that do not meet all requirements established in Sections 3 and 4 of this administrative regulation shall be confiscated for disposal purposes.

Section 4. Fish Transportation Permit Application. (1) If an individual, corporation, or other business entity wants to transport fish, live bait, or other aquatic organisms into, within, or through Kentucky they **[first]** shall submit a completed Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR 3:022.

(2) If an individual, corporation, or other business entity wants to transport VHS-regulated fish

species into or through Kentucky from a VHS positive state, in addition to the requirements established in subsection (1) of this section they shall also submit a:

(a) Copy of the documentation showing that the facility that the VHS-regulated fish species are coming from is Certified as being VHS free; or

(b) Copy of the APHIS VS 1-27 permit if the facility is not certified as being VHS free.

(3) An individual, corporation, or other business entity shall not transport fish, live bait, or other aquatic organisms into, within, or through Kentucky without an approved Fish Transportation Permit ~~[is]~~ in possession.

(4) If an individual, corporation, or other business entity desires to transport VHS-regulated fish species from a facility in a VHS positive state that is currently not listed on their Fish Transportation Permit, the permittee shall:

(a) Notify the department; and

(b) If approved by the commissioner based on risk of contagion to fish of the Commonwealth be sent an updated Fish Transportation Permit listing the approved facility.

Section 5. Transportation of Roe-Bearing Fish and Roe. (1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as established in 301 KAR 1:155 into, within, or through Kentucky, shall have in possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester's name and commercial fishing license and roe-bearing harvester's permit numbers listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155, Section 4(4)(d)3.

Section 6. All officers and agents of the department have the authority to demand of the transporter, at any time, that prohibited species listed in 301 KAR 1:122 shall not be present and proof that the transporter possesses all appropriate permits and documentation.

Section 7. Fish Transportation Permit Revocation and Nonrenewal. (1) The Department shall revoke and not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they:~~[:]~~

(a) Falsify the documentation needed to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit; or

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

(2) An individual, corporation, or other business entity whose Fish Transportation Permit has been denied or~~[,]~~ revoked ~~[or not renewed]~~ may request an administrative hearing pursuant to KRS Chapter 13B.

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(4) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

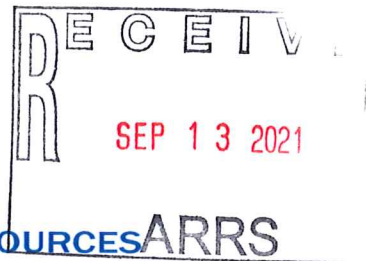


(5) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 8. Incorporated by Reference. (1) "Application for Fish Transportation Permit", 2008 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov).



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

**Andy Beshear**  
Governor

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Frankfort, Kentucky 40601  
Phone (502) 564-3400  
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**Mike Berry**  
Secretary

**Rich Storm**  
Commissioner

September 10, 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: 301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:140, Special commercial fishing permit for Kentucky and Barkley lakes, proposes the attached amendment to 301 KAR 1:140.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Staff-suggested Amendment**

**9/10/2021**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources**

**301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.**

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY paragraph**

**Line 12**

After "regulation", insert "establishes".

Delete "is necessary to establish".

**Page 2**

**Section 1(5)**

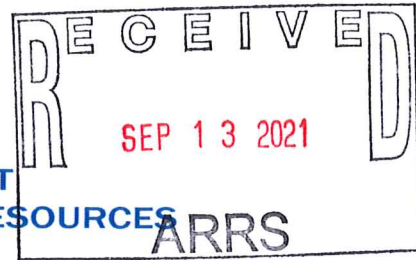
**Line 2**

After "KRS 150.010", insert "(37)".

Delete "(32)".



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**



**Andy Beshear**  
Governor

#1 Sportsman's Lane  
Frankfort, Kentucky 40601  
Phone (502) 564-3400  
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Commissioner

September 10, 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: 301 KAR 1:152. Harvest and sale of Asian carp.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:152, Harvest and sale of Asian Carp, proposes the attached amendment to 301 KAR 1:152.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Staff-suggested Amendment**

**9/10/2021**

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources**

**301 KAR 1:152. Harvest and sale of Asian carp.**

**Page 8**

**Section 8(1)**

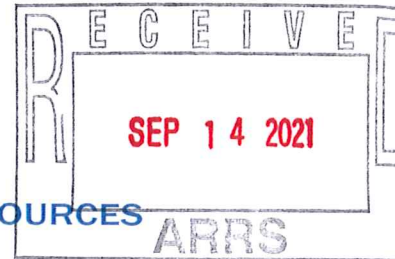
**Line 6**

After "1:201", insert "z".

Delete ",".



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**



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Governor

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**Mike Berry**  
Secretary

**Rich Storm**  
Commissioner

September 13, 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: ; 301 KAR 2:050. Land Between the Lakes  
hunting requirement; 301 KAR 2:260 Crow hunting season; and 301 KAR 2:230. Shoot-  
to-retrieve field trial permits and procedures.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of  
the issues raised by 301 KAR 2:050. Land Between the  
Lakes hunting requirement; 301 KAR 2:260 Crow hunting season; and 301 KAR 2:230.  
Shoot-to-retrieve field trial permits and procedures, proposes the attached amendment  
to 301 KAR 2:015; 301 KAR 2:050; 301 KAR 2:060; and 301 KAR 2:230.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Suggested Amendment**  
**Tourism, Arts and Heritage Cabinet**  
**Department of Fish and Wildlife Resources**

**301 KAR 2:050. Land Between the Lakes hunting requirements.**

**Page 1**

**STATUTORY AUTHORITY**

**Line 6**

After “150.025”, delete “, 150.680”.

**Page 1**

**NECESSITY, FUNCTION, & CONFORMITY**

**Line 7**

After “CONFORMITY:”, insert the following:

KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations establishing requirements for hunting.

Delete the following:

This administrative regulation pertains to general rules for hunting on the Kentucky portion of Land Between the Lakes as defined in KRS 150.680.

**Line 9**

After “This administrative regulation”, insert “establishes”.

Delete “is necessary to specify”.

**Line 10**

After “Lakes and”, insert “authorizes”.

Delete “to authorize”.

**Page 1**

**Section 1(2)**

**Line 15**

After “Permits”, insert “shall be”.

Delete “are”.

**Page 2**

**Section 2**

**Line 4**

After “Requirements.”, delete the following:

(1) Except as noted, state and federal regulations shall apply.

(2)

**Page 2**

**Section 2(2)(a) [before renumbering]**

**Line 7**

Before “Take”, insert “(1)”.

Delete “(a)”.

After “authorized”, insert the following:

in KRS Chapter 150 or 301 KAR Chapter 2;

Delete period.

**Page 2**

**Section 2(2)(b) [before renumbering]**

**Line 8**

Before “Target”, insert “(2)”.

Delete “(b)”.

After “practice”, insert comma.

**Line 9**

After “approval”, insert semicolon.

Delete period.

**Page 2**

**Section 2(2)(c) [before renumbering]**

**Line 10**

Before “Operate”, insert “(3)”.

Delete “(c)”.

After “vehicles”, insert comma.

After “except”, insert “: (a)”.

Capitalize “within”.

After “vehicle area”, insert semicolon.

**Line 11**

After “and”, insert “(b)”.

Capitalize “on”.

**Line 12**

After “Lakes”, insert semicolon.

Delete period.

**Page 2**

**Section 2(2)(d) [before renumbering]**

**Line 13**

Before “Drive”, insert “(4)”.

Delete “(d)”.



**Page 2**

**Section 2(2)(e) [before renumbering]**

**Line 14**

Before “Block”, insert “(5)”.

Delete “(e)”.

**Page 3**

**Section 3(3)**

**Line 4**

After “conform to”, insert “301 KAR Chapter 2.”

Delete “applicable administrative regulations”.

**Page 3**

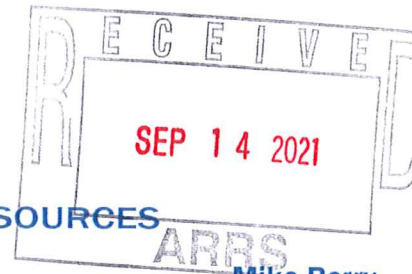
**Section 4(1)**

**Line 7**

After “safety zones”, insert comma.



TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES



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September 13, 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: 301 KAR 2:050. Land Between the Lakes  
hunting requirement; 301 KAR 2:260 Crow hunting season; and 301 KAR 2:230. Shoot-  
to-retrieve field trial permits and procedures.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of  
the issues raised by 301 KAR 2:050. Land Between the  
Lakes hunting requirement; 301 KAR 2:260 Crow hunting season; and 301 KAR 2:230.  
Shoot-to-retrieve field trial permits and procedures, proposes the attached amendment  
to 301 KAR 2:015; 301 KAR 2:050; 301 KAR 2:060; and 301 KAR 2:230.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**REVISED:**  
**9/13/2021 2:37 PM**  
**Suggested Amendment**  
**Tourism, Arts and Heritage Cabinet**  
**Department of Fish and Wildlife Resources**

**301 KAR 2:230. Shoot-to-retrieve field trial permits and procedures.**

**Page 1**

**STATUTORY AUTHORITY**

**Line 6**

After "150.175", insert "(16)".

Delete "(1)(p)".

**Page 1**

**NECESSITY, FUNCTION, & CONFORMITY**

**Line 7**

After "150.175", insert "(16)".

Delete "(1)(p)".

**Page 1**

**Section 1(2)**

**Line 15**

After "duck", insert comma.

**Page 2**

**Section 3(2)(a)**

**Line 12**

After "made on", insert the following:

the "Shoot-to-Retrieve Field Trial Application"

Delete the following:

a form provided by the department

**Page 3**

**Section 5(1)**

**Line 7**

After "(1)", insert parenthesis.

After "Application", insert parenthesis.

**Page 3**

**Section 5(1)**

**Line 7**

After “ Application,” ”, insert “5/19”.  
Delete “5/98”.

**Page 3**

**Section 5(2)**

**Line 9**

After “(2)”, insert the following:

This material may be inspected, copied, or obtained, subject to applicable  
copyright law.

Delete the following:

It may be copied, inspected or obtained

**Line 11**

After “business days”, insert the following:

or at

<https://fw.ky.gov/Licenses/Documents/shootToRetrieveFieldTrialApplicationIncludesFees.pdf>

Kentucky Department of Fish and Wildlife Resources

Shoot to Retrieve Field Trial Application

Revised 5/19

Instructions: Consult 301 KAR 2:230 and 3:022 for type of permit and fee required. Fee must accompany this application. Application for shoot to retrieve field trial must be through the Conservation Officer or Law Enforcement District Captain at least 30 days prior to the trial opening date. Mail application and money to Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, KY 40601. Attn: Administrative Services Division.

Type of Trial: \_\_\_\_\_ Multi-day with license exemption (\$75)      \_\_\_\_\_ Single Day (\$25)

1. Date of Application \_\_\_\_\_
2. Date(s) field trial to be held \_\_\_\_\_
3. Name of sponsoring organization \_\_\_\_\_
4. Name, address and phone number of club officer who is to receive filed trial permit.  
Name: \_\_\_\_\_ Street Address \_\_\_\_\_  
City: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Phone: \_\_\_\_\_
5. County in which field trial is to be held: \_\_\_\_\_
6. Name and address of landowner on whose land the field trial is to be held:  
Name: \_\_\_\_\_ Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

PLEASE ATTACH LANDOWNER'S WRITTEN PERMISSION

7. Specie(s) of birds and number to be released:

<u>Species</u>	<u>No. of birds to be released</u>
(a) Quail	_____
(b) Pheasant	_____
(c) Chukar	_____
(d) Other (specify)	_____

8. Approval of Conservation Officer or Law Enforcement District Captain.

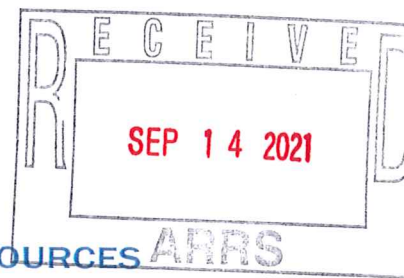
\_\_\_\_\_  
Officer Signature                      Officer Name                      Badge #                      Date

DO NOT WRITE BELOW THIS LINE – FOR OFFICE USE ONLY

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Date application received \_\_\_\_\_                      Approved \_\_\_\_\_  
Date permit issued \_\_\_\_\_                      Date permit mailed \_\_\_\_\_



**TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

**Andy Beshear**  
Governor

#1 Sportsman's Lane  
Frankfort, Kentucky 40601  
Phone (502) 564-3400  
Fax (502) 564-0506

**Mike Berry**  
Secretary

**Rich Storm**  
Commissioner

September 13, 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: ; 301 KAR 2:050. Land Between the Lakes  
hunting requirement; 301 KAR 2:260 Crow hunting season; and 301 KAR 2:230. Shoot-  
to-retrieve field trial permits and procedures.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of  
the issues raised by : 301 KAR 2:050. Land Between the  
Lakes hunting requirement; 301 KAR 2:260 Crow hunting season; and 301 KAR 2:230.  
Shoot-to-retrieve field trial permits and procedures, proposes the attached amendment  
to 301 KAR 2:015; 301 KAR 2:050; 301 KAR 2:060; and 301 KAR 2:230.

Sincerely,

*Beth Frazee*

Beth Frazee, Program Coordinator  
Kentucky Fish and Wildlife Resources  
1 Sportsmen's Lane, Frankfort, KY 40601



**Suggested Amendment**  
**Tourism, Arts and Heritage Cabinet**  
**Department of Fish and Wildlife Resources**

**301 KAR 2:260. Crow hunting season.**

**Page 1**

**STATUTORY AUTHORITY**

**Line 7**

After “KRS”, insert “150.025”.

Delete “150.015”.

**Lines 7-8**

After “150.340,” delete “150.600,150.630”.

**Page 1**

**NECESSITY, FUNCTION, & CONFORMITY**

**Line 9**

After “CONFORMITY:”, insert the following:

KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations establishing requirements for hunting. This administrative regulation establishes seasons and other requirements for the taking of crow.

Delete the remainder of the NECESSITY, FUNCTION, & CONFORMITY paragraph in its entirety.

**Page 2**

**Section 1(4)**

**Line 3**

After “concentrated in”, delete “such”.

After “numbers” insert “that”.

Delete “as to”.

**Page 2**

**Section 2(3)**

**Line 8**

After “crows”, insert “shall”.

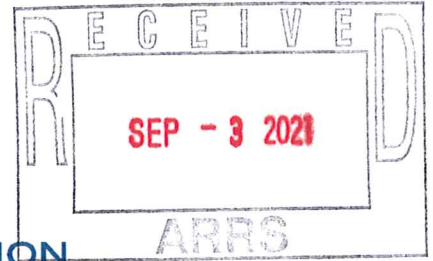
Delete “must”.

**Page 2**

**Section 3(2)**

**Line 13**

After “calls”, insert comma.



## MOTOR VEHICLE COMMISSION

200 Mero St. Floor 3 West  
Frankfort, Kentucky 40622  
Phone: (502) 573-1000  
Fax: (502) 227-8082  
mvc.ky.gov

**Andy Beshear**  
Governor

September 3, 2021

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **605 KAR 1:030** and 035, the Motor Vehicle Commission accepts attached the staff substitutions of 605 KAR 1:030 and 035. The Commission also accepts the proposed staff amendments to the MIR, Form TC-98. Copies of the amended MIR and renewal application MIR are filed as well.

Sincerely,

A handwritten signature in cursive script that reads "Carlos R. Cassady".

Carlos R. Cassady  
Executive Director



An Equal Opportunity Employer M/F/D



**Subcommittee Substitute**

**TRANSPORTATION CABINET  
Motor Vehicle Commission  
(As Amended at ARRS)**

**605 KAR 1:030. Applications.**

RELATES TO: KRS 190.010-190.080

STATUTORY AUTHORITY: KRS 190.020, 190.030, 190.035, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 provides for the issuance of various licenses to engage in the activity of a motor vehicle dealer. **KRS 190.020 requires the commission, under administrative regulations promulgated by it, to issue the licenses provided for by KRS 190.010 to 190.080. KRS 190.073 requires the commission to promulgate appropriate and reasonable administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190.** This administrative regulation allows the Motor Vehicle Commission to provide for an orderly procedure for the submission and content of applications to facilitate processing of applications and the issuance of the license.

Section 1. **Application and Renewal.** [~~Definitions. In this administrative regulation "established place of business" means, in addition to those requirements of KRS 190.010(18), a dealership sales facility which has the following:~~

- ~~(1) A business office which:
  - ~~(a) Is underpinned and on a permanent foundation;~~
  - ~~(b) Has electricity;~~
  - ~~(c) Has a file cabinet used for the storage of business records;~~
  - ~~(d) Has a working business telephone;~~
  - ~~(e) Has a desk and chairs for the use of the business;~~
  - ~~(f) Has at least 100 square feet of floor space;~~
  - ~~(g) Shall be located on or immediately adjacent to the vehicle storage or display lot;~~
  - ~~(h) Is not part of a residence;~~
  - ~~(i) Is used exclusively as a licensee business office; and~~~~
- ~~(2) A vehicle storage or display lot which:
  - ~~(a) Has a hard surface lot (gravel, asphalt, concrete or other suitable covering);~~
  - ~~(b) Is at least 2,000 square feet in size;~~
  - ~~(c) Is used exclusively for the display and showing of vehicles for sale and licensee customer parking;~~
  - ~~(d) Is a distinctively defined area, from that which surrounds it. The dealership business office need not be a separate walled enclosure.]~~~~

~~Section 2.] **(1) An Application for Motor Vehicle Dealer License, form TC 98-1, shall be submitted on behalf of an [the] individual or entity wishing to obtain a license using a name that is not the name of a current licensee. Applicants shall provide additional information in support of the application if requested by the commission or its staff. The application shall not be**~~

considered complete until the additional information is received. [Upon receipt of a completed application, a review of the application will be made, including an appropriate investigation as to the applicant's compliance with the appropriate statutory and regulatory provisions governing the issuance of a license.]

**(2) Renewal of a dealer license shall be submitted by completing a Dealer License Renewal Application available on the commission's website at <https://mvc.ky.gov/Pages/Online-Renewal.aspx>.**

Section 2[3]. The applicant [Applicant] ***shall [will]*** be notified in writing of the acceptance or rejection of the [his] application. If [-and if] the application is rejected, the reason or reasons for rejection shall be specifically stated, and the rejected applicant shall be notified of the [his] right to a hearing before the commission in accordance with the rules and administrative regulations of the commission.[]

Section 4. A motor vehicle dealer, other than a wholesale dealer, shall display on his premises a sign with lettering not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business. The business name on the sign must be the same as that on the license application.

Section 5. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this administrative regulation provided he has suitable space and adequate facilities to conduct the business of a motor vehicle dealer.[]

Section 3[6]. All applicants shall ***[comply with the following]***:

(1) Submit a financial statement;[-]

(2) Submit at least six (6) different photographs of the premises to be occupied by the applicant;[-]

(3) Submit a detailed drawing of the [his] premises in relation to the nearest roadway, ***which shall[-. This drawing is to]*** include ***the*** location and size of ***the*** office ***and the[-]*** display area, and ***the*** location of ***the*** dealership sign;[-]

(4) Furnish a personal data sheet, ***employment history, and photograph for [on]*** each individual owning a portion of the business, ***[and]*** officers of a corporation, ***or members and managers of a limited liability company;[-, including a photograph and an employment history of each such person.]***

(5) ***[Every applicant, partner, [or] corporate officer, and manager or managing member of a limited liability company shall]*** Sign a statement authorizing the Motor Vehicle Commission to make inquiries or investigations concerning ***[that individual's]*** [the applicant's] employment, credit, or criminal records ***of the applicant or any partner, corporate officer, and manager or managing member of a limited liability corporation; and[-]***

(6) ***[The applicant]*** [Applicant] ***[shall]*** Obtain garage liability insurance and file with the commission a certificate of insurance [(form TD 95-99)] in the exact name in which it applies for a license.[]

~~Section 7. Every applicant who conducts an automobile salvage or junk business on the same premises shall be in compliance with all state administrative regulations regarding junkyard operations. Applicant shall have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.~~

~~Section 8. If an applicant operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where the repairs are made shall be allocated for the licensed activity.~~

~~Section 9. Not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business.]~~

Section 4. An Applicant for a new, used, motorcycle, automotive mobility dealer, or motor vehicle leasing dealer license **shall [must]** demonstrate that they possess a minimum of \$50,000 in unencumbered cash or unencumbered inventory.

Section 5. (1) An Applicant for a new, used, motorcycle, automotive mobility dealer, or motor vehicle leasing dealer license who demonstrates that they possess between \$50,000 and \$100,000 of unencumbered cash or unencumbered motor vehicle inventory may be granted a license only if the applicant also obtains a commercial bond, as set forth in KRS 190.030(9), in the amount of the difference between the unencumbered cash and unencumbered motor vehicle inventory and the \$100,000 amount.

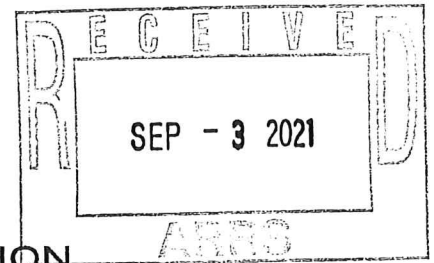
(2) The commission may require a commercial bond, as set forth in KRS 190.030(9), for an applicant with a net worth above the \$100,000 amount if the information submitted by the applicant indicates reasonable cause to doubt the financial responsibility or the applicant's compliance with the provisions of KRS Chapter 190.

Section 6[40]. Every licensee shall obtain a sales tax permit number from the Department of Revenue [Cabinet].

**Section 7. Incorporation by Reference. (1) "Application for Motor Vehicle Dealer License, TC 98-1", 6/2021 edition is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky, 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.**

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email Suzanne.Baskett@ky.gov.



## MOTOR VEHICLE COMMISSION

200 Mero St. Floor 3 West  
Frankfort, Kentucky 40622  
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mvc.ky.gov

**Andy Beshear**  
Governor

September 3, 2021

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 605 KAR 1:030 and 035, the Motor Vehicle Commission accepts attached the staff substitutions of 605 KAR 1:030 and 035. The Commission also accepts the proposed staff amendments to the MIR, Form TC-98. Copies of the amended MIR and renewal application MIR are filed as well.

Sincerely,

A handwritten signature in cursive script that reads "Carlos R. Cassady".

Carlos R. Cassady  
Executive Director



An Equal Opportunity Employer M/F/D

**Subcommittee Substitute**

**TRANSPORTATION CABINET  
Motor Vehicle Commission  
(As Amended at ARRS)**

**605 KAR 1:035, Facilities requirements.**

RELATES TO: KRS 190.010 (19), 190.035

STATUTORY AUTHORITY: KRS 190.020, 190.035, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.035 provides for dealers to have an established place of business with sufficient space and attributes consistent with the activity of the license applied for as established by regulations issued by the commission. **KRS 190.073 requires the commission to promulgate appropriate and reasonable administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190.** This administrative regulation establishes those requirements and standards.

Section 1. In addition to **the [those]** requirements of KRS 190.010(19), the established place of business of a dealership shall **[have the following]**:

- (1) **Have** a business office which:
  - (a) Is underpinned and on a permanent foundation. The dealership business office need not be a separate walled enclosure;
  - (b) Has electricity;
  - (c) Has adequate facilities for the physical or electronic storage of business records;
  - (d) Has a working business telephone used exclusively for the sale of motor vehicles;
  - (e) Has a desk and chairs for the use of the business;
  - (f) Has at least 100 square feet of floor space;
  - (g) **Is [Shall be]** located on or immediately adjacent to the vehicle storage or display lot;
  - (h) Is not part of a residence;
  - (i) Is used exclusively as a licensee business office and has a separate postal street address.
- (2) **Have** a vehicle storage or display lot which:
  - (a) Has a hard surface lot (gravel, asphalt, concrete, or other suitable covering);
  - (b) Is at least 2,000 square feet in size;
  - (c) Is used exclusively for the display and showing of vehicles for sale and licensee customer parking; and
  - (d) Is a distinctively defined area from that which surrounds it.

Section 2. A location otherwise meeting the requirements of this administrative regulation may be used by more than one **(1)** business or licensee, provided that each licensee **[he]** has sufficient rights to suitable space and adequate facilities to conduct the separate business of a motor vehicle dealer. Notwithstanding the provisions of this section, not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business if the licensee **shares [must share]** any of the facilities listed in Section 1 with another licensee or business in order to meet the minimum facility requirements.

Section 3. A motor vehicle dealer, other than a wholesale dealer, shall display on his premises a sign with lettering not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business. The business name on the sign ***shall [must]*** be the same as that on the license application.

Section 4. Every licensee who conducts an automobile salvage or junk business on the same premises shall be in compliance with all state administrative regulations regarding junkyard operations. The licensee shall have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

Section 5. If a licensee operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where the repairs are made shall be allocated for the licensed activity.

Section 6. The requirements in this administrative regulation shall not apply to a non-profit motor vehicle dealer.

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).



## MOTOR VEHICLE COMMISSION

200 Mero St. Floor 3 West  
Frankfort, Kentucky 40622  
Phone: (502) 573-1000  
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mvc.ky.gov



**Andy Beshear**  
Governor

August 30, 2021

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **605 KAR 1:215**, the Motor Vehicle Commission proposes the attached suggested amendments to 605 KAR 1:215.

Sincerely,

  
Carlos R. Cassady  
Executive Director



An Equal Opportunity Employer M/F/D

**SUGGESTED SUBSTITUTE – ORDINARY ONLY**

**TRANSPORTATION CABINET  
Motor Vehicle Commission**

**605 KAR 1:215. Licensing fees.**

RELATES TO: KRS 190.030

STATUTORY AUTHORITY: KRS 190.030, 190.073

NECESSITY, FUNCTION AND CONFORMITY: KRS 190.030(6)(a) requires the Motor Vehicle Commission to promulgate administrative regulations in accordance with KRS Chapter 13A to establish fees for licenses issued by the Motor Vehicle Commission. This administrative regulation establishes the fees associated with acquiring and renewing licenses.

Section 1. Licensing Fees. The license fee for a calendar year, or part thereof, shall be as follows:

- (1) For new motor vehicle dealers, \$200 for each office or branch or agent thereof, plus \$200 for a supplemental license for each used car lot not immediately adjacent to the office or to a branch;
- (2) For used motor vehicle dealers, \$200 for each office or branch or agent thereof;
- (3) For motor vehicle leasing dealers, \$200 for each office or branch or agent thereof;
- (4) For restricted motor vehicle dealers, \$200 for each office or branch or agent thereof;
- (5) For motorcycle dealers, \$200 for each office, branch, or agent thereof;
- (6) For motor vehicle manufacturers, \$200; and for each factory branch in this state, \$200;
- (7) For distributors, motor vehicle auction dealers or wholesalers, \$200;
- (8) For motor vehicle or recreational vehicle salespersons, forty dollars (\$40), to be paid by the licensed dealer for every salesperson the dealer employs;
- (9) For factory representatives, or distributor branch representatives, \$200;
- (10) For automotive mobility dealers, \$200;
- (11) For nonprofit motor vehicle dealers, \$200;
- (12) For nonprofit motor vehicle dealer salespersons, a license fee shall not be imposed;
- (13) For recreational vehicle manufacturers or distributors, \$200; and
- (14) For new recreational vehicle dealers, \$200.

Section 2. Renewal and Renewal Fees. (1) Pursuant to KRS 190.030(5) all licenses expire December 31 of the calendar year for which they are granted. Licenses in good standing and ***that do not have[which have no]*** outstanding fines or charges owed to the commission may be renewed by the licensee for the next calendar year. ***Renewal shall be*** by submitting a ***Dealer License Renewal Application, as established in 605 KAR 1:030.[renewal application]*** and the appropriate fee to the Motor Vehicle Commission prior to December 31. Licenses that have outstanding fines or charges owed to the commission, have been revoked, suspended, or are not in good standing ***shall[may]*** not be renewed.



(2) The fee for a license renewal shall be the fee **established[set forth]** in Section 1 for the applicable license type being renewed.

(3) A license **shall[may]** not be renewed for a new calendar year if events **established in[described]** KRS 190.030(7)(a) (change of location) or 605 KAR 1:070 (change of ownership) have occurred **that[which]** have not been approved by the commission. In such case, the licensee **shall[must]** submit a new **Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030[application]** reflecting the changes in order to obtain a license for the new calendar year.

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email Suzanne.Baskett@ky.gov.

Andy Beshear  
Governor

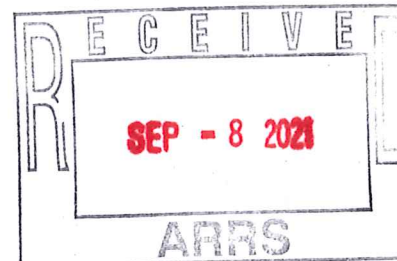


Lt. Gov. Jacqueline Coleman  
Secretary  
Education and Workforce  
Development Cabinet

Jason E. Glass, Ed.D.  
Commissioner and Chief Learner

**KENTUCKY DEPARTMENT OF EDUCATION**

300 Sower Boulevard • Frankfort, Kentucky 40601  
Phone: (502) 564-3141 • [www.education.ky.gov](http://www.education.ky.gov)



September 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: 707 KAR 1:340. Procedural Safeguards and state complaint procedures.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 707 KAR 1:340, the Kentucky Board of Education proposes the attached amendment to 707 KAR 1:340.

Sincerely,

A handwritten signature in cursive script that reads "Todd G. Allen".

Todd G. Allen  
General Counsel

attachment

**REVISED:**

**9/2/2021 11:51 AM**

**Suggested Amendment  
Education and Workforce Development Cabinet  
Kentucky Board of Education  
Kentucky Department of Education**

**707 KAR 1:340. Procedural safeguards and state complaint procedures.**

**Page 1**

**RELATES TO**

**Line 8**

After "1400-1419", insert "42 U.S.C. 11431".

**Page 1**

**STATUTORY AUTHORITY**

**Line 9**

After "KRS", insert "156.035".

After "167.015", insert the following:

, 34 C.F.R. 300.100, 20 U.S.C. 1407, 1412

**Page 1**

**NECESSITY, FUNCTION, & CONFORMITY**

**Line 12**

After "Education to", insert "promulgate".

Delete "adopt rules and".

**Page 3**

**Section 2(3)(b)**

**Line 10**

After "LEA criteria", insert period.

Delete semicolon.

**Page 3**

**Section 2(4)**

**Line 13**

After "from a parent", insert period.

Delete "; and".

**Page 4**

**Section 3(1)**

**Line 11**

After "days before an", delete the parentheses around "ARC".

**Page 4**

**Section 3(3)(c)**

**Line 19**

After “disability, insert comma.

**Page 6**

**Section 5(1)**

**Lines 9-10**

After “safeguards notice” insert comma.

Delete parenthesis.

After “including”, delete comma.

After “rights”, insert comma.

Delete parenthesis.

**Page 7**

**Section 6(5)**

**Line 22**

After “provide”, insert “these”.

Delete “such”.

**Page 8**

**Section 6(7)(a)**

**Line 5**

After “to obtain”, insert “this”.

Delete “such”.

**Line 6**

After “of this section”, delete “of this administrative regulation”.

**Page 11**

**Section 8(3)(a)**

**Line 23**

After “or IDEA”, delete “administrative”.

**Page 12**

**Section 8(6)**

**Line 16**

After “of this section”, delete “only”.

After first occurrence of “if”, insert “: (a)”.

Capitalize “exceptional”.

After “exist”, insert the following:

as established in accordance with 34 C.F.R. 300.152(b)(1);

After “or”, insert “(b)”.

Delete “if”.

Capitalize “the”.

**Page 18**

**Section 14(1)**

**Line 12**

After “consider any”, insert “relevant”.

**Lines 12-13**

After “circumstances”, delete “on a case-by-case basis”.

**Page 21**

**Section 15(4)(a)2.**

**Line 4**

After “intervention plan,” delete parenthesis.

After “developed”, insert comma.

Delete parenthesis.

**Page 22**

**Section 16(4)**

**Line 18**

After “(4)”, insert “If”.

Delete “When”.

**Page 23**

**Section 17(1)(a)**

**Line 5**

After “concern in writing”, insert comma.

Delete parenthesis.

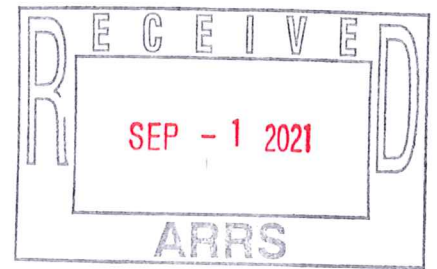
**Line 6**

After “express it in writing”, insert comma.

Delete parenthesis.



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



**Andy Beshear**  
Governor

**Robert Walker**  
Interim Commissioner  
500 Mero Street, 3rd Floor  
Frankfort, KY 40601  
Telephone: (502) 564-5550

**Jamie Link**  
Secretary

**Jacqueline Coleman**  
Lieutenant Governor

**Vickie L. Wise**  
Deputy Secretary

September 1, 2021

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **803 KAR 25:165**, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:165.

Sincerely,

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

**SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION**

Final Version: 8/25/2021 3:52 PM

**LABOR CABINET  
Department of Workers' Claims**

803 KAR 25:165. Electronic Data Interchange vendor approval.

RELATES TO: KRS 342.0011(1), (6), (7), (22), (26), 342.038, 342.039, 342.260, 342.340

STATUTORY AUTHORITY: KRS 342.038, 342.039, 342.260, 342.340

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department. KRS 342.038 requires an employer to keep a record of all injuries received by the employer's employees and to report to the department any injury causing the employee's absence from more than one day of work. KRS 342.039 requires insurance carriers, each self-insured group, and each employer authorized to carry its own risk to file detailed claim information with the department. KRS 342.340 requires information to be filed when a workers' compensation policy is issued, modified, cancelled, lapsed, or terminated. ~~[The department requires approved vendors to communicate the required data.]~~ This administrative regulation establishes the procedure to become an approved Electronic Data Interchange vendor.

Section 1. Definitions.

**(1) "Applicant" means a vendor seeking to become an approved vendor.**

~~(2)[(1)]~~ "Approved vendor" means a vendor approved and certified by the commissioner of the Department of Workers' Claims in accordance with this administrative regulation.

~~(3)[(2)]~~ "Electronic Data Interchange" or "EDI" means the electronic transmission of data to and from the Department of Workers' Claims by use of EDI Claims Release, 3.0 version, and Proof of Coverage Release, 2.1 version, of the International Association of Industrial Accident Boards and Commissions.

~~(4)[(3)]~~ "Vendor" means an entity that **formats electronic data for transmission to the Department of Workers' Claims, transmits electronic data to the Department of Workers' Claims, and responds to any technical issues related to the content or structure of an electronic data interchange file.** ~~[transcribes information into an electronic format, accepts data transmissions, and sorts the resulting data for delivery to and from the Department of Workers' Claims.]~~

Section 2. Application and Qualifications.

(1) An application for approval as an EDI vendor shall be submitted to the commissioner on Form EDIVEN-01, EDI Vendor Application.

(2) An applicant shall ~~shall~~ **meet all of the following qualifications**:

(a) ~~[The applicant shall]~~ Submit EDI transactions from trading partners and claim administrators to the Department of Workers' Claims using only EDI Claims Release, 3.0 version, and Proof of Coverage Release, 2.1 version, of the International Association of

Industrial Accident Boards and Commissions (~~["IAIABC"]~~). Kentucky-specific edits for EDI may be found at <http://www.labor.ky.gov/workersclaims/Pages/EDI.aspx>;

(b) ~~[The applicant shall]~~ Be capable of transmitting and receiving data through secure file transfer protocol (~~["SFTP"]~~);

(c) ~~[The applicant shall]~~ Be able to send and receive data on a daily basis;

(d) ~~[The applicant shall]~~ Provide and identify a contact person capable of providing quick resolution of issues that arise during attempted data delivery. The contact information shall include the contact's name, phone number, email address, and physical address;

(f) ~~[The applicant shall]~~ Submit a list of all insurance carriers for which it will be delivering and receiving data. The list shall include the name of the insurance carrier, the insurance carrier's federal employer identification number, the name of a contact person for the insurance carrier, **and** that person's email, phone number, and mailing address;

(g) ~~[The applicant shall]~~ Submit data for no less than **eight (8)**~~[ten (10)]~~ insurance carriers;

(h) ~~[The applicant shall]~~ Be and remain a member of the IAIABC; **and**;

(i) ~~[The applicant shall]~~ Comply with the provisions of KRS Chapter 342 and **803 KAR Chapter 25**~~[the administrative regulations promulgated by the commissioner of the Department of Workers' Claims]~~.

### Section 3. Application Process.

(1) Upon notification that the application has been accepted, the applicant shall contact the Data Management Branch of the Division of Information Technology and Support Services of the Kentucky Labor Cabinet to schedule two (2) test data transmissions.

(2) If both transmissions are successfully completed, trading partner information from the vendor **shall/will** be added to the database of the Department of Workers' Claims. The vendor may begin submission of data once notified that it has been certified as an approved EDI vendor by the Department of Workers' Claims.

### Section 4. Certification.

(1) A person or entity shall not act as or hold itself out as an approved EDI vendor unless that person or entity has been approved by the commissioner of the Department of Workers' Claims in accordance with this administrative regulation.

(2) Certification that a vendor has been approved by the commissioner shall remain in effect until revoked by the commissioner pursuant to Section 5 of this administrative regulation or voluntarily surrendered. A vendor that voluntarily surrenders its certificate shall notify the commissioner in writing.

(3) ~~if/When~~ a vendor desires to deliver and receive data for an insurance carrier not previously reported to the department, an email shall be sent to the department seeking approval to deliver and send data for the new insurance carrier.

**(a)** The email shall contain the name and FEIN of the new insurance carrier.

**(b)** Attached to the email shall be an updated carrier list that includes that new insurance carrier.

**(c)** Upon **confirming with the Department of Insurance that the new insurance carrier is authorized to transact the business of workers' compensation in Kentucky, the**



**Department of Workers' Claims shall send an email to the vendor**~~[receipt of an email confirmation from the Department of Workers' Claims]~~ approving the transmittal of data for the new insurance carrier, **and** the vendor may begin transmitting data for the new carrier.

Section 5. Revocation of Certification. The commissioner may revoke a vendor's certification as an approved EDI vendor **if the vendor**~~[when one or more of the following occur]:~~

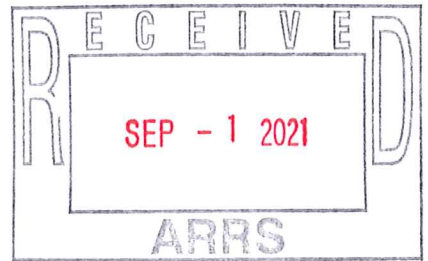
- (1) ~~[The vendor]~~Resigns or is removed from membership in the IAIABC;
- (2) ~~[The vendor]~~Is unable to be contacted for resolution of transmission issues;
- (3) ~~[The vendor]~~**Does not actively take steps to assist in the resolution of EDI related issues** ~~[is unable to resolve transmission issues within ten (10) days of discovery];~~ **or**
- (4) ~~[The vendor]~~No longer meets the requirements contained in **Section**~~[subsection]~~ 2(2) of this administrative regulation.

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

(a) "Electronic Data Interchange Vendor Application", EDIVEN-1, **August 10** ~~[March 1]~~, 2021 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building, 3<sup>rd</sup> Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and may also be found at <https://labor.ky.gov/comp/Forms/Pages/default.aspx>.

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



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

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

**Robert Walker**  
Interim Commissioner  
500 Mero Street, 3rd Floor  
Frankfort, KY 40601  
Telephone: (502) 564-5550

**Jamie Link**  
Secretary

**Vickie L. Wise**  
Deputy Secretary

September 1, 2021

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 25:170, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:170.

Sincerely,

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

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

**803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.**

RELATES TO: KRS 342.038, 342.039

STATUTORY AUTHORITY: KRS 342.039

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.039 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations by which each insurance company writing workers' compensation policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC). This administrative regulation establishes the requirements for filing claims information with the Department [~~Office~~] of Workers' Claims.

Section 1. Definitions. (1) "Carrier" is defined **by/in** KRS 342.0011(6).[

~~(2) "Data collection agent" means a business or entity that keys information in an electronic format and transmits the resulting data to a value added network used by the Office of Workers' Claims.]~~

~~(2)[(3)] "Commissioner" [~~"Executive director"~~] is defined **by/in** KRS 342.0011(9).~~

~~(3) "Vendor" means an entity that transcribes information into an electronic format, accepts electronic data transmissions, and sorts the resulting data for delivery to and from the Department of Workers' Claims.]~~

~~(4) "Value added network" means a business or entity that accepts electronic data transmissions and sorts the transmissions for delivery to various addressees.]~~

Section 2. Reporting Requirements. (1) Each carrier shall file the information required on the Form IA-1 through [~~with~~] a vendor approved [~~data collection agent or a value added network designated~~] by the Department [~~Office~~] of Workers' Claims, in electronic format, according to the time periods **established**[~~prescribed~~] by KRS 342.038.

(2) Each carrier shall file the information required on the Form IA-2 through [~~with~~] a vendor approved [~~data collection agent or a value added network designated~~] by the Department [~~Office~~] of Workers' Claims, in electronic format:

(a) As soon as practicable and not later than one (1) week from the date payments to an employee are commenced, terminated, changed, or resumed; and

(b) Every sixty (60) days during temporary total disability.

Section 3. Vendors. The Department of Workers' Claims shall maintain a directory of **approved**[~~approved~~] vendors **approved as established in 803 KAR 25:165**. The directory may be accessed at <https://labor.ky.gov/Documents/VendorList%20Info.pdf>. [~~Data Collection Agents. (1) If a carri-~~

~~er is unable to transmit the information required under this Office of Workers' Claims using its own facilities and resources, it shall employ a data collection agent capable of transmitting the information to a value added network utilized by the Office of Workers' Claims.~~

~~(2) The Office of Workers' Claims shall maintain a directory of authorized data collection agents and value added networks. The directory may be accessed at <http://labor.ky.gov/dwc/getstart.htm>.]~~

Section 4. Acknowledgements. An acknowledgement of an accepted filing made pursuant to this administrative regulation, or a request by the Department [Office] of Workers' Claims for re-submission of a report due to incomplete or incorrect information, shall be made in electronic format through the same vendor [data collection agent or value added network] used for the filing.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form IA-1", [October 10, 1995 edition]; and

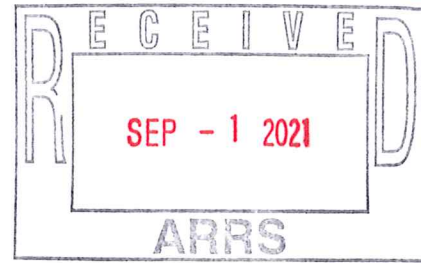
(b) "Form IA-2", [October 10, 1995 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [Office] of Workers' Claims, Mayo-Underwood Building, 3<sup>rd</sup> Floor, 500 Mero Street, [Prevention Park, 657 Chamberlain Avenue], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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



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



**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

**Robert Walker**  
Interim Commissioner  
500 Mero Street, 3rd Floor  
Frankfort, KY 40601  
Telephone: (502) 564-5550

**Jamie Link**  
Secretary

**Vickie L. Wise**  
Deputy Secretary

September 1, 2021

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 25:175, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:175.

Sincerely,

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

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

**803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.**

RELATES TO: KRS 342.0011(22), 342.340(2)

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.340 requires an insurance carrier to file proof of workers' compensation insurance coverage for an employer and notice of policy change or termination ~~in a format [on a form]~~ **established**~~[prescribed]~~ by the commissioner ~~[executive director]~~. KRS 342.260(1) requires the commissioner ~~[executive director]~~ to promulgate administrative regulations necessary to carry on the work of the department ~~[office]~~. This administrative regulation establishes the requirements for filing proof of coverage and policy change or termination of coverage.

Section 1. Definition. "Insurance carrier" is defined ~~by~~**in** KRS 342.0011(22).

Section 2. Reporting Requirements. (1) Each insurance carrier shall file the information required on the Form POC-1 for each new policy or a change or termination of a policy.

(2) The ~~information required on the [completed]~~ Form POC-1 shall be filed electronically **with the Department of Workers' Claims by a [an approved] vendor approved pursuant to 803 KAR 25:165 [with the Department] [Office] [of Workers' Claims].**

(3) ~~An electronic transmission of data shall have:~~

- ~~(a) Demonstrated its reliability in tests rendered by the office; and~~
- ~~(b) Received the approval of the executive director.~~

Section 3. (1) The Department ~~[Office]~~ of Workers' Claims shall acknowledge a filing in an electronic format with either an acceptance or rejection through the vendor used for filing ~~[to the carrier or its agent]~~.

(2) A report that is incomplete or provides incorrect information shall be rejected and not be considered in compliance with KRS 342.340(2) until the information is completed or corrected and refiled with the department ~~[Office of Workers' Claims]~~.

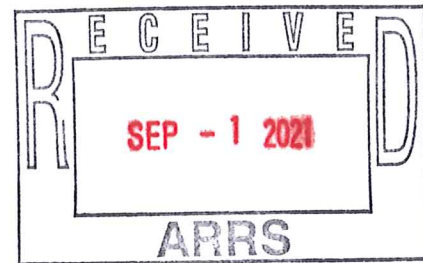
Section 4. Incorporation by Reference. (1) "Form POC-1", December 1996 Edition, Department ~~[Office]~~ of Workers' Claims, is incorporated by reference.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department ~~[Office]~~ of Workers' Claims, Mayo-Underwood Building, 3<sup>rd</sup> Floor, 500 Mero Street, ~~[Prevention Park, 657 Chamberlin Avenue,]~~ Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.

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, Dale.Hamblin@ky.gov



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



**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

**Robert Walker**  
Interim Commissioner  
500 Mero Street, 3rd Floor  
Frankfort, KY 40601  
Telephone: (502) 564-5550

**Jamie Link**  
Secretary

**Vickie L. Wise**  
Deputy Secretary

September 1, 2021

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 25:185, the Department of Workers' Claims proposes the attached suggested amendment to **803 KAR 25:185**.

Sincerely,

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



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

**803 KAR 25:185. Procedure for e-mail notification of cancellation or removal of location of specific workers' compensation coverage.**

RELATES TO: KRS 342.0011(9), (16), 342.260, 342.340

STATUTORY AUTHORITY: KRS 342.260(2), 342.340

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(2) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations ***to establish***~~*on or before December 31, 2015, establishing*~~ information necessary to be received to create an e-mail notification system for a person to enter his or her e-mail address into the Insurance Coverage Look-up database and be notified of any cancellation of a specific business' workers' compensation coverage. This administrative regulation establishes procedures and standards for email notification of cancellation of specific business workers' compensation coverage to persons registered with the Department of Workers' Claims Insurance Coverage Look-up database.

Section 1. Definitions. (1) "Cancellation of coverage" means coverage lapse notice or an employer location has been removed from the policy.

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

(3) "Insurance Coverage Look-up database" means a location in Department of Workers' Claims (DWC) Litigation Management System (LMS) Web site that links a subscriber to the DWC Insurance Coverage database.

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

(5) "Person" is defined by KRS 342.0011(16).

(6) "Workers' compensation coverage" means the insurance required by KRS 342.340(1)(a).

Section 2. Subscription Requirements. (1) Any person who wishes to receive electronic mail notification of cancellation of a specific business' workers' compensation coverage shall subscribe with the Department of Workers' Claims ~~through~~ ~~[at]~~ its ***Web site***~~*website*~~ ~~[Web site]~~ at <https://kyworkersclaims.lms.ky.gov/CoverageLookup>. ~~[www.labor.ky.gov/workersclaims by using the specific link to the LMS.]~~

(a) The subscriber shall provide through the link the name and address of each business whose policy is to be monitored.

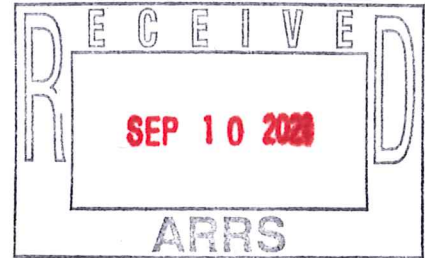
(b) The subscriber shall provide through the link the e-mail address to which notices of cancellation of coverage are to be sent.

(2)(a) The term for a specific subscriber shall be for a period of one (1) year from the date of subscription.

(b) There shall not be a limit as to how many times subsequent consecutive subscriptions may occur.

Section 3. Notification by the Commissioner. Upon notification from the insurance carrier that the specific policy selected has been cancelled or that the selected location has been removed from the policy, the commissioner shall notify the subscriber by e-mail to the registered e-mail address within five (5) days of the receipt of a notification of cancellation or removal by the Department of Workers' Claims.

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



**PUBLIC PROTECTION CABINET**

**Department of Insurance**

P.O. Box 517  
Frankfort, Kentucky 40602-0517  
1-800-595-6053  
<http://insurance.ky.gov>

**Andy Beshear**  
Governor

**Ray A. Perry**  
Deputy Secretary

**Kerry B. Harvey**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 4:010. Fees of the Department of Insurance.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 4:010, the Department of Insurance proposes the attached agency amendments to 806 KAR 4:010.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final 8-30-2021

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PUBLIC PROTECTION CABINET  
Department of Insurance

806 KAR 4:010. Fees of the Department [Office] of Insurance.

RELATES TO: KRS 18A.225, 61.874, 304.2-110, 304.2-150, 304.3-150, 304.4-010, 304.9-053, 304.9-105, 304.9-130, 304.9-140, 304.9-150, 304.9-160, 304.9-200, 304.9-260, 304.9-270, 304.9-280, 304.9-295, 304.9-300, 304.9-320, 304.9-430, 304.9-432[304.9-485], 304.9-505, 304.9-780, 304.10-120, 304.11-020, 304.15-700, 304.15-720, 304.17A-300, 304.19-080, 304.29-231, 304.32-120, 304.32-270, 304.38-040, 304.38-060, 304.38-200, 304.38A-070, 304.45-140, 304.49-150.

STATUTORY AUTHORITY: KRS 61.874(4), 304.2-110(1), 304.4-010(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [Executive Director] of Insurance to promulgate reasonable 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 304.4-010(1) requires the Commissioner [Executive Director] of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. KRS 61.874(4) authorizes an agency to charge fees based on costs for public records used for commercial purposes. This administrative regulation establishes[shall prescribe] [prescribes] [these] services for which the Department [Office] of Insurance shall [will] charge fees and the amounts of those fees.

Section 1. The commissioner shall collect [in advance] fees as follows:

- (1) Annual statement.
  - (a) Filing each year, \$100.
  - (b) Filing additional or supplemental statement in the same year, \$100.
- (2) Filing charter documents.
  - (a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, \$100.
  - (b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, fifty (50) dollars.
- (3) Certificate of authority.
  - (a) Issuance of original certificate, \$500.
  - (b) Amending, to add a line, fifty (50) dollars.
  - (c) Renewal, each year, \$100.
- (4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of [such] permit, \$200.
- (5) Self insurer.
  - (a) Application to become self insurer under KRS Chapter 304 Subtitle 39, \$200.
  - (b) Notification of self-insurance program under KRS Chapter 304 Subtitle 32, fifty (50) dollars.
- (6) Agent license, line of authority, license renewal, appointment, appointment renewal, and late renewal penalty. Each individual agent and each business entity agent.
  - (a) License and line of authority:
    1. Resident individual license, forty (40) dollars and an additional forty (40) dollars for each line of authority;
    2. Nonresident individual license, fifty (50) dollars and an additional fifty (50) dollars for each line of authority;

3. Resident business entity license, \$100 and an additional \$100 for each line of authority;  
and

4. Nonresident business entity license, \$120 and an additional \$120 for each line of authority.  
(b) Temporary license as agent, twenty (20) dollars.

(c) License renewal, biennial:

1. Resident individual license renewal:

a. [(a)] If no active appointment, forty (40) dollars; and

b. [(b)] If one (1) or more active appointments, zero dollars;

2. Nonresident individual license renewal:

a. [(a)] If no active appointment, fifty (50) dollars; and

b. [(b)] If one (1) or more active appointments, zero dollars;

3. Resident business entity license renewal:

a. If no active appointment, \$100; and

b. If one (1) or more active appointments, zero dollars; and

4. Nonresident business entity license renewal:

a. If no active appointment, \$120; and

b. If one (1) or more active appointments, zero dollars.

(d) Appointment, per foreign or alien insurer represented:

1. Resident individual appointment, for each form filed:

a. Property, casualty, and personal lines of authority of agent, forty (40) dollars;

b. Life, health, and variable life and variable annuity lines of authority, forty (40) dollars; and

c. All other lines of authority of agent, forty (40) dollars each;

2. Nonresident individual appointment, for each form filed:

a. Property, casualty, and personal lines of authority of agent, fifty (50) dollars;

b. Life, health, and variable life and variable annuity lines of authority, fifty (50) dollars; and

c. All other lines of authority of agent, fifty (50) dollars each;

3. Resident business entity appointment, for each form filed:

a. Property, casualty, and personal lines of authority of agent, \$100;

b. Life, health, and variable life and variable annuity lines of authority, \$100; and

c. All other lines of authority of agent, \$100 each; and

4. Nonresident business entity appointment, for each form filed:

a. Property, casualty, and personal lines of authority of agent, \$120;

b. Life, health, and variable life and variable annuity lines of authority, \$120; and

c. All other lines of authority of agent, \$120 each.

(e) Appointment renewal, biennial, per foreign or alien insurer:

1. Resident individual appointment renewal, forty (40) dollars;

2. Nonresident individual appointment renewal, fifty (50) dollars;

3. Resident business entity appointment renewal, \$100; and

4. Nonresident business entity appointment renewal, \$120.

(f) Appointment and biennial appointment renewal, per fraternal benefit society, KRS Chapter 304 Subtitle 32 corporation, health maintenance organization, or limited health service organization represented:

1. Resident individual, forty (40) dollars;

2. Nonresident individual, fifty (50) dollars;

3. Resident business entity, \$100; and

4. Nonresident business entity, \$120.

(g) Late penalty for license renewal and appointment renewal:

1. Resident individual, forty (40) dollars;

2. Nonresident individual, fifty (50) dollars;

3. Resident business entity, \$100; and

4. Nonresident business entity, \$120.

(7) (a) Pharmacy benefit manager license, or annual license renewal, \$1,000; and  
(b) Late renewal penalty \$500.

(8) Portable Electronics Insurance Retailer License:

(a) One (1) to twenty (20) locations in Kentucky, \$100 per location; and

(b) Twenty-one (21) or more locations in Kentucky, \$2,500 dollars total.

(9) Surplus lines broker, consultant, reinsurance intermediary, or managing general agent license, biennial license renewal, or late renewal penalty, \$100 each.

(10) (a) Adjuster license, biennial license renewal, or late renewal penalty, fifty (50) dollars each.

(b) Temporary license as apprentice adjuster, twenty-five (25) dollars.

(11) Administrator's license, biennial license renewal, or late renewal penalty, fifty (50) dollars each.

(12) (a) Individual life settlement broker license, biennial license renewal, or late renewal penalty, \$250 each.

(b) Business entity life settlement broker license, biennial license renewal, or late renewal penalty, \$750 each.

(13) (a) Individual life settlement provider license, biennial license renewal, or late renewal penalty, \$500 each.

(b) Business entity life settlement provider license, biennial license renewal, or late renewal penalty, \$1,500 each.

(14) Approval of preclicensing training course, fifty (50) dollars; biennial renewal, fifty (50) dollars.

(15) Approval of instructors, five (5) dollars per instructor; biennial renewal, five (5) dollars per instructor.

(16) Filing agent continuing education course for:

(a) Approval, five (5) dollars per hour of continuing education credit in addition to initial fee of ten (10) dollars remitted with filing; and

(b) Biennial renewal, five (5) dollars per hour of continuing education credit; minimum of ten (10) dollars.

(17) Examination for agents, life settlement brokers, adjusters, and consultants, fifty (50) dollars for each examination.

(18) Annual registration fee of unauthorized insurer under KRS 304.11-020(2), \$500.

(19) (a) Rental vehicle insurance license, biennial license renewal, and late license renewal penalty:

1. Rental vehicle agent, \$100 each; and

2. Rental vehicle managing employee, individual, forty (40) dollars each.

(b) Rental vehicle agent and managing employee appointment, biennial appointment renewal, and late appointment renewal penalty, per insurer represented:

1. Resident individual, forty (40) dollars each;

2. Nonresident individual, fifty (50) dollars each;

3. Resident business entity, \$100 each; and

4. Nonresident business entity, \$120 each.

(c) Rental vehicle location registration or biennial location registration renewal, fifty (50) dollars per location.

~~(18) (a) Specialty credit insurance license, biennial license renewal, and late license renewal penalty:~~

~~1. Specialty credit producer, \$750; and~~

~~2. Specialty credit managing employee, forty (40) dollars each.~~

~~(b) Specialty credit producer and managing employee appointment, biennial appointment renewal, and late appointment renewal penalty, per insurer represented:~~

~~1. Resident individual, forty (40) dollars each;~~

2. Nonresident individual, fifty (50) dollars each;

3. Resident business entity, \$100 each; and

4. Nonresident business entity, \$120 each.

(e) ~~Specialty credit location registration or biennial location registration renewal, \$250 per location.~~

(20[49]) Registration fee of industrial insureds, government entity insureds, and exempt commercial policyholders under KRS Chapter 304 Subtitle 11, \$100.

(21[20]) Advisory organizations, statistical agents, and form providers.

(a) Application for license, \$500.

(b) Annual renewal, \$100.

(22[24]) Rate and form filings.

(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner ~~[executive director]~~, \$100.

(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, \$100.

(c) Other rate and form filings, five (5) dollars per rate and form.

(23[22]) Insurance premium finance companies.

(a) Application for license, \$500.

(b) Annual renewal, \$100.

(24[23]) Cost of administering KRS Chapter 304 Subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.

(25[24]) Computer printouts of lists, computer printouts of mailing labels, and electronic or digital media:

(a) Agents with lines of authority for:

1. Property, casualty, and personal lines, for computer print-outs of lists or mailing labels, \$300, for electronic or digital media, \$265;

2. Life, health, and variable life and variable annuity for computer print-outs of lists or mailing labels, \$300, for electronic or digital media, \$265;

3. All other lines, \$100;

4. Listing for each ZIP code, fifty (50) dollars; and

5. Appointments (activity) of a specific agent, five (5) dollars.

(b) Adjusters, consultants, managing general agents, surplus lines brokers, reinsurance intermediaries, rental vehicle agents and managing employees, ~~[specialty credit producers and managing employees,]~~ life ~~[viatical]~~ settlement brokers, life ~~[viatical]~~ settlement providers, and administrators, ninety (90) dollars per license classification.

(c) Insurer directories:

1. All authorized insurers, ninety (90) dollars;

2. Insurers by line of insurance, ninety (90) dollars; and

3. Appointments (activity) by a specific insurer, fifty (50) dollars.

(d) Business entity license for agent, adjuster, administrator, managing general agent, reinsurance intermediary, rental vehicle agent, ~~[specialty credit producer]~~, life ~~[viatical]~~ settlement broker, and life ~~[viatical]~~ settlement provider, per license classification:

1. Business entity directory, ninety (90) dollars;

2. Business entities by line of authority, ninety (90) dollars; and

3. Appointments (activity) of a specific business entity, ten (10) dollars.

(e) Other special requests, printouts, or electronic or digital media not specified in this section, if the request is approved by the commissioner ~~[executive director]~~, the commissioner ~~[executive director]~~ shall establish the cost for the request in accordance with KRS 61.874(4)(c).

(26[25]) Provider agreement filing, twenty-five (25) dollars.

(27[26]) Subcontract agreement filing, twenty-five (25) dollars.

(28[27]) Risk-sharing arrangement filing, fifty (50) dollars.

(29[28]) Miscellaneous services.

(a) Filing other documents, each, five (5) dollars per document.

(b) Commissioner's [~~Executive Director's~~] certificate under seal, other than certificates, licenses, and other documents provided for in this section, each, five (5) dollars.

(c) For copies of any document on file with the commissioner [~~executive director~~], per page, thirty (30) cents.

(d) Copy of annual statements, per page, one (1) dollar.

Section 2. The biennial appointment renewal fees for agents, including managing general agent, rental vehicle agent, and rental vehicle managing employee, [~~specialty credit producer, and specialty credit managing employee~~], shall be payable as follows:

(1) Life insurers and health insurers, including health maintenance organizations, limited health service organizations, and KRS Chapter 304 Subtitle 32 corporations, shall renew their appointments on or before March 31 in odd numbered years and biennially thereafter; fraternal benefit societies shall renew their appointments on or before March 31, 2005, and biennially thereafter.

(2) All other insurers shall renew their appointments on or before March 31 in even numbered years and biennially thereafter.

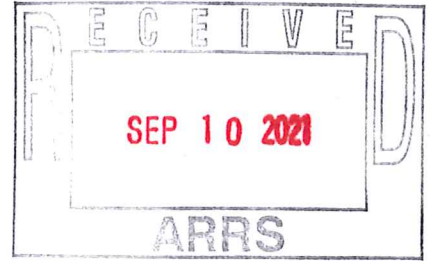
(3) Original license and appointment fees shall be the amount stated and not prorated.

(4) Fee for duplicate request of appointment or renewal of appointment may be found as[deemed] earned if[when] the appointment or renewal is confirmed.

Section 3. If a statute or administrative regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as established[specified] in this administrative regulation.

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





**Andy Beshear**  
Governor

**Ray A. Perry**  
Deputy Secretary

**PUBLIC PROTECTION CABINET**

**Department of Insurance**  
P.O. Box 517  
Frankfort, Kentucky 40602-0517  
1-800-595-6053  
<http://insurance.ky.gov>

**Kerry B. Harvey**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 9:025. Licensing Process.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 9:025, the Department of Insurance proposes the attached agency amendments to 806 KAR 9:025.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final 9-3-2021

**SUGGESTED SUBSTITUTE**

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Agent Licensing Division**

**806 KAR 9:025. [Agent] Licensing process.**

RELATES TO: KRS 165A.330, 304.4-010, 304.9-030, 304.9-105, 304.9-130, 304.9-150, 304.9-160, 304.9-230, 304.9-260~~[304.-260]~~, 304.9-270, 304.9-295, 304.9-320, 304.9-430, 304.14-642

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, 304.9.133, 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-280, 304.9-295

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 provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form **[required]** for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of **prelicensing**~~[pre-licensing]~~ and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

**Section 1. Pre[-]Licensing Course Requirements.**

(1) An individual applying for an agent license shall complete a **prelicensing**~~[pre-licensing]~~ course of study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

- (a) Seeking a limited line of authority under KRS 304.9-230; or
- (b) Exempt pursuant to KRS 304.9-170.

(2)(a) All prelicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A prelicensing course provider shall submit either in writing or electronically through the department's Web site, <http://insurance.ky.gov>:

1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;
2. A Form CE/PL-100, Course Approval Application, for each course the approved provider wants to offer;
3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;

4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and

5. An outline of the content of the course of study.

(c) In approving a prelicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) ~~[If approved,]~~ A prelicensing course of study approved by the commissioner shall be renewed biennially.

(e) ~~For renewals~~~~[If approved previously,]~~ the provider and instructor approval applications shall not be ~~[are not]~~ required to be submitted with each course.

(3) A prelicensing course of study shall be ~~[is]~~ valid for one (1) year from the date of completion.

(4) The prelicensing provider shall submit proof of completion of a course of study to the department and the applicant on Form CPL-01, Certificate of ~~Prelicensing~~~~[Pre-Licensing]~~ Course Completion or electronically through the department's Web site, <http://insurance.ky.gov>, for each applicant.

## Section 2. Agent ~~Licensing~~~~[Examinations]~~.

(1) An applicant ~~[All applicants]~~ for an individual agent ~~[a]~~ license, ~~other than a preneed funeral agent license provided under 806 KAR 9:370,~~ shall file with the ~~department~~~~[commissioner]~~:

(a) A completed Form 8301, NAIC Individual Insurance ~~[Producer]~~ License Application;

(b) Documentation demonstrating successful completion of any required prelicensing ~~course~~~~[courses]~~;

(c) A completed background check through the Kentucky Administrative Office of the Courts; and

(d) Payment of the fees applicable to the license and lines of authority sought in accordance with ~~[according to]~~ KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully ~~[successfully]~~ complete an examination ~~[examinations]~~ as follows:

(a) For a life line of authority, a life examination;

(b) For a health line of authority, a health examination;

(c) For a property line of authority, a property examination;

(d) For a casualty line of authority, a casualty examination;

(e) For a personal lines line of authority~~[lines]~~, a property and casualty personal lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For a variable life and variable annuity products line of authority~~[product]~~~~[products]~~, no examination is required.

(4) An examination ~~[Examinations]~~ shall only be required for individual applicants applying for the following limited lines of authority identified in KRS 304.9-230:

(a) For a crop limited line of authority, a crop examination; and

(b) For a rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license for which ~~[required to take]~~ an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 3. Adjuster Licensing [Examinations].

(1) An applicant for an adjuster license shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance [Producer] License Application;

(b) A completed background check through the Kentucky Administrative Office of the Courts; and

(c) The applicable fee established in 806 KAR 4:010.

(2) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) [or (8)] shall:

(a) For a property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For a workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For a crop line of authority, either:

1. Successfully complete a crop adjuster examination; or

2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

(3) [(2)] Every applicant for a license for which [required to take] an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 4. Consultant Licensing[Examination].

(1) An applicant for a consultant license shall:

(a) File with the department:

1. [(a)] A completed Form 8301, NAIC Individual Insurance [Producer] License Application;

2. A completed background check through the Kentucky Administrative Office of the Courts; and

3. [(b)] Payment of the fees applicable to the license in accordance with KRS 304.4-010 and 806 KAR 4:010; and

(b) Successfully complete the consultant examination.

(2) The documents and fees required under[in] subsection (1)(a) of this section shall be submitted prior to scheduling an examination.

(3) An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination [and obtain a license].

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 5. Continuing Education.

(1) (a) Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

(b) [(a)] To apply for approval as a continuing education provider, an applicant [Continuing education courses providers] shall submit to the department:

1. A [a] completed Form KYP-01, Provider Approval Application; and

2. For [new] proprietary schools[education providers], documentation of licen-

sure[approval] by the Kentucky Commission on Proprietary Education.

(c)/(b) To apply for approval as[ef] a continuing education instructor, an approved continuing education provider [~~Continuing education course instructors~~] shall submit to the department:

1. A [a] completed Form CE/PL-200, Instructor Approval Application; and
2. The applicable fee established in 806 KAR 4:010.

(d)/(c)1. To apply for approval of a continuing education course, an approved continuing education provider [~~A continuing education course~~] shall submit to the department [~~be filed by submitting the~~] Form CE/PL-100, Course Approval Application [~~form~~] at least sixty (60) days in advance of advertising the course, unless good cause is demonstrated by the provider for the failure to timely submit the form [~~file~~]. If the course is offered in multiple states, the provider may in lieu of Form CE/PL-100, submit the [~~use the National Association of Insurance Commissioners';~~] NAIC Uniform Continuing Education Reciprocity Course Filing Form [~~for approval~~].

2. After approval of the continuing education course and the determination of the number of credit hours assigned to the course, the continuing education provider shall pay to the department the applicable fee established in 806 KAR 4:010.

(e)/(d) The commissioner shall consider the following in determining approval of a continuing education course [~~courses~~]:

1. Whether the applicant has remitted all fees due once the total credit hours are determined pursuant to 806 KAR 4:010; and
2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:
  - a. Insurance, annuities, and risk management;
  - b. Insurance laws and administrative regulations;
  - c. Mathematics, statistics, and probability;
  - d. Economics;
  - e. Business law;
  - f. Finance;
  - g. Taxes;
  - h. Agency management including all aspects of agency operations that support the long-term stability of the agency system and encourage the service and protection of customers;
  - i. Ethics; and/or
  - j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.

(f)/(e) The continuing education course shall:

1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;
2. Have clearly defined objectives and course completion criteria;
3. Have a written outline and study materials or texts; and
4. Include a means for evaluation.

(g)/(f) A self-study course [~~Self-study courses~~] shall require successful completion of an examination.

(h)/(g) Continuing education credit shall not be provided for:

1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;
2. Committee service for professional organizations;
3. Computer training to develop functional skills; and
4. Motivational or self-help courses.

(i)/(h) The commissioner shall measure continuing education course credit hours by the following:

1. Each credit hour for live instruction courses, completed in a classroom, by video, telecon-

ference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation; and [-]

2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the ~~[National Association of Insurance Commissioners']~~ Recommended Guidelines for Online Courses.

~~(j)(#)~~ Any material change in a previously approved continuing education course shall be filed with and approved by the commissioner prior to use.

~~(k)(#)~~ Biennially, a continuing education provider [providers] shall request renewal [renew approval] of a continuing education course [courses] and a continuing education instructor [instructors] by submitting the information required by subsection (1)(c)(b) and (d)(e) of this section and the fee established in 806 KAR 4:010 to the department on or before [all applicable information and fee payment to the commissioner prior to] June 30 of even-numbered years.

(2) ~~[Licensees engaging in the sale, solicitation, or negotiation of specialized products listed [as noted] in paragraphs (a), (b) and (c) of this subsection are subject to the following:]~~

(a) A resident [Resident] individual agent [licensees] selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care insurance training, and four (4) hours of additional training for each biennial continuing education compliance period.[-]

(b) A resident individual agent [Any resident licensee] who holds [licensed with] a property and casualty line [Property and Casualty lines] of authority selling [federal] flood insurance under the National Flood Insurance Program shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207.[- and]

(c) 1. An individual agent [Any individual licensee] who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the agent [licensee] has documented the completion of substantially similar training in another state, that shall include at a minimum information on the following topics:

a. [4.] The types of annuities and various classifications of annuities;

b. [2.] Identification of the parties to an annuity;

c. How product specific annuity contract features affect consumers[3. The manner in which fixed, variable, and indexed annuity contract provisions affect consumers];

d. [4.] The application of income taxation of qualified and non-qualified annuities;

e. [5.] The primary uses of annuities; and

f. [6.] Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

2. The training required by subparagraph 1. of this paragraph(c)1. of this subsection] shall not include:

a. Marketing information;

b. Training on sales techniques; or

c. Specific information about a particular insurer's products.

3. Except as provided in subparagraph 4. of this paragraph(d)1. an agent who has completed an annuity training course approved by the department prior to January 1, 2022[July 1, 2021] shall, within six (6) months after January 1, 2022[July 1, 2021], complete either:

a. A new four (4) credit hour [credit] training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider; or

b. An additional one-time one (1) credit hour training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider on appro-

priate sales practices ~~and,~~ replacement and disclosure requirements under 806 KAR 12:120.

~~4.2.]~~ A non-resident agent who has completed a training course that is substantially similar to the training course required in subparagraph ~~3.4.]~~ of this paragraph shall meet the requirements of subparagraph ~~3.4.]~~ of this paragraph.

(3) A continuing ~~[Continuing]~~ education provider ~~[providers]~~ shall:

(a) Within thirty (30) days of completion of a continuing education course, submit electronically through the department's Web site, <http://insurance.ky.gov>, ~~[to the commissioner]~~ the Continuing Education Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue ~~[the]~~ Form CE-301, Approved Continuing Education Certificate of Completion ~~[form]~~ to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

~~(4) A licensee shall be [Licensees remain] responsible for verifying that a continuing education provider has submitted a continuing education certificate of completion form to the department for a continuing education course that the licensee has successfully completed. If the continuing education provider has not submitted a continuing education certificate of completion form in accordance with subsection (3) of this section, the licensee shall submit the continuing education certificate of completion to the department within the timeframes established in KRS 304.9-260 and 304.9-295. [the timely submission of a continuing education certificates of completion to the commissioner even if the provider does not fulfill their responsibilities under this section.]~~

(5) A licensee ~~[Licensees]~~ may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6)~~(a)~~ If the department does not receive proof of ~~compliance with~~~~[fulfillment of]~~ a licensee's continuing education requirement on or before the deadline established in KRS 304.9-260 and 304.9-295, the commissioner shall:

~~1.(a)]~~ Make information of the deficiency available to the licensee; and

~~2.(b)]~~ Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

~~(b)(7)]~~ A licensee ~~[Licensees]~~ whose license is terminated ~~pursuant to paragraph (a) of this subsection [due to the failure to submit the certification of continuing education by the required deadline established in KRS 304.9-260 and 304.9-295]~~ shall:

~~1.(a)]~~ Have the license reissued within twelve (12) months of the license termination if the licensee:

~~a.1.]~~ Satisfies the delinquent continuing education requirements;

~~b.2.]~~ Submits a new application with required attachments included within Section 2(1) or Section 3(1) of this administrative regulation for a license; and

~~c.3.]~~ Submits the applicable fees established in 806 KAR 4:010; or

~~2.(b)]~~ Complete ~~[Be required to complete]~~ all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation ~~if [after]~~ the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

~~(7)(a)(8)]~~ A licensee may seek exemption from continuing education ~~[Continuing Education]~~ requirements by completing a Form CE AFF 304, Affidavit for Exemption from Continuing Education ~~[Requirement]~~.

~~(b)(a)]~~ An agent exempted from continuing education requirements ~~in accordance with paragraph (a) of this subsection]~~~~on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions]~~ may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

1. Completing the continuing education requirements for the immediate preceding continuing

education biennium;

2. Providing a certification of completion of those continuing education requirements; and
3. Providing a signed, written statement withdrawing the affidavit.

~~(c)(b)~~ The false use of **Form CE AFF 304, Affidavit for Exemption from Continuing Education** ~~[a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions]~~ for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

~~(8)(9)~~ Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

—(a) request an extension of time for completion, or a waiver, of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the Form MLW-01, Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment; ~~or~~

—(b) ~~Request a waiver of continuing education requirements in accordance with KRS 304.9-260(3)].~~

Section 6. Business Entity Agent Application and Designation.

(1) A business entity applying for a license in accordance with KRS Chapter 304 Subtitle 9 or Subtitle 10, **other than a preneed funeral agent license provided under 806 KAR 9:370**, ~~[seeking an agent license pursuant to KRS 304.9-130]~~ shall submit to the department:

(a) Form 8301-BE, **NAIC** ~~[Uniform Application for]~~ Business Entity Insurance License **Application**; and

(b) The applicable fee established in 806 KAR 4:010.

(2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form, to designate or terminate individuals authorized to act under the business entity's license or ~~[and]~~ appointments.

Section 7. Agent Appointment.

(1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, in accordance with ~~[as established by]~~ KRS 304.9-270.

(2) An insurer seeking approval of an agent's appointment shall submit to the department:

(a) Form 8302-AP, Producer Appointment; and

(b) The ~~[the]~~ applicable filing fee established in 806 KAR 4:010.

(3) An insurer terminating an appointment pursuant to KRS 304.9-280 shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.

(4) The requirements of this section shall apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form to the department ~~[with the commissioner]~~ to make a change or update the licensee's:

(1) Name;

(2) Address;

(3) Phone number;

(4) Email address; and

(5) Name in which the licensee is doing business. ~~[name and address.]~~

Section 9. Material Incorporated by Reference.



- (1) The following material is incorporated by reference:
- (a) Form CPL-01, "Certificate of ~~Prelicensing~~**[Pre-licensing]** Course Completion," (8/2019);
  - (b) Form 8301, "NAIC Individual Insurance ~~Producer~~**[Producer]** License Application," ~~(9/2021)~~**[(11/2020)]**~~[(8/2019)]~~;
  - (c) Form 8301-BE, "~~NAIC~~**[Uniform Application for]** Business Entity Insurance License Application," ~~(9/2021)~~**[(8/2019)];**
  - (d) Form 8302-AP, "Producer Appointment," ~~(9/2021)~~**[(8/2019)];**
  - (e) Form 8302-TE, "Termination of Producer Appointment," ~~(9/2021)~~**[(8/2019)];**
  - (f) Form 8305, "Business Entity Designation or Termination of Designation Form," ~~(9/2021)~~**[(8/2019)];**
  - (g) Form 8304, "Examination Retake Form," ~~(9/2021)~~**[(8/2019)];**
  - (h) Form KYP-01, "Provider Approval Application," ~~(9/2021)~~**[(8/2019)];**
  - (i) Form CE/PL-100, "Course Approval Application," (8/2019);
  - (j) Form CE/PL-200, "Instructor Approval Application," (8/2019);
  - (k) Form CE-301, "Approved Continuing Education Certificate of Completion," ~~(9/2021)~~**[(12/2019)];**
  - (l) Form CE AFF 304, "Affidavit for Exemption from Continuing Education," ~~(9/2021)~~**[(8/2019)];**
  - (m) Form 8303, "Record Correction Form," ~~(9/2021)~~**[(8/2019)];**
  - (n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," ~~(9/2021)~~**[(8/2019)];**
  - (o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019); and
  - (p) "Recommended Guidelines for Online Courses", National Association of Insurance Commissioners, 3/2015.

(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~~[245 West Main Street]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the Department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.**

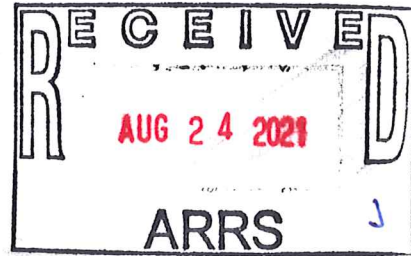
CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [dj.wasson@ky.gov](mailto:dj.wasson@ky.gov).

#### **MATERIAL INCORPORATED BY REFERENCE**

At the time that the agency files this staff suggested amendment it will need to file one (1) clean copy of each of the following forms that includes the 9/2021 edition date and makes technical changes, including to update the agency's contact information:

- Form 8301, "NAIC Individual Insurance Producer License Application"
- Form 8301-BE, "Uniform Application for Business Entity Insurance License Application"
- Form 8302-AP, "Producer Appointment"
- Form 8302-TE, "Termination of Producer Appointment"
- Form 8305, "Business Entity Designation or Termination of Designation Form"
- Form 8304, "Examination Retake Form"
- Form KYP-01, "Provider Approval Application"
- Form CE-301, "Approved Continuing Education Certificate of Completion"

- **Form CE AFF 304, "Affidavit for Exemption from Continuing Education"**
- **Form 8303, "Record Correction Form"**
- **Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment"**



**Andy Beshear**  
Governor

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
P.O. Box 517  
Frankfort, Kentucky 40602-0517  
1-800-595-6053  
<http://insurance.ky.gov>

**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

August 24, 2021

Ms. Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 12:120**, the Department of Insurance proposes the attached agency amendment to 806 KAR 12:120.

Sincerely,

*Abigail Gall*

Abigail Gall  
Regulations Coordinator  
Department of Insurance  
500 Mero St.  
Frankfort, KY 40601

**Agency Amendment**  
**Public Protection Cabinet**  
**Department of Insurance**  
**Health and Life Insurance and Managed Care Division**

**806 KAR 12:120. Suitability and annuity transactions.**

Page 1  
NECESSITY, FUNCTION, AND CONFORMITY  
Line 13

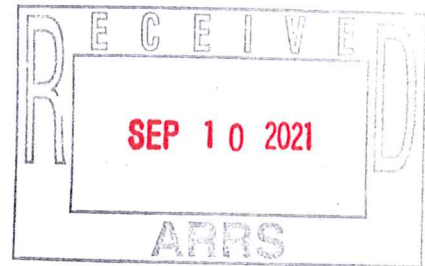
After “licensees to”, insert the following:  
“act in the best interest of the consumer”  
Delete “satisfy specific requirements and standards”

Page 5  
Section 3.  
Line 4

After “shall do so”, insert the following:  
“ act in the best interest of the consumer”

Page 13  
Section 3.  
Line 12

After “of the”, insert the following:  
“best interest”.



**PUBLIC PROTECTION CABINET**

**Department of Insurance**

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Frankfort, Kentucky 40602-0517  
1-800-595-6053  
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**Andy Beshear**

Governor

**Ray A. Perry**

Deputy Secretary

**Kerry B. Harvey**

Secretary

**Sharon P. Clark**

Commissioner

September 7th, 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 13:150. Property and casualty rate and rule filings.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 13:150, the Department of Insurance proposes the attached agency amendments to 806 KAR 13:150.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final 8-30-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Property and Casualty

806 KAR 13:150. Property and casualty rate and rule filings.

RELATES TO: KRS 304.1-010, 304.1-050, 304.4-010(2), 304.13-011, ~~304.13-021~~~~[304.13-022]~~, 304.13-031, 304.13-051, 304.13-061, 304.13-081, 304.21-010, 304.22-020, 304.23-010

STATUTORY AUTHORITY: KRS 304.2-110, ~~304.13-061~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the ~~commissioner~~ [executive Director] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, defined in KRS 304.1-010. This administrative regulation establishes rate and rule filing procedures for property, casualty, surety, title, and mortgage guaranty insurance.

- Section 1. Definitions. (1) "Advisory organization" is defined ~~by~~~~[in]~~ KRS 304.13-011(9).  
(2) "Commissioner" [~~Executive director~~] is defined ~~by~~~~[in]~~ KRS 304.1-050(1).  
(3) [~~2~~] "Department" is defined ~~by~~~~[in]~~ KRS 304.1-050(2).  
(4) "Loss cost" means the loss cost per unit of exposure excluding all loss adjustment expenses.  
(3) ~~"Office"~~ is defined in KRS 304.1-050(2).  
(5) [~~4~~] "Rate" is defined ~~by~~~~[in]~~ KRS 304.13-011(22).  
(6) [~~5~~] "Statistical agent" is defined ~~by~~~~[in]~~ KRS 304.13-~~011~~~~[022]~~(24).  
(7) "Supplementary rating information" is defined ~~by~~~~[in]~~ KRS 304.13-011(2).

Section 2. (1) [~~a~~] Paper filings shall include two (2) full document sets, on 8 1/2" x 11" white paper, with three (3) copies of Form PC TD-1, [~~"]~~Property & Casualty Transmittal Document~~["]~~ and a self-addressed stamped envelope. ~~The~~~~[This]~~ interactive version of this form is available on the National Association of Insurance Commissioners Web site at [https://content.naic.org/industry\\_rates\\_forms\\_trans\\_docs.htm](https://content.naic.org/industry_rates_forms_trans_docs.htm).

~~(b) Section 12(1)(f) through (nn) of this administrative regulation shall be used, as appropriate, for guidance in conjunction with filing the Form PC TD-1, [~~"]~~Property & Casualty Transmittal Document~~["]~~.~~

(2) A property and casualty insurance company, advisory organization, or statistical agent may file a rate or supplementary rating information on the commissioner's electronic system for rate and form filings via the Web site [www.serff.com](http://www.serff.com). An electronic filing shall be in lieu of a paper filing.

Section 3. (1) Every insurer, other than a life or health insurer, [~~insurers,~~] required by law or licensed advisory organization, or statistical agent permitted by law to file rates, loss costs, supplementary rating information, statistical plans, advertising and sales materials, or other documents shall file with these documents a completed and signed Form PC TD-1, [~~"]~~Property and Casualty Transmittal Document~~["]~~.

(2) If the filing is being made by a third party, a signed letter of authorization from the insurer shall be submitted.

Section 4. (1) A filing may include any number of documents, filed together on a particular date, pertaining to a single type of insurance identified on [from] the [ ]Uniform Property and Casualty Product Coding Matrix[ ]. This form is available electronically on the National Association of Insurance Commissioners Web site at <https://content.naic.org/sites/default/files/inline-files/2021%20PC%20PCM.pdf>.

(2) Rates, loss costs, and supplementary rating information shall be filed separately from forms.

Section 5. All rate, loss cost, or supplementary rating information filings shall be accompanied by Form PC RRFS-1. [ ]Rate/Ruling Filing Schedule. This form is available electronically at <https://insurance.ky.gov/PPC/Documents/NAICPropCasFormFilingSched102708.pdf>.

Section 6. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, rate filings referencing loss costs formulated by an advisory organization shall be accompanied by Form LC-1 P & C, [ ]Calculation of Loss Cost Multiplier[ ]. This form is available electronically at <https://insurance.ky.gov/PPC/Documents/LC-1%202007.pdf>.

(b) A rate filing referencing loss costs formulated by an advisory organization in which an expense constant is used shall be accompanied by Form LC-2 P & C, [ ]Expense Constant Supplement[ ], Calculation of Loss Cost Multiplier. This form is available electronically at <https://insurance.ky.gov/PPC/Documents/LC-2%20P&C%202007.pdf>.

(2) A rate filing to which this section applies shall include separate Forms LC-1 P & C; Calculation of Loss Cost Multiplier; and LC-2 P&C; Expense Constant Supplement, Calculation of Loss Cost Multiplier for each company included in the filing.

Section 7. (1)(a) An insurer filing rates or supplement rating information regarding personal automobile insurance shall submit premium comparison information on-line via the Department [Office] of Insurance Web site, <https://insurance.ky.gov/doeservices/UserRole.aspx>, if any rate or supplementary rating information change impacts the premium information previously submitted.

(b) If there is not an impact to premium information previously submitted, an explanatory statement shall be included in Form PC TD-1, [ ]Property and Casualty Transmittal Document[ ].

(2)(a) An insurer filing rates or supplemental rating information regarding homeowners' insurance shall submit premium comparison information on-line via the Department [Office] of Insurance Web Site, <https://insurance.ky.gov/doeservices/UserRole.aspx>, if any rate or supplementary rating information change impacts the premium information previously submitted.

(b) If there is not an impact to premium information previously submitted on-line, an explanatory statement shall be included in Form PC TD-1 [ ]Property and Casualty Transmittal Document[ ].

(3) A filing to which this section applies shall include a separate premium comparison information for each company included in the filing.

Section 8. (1) A property and casualty rate or supplementary rating information filing may include rates or supplementary rating information for a particular insurance company or group of insurance companies.

(2) If the filing is made for a group of insurance companies, Form PC TD-1, [ ]Property and Casualty Transmittal Document[ ] shall identify all companies included in the filing.

Section 9. (1) Filing fees shall be paid on a per company basis.

(2) Pursuant to KRS 304.4-010(2), all fees and charges payable under the insurance code, KRS Chapter 304, shall ~~[are required to]~~ be collected by the department pursuant to 806 KAR 4:010[in advance].

(3) The period of time in which the commissioner ~~[executive director]~~ may affirmatively approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee are received by the department ~~[office]~~.

Section 10. (1) An insurer that is a member, subscriber, or service purchaser of an advisory organization or statistical agent may choose to adopt all or some of the loss costs, supplementary rating information, or statistical plans of that advisory organization or statistical agent.

(2) If an insurer chooses to adopt only a specific filing of an advisory organization or statistical agent, it shall do so in accordance with the procedures established in subsection (3) of this section ~~[this administrative Regulation]~~, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting.

(3)(a) If an insurer chooses to adopt all of the current and future loss costs, supplementary rating information, or statistical plans of an advisory organization or statistical agent, it shall:

1. Provide written authorization to the advisory organization or statistical agent to notify the commissioner ~~[executive director]~~ that the insurance company shall adopt all of the loss costs, supplementary rating information, or statistical plans that the advisory organization or statistical agent files on its behalf; or

2. File written notice with the commissioner ~~[executive director]~~ that the insurer is adopting by reference all of the current and future loss costs, supplementary rating information, or statistical plans that the advisory organization or statistical agent files.

(b)1. If required by law to file its rates, an insurer may file a loss cost multiplier, in accordance with this section and Sections 2 through 9 of this administrative regulation, to adopt the prospective loss costs filed by an advisory organization.

2. The insurer shall:

a. Apply its loss cost multiplier to a specific loss cost filing; or

b. Elect to have its multiplier apply to all future loss costs filed by the advisory organization.

(c)1. The advisory organization or statistical agent shall file the written notice of authorization referred to in paragraphs (a) and (b) of this subsection with the commissioner ~~[executive director]~~ and shall pay the appropriate fee, pursuant to KRS 304.4-010 and 806 KAR 4:010.

2. The fee shall be paid for each company sending a written authorization and on the basis of each line of insurance.

(d)1. If an insurer that previously authorized an advisory organization or statistical agent to file loss costs, supplementary rating information, or statistical plans on its behalf chooses to not adopt certain loss costs, supplementary rating information, or statistical plans as filed on its behalf by the advisory organization or statistical agent, or changes its loss cost multiplier, the insurer shall file a notice of the nonadoption or change of its loss cost multiplier with the commissioner ~~[executive director]~~ and shall pay the appropriate filing fee, pursuant to KRS 304.4-010 and 806 KAR 4:010.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or statistical agent filing, it shall submit a letter requesting the revised date upon which it will adopt the filing.

b. The delayed adoption date shall be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted, requesting a revised delayed adoption date.

d. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization or statistical agent.



3. If an insurer fails to adopt the advisory organization or statistical agent filing within one (1) year of the original effective date as filed by the advisory organization or statistical agent, the insurer shall submit a filing indicating it is not adopting.

Section 11. A property and casualty insurance company, advisory organization and statistical agent may file its prospective loss cost or rate on the commissioners' electronic system for rate and form filings via the Web site [www.serff.com](http://www.serff.com). An electronic filing shall substitute for any physical filing.

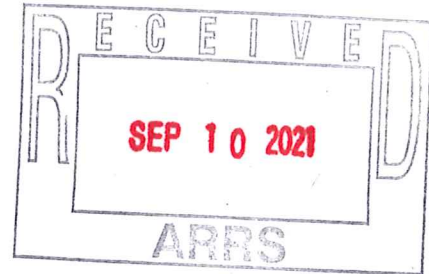
Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Uniform Property and Casualty Product Coding Matrix", 01/2021 [~~(March 1, 2007)~~];
- (b) Form PC TD-1, "Property and Casualty Transmittal Document", 01/2020 [~~(March 1, 2007)~~];
- (c) Form PC RRFs-1, "Rate/Rule Filing Schedule", 3/2007 [~~(March 1, 2007)~~];
- (d) LC-1 P&C, "Calculation of Loss Cost Multiplier", 10/2007 [~~(October 2007)~~];
- (e) LC-2 P&C, "Expense Constant Supplement, Calculation of Loss Cost Multiplier with Expense Constant", 10/2007; [~~(October 2007)~~];
- (f) "~~Kentucky Office of Insurance Review Requirements Checklist, Auto Guaranty and Home Warranty~~", (2nd Edition, 2/2008);
- (g) "~~Kentucky Office of Insurance Review Requirements Checklist, Motor Vehicle Extended Warranty Reimbursement Insurance~~", (2nd Edition, 2/2008);
- (h) "~~Kentucky Office of Insurance Review Requirements Checklist, Aviation~~", (2nd Edition, 02/2008);
- (i) "~~Kentucky Office of Insurance Review Requirements Checklist, Boatowners~~", (2nd Edition, 02/2008);
- (j) "~~Kentucky Office of Insurance Review Requirements Checklist, Boiler & Machinery (Equipment Breakdown)~~", (2nd Edition, 02/2008);
- (k) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Auto~~", (2nd Edition, 02/2008);
- (l) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Farm~~", (2nd Edition, 02/2008);
- (m) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial General Liability~~", (2nd Edition, 02/2008);
- (n) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Inland Marine~~", (2nd Edition, 02/2008);
- (o) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Property~~", (2nd Edition, 2/2008);
- (p) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Umbrella (Excess Liability)~~", (2nd Edition, 02/2008);
- (q) "~~Kentucky Office of Insurance Review Requirements Checklist, Credit (Vendor Single/Dual Interest; Unemployment/Layoff; Collateral Protection; Property; GAP)~~", (2nd Edition, 2/2008);
- (r) "~~Kentucky Office of Insurance Review Requirements Checklist, Crime~~", (2nd Edition 2/2008);
- (s) "~~Kentucky Office of Insurance Review Requirements Checklist, Crop~~", (2nd Edition, 2/2008);
- (t) "~~Kentucky Office of Insurance Review Requirements Checklist, Earthquake (monoline)~~", (2nd Edition, Revised 2/2008);
- (u) "~~Kentucky Office of Insurance Review Requirements Checklist, Employment Practices Liability~~", (2nd Edition, Revised 2/2008);

- (v) "~~Kentucky Office of Insurance Review Requirements Checklist, Flood (monoline)~~", (2nd Edition, Revised 2/2008);
- (w) "~~Kentucky Office of Insurance Review Requirements Checklist, Glass (Monoline)~~", (2nd Edition, Revised 2/2008);
- (x) "~~Kentucky Office of Insurance Review Requirements Checklist, Livestock, Equine and Pet Insurance~~", (2nd Edition, 2/2008);
- (y) "~~Kentucky Office of Insurance Review Requirements Checklist, Medical Professional Liability (Physicians & Dentists; Hospital & Health Facilities; Other Medical)~~", (2nd Edition, 2/2008);
- (z) "~~Kentucky Office of Insurance Review Requirements Checklist, Mortgage Guaranty~~", (2nd Edition, 2/2008);
- (aa) "~~Kentucky Office of Insurance Review Requirements Checklist, Motorcycle~~", (2nd Edition, 2/2008);
- (bb) "~~Kentucky Office of Insurance Review Requirements Checklist, Motor Home~~", (2nd Edition, 2/2008);
- (cc) "~~Kentucky Office of Insurance Review Requirements Checklist, Personal Dwelling, Homeowners, Mobile homeowners, and Farm owners including primary residence~~", (2nd Edition, Revised 2/2008);
- (dd) "~~Kentucky Office of Insurance Review Requirements Checklist, Personal General Liability and Personal Umbrella/Excess~~", (2nd Edition, Revised 2/2008);
- (ee) "~~Kentucky Office of Insurance Review Requirements Checklist, Personal Inland Marine and Recreational Vehicle not requiring vehicle registration~~", (2nd Edition, Revised 2/2008);
- (ff) "~~Kentucky Office of Insurance Review Requirements Checklist, Personal Auto~~", (2nd edition, Revised 2/2008);
- (gg) "~~Kentucky Office of Insurance Review Requirements Checklist, Pollution Legal Liability (Environmental Legal Liability)~~", (2nd Edition, 2/2008);
- (hh) "~~Kentucky Office of Insurance Review Requirements Checklist, Professional Liability (Directors & Officers; Physicians & Dentists; Other Medical Personnel;) (Misc. Professional; Lawyers; Hospital & Health Facilities)~~", (2nd Edition, 2/2008);
- (ii) "~~Kentucky Office of Insurance Review Requirements Checklist, Service Contract Reimbursement Insurance~~", (2nd Edition, 2/2008);
- (jj) "~~Kentucky Office of Insurance Review Requirements Checklist, Stop Loss//Excess of Loss (Self Funded Workers' Compensation; HMO & Managed Care; General Liability; Professional Liability & Misc. Stop Loss) (Stop loss for Self Funded Health Plans must be filed with the Health Division of KOI even if the filer holds a P&C Certificate of Authority)~~", (2nd Edition, 2/2008);
- (kk) "~~Kentucky Office of Insurance Review Requirements Checklist, Surety (Fidelity, Suretyship and Financial Institution Bonds)~~", (2nd Edition 2/2008);
- (ll) "~~Kentucky Office of Insurance Review Requirements Checklist, Title~~", (2nd Edition, 2/2008);
- (mm) "~~Kentucky Office of Insurance Review Requirements Checklist, Travel & Accident~~", (2nd Edition, 2/2008); and
- (nn) "~~Kentucky Office of Insurance Review Requirements Checklist, Workers' Compensation~~", (2nd Edition, 2/2008)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department [Office] of Insurance, The Mayo-Underwood Building, 500 Mero Street, 2 SE 11, [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Internet Web site at: <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov>] [<http://doi.ppr.ky.gov>] or the Web site of the National Association of Insurance Commissioners at [www.naic.org](http://www.naic.org).

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



**PUBLIC PROTECTION CABINET**

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**Andy Beshear**  
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Commissioner

September 7th, 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 17:070. Filing procedures for health insurance rates.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:070, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:070.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final 8-30-2021

SUGGESTED SUBSTITUTE

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

806 KAR 17:070. Filing procedures for health insurance rates.

RELATES TO: KRS 304.14-120, 304.14-130, 304.17-380, 304.17A-005(22)

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) [~~KRS 304.2-110~~] authorizes [~~provides that~~] the Commissioner [~~Executive Director~~] of Insurance to promulgate [~~may make reasonable rules and~~] 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 [~~through KRS 304.99-154~~]. [~~The purpose of~~] This [~~This~~] administrative regulation establishes/is to provide [~~provides~~] additional filing procedures for health insurance rates.

Section 1. Definitions.

(1) "Accumulated value" means the amount of which a sum of money would have increased as of the valuation date, if invested at a specific date in the past, subject to the investment earnings attributable to the policies.

(2) Insurer is defined by KRS 304.1-040.

(3) "Loss ratio" means the ratio of the sum of incurred losses divided by the earned premiums.

~~(4)~~ [(3)] "Present value" means the amount of money needed as of the valuation date to produce, when accumulated at interest, a specified amount on a specific future date. The "present value of future benefits" and "present value of future premiums" are the sums of those/such values that [~~which~~] [~~should~~] take into account not only the interest assumption, but the assumed persistency and mortality of the business.

~~[(2) "Accumulated value" means the amount of which a sum of money would have increased as of the valuation date, if invested at a specific date in the past, subject to the investment earnings at attributable to the policies.~~

~~(3) "Loss ratio" means the ratio of the sum of incurred losses and the change in policy reserves divided by the earned premiums.]~~

(5) [(4)] [A] "Qualified actuary" means/is a member of the American Academy of Actuaries, a fellow or associate of the Society of Actuaries, the Institute of Actuaries, the Faculty of Actuaries, the Casualty Actuarial Society, or a fellow or member of the Conference of Actuaries in Public Practice that is compliant with continuing professional development in the area of health insurance.

Section 2. Scope. This administrative regulation shall apply to individual health insurance products and Medicare supplement plans. This administrative regulation shall not apply to health benefit plans as defined by KRS 304.17A-005(22).

Section 3. Classification of Policies. For the purposes of this administrative regulation, policies are classified by type of benefit, renewal clause, and average annual premium.

(1) Types of benefits recognized are:

(a) Medical expense, including hospital indemnity policies, as well as hospital, surgical, major medical, cancer, critical illness, or any other policies providing insurance against the expenses

resulting from accident or sickness, as well as indemnity or lump sum benefits payable upon a medical event or diagnosis;

(b) Medicare supplement policies; and

(c) Loss of income; and

~~(d) All other policies that [which may be designated by] the commissioner [executive director] may designate].~~

(2) Categories of renewal clause are as follows:

OR	Optionally renewable: renewal of individual policies is at the option of the <u>insurer[insurance company]</u> .
CR	Conditionally renewable: renewal can be declined by the <u>insurer[insurance company]</u> only for a stated reason [reasons] other than deterioration of health.
GR	Guaranteed renewable: renewal cannot be declined by the <u>insurer[insurance company]</u> for any reason, but the <u>insurer[insurance company]</u> can revise rates on a class basis.
NC	Noncancellable: renewal cannot be declined nor can rates be revised by the <u>insurer[insurance company]</u> .

(3) Recognized categories by average annual premium per policy are:

(a) Less than \$250 [\$400];

(b) A minimum of at [At] least \$250 [\$400] but less [no more] than [less than] \$500 [\$200];

and

(c) \$500 [\$200] or more.

Section 4.[3.] Filing of Rates. Every policy, rider, or endorsement form affecting benefits that are [which is] submitted for approval shall be accompanied by a rate filing unless the[such] rider or endorsement form does not directly or indirectly produce a change in the benefit level. Any subsequent addition to or change in rates applicable to the[such] policy, rider, or endorsement shall also be filed.

(1) The following items shall be included in individual health insurance rate filing submissions for rates on a new product:

(a) Policy form, application, endorsements, HIPMC-F1 incorporated by reference in 806 KAR 14:007, ["face sheet and verification form"] and filing fee.

(b) Rate sheet.

(c) Actuarial memorandum including: [.]

1. A brief description of the type of policy, benefits, renewability, general marketing method, and issue age limits.

2. A brief [Brief] description of how rates were determined, including the general description and source of each assumption used. If assumptions are materially different from the insurer's[company's] experience on similar policies, the reasons for their choice shall[should] be explained. Margins, both implicit and explicit, shall[should] be estimated. For expenses, show those that [which] are percent of premium, dollars per policy and[and/or] dollars per unit of benefit, separately, by policy year.

3. Estimated average annual premium per policy.

4. Anticipated loss ratio, including a brief description of how it was calculated, and a projection of year-by-year expected loss ratios.

5. Anticipated loss ratio presumed reasonable according to Section 5[4] of this administrative regulation.

6. If subparagraph 4 of this paragraph is less than subparagraph 5 of this paragraph, supporting documentation for the use of the proposed premium rates shall[~~must~~] be filed.

7. An actuarial report signed by a qualified actuary as to whether or not, to the best of the actuary's knowledge and judgment, the rate submission is in compliance with the applicable laws and administrative regulations of the state, the Actuarial Standards of Practice available at <http://www.actuarialstandardsboard.org/standards-of-practice/>, and that the premi-  
ums[benefits] are:

a. Reasonable in relation to the ~~benefits~~[premiums];

b.[;] Adequate;

c.[;] Not excessive;[;] and

d. Not unfairly discriminatory [and the benefits are reasonable in relation to the premiums].

8. A comparison [Comparison] of the rates with those of any similar policies currently or recently issued by the insurer[company].

(d) A statement as to the status of the filing in the insurer's[company's] home state, and a statement as to any variations in rates or [and/or] loss ratio assumptions required by or used in other states.

(2) The following items shall be included in individual health insurance rate filing submissions for rate increases on an existing product:

(a) New rate sheet, HIPMC-F1 incorporated by reference in 806 KAR 14:007["face sheet and verification form"], and filing fee.

(b) Actuarial memorandum including:[-]

1. A brief [Brief] description of the type of policy, benefits, renewability, general marketing method, issue age limits, the first and last year the policy form was issued, and the anticipated loss ratio of its original rates.

2. The scope [Scope] and reason for rate revision including a statement of whether the revision applies only to new business, only to in-force business, or to both, and outline of all past rate increases on this form.

3. The estimated [Estimated] average annual premium per policy, before and after rate increase and a[.] comparison of proposed rate scale with current rate scale.

4. Past experience, [in the format of the "experience reporting form,"] the statistical credibility of the experience data and any other available data the insurer may wish to provide. If policy reserves are other than net level reserves based on the rate assumptions underlying the existing rates, an estimate of the effect of using the[such] reserves shall [should] be provided.

5. A brief [Brief] description of how revised rates were determined, including the general description and source of each assumption used. For expenses, include percent of premium, dollars per policy, [and/or] dollars per unit of benefit as separate items, and [Also,] the unamortized initial expenses to be recovered from future premiums shall[should] be shown.

6. The anticipated future loss ratio described in Section 5[4](2)(a) of this administrative regulation and a description of how it was calculated.

7. The anticipated loss ratio that [which] combines cumulative and future experience described in Section 5[4](2)(b) of this administrative regulation, and a description of how it was calculated.

8. Anticipated loss ratio presumed reasonable according to Section 5[4] of this administrative regulation.

9. If subparagraphs 6 or 7 of this paragraph is less than subparagraph 8 of this paragraph, supporting documentation for the use of the[such] premium rates.

10. An actuarial report signed by a qualified actuary as to whether or not, to the best of the actuary's knowledge and judgment, the rate submission is in compliance with the applicable laws and administrative regulations of the state, the Actuarial Standards of Practice available at

<http://www.actuarialstandardsboard.org/standards-of-practice/>, and that the premiums[benefits] are:

a. Reasonable in relation to benefits[premiums];

b.[7] Adequate;

c.[7] Not excessive;[7] and

d. Not unfairly discriminatory [and the benefits are reasonable in relation to the premiums].

11. The number of policies in force in Kentucky and approximate annual premiums.

(c) A statement as to the status of the filing in the insurer's[company's] home state, and a statement as to any variations in rates or [and/or less] ratio assumptions required by or used in other states.

Section 5.[4.] Reasonableness of Benefits in Relation to Premiums. (1) New forms.

(a) With respect to a new form other than a Medicare supplement form under which the average annual premium, as defined in the table below [(as defined below)] is expected to be at least \$500 [\$200], benefits shall be found as[deemed] reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

Type of Coverage	Renewal Clause			
	OR	CR	GR	NC
Medical Expense	60%	55%	55%	50%
Loss of Income and Other	60%	55%	50%	45%

(b) For a policy form, including riders and endorsements, under which the expected average annual premium per policy is \$250 [\$100] or more but less than \$500 [\$200], subtract five (5) percentage points from the numbers in the table above, or less than \$250 [\$100], subtract ten (10) percentage points.

(c) The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

(d) The loss ratio for a Medicare supplement policy shall be as provided in 806 KAR 17:570 [806 KAR 17:060], regardless of renewal clause or average premium.

(2) Rate revisions. Except[Excepting] as provided in subsection (3) of this Section[below], with respect to filings of rate revisions for a previously approved form, benefits shall be determined[deemed] reasonable in relation to premiums if[provided that] both of the following loss ratios meet the [above] standards for new forms as established in subsection (1) of this Section and the loss ratio described in paragraph (b) of this subsection meets[meet] or exceeds[exceed] the initial filed expected loss ratio.

(a) The anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage;

(b) The anticipated loss ratio derived by dividing "A" by "B" where:

1. a. "A" is the sum of the accumulated value of the benefits, from the original effective date of the form or the effective date of this administrative regulation, whichever is later, to the effective date of the revision, and the present value of future benefits;[7] and

b.[2.] "B" is the sum of the accumulated value of the premiums from the original effective date of the form or the effective date of the administrative regulation, whichever is later, to the effective date of the revision, and the present value of future premiums.

2.[7] The[such] present values shall[to] be taken over the entire period that [for which] the revised rates are computed to provide coverage, and the values shall be calculated[such accumulated benefits and premiums, and premiums] from the last date that [as of which an] accounting has been made to the effective date of the revision.



(3) Anticipated loss ratios other than those indicated in subsection (1) or (2) of this section shall/will require justification based on the special circumstances that may be applicable.

(a) ~~[Examples of]~~ Coverages for which a lower loss ratio may receive special consideration are as follows:

1. Accident only;
2. Short term nonrenewable, e.g., airline trip, student accident;
3. Specified peril, e.g., common carrier; and
4. Other special risks.

(b) ~~[Examples of other]~~ Factors for which lower loss ratios may receive special consideration are as follows:

1. Marketing methods, giving due consideration to acquisition and administration costs and to premium mode;
2. Extraordinary expenses;
3. High risk of claim fluctuation because of the low loss frequency or the catastrophic, or experimental nature of the coverage;
4. Product features such as long elimination periods, high deductibles and high maximum limits;
5. The industrial or debit method of distribution; and
6. Forms issued prior to the effective date of these guidelines.

(c) Insurers/Companies shall ~~[are urged to]~~ review their experience periodically and ~~[to]~~ file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of unacceptable large rate increases. For rate increases of more than thirty (30) percent, insurers/companies may/will be requested to implement the increase/rate increases of more than thirty (30) percent over two (2) or more years.

(d) An example ~~[Examples]~~ of factors for which higher loss ratios may be required:

1. A form ~~[Forms]~~ on which all initial expenses have been amortized.
2. A form ~~[Forms]~~ on which rates have been increased to at least double their original level.
3. A form on which insurers/Companies have not filed rate increases in a timely manner pursuant to subsection 3(c) of this section/Section 4(3)(c).

(e) When rates are submitted for new forms, the Department may require subsequent filings to demonstrate that the loss ratio required by subsection (1)(a) of this section/Section 4(1)(a) is being met.

Section 6.[5.] Miscellaneous Considerations. (1) Additional data ~~that [which]~~ may be included in the support of rate filings includes data such as the, but is not limited to, substitution of actual claim run-offs for claim reserves and liabilities, in order to avoid the problems of short-term developments, accident-year loss ratios supporting trends, the operation of any experience funds or stabilization reserves, and the adjustment of premiums to an annual mode basis.

(2) All additional data shall/must be reconciled, as appropriate, to the required data, and any missing data explained.

Section 7.[6.] Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this administrative regulation and the application of the/such provision to other persons or circumstances shall not be affected thereby.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

The agency needs to file one (1) copy of a corrected RIA at the time that the agency files this staff suggested substitute that:

- Provides a response to question 8 relating to fees.
- Provides responses also to questions (1)(d), (4), (7) and (9), including to provide a response on whether tiering was applied.

## FISCAL NOTE

The agency needs to file one (1) copy of a corrected Fiscal Note at the time that the agency files this staff suggested substitute that:

- Provides a response to questions (1), (2), and (3).

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR 17:070  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

- (1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110
- (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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
  - (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? Revenue is expected from the filing fees, amount indeterminable.
  - (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? Revenue is expected from the filing fees, amount indeterminable
  - (c) How much will it cost to administer this program for the first year? No cost is expected.
  - (d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

- (4) Revenues (+/-): Neutral
- (5) Expenditures (+/-): Neutral
- (6) Other Explanation:

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:070  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is to provide additional filing procedures for health insurance rates.

(b) The necessity of this administrative regulation: KRS 304.2-110(1) 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 through KRS 304.99-154. This administrative regulation is to provide additional filing procedures for health insurance rates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) 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 through KRS 304.99-154.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendments assist in the effective administration of KRS 304.2-110, authorizing the Commissioner to promulgate regulations to aid in the effectuation of the Insurance Code. More specifically to articulate the process and procedures for regulated entities filing health insurance rates, excluding health benefit plans.

(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 amendments made to this administrative regulation are to include cancer, critical illness, as well as indemnity or lump sum benefits payable upon a medical event or diagnosis to the benefit types, to update the recognized categories by annual premium per policy to be less than \$250, a minimum set at \$250 to \$500, and premium exceeding \$500, and to recognize that the Department shall request further documentation to determine loss ratios are being met in Section 4 of this administrative regulation. Aside from the substantive changes to this regulation, the regulation was also amended to meet drafting requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The increases noted in the annual premium policy amendment is necessary to conform to changing policy

limitations. The other amendments, less substantive, are to meet the drafting requirements set forth in Chapter 13A of the Kentucky Revised Statutes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner promulgate any administrative regulations necessary.

(d) How the amendment will assist in the effective administration of the statutes: The amendments set forth requirements for policy categorization and sets forth procedures to properly file health rate filings with the Department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Health insurers writing business in Kentucky.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: The process and procedures were not changed. The language is being cleaned up to better articulate existing processes and procedures. The actions remain the same, but the Department is authorized to require more information concerning justifications on loss ratio determinations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This would depend on the product type and entity type. The associated fees would be determine on the HIPMC-F1 and 806 KAR 4:010 or 806 KAR 17:300.

(c) As a result of compliance, what benefits will accrue to the entities: If the regulated entities abide by the regulation and relevant statutes the rate filings will be accepted and reviewed by the Department.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(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 an increase is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, but does require the HIPMC-F1 form to be filled with the filing fee set forth in 806 KAR 4:010, as well as 806 KAR 17:300 if applicable to the entity.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this administrative regulation applies to any/all individual health insurance rate filings or health insurers writing individual health insurance products/policies.



**PUBLIC PROTECTION CABINET**

**Department of Insurance**

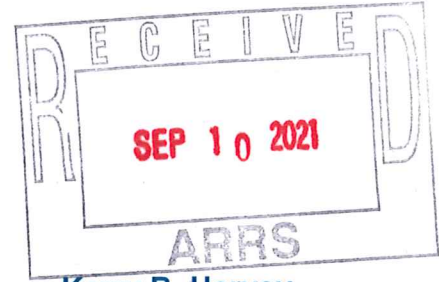
P.O. Box 517  
Frankfort, Kentucky 40602-0517  
1-800-595-6053  
<http://insurance.ky.gov>

**Andy Beshear**

Governor

**Ray A. Perry**

Deputy Secretary



**Kerry B. Harvey**

Secretary

**Sharon P. Clark**

Commissioner

September 7th, 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 17:085. Minimum standards for short-term nursing home insurance policies.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:085, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:085.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final 9-1-2021

SUGGESTED SUBSTITUTE

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

806 KAR 17:085. Minimum standards for short-term nursing home insurance policies.

RELATES TO: KRS 304.6-070, 304.6-130, 304.6-180, 304.12-010, 304.12-020, 304.14-650-304.14-675, 304.17-080

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~Executive Director~~] 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 [as defined in] KRS 304.1-010 [through KRS 304.99-154] [KRS 304.1-010]. KRS 304.14-660 requires[authorizes] [requires] the Commissioner [~~Executive Director~~] of Insurance to promulgate administrative regulations to establish the [establishing] requirements for short-term nursing home insurance policies. [The purpose of] This [This] administrative regulation establish-es/[is to establish] the [establishes] minimum standards for short-term nursing home insurance policies.

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

(1) "Applicant" means:

(a) For an individual short-term nursing home insurance policy, the person who seeks to contract for benefits; and

(b) For a group short-term nursing home insurance policy, the proposed certificate holder.

(2) "Association" means entities eligible for group health insurance pursuant to KRS 304.18-020["Attained age rating" means a schedule of premiums starting from the issue age that [which] may increase [increases] at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50)].

(3) "Benefit trigger" means a contractual provision in the insured's[insureds] policy conditioning the payment of benefits on a determination of the insured's[insureds] ability to perform activities of daily living and on cognitive impairment.

(4) [(3)] "Certificate" means any certificate issued under a group short-term nursing home insurance policy, which has been delivered or issued for delivery in Kentucky.

(5) [(4)] "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(6) [(5)] "Commissioner" is defined by KRS 304.1-050.

(7) [(6)] "Compensation" means pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of short-term nursing home insurance or certificates, including bonuses, gift, prizes, awards, and finders fees.

(8) [(7)] "Elimination period" means the time that elapses[shall elapse] before benefits commence under a short-term nursing home insurance policy or certificate.

(9) [(8)] "Insurer" means an entity authorized to issue short-term nursing home insurance in Kentucky.

(10) [(9)] "Maintenance or Personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the



individual is a chronically-ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(11) [(40)] "Policy" means any policy, contract, subscriber agreement, enrollment agreement, rider, or endorsement delivered or issued for delivery in Kentucky.

(12) "Qualified short-term nursing home insurance contract" is defined by 26 U.S.C. §7702B.

(13)[(44)] "Short-term nursing home insurance policies" is defined by[in] KRS 304.14-650.

Section 2. Policy Requirements. A short-term nursing home insurance policy delivered or issued for delivery in Kentucky shall not use the terms set forth below unless the terms are defined in the policy as follows:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means that the individual is medically unstable. The individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain health status.

(3) "Adult day care" means a program for four (4) or more individuals, of social or health-related, or both, services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgement as it relates to safety awareness.

(6) "Continence" means the ability to maintain control of bowel and bladder function; or [if], when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

(10) "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.

(11) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Pub.L. 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(12) "Mental or nervous disorder" means[shall] not including[be defined to include] more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(13) "Personal care" or maintenance means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care", "intermediate care", "personal care", "home care", "specialized care", "assisted living" and other services means being[shall be] defined in relation to the level of skill required, the nature of the care, and the setting in which care is to[shall] be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of bed, chair, or wheelchair.

Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual short-term nursing home insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this administrative regulation.

(a) A short-term nursing home insurance policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable".

(b) The term "guaranteed renewable" may be used only if the insured has the right to continue the short-term nursing home insurance in force by the timely payment of premiums and if the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only if the insured has the right to continue the short-term nursing home insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the scheduled premium rate.

(d) The term "level premium" may only be used if the insurer does not have the right to change the premium.

(2)(a) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as a short-term nursing home insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

1. Preexisting conditions or diseases as defined in Section 5 ~~(8)(7)~~ through ~~(10)(9)~~ of this administrative regulation;

2. Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;

3. Alcoholism and drug addiction;

4. Illness, treatment, or medical condition arising out of:

a. War or act of war (whether declared or undeclared);

b. Participation in a felony, riot, or insurrection;

c. Service in the armed forces or auxiliary units;

d. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

e. Aviation (this exclusion shall apply only to nonfare-paying passengers);

5. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(b) This subsection shall not prohibit exclusions and limitations by type of provider or territorial limitations.

(3) Continuation or conversion.

(a) Group short-term nursing home insurance issued in Kentucky on or after the effective date of this administrative regulation shall provide:

1. A covered individual with a basis for continuation or conversion of coverage without underwriting upon termination of coverage; and

2. A converted policy or continued coverage including benefits identical to or benefits determined by the Commissioner ~~[executive director]~~ to be substantially similar to or in excess of those provided under the group policy from which conversion or continued coverage is made.

(b) Written application for the converted policy or continued coverage shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days following notice of continuation or conversion rights under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

(4) ~~[The premium charged to an insured for short-term nursing home insurance shall not increase due to either:~~

~~(a) The increasing age of the insured at ages beyond sixty-five (65); or~~

~~(b) The duration the insured has been covered under the policy.~~

~~(5)] Extension of benefits. Termination of short-term nursing home insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the short-term nursing home insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the short-term nursing home insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefit and may be subject to any policy waiting period, and all other applicable provisions of the policy.~~

~~(5)[(6)] Discontinuance and replacement. If a group short-term **nursing home insurance** policy is replaced by another group short-term **nursing home insurance** policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:~~

~~(a) Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and~~

~~(b) Vary or otherwise depend on the individual's health or disability status, claim experience or use of short term care services.~~

~~(6)[(7)] Premium changes.~~

~~(a) The premium charged to an insured for short-term nursing home insurance shall not increase due to either:~~

~~1. The increasing age of the insured at ages beyond sixty-five (65); or~~

~~2. The duration the insured has been covered under the policy.~~

~~(7) Coverage of dependents. A short-term nursing home policy may be issued that jointly covers the life of the policyholder and his or her spouse.~~

Section 4. Unintentional Lapse. An insurer offering short-term nursing home insurance shall, as a protection against unintentional lapse, comply with the following:

(1) Notice before lapse or termination. An individual short-term nursing home policy or certificate shall not be issued until the insurer has received from the applicant either a written:

(a) Designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or

(b) Waiver, dated and signed by the applicant, electing not to designate additional persons to receive notice.

(2) Lapse or termination for nonpayment of premium:

(a) An individual short-term nursing home policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to subsection (1)(a) of this section, at the address provided by the insured for purposes of receiving notice of lapse or termination; and

(b) Notice shall:

1. Be given by first class United States mail, postage prepaid;

2. Not be given until thirty (30) days after a premium is due and unpaid; and

3. Be **found[deemed]** to have been given as of five (5) days after the date of mailing.

(3) Reinstatement. A short-term nursing home policy shall contain a reinstatement provision as required in KRS 304.17-080.

Section 5. Required Information and Disclosure Provisions.

(1) Renewability.

(a) Individual short-term nursing home insurance policies shall contain a renewability provision.

(b) The provision shall:

1. Be appropriately captioned;
2. Appear on the first page of the policy; and
3. State clearly that:

a. The coverage is guaranteed renewable and that premium rates are subject to change; or  
b. [that] the coverage is noncancellable.

(c) All short-term nursing home policies or certificates issued in the commonwealth of Kentucky shall state in (16) sixteen point bold type print on the front page of the policy the following statement: This is a short-term nursing home product that offers benefits for less than twelve (12) months. This is not a long-term care policy.

(2) Riders and endorsements.

(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual short-term nursing home insurance policy, riders or endorsements added to an individual short-term nursing home insurance policy after date of issue, reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, a rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of benefits. A short-term nursing home insurance policy or certificate shall clearly define how benefits will be paid.

(4) Limitations. If a short-term nursing home insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations".

(5) Other limitations or conditions on eligibility for benefits. A short-term nursing home insurance policy or certificate containing any limitations or conditions for eligibility including any elimination period shall be clearly defined in the policy or certificate and the paragraph shall be labeled ~~[the paragraph]~~ "Limitations or Conditions on Eligibility for Benefits".

(6) Benefit triggers. (a) Activities of daily living and cognitive impairment shall be:

1. Used to measure an *insured's*[insureds] need for short-term nursing home care;

2. [shall be] Described in the policy or certificate in a separate paragraph; [;] and

3. [shall be] Labeled "Eligibility for the payment of benefits."

(b) Any additional benefit triggers shall also be explained in this section.

(c) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.

(d) If an attending physician or other specified person shall[must] certify a certain level of functional dependency in order to be eligible for benefits, this [too] shall be specified.

(7)[(6)] A provider of service shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

(8)[(7)] Short-term nursing home policies or certificates shall not use a definition of preexisting condition that [which] is more restrictive than the following: "Preexisting condition means a

condition for which medical services or treatment is ~~is~~ was recommended by, or received from, a provider of health care services within six (6) months preceding the effective date of coverage of an insured person."

~~(9)~~~~(8)~~ A short-term nursing home policy or certificate shall not exclude coverage for a loss or confinement which is the result of a preexisting condition unless that loss or confinement begins within six (6) months following the effective date of coverage of the insured person.

~~(10)~~~~(9)~~ A short term nursing home policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting conditions or physical conditions beyond the preexisting condition periods described in subsections ~~(8)~~~~(7)~~ and ~~(9)~~~~(8)~~ of this section.

~~(11)~~~~(10)~~ Insurers shall offer an option to purchase ~~[disclose whether or not]~~ inflation protection ~~[is offered]~~ at a minimum of **three (3) percent** ~~[%]~~ compounded annually with any short-term nursing home policy or certificate.

~~(12)~~~~(11)~~ Short-term nursing home policies shall contain on the front page of the policy or certificate the following statement: "Notice to buyer: This policy may not cover all of the costs associated with nursing home care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations".

~~(13)~~~~(12)~~ An elimination period shall be calculated based upon consecutive calendar days, beginning the first day eligible services are received by the individual, and ending the first day benefits are payable.

Section 6. Prohibition Against Post-claims Underwriting. (1)(a) If an application for short-term nursing home insurance contains a question that [which] asks if [whether] the applicant has had medication prescribed by a physician, it shall also ask the applicant to list all medication that has been prescribed.

(b) If the medications listed in the application are [were] known by the insurer, or should have been known at the time of application, to be directly related to a medical condition that [for which] coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(2) The following language, or language substantially similar to the following, shall be set out conspicuously on the short-term nursing home insurance policy or certificate no later than when it is delivered: "Caution: The issuance of this short-term nursing home insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) ~~[is]~~ enclosed or was retained by you when you applied~~[s]~~. If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer may have the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."

(3) A copy of the completed application or enrollment form, whichever is applicable, ~~[(which-ever is applicable)]~~ shall be delivered to the insured no later than when the policy or certificate is delivered unless it was retained by the applicant at the time of application.

Section 7. Reserve Standards. (1)(a) If short-term nursing home insurance benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.

(b) Claim reserves shall also be established if the policy or rider is in claim status.

(c) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations that may [which] have an impact on projected claim costs.

(d) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) If short-term nursing home benefits are provided other than as described in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

#### Section 8. Loss Ratio.

(1) Rate filings shall follow the filing procedures contained in 806 KAR 14:007 and 806 KAR 17:070.

(2) Initial premium rate schedules shall be calculated so that[using] ~~[such that]~~ the present value of future projected incurred claims, without the inclusion of active life reserves, shall [will] not be less than the present value of future projected earned premiums times sixty (60) percent.

(3) Premium rate schedule increases shall be calculated so that[using] ~~[such that]~~ the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, excluding [without the inclusion of] active life reserves, shall [will] not be less than the sum of the following:

(a) The accumulated value of the initial earned premiums times sixty (60) percent;

(b) Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(c) The present value of future projected initial earned premiums times sixty (60) percent; and

(d) Eighty-five (85) percent of the present value of future projected premiums not described in paragraph (c) of this subsection on an earned basis.

(4) All present and accumulated values used to determine rates shall use the maximum valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall disclose as part of the actuarial memorandum required by 806 KAR 17:070, Section 3, the use of any appropriate averages.

Section 9. Minimum Standards for Home Health and Community Care Benefits in Short-term nursing Insurance Policies. (1) A short-term nursing home insurance policy or certificate that ~~provides[shall provide]~~ benefits for home health care or community care services shall not limit or exclude benefits by:

(a) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services are not provided;

(b) Requiring that the insured or claimant first or simultaneously [shall] receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered;

(c) Limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) Requiring that a nurse or therapist provide services covered by the policy that may be provided by a:

1. Home health aide; or

2. Other licensed or certified home care worker acting within the worker's scope of licensure or certification;

(e) Excluding coverage for personal care services provided by a home health aide;

(f) Requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) Requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) Limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) Excluding coverage for adult day care services.

(2)(a) A short term nursing insurance policy or certificate that includes home health or community care services shall provide the total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year of coverage available for nursing home benefits under the policy or certificate, when covered home health or community care services are received.

(b) The requirement identified in paragraph (a) of this subsection shall not apply to a policy or certificate issued to a resident of a continuing care retirement community.

(3) In determining maximum coverage under the terms of a policy or certificate, home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate.

Section 10 [9]. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a short-term nursing home insurance policy or certificate replaces another short-term nursing home or long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new short-term nursing home insurance policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section 11. Filing Requirements for Advertising. (1) An insurer providing short term nursing home care insurance or benefits in Kentucky shall provide a copy of any advertisement intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with this administrative regulation and KRS 304.12-020, 304.14-120, and 806 KAR 12:010, 806 KAR 14:005, 806 KAR 14:007, Section 5(2);

(2) An advertisement shall be retained by the insurer for at least five (5) years from the date the advertisement was first used.

(3) The commissioner may exempt advertising from the requirements of this section pursuant to KRS 304.14-120(4).

Section 12. Standards for Marketing. (1) An insurer marketing short term nursing home insurance coverage in Kentucky, directly or through its agents, shall:

(a) Establish marketing procedures and agent training requirements to assure that:

1. Marketing activities, including policy comparison, by its agent, shall be fair and accurate; and

2. Excessive insurance shall not be sold or issued.

(b) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy, the notice as established in HIPMC-STN-1.

(2) An insurer shall:

(a) Comply with the requirements of KRS Chapter 304.12; and

(b) Not perform the following acts and practices:

1. Twisting;

2. High pressure tactics;

3. Cold lead advertising; and

4. Misrepresentation.

(3)(a) To comply with the requirements of this subsection, an association ~~may~~**shall** have the primary responsibility of educating members concerning short-term nursing home issues in general:

1. If endorsing or selling short-term nursing home insurance; and

2. To ensure that its members make informed decisions.

(b) An association shall provide objective information regarding short-term nursing home insurance policies or certificates endorsed or sold by the association to ensure that members re-

ceive a balanced and complete explanation of the features of the policy or certificate that is endorsed or sold.

(c) An insurer shall file with the department the following:

1. ~~[An] Insurance policies[policy]~~ and, if applicable, ~~certificates[a certificate]~~;

2. ~~Outlines[An outline]~~ of coverage, which corresponds to the filed policy or certificate; and

3. Advertisements as requested by the department pursuant to Section 11(1) of this administrative regulation.

(d) An association shall disclose in a short-term nursing home insurance solicitation:

1. The specific nature and amount of the compensation arrangements, including fees, commissions, administrative fees, and other forms of financial support, which the association receives from endorsement or sale of the policy or certificate to its members; and

2. A brief description of the process used to select the policy and the insurer, which issued the policy.

(e) If an association and insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to the association members.

(f) The board of directors of an association selling or endorsing a short-term nursing home insurance policy or certificate shall review and approve the:

1. Insurance policy; and

2. Compensation arrangements made with the insurer.

(g) Except for a qualified short-term nursing home insurance contract, an association shall:

1. Upon a decision to endorse a short-term nursing home insurance contract, engage the services of a person with expertise in short-term nursing home insurance not affiliated with the insurer to:

a. Conduct an examination of the policy, including its benefits, features, and rates; and

b. Update the examination, if a material change is made to the contract;

2. Actively monitor the marketing efforts of the insurer and agents; and

3. Review and approve:

a. Marketing materials; or

b. Insurance communications other than marketing materials, including communications:

(i) Used to promote sales; or

(ii) Sent to members regarding the policy or certificate.

(h) A group short-term nursing home insurance policy or certificate shall not be issued to an association unless the insurer files with the commissioner the information required in this subsection.

(i) Unless an insurer certifies annually that an association has complied with the requirements established in this subsection, an insurer shall not:

1. Issue a short-term nursing home policy or certificate to the association; or

2. Continue to market the policy or certificate.

(j) Failure to comply with the filing and certification requirements of this section shall constitute an unfair trade practice in violation of KRS 304.12-010.

Section 13. Standard Format and Content of an Outline of Coverage.

(1) An outline of coverage shall:

(a) Be a freestanding document, that shall be printed in no less than ten (10) point type; and

(b) Not contain material of an advertising nature.

(2) Text, shall be ~~[capitalized or underscored in the standard format outline of coverage, may be]~~ emphasized by using a method, that provides prominence equivalent to the:

(a) Capitalization; or

(b) Underscoring.

(3) Except as indicated, use of the text and sequence of text shall be:

(a) Mandatory; and



(b) Consistent with the Outline of Coverage, HIPMC-STN-1.  
(5) The format to be used for the outline of coverage shall be consistent with the Outline of Coverage, HIPMC-STN-1.

Section 14. Standards for Benefit Triggers. (1) A short term nursing home insurance policy shall condition the payment of benefits based upon a determination of the *insured's*[*insureds*]:

- (a) Ability to perform activities of daily living; and
- (b) Cognitive impairment.
- (2) Eligibility for the payment of benefits shall not be more restrictive than requiring:
  - (a) A deficiency in the ability to perform no more than three (3) activities of daily living; or
  - (b) The presence of cognitive impairment.
- (3)(a) Activities of daily living shall include no less than the activities defined in Section 2(1) of this administrative regulation and the policy; and
  - (b) To trigger covered benefits, an insurer may use activities of daily living that are:
    - 1. Described in paragraph (a) of this subsection; and
    - 2. In addition to activities identified in paragraph (a) if defined in the policy.
- (4)(a) An insurer may use a provision other than activities of daily living as identified in subsection (3) of this section to determine the date benefits are payable under a policy or certificate; and
  - (b) If a provision, as established in paragraph (a) of this subsection is used by the insurer, the provision shall not:
    - 1. Restrict the requirements identified in subsections (1), (2), and (3) of this section; and
    - 2. Be used in lieu of the requirements of subsections (1), (2), and (3) of this section.
- (5) A determination of a deficiency, as identified in this section, shall not be more restrictive than:
  - (a) Requiring the hands on assistance of another person to perform the prescribed activities of daily living as identified in subsection (3) of this section; or
  - (b) If the deficiency is due to the presence of a cognitive impairment, supervision, or verbal cueing by another person shall be needed in order to protect the insured or others.
- (6) An assessment of the *insured's*[*insureds*] activities of daily living and cognitive impairment shall be performed by a licensed or certified professional, including a:
  - (a) Physician;
  - (b) Nurse; or
  - (c) Social worker.
- (7) A short-term nursing home insurance policy shall include a clear description of the process for an appeal and resolution of a benefit determination.

Section 15. Incorporation by Reference. (1) "Outline of Coverage", HIPMC-STN-1[1], 03/2021 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at The Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, 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 <https://insurance.ky.gov/ppc/CHAPTER.aspx>[<http://www.insurance.ky.gov>].

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

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

At the time that it files this staff suggested substitute the agency needs to file one (1) copy of a REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT that:

- Providers answers to Questions (7) and (8)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:085  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides standards for short-term nursing home insurance policies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply KRS 304.14-660, which requires the Commissioner to promulgate administrative regulations establishing requirements for short-term nursing home insurance policies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by providing the minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660.

(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 amendments to this administrative regulation include new benefit explanations for Home Health and Community Care services; marketing standards and advertisement filing procedures; details regarding benefit triggers, premium charges, discontinuance and replacement policies; a new option to purchase inflation protections at a minimum standard of 3%; the incorporation of a new form HIPMC-STN-1. There are also many technical changes to meet the drafting requirements of Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: the necessity of these amendments is based on the relationship to other administrative regulations and statutes. Previously, the requirements currently being added to this regulation were non-existent and thus, they allow for more efficient regulation of policies concerning Home Health and Community Care benefits.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660. Many of these amendments provide the minimum standard for these policies and procedures.

(d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the administration of statutes KRS 304.14-660 and 304.2-110 in order to establish requirements for short-term nursing home insurance policies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect approximately six (6) Kentucky insurers who offer short-term nursing home insurance policies to residents of Kentucky.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities providing short-term nursing home insurance policies must abide by the requirements set forth in the applicable sections of this administrative regulation. More specifically, the amended sections such as the benefit triggers, cancellations stipulations, premium charge requirements, extension of benefit updates, advertising and marketing requirements and standards, and utilizing the HIPMC-STN-1 form when outlining coverage to the consumer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no cost associated with this administrative regulation nor the amendments.

(c) As a result of compliance, what benefits will accrue to the entities: Insurers writing short-term nursing home insurance policies will meet the statutory and regulatory requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no cost associated with the administrative regulation.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

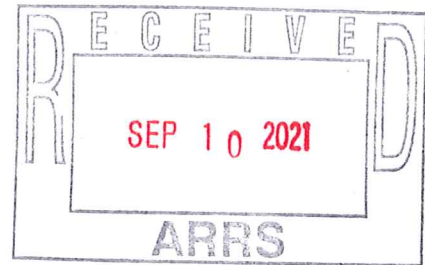
(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(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 of fees or funding is necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this regulation applies equally to all insurers offering short-term nursing home policies in Kentucky.



**PUBLIC PROTECTION CABINET**

**Department of Insurance**

P.O. Box 517  
Frankfort, Kentucky 40602-0517  
1-800-595-6053  
<http://insurance.ky.gov>

**Andy Beshear**  
Governor

**Ray A. Perry**  
Deputy Secretary

**Kerry B. Harvey**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 17:100. Certificate of filing for provider-sponsored networks.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:100, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:100.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final 8-30-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Financial Standards and Examinations

806 KAR 17:100. Certificate of filing for provider-sponsored networks.

RELATES TO: KRS ~~304.17A-005(39)~~~~[304.17A-100(6)]~~, 304.17A-300, 304.17A-310

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-300, 304.17A-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) ~~authorizes~~ ~~[provides that]~~ the commissioner to ~~[executive director may]~~ promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, established in KRS 304.1-010. KRS 304.17A-300 requires ~~[that]~~ provider sponsored networks ~~to[shall]~~ obtain a certificate of filing before doing business in Kentucky. ~~[The purpose of]~~ This ~~[This]~~ administrative regulation ~~establishes~~~~[is to establish]~~ ~~[sets forth]~~ the requirements for a provider sponsored network applying for a certificate of filing.

Section 1. Definitions. A provider-sponsored network is a provider sponsored integrated health delivery network as defined in ~~304.17A-005(39)~~~~[304.17A-100(6)]~~.

Section 2. A provider-sponsored network shall apply for and obtain a certificate of filing from the commissioner ~~[executive director]~~ in order to provide, directly or through arrangements with others, a health benefit plan to consumers voluntarily enrolled with the organization on a per capita or a predetermined, fixed prepayment basis.

Section 3. (1) Each application for a certificate of filing for a provider-sponsored network shall be filed on a Form 996 and verified by an officer or authorized representative of the applicant.

(2) Each application shall set forth or be accompanied by the following:

(a) Name, address, principal place of business, owners, officers, managers, and sponsors of ~~the~~ provider-sponsored ~~network~~~~[networks]~~.

(b) Address where books and records of the provider-sponsored network ~~shall~~ ~~[will]~~ be maintained at all times.

(c) The providers who sponsor, own, govern, or manage the provider-sponsored network shall provide a copy of their licenses and affidavit confirming good standing with their licensure board.

(d) A copy of the organizational documents of the applicant including:

1. Articles of incorporation;
2. Articles of association;
3. Partnership agreement;
4. Trust agreement;
5. Bylaws;
6. Organizational chart; and
7. Other applicable documents and amendments.

(e) A copy of the policies, procedures, and other documents explaining how the provider sponsored network ~~shall~~~~[will]~~:

1. Administer health plans;
2. Have ability, experience, and structure to arrange for appropriate level and type of health care services;

3. Conduct utilization management activities;
4. Achieve, monitor, and evaluate the quality and cost effectiveness of care provided;
5. Monitor access to its provider network; and
6. Use standardized electronic claims, ~~and~~ billing processes, and formats.

(f) Names, addresses, and biographical information of the following:

1. Board of directors;
2. Board of trustees;
3. Executive committee or other governing body;
4. Each owner of five (5) percent or more of the provider-sponsored network;
5. Principal officers;
6. Partners; and
7. Persons responsible for the conduct of the applicants affairs and day to day operations.

(g) Financial statements audited by an independent certified public accountant in conformity with statutory accounting practices ~~[prescribed or otherwise permitted by the commissioner]~~ [executive director] that reflect the following:

1. Financial position of the applicant;
2. Results of its operation;
3. Cash flows; and
4. Changes in capital and surplus.

(h) If the "as of" date of the financial statements filed pursuant to paragraph (f) of this subsection is more than ninety (90) days from the date of the application, interim financial statements compiled by an independent certified public accountant as of a date less than ninety (90) days from the application containing the same information as the audited financial statements.

(i) List of providers including name, address, license number, and health services provided.

(j) A statement or map reasonably describing the counties to be served and written assurance that health services ~~shall~~ will be provided to enrollees within fifty (50) miles of their residences.

(k) Proposed contracts and agreements including the following:

1. Applications or individual enrollment forms;
2. Master contract forms for group enrollment;
3. Evidence of coverage or handbook;
4. Riders or endorsements; and
5. Rates with actuarial justifications.

(l) A copy of the following professional agreements:

1. Provider agreements;
2. Third party administrators agreements;
3. Service agreements;
4. Administrative agreements; and
5. Reinsurance agreements.

(m) A copy of grievance procedures to be utilized for the investigation and resolution of enrollee and provider complaints and grievances.

(n) A copy of the applicant's plan for handling insolvency as required by KRS 304.17A-310(6).

(o) Financial program setting forth a three (3) year projection of operations on a quarterly basis which shall include the following:

1. Detailed enrollment projections;
2. Projection of balance sheets;
3. Projection of cash flow statements showing any capital expenditures;
4. Projection of purchase and sale of investments and deposits;
5. Projection of income and expense statements anticipated from the start of operation until the organization has had net income for one (1) year; and



6. Statement of the sources of working capital as well as other sources of funding.

Section 4. If any of the information filed with the department[office] pursuant to Section 3 of this administrative regulation changes or becomes incorrect, then the provider-sponsored network shall immediately notify the office in writing of the change and immediately give the department[office] the correction.

Section 5. Incorporated by Reference. (1) Form 996, "Application for Certificate of Filing as a Provider-Sponsored Integrated Health Delivery Network", 08[03]/2021, is incorporated by reference. [Form numbered "996", revised June 1996, is prescribed by the office and incorporated by reference. Copies may be obtained from the Office of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero St., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov>].

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

At the time the agency files this staff suggested substitute it needs to file one (1) copy of a corrected RIA that:

- Provides an answer to Question 8 on fees

#### MATERIAL INCORPORATED BY REFERENCE

At the time the agency files this staff suggested substitute it needs to file one (1) clean copy of Form 996 that:

- Updates edition date of form to 08/2021 to distinguish it from previous version
- In item 7., removes the "E" from the citation to 806 KAR 17:100 as the regulation is an ordinary administrative regulation

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:100  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the requirements for a provider sponsored network applying for a certificate of filing.
  - (b) The necessity of this administrative regulation:
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-300 requires that provider sponsored networks shall obtain a certificate of filing before doing business in Kentucky.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by providing the requirements for a provider sponsored network applying for a certificate filing.
- (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 amendments to this administrative regulation are technical in nature and are due in part to the drafting requirements of Chapter 13A.
  - (b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are set forth in Chapter 13A.
  - (c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A establishes several specific drafting requirements to ensure conformity and consistency with administrative regulation formatting.
  - (d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the administration of statutes KRS 304.2-110(1), 304.17A-300, 304.17A-310.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect 5 provider sponsored networks in Kentucky.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: A provider-sponsored network shall apply for and obtain a certificate of filing from the commissioner in order to provide, directly or through arrangements with others, a health benefit plan to consumers voluntarily enrolled with the organization on a per capita or a predetermined, fixed prepayment basis. In order to file for this certificate the regulated entity must use a Form 996.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no cost associated with this administrative regulation nor the amendments.

(c) As a result of compliance, what benefits will accrue to the entities: A provider-sponsored network applying for a certificate of filing will uphold it's statutory duties in order to obtain said certificate.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no cost associated with the administrative regulation.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(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:

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, no fees are established or increased.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this regulation applies equally to all provider-sponsored network.



**Commonwealth of Kentucky**  
**Department of Insurance**  
**P.O. Box 517**  
**500 Mero Street**  
**Frankfort, KY 40602**  
**502-564-6082 - FAX 502-564-4604**

**APPLICATION FOR CERTIFICATE OF FILING AS A PROVIDER-  
SPONSORED INTEGRATED HEALTH DELIVERY NETWORK**

1. Name and Address of Applicant: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

2. Address to which official communications should be mailed (if different from above):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Names of providers who are sponsors, owners, officers, or managers of the provider-sponsored network (attach additional pages, if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name of Provider Network)

by signing this registration, agrees to comply with all applicable provisions of Kentucky law, including, but not limited to KRS 304.17A

Provider's Signature: \_\_\_\_\_

Provider's Name: \_\_\_\_\_

Provider's Title: \_\_\_\_\_

IRS No. \_\_\_\_\_

Date: \_\_\_\_\_

4. Biographical Affidavit (Form No. 501) which is available on the Kentucky Department of Insurance website. Please make the appropriate number of copies that you will need completed.
5. Service of Process Designation (Form No. 800 - for non-domestic networks) which is available on the Kentucky Department of Insurance website.
6. KRS 304.17A-300 & 310 lists the criteria necessary for the establishment of a provider-sponsored integrated health delivery network. Kentucky Laws and Regulations are available for your review on the Kentucky Department of Insurance web. Please submit the required data, with the exception of the deposit. The forms for the deposit will be forwarded to you when we have completed an initial review of the application material.
7. 806 KAR 17:100, also lists additional criteria. Please submit the required data. The items listed under paragraph (k) should be submitted in duplicate. These items are the plan's proposed benefit package (policy forms), rates and enrollee application.

6. Fees for filing:

Charter Documents	\$100.00
Original Certificate of Filing	\$500.00
Policy Forms and Application	\$ 5.00 (each)
Rates	\$100.00

---

Please make checks payable to the **KENTUCKY STATE TREASURER** and submit to the Kentucky Department of Insurance, Financial Standards and Examination Division, at the address provided at the top of the page.



**Commonwealth of Kentucky**  
**Department of Insurance**  
**P.O. Box 517**  
**500 Mero Street**  
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(Name of Provider Network)

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Provider's Signature: \_\_\_\_\_

Provider's Name: \_\_\_\_\_

Provider's Title: \_\_\_\_\_

IRS No. \_\_\_\_\_

Date: \_\_\_\_\_

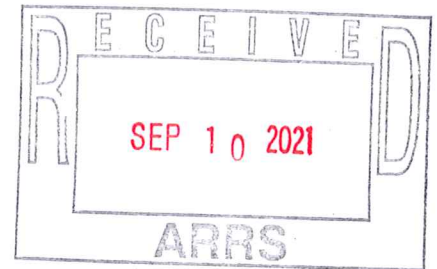
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**Andy Beshear**  
Governor

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
P.O. Box 517  
Frankfort, Kentucky 40602-0517  
1-800-595-6053  
<http://insurance.ky.gov>

**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 17:150. Health benefit plan rate filing requirements.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:150, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:150.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601



Final 8-31-2021

SUGGESTED SUBSTITUTE

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

806 KAR 17:150. Health benefit plan rate filing requirements.

RELATES TO: KRS 304.1-050, 304.3-270, 304.4-010, 304.17A-005, 304.17A-095, 304.17A-0952, 304.17A-0954, ~~[304.17A-096, 304.17A-132, 304.17A-134, 304.17A-139, 304.17A-149, 304.17A-410, 304.17A-430,]~~ ~~[304.17A-450,]~~ ~~[304.17A-500,]~~ 304.17A-750, 304.17A-764, 304.17A-834, 304.17B-021, 304.17B-023(3)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-095(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner ~~[Executive Director]~~ 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 ~~[by]~~ KRS 304.1-010 ~~[through KRS 304.99-154]~~. KRS 304.17A-095(7) authorizes the commissioner ~~[executive director]~~ to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and establish the format of the filing ~~[filings]~~. ~~[The purpose of]~~ This ~~[This]~~ administrative regulation ~~establishes~~ ~~[is to establish]~~ ~~[establishes]~~ the format and procedure for the submission of a health benefit plan rate filing.

Section 1. Definitions. (1) ~~["Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustment for case characteristics or health status.~~

~~(2) "Base new business rate change" means:~~

~~(a) For a product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period; and~~

~~(b) For a product within a market segment class of business, the percentage change equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.~~

~~(3) "Base premium rate" is defined by[in] KRS 304.17A-005(3).]~~

~~(4) "Basic health benefit plan" is defined in KRS 304.17A-005(4).]~~

~~(2) [(4)] [(5)] "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.~~

~~(3) [(5)] "Commissioner" is defined by[in] KRS 304.1-050(1). [~~

~~(6) "Covered person" is defined in KRS 304.17A-500(3).]~~

~~(4) [(6)] [(7)] "Date of filing" means the date the department ~~[office]~~ confirms that the appropriate filing fee and all information required by this administrative regulation have been received by the department ~~[office]~~.~~

~~(5) [(7)] "Department" is defined by[in] KRS 304.1-050(2).~~

~~(6) [(8)] "Duration" means a policy year of twelve (12) months, measured from the date of issuance of a policy, with each succeeding twelve (12) month period being a new duration.~~

~~(7) [(9)] "Employer-organized association" is defined by[in] 304.17A-005(12) ~~[KRS 304.17A-0954(1)(e)]. [~~~~

~~(10) "Executive director" is defined in KRS 304.1-050(1).]~~

~~(8) [(10)] [(11)] "FFS" means a fee for service product type.~~

~~(9)~~~~(11)~~~~(12)~~ [~~"Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17A-005(19).~~

~~(12)~~~~(13)~~ "Health benefit plan" is defined *by/in* KRS 304.17A-005(22).

~~(10)~~~~(13)~~~~(14)~~ "Health benefit plan region" or "geographic region" means each one (1) of the eight (8) allowable rating regions for health benefit plans identified in HIPMC-R33, Health Benefit Plan Regions[, which is incorporated by reference in 806 KAR 17:005].

~~(11)~~~~(14)~~~~(15)~~ "HMO" means a health maintenance organization product type.

~~(12)~~~~(15)~~~~(16)~~ "Index rate" is defined *by/in* KRS 304.17A-005(27) [304.17A-005(25)].

~~(13)~~~~(16)~~~~(17)~~ [~~"Insurance purchasing outlet" is defined in KRS 304.17A-750(4).~~

~~(17)~~~~(18)~~ "Large group" is defined *by/in* KRS 304.17A-005(32) 304.17A-005(30).

~~(14)~~~~(18)~~~~(19)~~ "Material change" means any change to a rate filing, except that a change in value of an existing rate factor other than trend *is/shall* not be considered a material change.[  
~~(20)~~ "Office" is defined in KRS 304.1-050(2).]

~~(15)~~~~(19)~~~~(21)~~ "POS" means a point of service product type.

~~(16)~~~~(20)~~~~(22)~~ "PPO" means a preferred provider organization product type.

~~(17)~~~~(21)~~~~(23)~~ "Small group" is defined *by/in* KRS 304.17A-005(45) [304.17A-005(42)].

~~(18)~~~~(22)~~~~(24)~~ "Target loss ratio" means a loss ratio that an insurer files, that [which] projects and guarantees a loss ratio on an annual basis.

Section 2. Scope. (1) A health benefit plan rate filing to which the standards of KRS 304.17A-095 apply, shall include the information required by Sections 3 through 10 of this administrative regulation.

(2) The period of time that [in which] the commissioner [executive director] shall have to approve or disapprove a filing shall not begin until the date of filing.

(3) An insurer shall not market or use the proposed rates until the date of filing.

(4) A filing and fee shall not be found as/deemed received until the department [office] confirms that:

(a) Information required by Sections 3 through 10 of this administrative regulation has been received; and

(b) The appropriate fee, as established in Section 3(2)(b) of this administrative regulation[set forth in 806 KAR 4:010], has been paid.

Section 3. Health Benefit Plan Rate Filing Procedures. (1) A health benefit plan rate filing shall be submitted electronically through the System For Electronic Rate and Form Filing (SERFF) [~~or an electronic manner approved by the department~~][to the office] for a:

(a) New rate filing; or

(b) Material change to a previously approved rate filing.

(2) The following shall be included and properly completed in a health benefit plan rate filing submission:

(a) Form HIPMC-R32, the Health Benefit Rate Filing Information Form[, which is incorporated by reference in 806 KAR 17:005];

(b) The following filing fee or the domiciliary state fee, whichever is greater:

1. \$100 for an original or new filing; or

2. Fifty (50) dollars for an amendment to a filing;

(c) Form HIPMC-F1, Face Sheet and Verification Form, that [which] is incorporated by reference in 806 KAR 14:007 [806 KAR 17:005];

(d) Signed actuarial memorandum prepared in accordance with Sections 6 and 7 of this administrative regulation; *and*

~~(e) An Income and Expense Worksheet, which is incorporated by reference in 806 KAR 17:005;]~~

(e) ~~[(f)]~~ Except for large groups, Certification Form HIPMC-R34~~[, which is incorporated by reference in 806 KAR 17:005].~~]; and~~~~

(g) ~~If a rate for a basic health benefit plan is included, Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet Form and Rate Filings, which is incorporated by reference in 806 KAR 17:005.~~

~~(3) Two (2) copies of all written material shall be submitted to the office.]~~

(3) ~~[(4)]~~ A ~~[One (1)]~~ copy of all ~~[written]~~ material shall be submitted electronically to the Kentucky Attorney General's Office by the insurer at the same time as the submission to the department [office] and shall include:

(a) An amendment;

(b) An update; or

(c) A response to an inquiry from the department [office].

(4) ~~[(5)]~~ An electronic copy~~[Two (2) copies]~~ of all correspondence with the department [office] or other state agency concerning a filing shall be submitted to the department [office].

~~(6) A photocopy of the most recent annual financial report shall be attached to the filing as an exhibit].~~

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for each market segment as follows:

(a) Individual;

(b) Small group;

(c) Association;

(d) Large group; ~~and~~

(e) Except as otherwise authorized pursuant to KRS 304.17A-0954~~(1)~~~~[(2)]~~, each employer-organized association; and

(f) Self-insured employer organized association.

(2) A large group rate filing may include each product type offered as follows:

(a) FFS;

(b) PPO;

(c) POS; and

(d) HMO.

(3) A rate filing for a market segment other than large group may be submitted separately for each product type listed in subsection (2) of this section or in the following combinations:

(a) FFS and PPO; or

(b) POS, HMO, and PPO.]

Section 5. Employer-organized Association Rate Filings for Fully Insured and Self Insured.

(1)(a) An employer-organized association rate filing shall include the name of each employer-organized association that generated the rating experience contained in the filing; and

(b) If more than one (1) employer-organized association is named in the filing as identified in paragraph (a) of this subsection and each employer-organized association provides the insurer with written permission to have rates based on experience other than its own, the insurer:

1. May have the experience of all employer-organized associations named in the filing combined for rate determination; and

2. Shall include proposed rates for the combination of associations in one (1) filing.

(2) Each employer-organized association rate filing shall contain documentation demonstrating that the entity is an employer-organized association pursuant to KRS 304.17A-005(12)~~[304.17A-0954(1)(c)]~~.

(3) An ~~[if an]~~ insurer ~~[is]~~ proposing to begin marketing a health benefit plan to an employer-organized association, shall file a rate filing ~~[may be based on the standard plan benefits]~~, in-

cluding appropriate formulas and rate factors within the limitations outlined in KRS 304.17A-0954. The filing shall include:

- (a) Factors for all plans to be offered; and
  - (b) A detailed description of the methodology for incorporating the actual experience of an employer-organized association in determining rates for that association.
- (4) If the insurer receives written permission from an employer-organized association regarding combining experience with other employer-organized associations, the insurer shall submit a copy of the ~~[two (2) copies of the written]~~ permission to the commissioner ~~[executive director]~~ with the rate filing. The ~~[written]~~ permission shall include the following:
- (a) A statement giving the insurer permission to rate the employer-organized association on experience other than the experience of the employer-organized association ~~[association's own experience]~~;
  - (b) Name, address, and telephone number of the employer-organized association giving permission to the insurer;
  - (c) Name, address, and telephone number of the insurer to which permission is given;
  - (d) Month, day, and year that permission is given to the insurer; and
  - (e) Number of eligible association members.

Section 6. Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the most recent edition of the following located at <http://www.actuarialstandardsboard.org/standards-of-practice/>:

- (a) Actuarial Standard of Practice No. 8, Regulatory Filings for *Health Benefits, Accidents/Rates* and *Health Insurance, and Entities Providing Health Benefits/Financial Projections for Health Plans* [(Doc. No. 010, 1990 Edition)], *Actuarial Standards Board/American Academy of Actuaries*;
  - (b) Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans [(Doc. No. 052, adopted October, 1996)], *Actuarial Standards Board/American Academy of Actuaries*; and
  - (c) Actuarial Standard of Practice No. 31, Documentation in Health Benefit Plan Ratemaking [(Doc. No. 060, adopted October, 1997), American Academy of Actuaries; and]
- ~~(c)~~(d) Actuarial Standard of Practice No. 41, Actuarial *Communications/Communication* [(Doc. No. 086, adopted March, 2002)], *Actuarial Standards Board/American Academy of Actuaries*].

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

- (a) Qualifications of the signing actuary;
- (b) A statement identifying the date that the proposed rates shall be used;
- (c) A discussion of the rate development, that [which] shall include a detailed explanation of the following:[]

~~1. The effects of each of the following mandated benefits which shall include the percentage cost and actual dollars attributable to the rates and the number of policyholders who are affected:~~

- ~~a. For benefit plans offering pharmacy benefits, coverage for amino acid modified preparations and low protein modified food products for the treatment of inherited metabolic disorders in accordance with KRS 304.17A-139(4);~~
- ~~b. Hearing aids and related services in accordance with KRS 304.17A-132;~~
- ~~c. Anesthesia and hospital or ambulatory surgical facility services in connection with dental procedures in accordance with KRS 304.17A-149; and~~
- ~~d. Medical and surgical benefits with respect to mastectomies pursuant to KRS 304.17A-134;]~~

~~1.~~ 1. [2.] The claim cost development, that [which] shall include an explanation of the following:

- a. Methodology;
- b. Assumptions including the following:
  - (i) Trend, including supporting analysis, that [which] supports the trend level selected;
  - (ii) Benefit change;
  - (iii) Utilization or cost-per-service change;
  - (iv) Demographic change;
  - (v) Change in medical management;
  - (vi) Change in provider contracts; and
  - (vii) Any other assumption used by the actuary in the claim cost development; and
- c. Experience by month, including exposures or members, earned premium, paid claims, incurred claims, and incurred loss ratio, for the past three (3) years for this product, or for a similar product if the [this] filing is for a new product;

2.a.[3.a.] Development and printout of the following shall be shown by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and highest area factor:

- (i) Base premium rates;
  - (ii) Index rates; and
  - (iii) Corresponding highest premium rates; [and
  - (iv) ~~If offered, any applicable GAP premium rates for the standard plan option.]~~
- b. If the filing contains more than one (1) product type, a development and printout as identified and described in clause a of this subparagraph for each product type separately.
  - c. If the filing contains proposed rates for more than one (1) class of business, a development and printout as identified and described in clauses a. [a] and b. [b] of this subparagraph for each class of business separately;[

4. For an insurer that has existing GAP enrollees:

- a. ~~Index rates for the non-GAP classes of business may be set by excluding the experience of the GAP enrollees;~~
- b. ~~Index rates for the GAP class of business shall be set by considering the block of experience for the new GAP class of business and the former class of business, which included GAP enrollees; and~~
- c. ~~Rates for the GAP class of business may not exceed 150 percent of the index rates established in clause b of this subparagraph;]~~

3. [5.] Factors used for each case characteristic, including age, gender, industry or occupation, and geographic region, with a separate summary of the maximum factor and the minimum factor for each case characteristic.

a. A health benefit plan region other than the eight (8) identified in HIPMC-R33, Health Benefit Plan Regions, [~~which is incorporated by reference in 806 KAR 17:005.~~] shall not be used for a geographic region factor adjustment; and

b. Any healthy lifestyle discount factor, if applicable, shall be included and an explanation of the determination of that factor, and the condition for when [under which] that factor is applicable;

4. [6.] The anticipated pricing loss ratio, including a detailed justification of load factors, including percentages allocated for the:

- a. Administrative expense assumption, including an explanation of:
  - (i) Any change from the factor used for an existing rate [rates]; and
  - (ii) How these costs are allocated among each benefit plan design, including demonstrative documentation as an exhibit;
- b. Commission assumption, including an explanation for any change from the factor used for an existing rate [rates];
- c. Federal, state, and local government tax assumptions, including an explanation for a change from the factor used for an existing rate [rates];

- d. Investment income assumption, including an explanation for any change from the factor used for an existing rate [rates];
- e. Profit and contingency assumption, including an explanation for a change from the factor used for an existing rate [rates];
- f. Assessments pursuant to KRS 304.17B-021; and
- g. Other identified load factors;
- (d) A detailed explanation, including an example of the following:
  - 1. The method for determining a small group composite rate;
  - 2. The conditions under which a small group composite rate is recalculated; and
  - 3. The group size that is eligible for a composite rate calculation;
- (e) Each health benefit plan description and the applicable benefit factor adjustment, or other methods of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan applicable to the [to which this] filing [applies];
- (f) Detailed discussion of the manner in which the projected amount of net assessments and payments under KRS 304.17B-021 and 304.17B-023(3) are to be used in establishing the proposed rates in the filing as required by KRS 304.17A-095;
- (g) Information regarding how fees are paid to providers as follows:
  - 1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and
  - 2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments, and other payments for the rate filing period;
- (h) If a trend rate is used, include the time period to which the trend applies, not to exceed twelve (12) months, and the applicable annual trend rate and the periodicity of the factor;
- (i) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers, or enrollees;
- (j) Information regarding each class of business, which shall include:
  - 1. Identification of each class of business;
  - 2. Justification of each separate class of business; and
  - 3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates~~[, excluding a GAP class of business]~~; and
- (k) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum for a rate filing other than a large group filing, and signed by the qualified actuary who prepared and signed the actuarial memorandum:
  - 1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to the following markets:
    - a. Individual;
    - b. Association; and
    - c. Small group; and
  - 2. That the proposed rates meet the requirements of KRS 304.17A-0952 or 304.17A-0954, as applicable.

Section 7. Large Group Rate Filings. ~~[(4)]~~ The actuarial memorandum for a large group rate filing shall include the following information:

~~(1)[(a)]~~ The information identified in Section 6(2)(a), (b), (c)1, ~~[2;]~~ ~~4[6]~~, (f), (g), (h), ~~[and]~~ (i) and (j) of this administrative regulation;

~~(2)[(b)]~~ Development of rating basis, including each adjustment for the following:

~~(a)[4.]~~ Age;

- ~~(b)[2.]~~ Gender;
  - ~~(c)[3.]~~ Family composition;
  - ~~(d)[4.]~~ Benefit plan;
  - ~~(e)[5.]~~ Industry;
  - ~~(f)[6.]~~ Healthy lifestyle; and
  - ~~(g)[7.]~~ Any other adjustment included in the development;
  - ~~(3)[(e)]~~ A formula for new and renewal business, including a definition of each term used in the formula;
  - ~~(4)[(d)]~~ Credibility criteria used in conjunction with experience rating;
  - ~~(5)[(e)]~~ Detailed explanation of a change in the manual rating formula or experience rating formula;
  - ~~(6)[(f)]~~ Detailed explanation of a change in factors that would be used in a formula;
  - ~~(7)[(g)]~~ Any periodic trend rate applied in the formula;
  - ~~(8)[(h)]~~ The composite effect of a change in formula and formula factors; and
  - ~~(9)[(i)]~~ Detailed explanation of any trend assumption used in experience rating.
- ~~[(2) Certification Form HIPMC-R34, Certification Form[, incorporated by reference in 806 KAR 17:005], shall not be required for a large group rate filing.]~~

Section 8. Guaranteed Loss Ratio Filing for New Products or Products without Credible Experience.

- (1) A filing accompanied by a guaranteed loss ratio statement shall meet all requirements of KRS 304.17A-095(6).
- (2) Individual, small group, and employer-organized association market filings shall meet the following requirements regarding guaranteed loss ratios by duration:
  - (a) The guaranteed loss ratio for the first duration shall not be less than sixty (60) percent of the guaranteed lifetime loss ratio specified in the policy.
    - 1. Expected loss ratios may vary by month within the first duration; and
    - 2. The average of the loss ratios for all months shall be equal to the guaranteed loss ratio for the first duration;
  - (b) The guaranteed loss ratio for a specific duration shall not be less than the guaranteed loss ratio for the previous duration;
  - (c) The guaranteed loss ratio for the third duration shall not be less than the guaranteed lifetime loss ratio identified in the policy;
  - (d) The average of the first six (6) guaranteed loss ratios by duration shall not be less than the guaranteed lifetime loss ratio identified in the policy;
  - (e) The guaranteed lifetime loss ratio shall not be less than that identified in KRS 304.17A-095(6)(a)5; and
  - (f) The guaranteed loss ratios by duration shall be guaranteed for any policy issued under the policy form and shall be identified in the policy.
- (3) A refund shall be calculated pursuant to the following formula:
  - (a) Refundable premium for any year shall be the sum of the current year's refundable premium for each duration. Each duration's refundable premium shall be calculated by subtracting the three (3) items in subparagraphs 1, 2, and 3 of this paragraph from the current year's earned premium by duration and multiplying the result by the ratio of earned premium by duration and earned premium by duration minus the items identified in subparagraphs 1 and 2 of this paragraph and minus any premium related expenses identified in subparagraph 3 of this paragraph:
    - 1. State and local premium taxes allocated to that duration;
    - 2. Assessments pursuant to KRS 304.17B-021 allocated to that duration; and

3. The sum of incurred claims, preferred provider organization expenses, case management and utilization review expenses, and reinsurance premiums, minus reinsurance recoveries, allocated to that duration, divided by the guaranteed loss ratio in the policy, for that duration;

(b) If the annual earned premium is less than \$2,500,000, the minimum refund shall be calculated by refundable premium multiplied by the annual earned premium, divided by \$2,500,000;

(c) If the annual earned premium is equal to or greater than \$2,500,000, the minimum refund shall be the refundable premium;

(d) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(e) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(4) An audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Guaranteed loss ratios by duration;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities, and description of method of allocation by duration;

(d) Earned premium by duration and description of method of allocation by duration;

(e) State premium tax by duration and description of method of allocation by duration;

(f) Local premium tax by duration and description of method of allocation by duration;

(g) Assessments by duration and description of the method of allocation by duration;

(h) Incurred claims by duration and description of method of allocation by duration;

(i) Preferred provider organization expenses and description of method of allocation by duration;

(j) Case management and utilization review expenses and description of method of allocation by duration;

(k) Reinsurance premiums less reinsurance recoveries and description of method of allocation by duration;

(l) A description of reinsurance and identity of reinsurer;

(m) A statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees, or any other related administration expenses;

(n) A statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings, and any other savings;

(o) A statement of refund checks not being issued before approval of the audit;

(p) Calculation of minimum refundable premium, actual refunded premium, and refund carryover;

(q) Calculation of percent of earned premium that shall be refunded;

(r) Method used to calculate a policyholder's actual refund;

(s) Historical experience for the policy form since inception;

(t) Auditor's certification; and

(u) Actuarial certification.

(5) An initial rate filing shall be a formal filing, and a subsequent rate filing may be submitted by actuarial certification.

Section 9. Minimum Guaranteed Loss Ratio Requirements for an Amended Policy Form or a Previously Filed Minimum Guaranteed Loss Ratio.



(1) If amending a policy form or a previously filed minimum guaranteed loss ratio, a filing accompanied by a guaranteed loss ratio statement shall meet the requirements of KRS 304.17A-095(6).

(2)~~[(a)]~~ An insurer shall provide a minimum guaranteed loss ratio statement each time rates are amended for a policy form or if amending a previously filed minimum guaranteed loss ratio. The statement shall identify amounts by which rates are amended and include an actuarial certification verifying that rates continue to meet the requirements of the minimum guaranteed loss ratio most recently filed with the department~~;~~ and

~~—(b) Most recently filed with the department [office]].~~

(3) The initial rate filing and subsequent statements shall include an actuarial certification, which includes information to demonstrate meeting the requirements of KRS 304.17A-0952 and Section 6 of this administrative regulation.

(4)(a) The currently approved loss ratio on file with the department ~~[office]~~ under a prior approval process or a minimum guaranteed loss ratio shall be found as~~deemed~~ a reasonable loss ratio for any amended policy forms or amended minimum guaranteed loss ratios; and

(b) Rate filings requesting a change in the previously approved loss ratio shall require documented evidence to demonstrate increased administrative cost or other evidence that the insurer would not be able to achieve previously approved profitability targets.

(5) If experience is filed by duration pursuant to Section 8(2) of this administrative regulation, a refund shall be calculated in accordance with Section 8(3) of this administrative regulation.

(6) If experience is filed by utilizing a target loss ratio and the actual achieved loss ratio is less than the target loss ratio, a refundable premium shall be determined as follows:

(a) Refundable premium shall be equal to the annual earned premium multiplied by the percentage by which the target loss ratio exceeds the actual achieved loss ratio;

(b)1. If the annual earned premium is equal to or greater than \$2,500,000, the minimum refundable premium shall be equal to the refundable premium as established in paragraph (a) of this subsection; or

2. If the annual earned premium is less than \$2,500,000, the:

a. Minimum refundable premium shall be equal to the refundable premium multiplied by the ratio of the annual earned premium divided by \$2,500,000;

b. Refund carryover shall be equal to any amount by which the refundable premium exceeds the minimum refundable premium; and

c. Refundable premium in the subsequent year shall be the sum of the refund carryover plus the calculated refundable premium for the subsequent year;

(c) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(d) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(7) If experience is filed by duration, an audit shall be conducted in accordance with Section 8(4) of this administrative regulation.

(8) If experience is filed by target loss ratio, an audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Actual loss ratio;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities;

(d) Earned premium;

(e) State premium tax;

- (f) Local premium tax;
  - (g) Assessments;
  - (h) Incurred claims;
  - (i) Preferred provider organization expenses;
  - (j) Case management and utilization review expenses;
  - (k) Reinsurance premiums less reinsurance recoveries;
  - (l) A description of reinsurance and identity of reinsurer;
  - (m) A statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees, or any other related administration expenses;
  - (n) A statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings, and any other savings;
  - (o) A statement of refund checks not being issued before approval of the audit;
  - (p) Calculation of minimum refundable premium, actual refunded premium, and refund carryover;
  - (q) Calculation of percent of earned premium that is to be refunded;
  - (r) Method used to calculate a policyholder's actual refund;
  - (s) Historical experience for the policy form since inception;
  - (t) An auditor's certification; and
  - (u) An actuarial certification.
- (9) An initial rate filing shall be a formal filing, and a subsequent rate filing may be by actuarial certification.
- (10) An initial rate filing shall be required for insurers electing to file under a minimum guaranteed loss ratio pursuant to KRS 304.17A-095(6).

Section 10. Amendments to Previously Approved Rate Filings. (1) For any change that is not a material change, an insurer shall submit an amendment to a rate filing previously approved by the department [office], which shall include the following:

- (a) Identification of the rate file number assigned and stated in the Order of Approval received by the insurer from the department [office] for the previously approved rate filing;
- (b) Date of approval of the previously approved rate filing;
- (c) The proposed effective date of the amendment;
- (d) A fifty (50) dollar filing fee;
- (e) A copy [~~Two (2) copies~~] of a properly completed HIPMC-F1 form, Face Sheet and Verification Form ***that is incorporated by reference in 806 KAR 14:007***; and [~~which is incorporated by reference in 806 KAR 17:005;~~]
- (f) A copy [~~Two (2) copies~~] of a properly-completed HIPMC-R32 form, Health Benefit Plan Rate Filing Information Form [~~which is incorporated by reference in 806 KAR 17:005;~~ and
- (g) ~~If the filing is for a basic health benefit, Two (2) copies of the completed HIPMC-RF-25 Form, Basic Health Benefit Plan Summary Sheet - Form and Rate Filings, which is incorporated by reference in 806 KAR 17:005].~~

(2) Each amendment filing shall contain documentation to demonstrate the necessity of the amendment, which shall include the following:

- (a) An itemized list of the information to be amended and the reason for the amendment;
- (b) A statement identifying the impact of the amendment in relation to benefits and costs on current and future policyholders; and
- (c) A statement identifying the impact of the amendment on the insurer.

(3) One (1) copy of the amendment filing and written material relating to the filing shall be submitted to the Kentucky Attorney General's department [office] by the insurer at the same time as the submission to the department [office].

(4) The amendment to a previously approved rate filing shall not be **found as[deemed]** received until the department [office] confirms that the information and fifty (50) dollar filing fee required under this section have been received.

(5) Within sixty (60) days of **date of filing[confirmation of receipt of the required information and fee]**, the department [office] shall notify the insurer in writing of the acceptance or rejection of the amendment.

~~[(6) The sixty (60) day confirmation time shall not begin until the department [office] confirms that the required information and fee have been received.]~~

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

(a) Actuarial Standard of Practice No. 8, "Regulatory Filings for **Health Benefits, Accident,[Rates]** and **Health Insurance, and Entities Providing Health Benefits[Financial projections for Health Plans]**", ~~[originally adopted 1990, newly adopted] 03/2014~~ [(Doc. No. 010, 1990 Edition)]["], **Actuarial Standards Board[American Academy of Actuaries]**;

(b) Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans", ~~[originally adopted 10/1997, revised and effective] 05/2011~~ [(Doc. No. 052, adopted October, 1996)]["], **Actuarial Standards Board[American Academy of Actuaries]**;

(c) Actuarial Standard of Practice No. 31, "Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997)", American Academy of Actuaries;

~~(c) [(d)]~~ Actuarial Standard of Practice No. 41, "Actuarial **Communications[Communication]**", ~~12/2010[originally adopted 03/2002, revised and effective 05/2011]~~ (Doc. No. 086, adopted March, 2002)["], **Actuarial Standards Board[American Academy of Actuaries]**;

(d) HIPMC-R32 Form, "Health Benefit Plan Rate Filing Information Form", 04/2021;

~~(e) [HIPMC-F1 Form, Face Sheet and Verification Form, 07/2020;~~

~~(f)]~~ HIPMC-R33, "Health Benefit Plan Regions", 04/2021;

~~(f)[(g)] [Certification Form]~~ HIPMC-R34, "Certification Form", 04/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [office] of Insurance, The Mayo-Underwood Building, 500 Mero Street [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance[office's] internet Web site at **<https://insurance.ky.gov/ppc/CHAPTER.aspx>**[**<http://www.insurance.ky.gov>**] [**<http://doi.ppr.ky.gov>**].

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

At the time the agency files this staff suggested substitute, it needs to file one (1) copy of an RIA that includes:

- An answer to Questions 2(b), 7, and 8

## MATERIAL INCORPORATED BY REFERENCE

At the time the agency files this substitute it needs to file one (1) clean copy of the HIPMC Form R-32, Health Benefit Rate Filing Information Form that makes changes to update for clarity relating to base new business rate and base new business rate change.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:150  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for filing health benefit plan rates so the Commissioner will have relevant information to approve or disapprove a rate filing.

(b) The necessity of this administrative regulation: KRS 304.17A-095 authorizes the Commissioner to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and set forth the format for the filings. This administrative regulation is needed to ensure that health benefit plans provide the required information necessary for the commissioner to approve or disapprove rate filings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-095(7) authorizes the commissioner to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the commissioner will have relevant information to approve or disapprove the rate filing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the commissioner to receive the information required to approve or disapprove a health benefit plan rate filing as required by KRS 304.17A-095.

(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 amendments filed in this administrative regulation include amending outdated language to meet the statutory requirements on Chapter 13A. Other amendments include incorporating previous materials into the regulation, update market segments, establishing a requirement for forms to be submitted electronically using SERFF system. The amendments also reflect the new adoption dates of the materials incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clean up original language for readability and remove any references to GAP reporting program, which is no longer completed by the Department.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-095(7) authorizes the commissioner to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the commissioner will have relevant information to approve or disapprove the rate filing.

(d) How the amendment will assist in the effective administration of the statutes: this administrative regulation will continue to enable the commissioner to receive the information required to approve or disapprove a health benefit plan rate filing as required by KRS 304.17A-095

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect licensed insurers writing health insurance in Kentucky.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: Insurers will be required to file information in conformity with current law regarding health insurance rates needed by the commissioner to determine whether the rates should be approved or disapproved. The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file information under 806 KAR 17:150, the costs to the insurers for filing under this amendment should not increase significantly, if at all.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The insurer is responsible for the applicable filing fee. Copying and delivery costs.

(c) As a result of compliance, what benefits will accrue to the entities: If the insurer writing the plan meets formatting requirement set in this administrative regulation as well as specified statutes the commissioner shall approve the filing. If the requirements set forth are not met, the commissioner may disapprove the filing.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(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, fees will not need to be increased to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes fees by requiring a one hundred (100) dollar [\$100] for an original or new filing; or fifty (50) dollar for an amendment to a filing; if these are greater than the fees established in 806 KAR 4:010.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this administrative regulation applied to all insurers licensed to issue, deliver, or renew health benefit plans in Kentucky.

COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF INSURANCE  
Frankfort, KY 40602-0517

HEALTH BENEFIT PLAN RATE FILING  
INFORMATION FORM

Company Name \_\_\_\_\_  
(name listed on the certificate of authority and/or the article of incorporation)

NAIC NO. \_\_\_\_\_ FEDERAL TAX ID NO. \_\_\_\_\_

D/B/A \_\_\_\_\_  
(name listed on the filed certificate of assumed name)

Product Marketing Network Name (if any): \_\_\_\_\_

Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-Mail: \_\_\_\_\_

Contact Actuary: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-Mail: \_\_\_\_\_

To whom should the notification for the "DATE OF FILING" be sent:

\_\_\_ Contact Person \_\_\_\_\_ Contact Actuary

\_\_\_\_\_  
Other

\_\_\_\_\_  
Email

Company/Insurer Assigned File Number: \_\_\_\_\_

Requested Effective Date of This Filing: \_\_\_\_\_

MARKET SEGMENT: Small Group \_\_\_\_\_ Individual \_\_\_\_\_ Large Group \_\_\_\_\_

Association \_\_\_\_\_

OTHER: \_\_\_\_\_ Employer Organized Association (EOA): \_\_\_\_\_  
Employer Organized Association Name

\_\_\_\_\_ Self Insured EOA: \_\_\_\_\_  
Self Insured EOA Name

PRODUCT TYPE: HMO \_\_\_\_\_ POS \_\_\_\_\_ PPO \_\_\_\_\_ FFS \_\_\_\_\_



COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF INSURANCE  
Frankfort, KY 40602-0517

HEALTH BENEFIT PLAN RATE FILING  
INFORMATION FORM

**COMPLETE A SEPARATE PAGE FOR EACH PRODUCT TYPE**

Product Type \_\_\_\_\_

This filing is for: \_\_\_\_\_ Material Change to previously approved DOI Rate Filing # \_\_\_\_\_  
(DOI File No)

\_\_\_\_\_ New Product Rates

\_\_\_\_\_ Change in Existing Product Rates Due To:

\_\_\_\_\_ Projected need for rate change

\_\_\_\_\_ Geographical Region (Adding or Deleting a Service Area)

\_\_\_\_\_ Other change requiring a change in rates

Specify: \_\_\_\_\_

\_\_\_\_\_ Rate Change: Increase \_\_\_\_\_ Decrease \_\_\_\_\_

DOI File Number for Existing Health Benefit Rates: \_\_\_\_\_

Effective Date of Existing Health Benefit Rates: \_\_\_\_\_

Base New Business Rate: \_\_\_\_\_

Base New Business Rate Change: \_\_\_\_\_

Class: \_\_\_\_\_ Product: \_\_\_\_\_

Class: \_\_\_\_\_ Product: \_\_\_\_\_

Note: "Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustment for case characteristics or health status.

"Base new business rate change" means:

(a) For a product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period; and

(b) For a product within a market segment class of business, the percentage change equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.

HEALTH BENEFIT PLAN RATE FILING  
INFORMATION FORM

**COMPLETE A SEPARATE PAGE FOR EACH PRODUCT TYPE**

Product Type \_\_\_\_\_

Enter the number of existing Covered Persons in each region

Region	1	2	3	4	5	6	7	8
All Plans								

Total Statewide Covered Persons: \_\_\_\_\_ As of date: \_\_\_\_\_

I have prepared or supervised the preparation of this Product Information Form for the above policy(ies), and the content is accurate and complete.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
(Type name of person signing)

\_\_\_\_\_  
(Type title of person signing above)

COMMONWEALTH OF KENTUCKY  
 DEPARTMENT OF INSURANCE  
 Frankfort, KY 40602-0517

HEALTH BENEFIT PLAN RATE FILING  
 INFORMATION FORM

**COMPLETE A SEPARATE PAGE FOR EACH PRODUCT TYPE**

Company Name: \_\_\_\_\_

Market Segment: \_\_\_\_\_ Product Type: \_\_\_\_\_

Class of Business: Regular \_\_\_\_\_ Other: \_\_\_\_\_

	Plan Identification	(a) Monthly Premium In Force	(b) Proposed Change in New Business Rate	(c) (a) * (b)
1		\$	%	
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

NOTE: The \* indicates "multiplied by."

Total \_\_\_\_\_

Average increase in base new business rates = Total (c)/Total (a) =  
 (Attach Additional Pages as Necessary)

Change for each product HMO, FFS, POS, and PPO

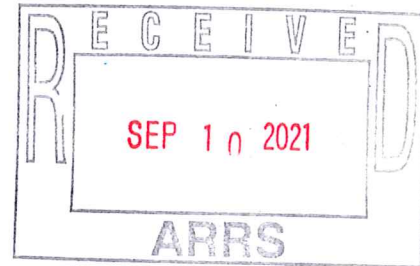


**PUBLIC PROTECTION CABINET**

**Department of Insurance**

P.O. Box 517  
Frankfort, Kentucky 40602-0517  
1-800-595-6053  
<http://insurance.ky.gov>

**Andy Beshear**  
Governor



**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 17:230. Requirements regarding medical director's signature on health care benefit denials.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:230, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:230.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final 8-30-2021

SUGGESTED SUBSTITUTE

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

806 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.

RELATES TO: KRS 304.17A-540, 304.17A-545, 304.17A-600 – 304.17A-619

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) ~~authorizes~~provides that the Commissioner ~~to~~to ~~Executive Director~~ [may] promulgate reasonable ~~administrative~~rules and 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. This administrative regulation establishes the procedure to be followed when a medical director's signature is required on health care benefit denials.

Section 1. Definitions. (1) "Adverse determination" is defined by KRS 304.17A-600(1).

(2) "Coverage denial" is defined by KRS 304.17A-617(1).

(3) "Electronic signature" is defined by KRS 369.102(8).

(4) "Enrollee" is defined by KRS 304.17A-500(5).

(5) "Managed care plan" is defined by KRS 304.17A-500(9).

(6) "Medical director" means a person meeting the requirements of KRS 304.17A-545(1), and includes a medical director of an entity under contract and delegated to perform utilization review on behalf of a managed care plan.

(7) "Notice of coverage denial" means a letter, a notice, or an Explanation of Benefits statement advising of a coverage denial as defined by KRS 304.17A-617(1).

(8) "Signature" means name, title, state of licensure and license number.

(9) "Utilization review" is defined by KRS 304.17A-600(17) ~~[KRS 304.17A-600(18)]~~.

Section 2. Application. This administrative regulation shall apply to all managed care plans authorized by law to engage in managed care in the state of Kentucky, and any utilization review entities registered in Kentucky that have contracted with a managed care plan to perform utilization reviews on the plan's behalf.

Section 3. Appointment of Medical Director. (1) A managed care plan shall submit to the department ~~[office]~~ a:

(a) Completed Form HIPMC-MD-1, ~~incorporated by reference in this administrative regulation~~; and

(b) Biographical resume of each individual who shall serve as the medical director ~~[of the managed care plan]~~.

(2) A managed care plan shall furnish the department ~~[office]~~ with any change in medical director within thirty (30) days of the change.

(3) A managed care plan shall provide for an alternative medical director to serve ~~if~~if in the event of the medical ~~director is absent~~director is absent and furnish the department ~~[office]~~ with information as required in subsection (1) of this section.

Section 4. Letters of Denial for Adverse Determination or Notices of Coverage Denial. (1) Letters of denial for adverse determination or notices of coverage denial shall be sent to an enrollee's last known address with a copy of the same sent to the provider.

(2) Letters of denial requiring signature of the medical director [~~of a managed care plan~~] pursuant to KRS 304.17A-545(1)(d) and KRS 304.17A-607(1) shall include:

(a) Letters of adverse determination, including denials, limitations, reductions and terminations of services, based on lack of medical necessity; and

(b) Letters of adverse determination, including denials, limitations, reductions and terminations or services, based on lack of medical appropriateness.

(3) Notices of coverage denial shall not require the medical director's signature.

Section 5. Signature of the Medical Director. For purposes of this administrative regulation, the signature of the medical director shall include:

(1) Handwritten and copies of original signature; or

(2) An electronic signature.

Section 6. Incorporation by Reference. (1) "Medical Director Report Form", Form HIPMC-MD-1, 03/2021 [~~40/2000~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [~~Office~~] of Insurance, The Mayo-Underwood Building, 500 Mero Street [~~245 West Main Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department's Web site at <http://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://www.insurance.ky.gov>].

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

The agency needs to file one (1) copy of the RIA at the time that it files this staff suggested substitute that:

- Includes an answer to Question 8

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:230  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to be used when a medical director's signature is required on health care benefit denials.

(b) The necessity of this administrative regulation: This administrative regulation clarifies when and what type of medical director's signature is acceptable for purposes of KRS 304.17A-545.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) provides that the Commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code. This administrative regulation will aid in implementation of KRS 304.17 A-545.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110(1) provides that the Commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code. This administrative regulation clarifies when and what type of medical director's signature is acceptable for purposes of KRS 304.17A-545.

(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: Several of the amendments to this administrative regulation are technical in nature and are set forth by Chapter 13A's drafting requirements. This administrative regulation was changed to generalized "medical director" instead of solely the "medical director of the managed care plan". The amendments to the form incorporated update the Department's contact information and include 806 KAR 17:280 as an authorizing regulation.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments derive from Chapter 13A and to generalize the term medical director, not just applying to the medical director of a managed care plan.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) provides that the Commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code.

(d) How the amendment will assist in the effective administration of the statutes: These amendments help to clarify when and what type of medical director's signature is acceptable for purposes of KRS 304.17A-545.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all licensed managed care plans in the state of Kentucky. Currently, there are five (5) licensed managed care plans in this state.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: This administrative regulation establishes the procedure to be used when a medical director's signature is required on health care benefit denials. The Department anticipates that this administrative regulation will have minimal effect upon the costs of complying with the statutory requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no associated cost with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: If the regulated entities meet the regulatory and statutory guidelines set forth in this administrative regulation, then they will not face potential civil penalty by the Commissioner and the Medical Director will have been properly determined for signature if need be.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(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:



(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this administrative regulation does not establish and fee or increase/decrease existing fees.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied since this administrative regulation applies to all managed care plans in the state of Kentucky.



**Andy Beshear**  
Governor

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
P.O. Box 517  
Frankfort, Kentucky 40602-0517  
1-800-595-6053  
<http://insurance.ky.gov>

**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 17:260. Conversion policy minimum benefits.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:260, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:260.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final, 9-1-2021

SUGGESTED SUBSTITUTE

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

806 KAR 17:260. Conversion policy minimum benefits.

RELATES TO: KRS 304.17A, ~~304.18-110~~, 304.18-114~~[304.18-110]~~, 304.18-120(2), 29 C.F.R 2590.715-2713(a), 29 C.F.R 2590.715-2713(b)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-120(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) ~~authorizes [provides that]~~ the ~~Commissioner [executive director]~~ of Insurance to promulgate ~~[may make reasonable]~~ 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 ~~[through KRS 304.99-154]~~. KRS 304.18-120(2) requires the ~~department [office]~~ to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy. ~~[The purpose of]~~ This ~~[This]~~ administrative regulation ~~es-~~  
~~tablishes[is to establish]~~ ~~[establishes]~~ those requirements.

Section 1. Definitions. (1) "Conversion policy" means an individual health policy issued to an insured person pursuant to a conversion privilege contained in a group health policy upon termination of the insured person's coverage under the group policy.

(2) "FFS" means a fee-for-service product type.

(3) "Group policy" is defined by ~~[in]~~ KRS 304.18-110(1)(a).

(4) "HMO" means a health maintenance organization product type.

(5) "POS" means a point-of-service product type.

(6) "PPO" means a preferred provider organization product type.

(7) "Preventive Health Service" means the service described by 29 C.F.R 2590.715-2713(a) and (b).

Section 2. Plan Cost Sharing and Minimum Benefits. (1) The out-of-pocket limit for covered expenses incurred during a plan year for a converted policy issued pursuant to a conversion privilege contained in a PPO, FFS, HMO, or POS product shall be no more than:

(a) \$7,000 ~~[\$6,000]~~ for a single person; and

(b) \$14,000 ~~[\$12,000]~~ for a family.

~~[(2) The deductible and out-of-pocket limit for covered expenses incurred during a plan year for a converted policy issued pursuant to the conversion privilege contained in a group FFS or PPO product shall be no more than:~~

~~(a) \$6,000 for a single person and an out-of-pocket limit of \$6,000 after the deductible; and~~

~~(b) \$12,000 for a family and an out-of-pocket limit of \$12,000 after the deductible.~~

Section 3. Minimum Benefits. (1) A converted policy issued pursuant to the conversion privilege contained in a HMO or POS product shall include the following minimum benefits:

(a) In hospital care:

1. Inpatient hospital room and board benefits in a maximum copayment amount of \$1,000 per admission; and

2. Coverage benefits in a maximum copayment amount of \$1,000 per admission for transplants, including:

- a. Kidney;
- b. Cornea;
- c. Bone marrow;
- d. Heart;
- e. Liver;
- f. Lung;
- g. Heart/lung; and
- h. Pancreas.

~~(b) Outpatient care:~~

- ~~1. Ambulatory outpatient surgery benefits in a maximum copayment amount of \$500 per visit;~~
- ~~2. Provider office visits benefits in a maximum copayment amount of thirty (30) dollars per visit; and~~
- ~~3. Diagnostic tests benefits in a maximum copayment amount of thirty (30) dollars per testing session.~~

~~(c) Emergency care:~~

- ~~1. Hospital emergency room benefits in a maximum copayment amount of \$150 per visit; and~~
- ~~2. Ground ambulance benefits in a maximum copayment amount of seventy-five (75) dollars per use.~~

~~(d) Medicare hospice benefit.]~~

~~(2) A converted policy issued pursuant to the conversion privilege contained in a group HMO, POS, FFS, or PPO product shall include the following minimum benefits:~~

~~(a) In hospital care:~~

- ~~1. Inpatient hospital room and board benefits in a maximum coinsurance amount of fifty (50) percent; and~~
- ~~2. Coverage benefits in a maximum coinsurance amount of fifty (50) percent for transplants, including:~~

- ~~a. Kidney;~~
- ~~b. Cornea;~~
- ~~c. Bone marrow;~~
- ~~d. Heart;~~
- ~~e. Liver;~~
- ~~f. Lung;~~
- ~~g. Heart or/lung; and~~
- ~~h. Pancreas.~~

~~(b) Outpatient care:~~

- ~~1. Ambulatory outpatient surgery benefits in a maximum coinsurance amount of fifty (50) percent;~~
- ~~2. Provider office visits benefits in a maximum coinsurance amount of fifty (50) percent; and~~
- ~~3. Diagnostic tests and Laboratory benefits in a maximum coinsurance amount of fifty (50) percent;~~

~~(c) Emergency care:~~

- ~~1. Hospital emergency room benefits in a maximum coinsurance amount of fifty (50) percent; and~~
- ~~2. Ground ambulance benefits in a maximum coinsurance amount of fifty (50) percent.~~

~~(d) Medicare hospice benefits.~~

~~(e) Prescription drug benefits in a maximum coinsurance amount of fifty (50) percent.~~

~~(f) Maternity Benefits in a maximum coinsurance amount of fifty (50) percent.~~

~~(g) Mental Health and Substance Abuse Benefits:~~

- ~~1. Inpatient Benefits in a maximum coinsurance amount of fifty (50) percent; and~~
- ~~2. Outpatient Benefits in a maximum coinsurance amount of fifty (50) percent.~~

(h) Rehabilitative and Habilitative Benefits in a maximum coinsurance amount of fifty (50) percent.

(i) Preventive Health Service shall be covered at 100 percent.

(i) Pediatric Benefits in a maximum coinsurance amount of fifty (50) percent.

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

## **REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

**At the time the agency files this staff suggested amendment it needs to file one (1) updated copy of an RIA answering Questions 7 and 8 relating to fees.**

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:260  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(b) The necessity of this administrative regulation: KRS 304.2-110(1) 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 through KRS 304.99-154. KRS 304.18-120(2) requires the Commissioner to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(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 amendments to this administrative regulation increases the minimum standard amount for PPO, FFS, HMO or POS no more than \$7,000 for a single individual and \$14,000 for a family. The amendment also includes lab benefits in coinsurance plans and several new benefits under HMO, PPO, FFS and POS plans.

(b) The necessity of the amendment to this administrative regulation: KRS 304.18-120(2) requires the Commissioner to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy, the amendments adhere to the requirements set forth in this statute.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner promulgate any administrative regulations necessary.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.18-120(2) requires the department to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers licensed to engage in insurance activities and issuing group health policies in the state of Kentucky.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: to the extent, insurers do not have a conversion product that already conforms to the regulation, the insurer will need to file a new product with the department or amend its existing product to conform to the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Commissioner can promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy. This administrative regulation establishes those requirements.

(c) As a result of compliance, what benefits will accrue to the entities: To the extent insurers do not have a conversion product that already conforms to the regulation, the insurer will need to file a new product with the department or amend its existing product to conform to the regulation.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

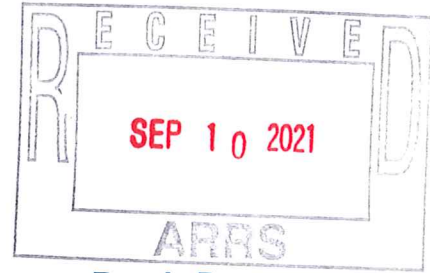
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(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 fees will need to be increased or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this administrative regulation does not establish and fees directly/indirectly, nor does it increase existing fees.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied since this administrative regulation applies to all insurers authorized to engage in insurance activities and issuing group health policies in the state of Kentucky.





**Andy Beshear**  
Governor

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
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**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 17:290. Independent External Review Program.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:290, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:290.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final, 9-1-2021

SUGGESTED SUBSTITUTE

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

806 KAR 17:290. Independent External Review Program.

RELATES TO: KRS ~~304.1-050~~, 304.2-100, 304.2-230, 304.2-310, ~~304.17A-005, 304.17A-505~~, 304.17A-600, ~~304.17A-617~~, 304.17A-621-304.17A-631~~[304.17A-700]~~

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner ~~[executive director]~~ 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 304.17A-629 requires the department ~~[office]~~ to promulgate administrative regulations regarding the Independent External Review Program. ~~[EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.]~~ ~~[The purpose of]~~ This ~~[This]~~ administrative regulation ~~establishes~~ ~~[is to establish]~~ ~~[establishes]~~ the insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. ~~This administrative regulation~~ ~~[It]~~ also establishes the disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

Section 1. Definitions. (1) "Adverse determination" is defined by ~~[in]~~ KRS 304.17A-600(1).

(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(3) "Authorized person" is defined by ~~[in]~~ KRS 304.17A-600(2).

(4) "Commissioner" ~~is~~ ~~[means Commissioner of Insurance as]~~ defined by KRS 304.1-050(1).

(5) "Coverage denial" is defined by ~~[in]~~ KRS 304.17A-617(1).

(6) "Covered person" is defined by ~~[in]~~ KRS 304.17A-600(4).

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

(8) "External review" is defined by KRS 304.17A-600(5).

(9) "Financial hardship" means the:

(a) Gross income of the covered person is below 200 percent of the federal poverty level based upon family size as shown by a federal income tax return for the previous year; or

(b) Covered person's participation in one (1) of the following programs:

1. National Prescription Drug Patient Assistance;
2. Kentucky Transitional Assistance Program (K-TAP);
3. Kentucky Medical Assistance Program; or
4. Unemployment Insurance.

(10) "Health Care Provider" or "Provider" is defined by KRS 304.17A-005(23).

(11) ~~[(40)]~~ "Independent review entity" is defined ~~by~~ ~~[in]~~ KRS 304.17A-600(7).

(12) ~~[(44)]~~ "Insurer" is defined by ~~[in]~~ KRS 304.17A-600(8).~~[~~

~~(12) "Provider" is defined in KRS 304.17A-600(13).]~~

(13) "Reviewer" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.

Section 2. Requirements of an Insurer. (1) An insurer shall:

(a) Disclose to a covered person in a clear, concise, written format the following information concerning an external review:

1. At enrollment, the right to an external review in accordance with KRS 304.17A-505(1)(g);
2. The availability of an external review, including expedited external review, in the insurer's notice of an adverse determination in accordance with KRS 304.17A-623(1);
3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:
  - a. Whether the appeal shall be in writing;
  - b. How to request and complete any [a] necessary forms [~~form~~], including a medical records release form or written authorization of representation;
  - c. Applicable time frames;
  - d. The position and telephone number of a contact person who can provide additional information about an external review; and
  - e. Additional documentation that may be necessary to initiate the external review; and
4. The right of a covered person to request an external review within sixty (60) days of receiving notice that, pursuant to KRS 304.17A-617(3)(d), the insurer has elected to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed by a brief written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances under which the following types of external review shall be provided:
  - a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6), and (13); and
  - b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);
2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);
3. Notice that the cost of an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);
4. The procedure for submitting:
  - a. An oral request followed up by a brief written request, or a written request for an expedited external review;
  - b. A written request for a nonexpedited external review; and
  - c. Any specific forms required by the insurer to initiate an external review, including a written authorization of personal representation or a consent to release medical records form;
5. The time frame for:
  - a. Submitting a request for external review in accordance with KRS 304.17A-623(4);
  - b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and
  - c. Implementation of a decision of the independent review entity in accordance with KRS 304.17A-625(11) through (13);
6. A statement relating to the confidential treatment of medical records and information relating to the external review; and
7. A statement of the availability of a complaint process through the department relating to:
  - a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and
  - b. The action of an independent review entity in accordance with KRS 304.17A-625(16);
- (d) If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:
  1. Written authorization of representation; and

2. Consent to release medical records to the independent review entity;
- (e) Determine if an external review is warranted in accordance with KRS 304.17A-623(3) and (10), and notify the person who requested the external review of its determination within the following time periods:
  1. For expedited reviews, within twenty-four (24) hours of receipt of the request, pursuant to KRS 304.17A-623(11); or
  2. For nonexpedited reviews, within five (5) business days of receipt of the request;
- (f) Upon a determination that an expedited external review is warranted:
  1. By telephone, request acceptance of assignment of the external review by an independent review entity, which was selected pursuant to KRS 304.17A-623(7) from a list of certified independent review entities maintained by the department at <http://insurance.ky.gov>; and
  2. Notify the independent review entity by telephone that the following documents shall be forwarded to the independent review entity in accordance with KRS 304.17A-623(11):
    - a. The written consent of the covered person authorizing release of medical records as required by KRS 304.17A-623(4);
    - b. Information to be considered ~~[taken into account]~~ as required by KRS 304.17A-625(1)(a); and
    - c. A completed External Review Information Face Sheet, HIPMC-IRE-6~~[, incorporated by reference in 806 KAR 17:005]~~;
- (g) Upon a determination that a nonexpedited external review is warranted:
  1. By telephone, request acceptance of assignment of the external review by an independent review entity which was selected pursuant to KRS 304.17A-623(7) from the list of certified independent review entities as identified in paragraph (f)1 of this subsection; and
  2. Within three (3) business days of assignment, deliver to the independent review entity the documentation as identified in paragraph (f)2 of this subsection;
- (h) Upon assignment of an external review, complete and send to the department an Assignment of Independent Review Entity Form, HIPMC-IRE-2~~[, incorporated by reference in 806 KAR 17:005]~~, within one (1) business day via email to DOI.UtilizationReview@ky.gov;
- (i) Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13) and provide the department with a reprocessed explanation of benefits or other payment documentation showing the implementation of the overturned decision;
- (j) Upon receipt of an invoice relating to an external review, pay the independent review entity within thirty (30) days;
- (k) Maintain a written record of each external review for a period of not less than five (5) years pursuant to 806 KAR 2:070, Section 1; and
- (l) Upon written notice of termination of an independent review entity pursuant to Section 3~~(21)~~~~(19)~~(a) or (c) of this administrative regulation, reassign an external review in accordance with paragraphs (f) and (g) of this subsection.
  - (2)(a) If a request for external review is denied by an insurer, written notification shall be provided by the insurer to the person requesting the external review, which shall include:
    1. The date the request for external review was received by the insurer;
    2. A statement relating to the nature of the request;
    3. The rationale of the insurer for denying the request;
    4. A statement relating to the availability of review by the department if a dispute arises regarding the right to external review;
    5. The toll-free telephone number of the department; and
    6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.
  - (b) If requested by the department, the insurer shall provide:
    1. A copy of the written notification described in paragraph (a) of this subsection; and

2. Information or documentation that the insurer relied upon to deny the request for external review.

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

- (1) Accept a request for assignment unless:
  - (a) A conflict of interest exists;
  - (b) Confidentiality issues exist; or
  - (c) Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable;
- (2) Upon receipt of a request for assignment from an insurer:
  - ~~(a)~~ Determine if a condition of subsection (1)(a) through (c) of this section exists;
  - ~~(3)~~~~(b)~~ Within twenty-four (24) hours of receipt of a request for assignment:
    - ~~(a)~~~~(1)~~ Immediately provide verbal notification, followed by written notification to the insurer and department of the rejection of an assignment if a condition of subsection (1)(a) through (c) of this section exists; or
    - ~~(b)~~~~(2)~~ Provide written notification to an insurer and the department via DOI.UtilizationReview@ky.gov of the acceptance of an assignment; and
    - ~~(4)~~~~(c)~~ Maintain a written record of:
      - ~~(a)~~~~(1)~~ Whether the external review relates to an adverse determination or coverage denial, which requires resolution of a medical issue;
      - ~~(b)~~~~(2)~~ The specific question or issue, as identified by the independent review entity, to be resolved by the external review; and
      - ~~(c)~~~~(3)~~ Whether the external review is expedited or nonexpedited;
      - ~~(5)~~~~(3)~~ For each external review, obtain and maintain a signed statement of a reviewer that the reviewer has no conflict of interest;
      - ~~(6)~~~~(4)~~ Not limit the basis of an external review decision to the standards, criteria, and clinical rationale used by the insurer to make its decision pursuant to KRS 304.17A-625(1), (2), and (7);
      - ~~(7)~~~~(5)~~ Have a reviewer with expertise in:
        - (a) Health insurance benefits and contracts, who shall serve as a reviewer with a healthcare professional reviewer, in an external review of a coverage denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and
        - (b) Health care, who shall:
          1. Conduct an external review of a coverage denial which requires resolution of a medical issue and an adverse determination; and
          2. Meet the following requirements:
            - a. Hold active licensure in a state of the United States;
            - b. Have recent experience or familiarity with current body of knowledge and applicable specialty or subspecialty practice;
            - c. Have at least five (5) years of experience in the specialty or subspecialty of the external review; and
            - d. Hold current board certification by:
              - (i) The American Board of Medical Specialties if the reviewer is a medical doctor;
              - (ii) The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine;
              - (iii) The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine;
  - or
  - (iv) Other recognized health professional board pursuant to KRS 304.17A-627;
  - ~~(8)~~~~(6)~~ Establish criteria in accordance with KRS 304.17A-627 for:
    - (a) Selection of a qualified reviewer, including the initial verification and reverification every three (3) years of credentials of the reviewer;

- (b) Ensuring that an appropriate:
1. Reviewer performs the external review; and
  2. Number of reviewers are used for the external review; and
- (c) Ensuring that at least one (1) reviewer qualified in each medical specialty and subspecialty is available for external review;
- (d) Provide a listing of the reviewers to the department including each reviewer's[reviewers] name, date of licensure, license number and specialty, including any subspecialty in accordance with KRS 304.17A-627(5) and (6);
- ~~(9)~~~~(7)~~ Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:
- (a) Hold a current license to practice medicine in a state of the United States;
  - (b) Provide guidance for the medical aspects of the external review process; and
  - (c) Oversee the medical aspects of the:
    1. Quality management program; and
    2. Reviewer credentialing program;
- ~~(10)~~~~(8)~~ Establish and implement criteria for determination of the need for a time extension pursuant to KRS 304.17A-623(12) and (13);
- ~~(11)~~~~(9)~~ Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:
- (a) Title, professional license number, state of licensure and specialty or subspecialty certifications, if any, of the reviewer;
  - (b) Date the decision was rendered; and
  - (c) A statement that:
    1. The decision shall be final and binding on the insurer; and
    2. If dissatisfied with the decision, a comment, question, or complaint may be submitted in writing to the department;
- ~~(12)~~~~(10)~~ Within two (2) business days of rendering a decision, provide written notification of the decision to the:
- (a) Covered person or authorized person, treating provider, and insurer; and
  - (b) Department ~~[by]~~ via email at [DOI.UtilizationReview@ky.gov](mailto:DOI.UtilizationReview@ky.gov) ~~by~~:
    1. Copying the department on the written notification to the covered person; and
    2. Completing an External Review Decision Notification Form, HIPMC-IRE-3~~[-incorporated by reference in 806 KAR 17:005]~~;
- ~~(13)~~~~(11)~~ Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9), 806 KAR 3:210, ~~[806 KAR 3:220]~~ and 806 KAR 3:230;
- ~~(14)~~~~(12)~~ Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070, which shall include, as applicable:
- (a) All documentation relating to the external review pursuant to KRS 304.17A 625(1)(a);
  - (b) The independent review entity's decision regarding each issue identified in the external review request;
  - (c) The name, credentials, and specialty or subspecialty of the reviewer;
  - (d) Medical records and information considered during the review;
  - (e) References to any medical literature, research data, or national clinical criteria upon which the independent review entity's decision was based;
  - (f) A copy of the covered person's health benefit plan;
  - (g) A copy of the adverse determination or coverage denial, which requires resolution of a medical issue, and the internal appeal decision; and
  - (h) A copy of all correspondence and communication between the independent review entity, reviewer, and any other person regarding the external review, including a copy of the final external review decision letter;

**(15)/(13)** Provide toll-free telephone access that:

(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone if the services under review are in dispute; and

(b) Allows for:

1. Receiving after-hours requests for external review; and
2. Acting upon expedited external review requests in accordance with KRS 304.17A-623(12);

**(16)/(14)** If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit to the department:

(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and

(b) A copy of the delegation or subcontract agreement;

**(17)/(15)** Establish and maintain a written quality assurance program in accordance KRS 304.17A-627, which shall be made available to the public upon request and shall include a written plan, which addresses:

(a) Scope and objectives;

(b) Program organization;

(c) Monitoring and oversight mechanisms; and

(d) Evaluation and organizational improvement of external review activities, including:

1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;
2. The implementation of an action plan to improve or correct an identified problem; and
3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;

**(18)/(16)** Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1[, as incorporated by reference in 806 KAR 17:005], in writing to the department for approval. A change shall not become effective until approved by the commissioner;

**(19)/(17)** Submit a new application for certification if requested by the department following notification of a material change in the application information as required by KRS 304.17A-627(2);

**(20)/(18)** Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:

(a) A completed external review of:

1. A coverage denial, which requires resolution of a medical issue; and
2. An adverse determination; and

(b) An incomplete external review;

**(21)/(19)** Immediately terminate an external review and provide notice by telephone, followed by a written notification to the department and, if appropriate, the insurer requesting the external review if:

(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process;

(b) A reversal of a coverage denial or adverse determination is received in writing from the insurer; or

(c) The independent review entity or a reviewer becomes unavailable for reasons beyond the control of the independent review entity, including acts of God, natural disasters, epidemics, strikes or other labor disruptions, war, civil disturbances, riots, or complete or partial disruptions of facilities;

**(22)/(20)** If more than one (1) reviewer is utilized in making a decision:

(a) Render an overall decision based upon the majority decision of the reviewers; or

(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment shall be covered, request an additional reviewer to make a binding majority decision;

~~(23)~~~~(21)~~ Implement a written policy and procedure for each aspect of an external review process, including:

- (a) Processing of the request for assignment of an external review from an insurer;
  - (b) Receipt and maintenance of medical records and information from insurer;
  - (c) Ensuring access to appropriate qualified reviewers pursuant to subsection ~~(8)~~~~(6)~~ of this section;
  - (d) Ensuring the credentialing, selection, and notification of a reviewer who performs an external review;
  - (e) Rendering a timely decision and issuing notification of the decision;
  - (f) Ongoing monitoring and evaluation of the performance of a reviewer;
  - (g) Monitoring and oversight of a delegated external review function, if any;
  - (h) Billing and collection of fees for external review, including:
    1. Filing fee of the covered person; and
    2. Cost of external review for the insurer;
  - (i) Collecting and reporting data;
  - (j) Termination of external review; and
  - (k) Response to a request for information relating to a complaint filed with the department;
- and

- ~~(24)~~~~(22)~~ (a) Conduct annually, a program for training reviewers, which:
1. Provides information relating to the requirements of the Kentucky Independent External Review Program; and
  2. Describes the policies and procedures of the independent review entity, as applicable; and
- (b) Provide a written record of the training to the department, upon request.

Section 4. Application Process for Certification to Perform External Reviews. (1) To perform an external review, an independent review entity shall be certified in accordance with requirements ~~[as]~~ established in KRS 304.17A-627, and this administrative regulation.

(2) To be certified to perform an external review, an independent review entity shall:

- (a) Complete and submit to the department, an Application for Certification of an Independent Review Entity, HIPMC-IRE-1[, incorporated by reference in ~~806 KAR 17:005~~];
- (b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation; and

(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an independent review entity ~~[as]~~ established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) In renewing a certification, an independent review entity shall submit an application for certification to the department at least ninety (90) days prior to expiration of the current certification.

Section 5. Fees. (1) Department fees.

(a) An application for certification as an independent review entity shall be submitted with \$500.

(b) ~~Pursuant to~~~~[As identified in]~~ KRS 304.17A-627(2), a change in application information after certification shall be submitted with fifty (50) dollars.

(c) Fees submitted to the department shall be made payable to the Kentucky State Treasurer.

(2) Independent review entity fees.



(a)1. Except for a fee which meets the criteria established in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800, the total fee charged for an external review shall not exceed \$800; and

2. The fee proposed by the independent review entity in excess of \$800 shall be submitted to the department for approval prior to billing the insurer with the justification defined in HIPMC-IRE-5, Approval of an External Review Fee *in Excess of \$800*.

(b) The twenty-five (25) dollar filing fee to be paid by the covered person shall:

1. Be billed by the independent review entity upon assignment; or
2. Be waived if it creates a financial hardship pursuant to KRS 304.17A-623(5).

Section 6. Department Review of Application for Certification or Change in Information Provided on the Application.

(1) Upon review of an application for certification or a change in information provided on the application, the department shall:

(a) Notify the applicant of any missing or necessary information;

(b) Identify and request submission of the information identified in paragraph (a) of this subsection within thirty (30) days;

(c) If requested information is not provided to the department within the time frame established in paragraph (b) of this subsection:

1. Disapprove the application for certification or the change of information provided on the application; and

2. Not refund the applicable fee submitted in accordance with Section 5(1) of this administrative regulation; and

(d) Approve or deny certification or a change to information provided on the application of an independent review entity within ninety (90) days of submission.

(2) An independent review entity certification shall expire on the second anniversary of the certification date unless the certification is renewed by the independent review entity, which submits a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department shall:

(1) Give written notice of its action; and

(2) Advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process. (1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department requesting a written response to the complaint shall be sent to the independent review entity.

(2) Within ten (10) business days of receipt of the letter from the department, the independent review entity shall submit a written response to the department, including the following:

(a) Information relating to the complaint;

(b) If applicable, corrective actions to address the complaint, including time frames for actions; and

(c) A mechanism to evaluate the corrective action, if applicable.

(3) Upon receipt of the written response of the independent review entity, the department shall:

(a) If applicable, take action pursuant to KRS 304.17A-625(16); and

(b) Notify the complainant of the department's findings and action taken, if any.

Section 9. Department Investigations. The commissioner may conduct an investigation of an independent review entity pursuant to KRS 304.2-100 and 304.2-230.

Section 10. Reporting Requirements. An independent review entity shall complete and submit to the department by March 31 of each year for the previous calendar year, the Annual Independent Review Entity Report Form, HIPMC-IRE-4~~[-incorporated by reference in 806 KAR 47:005]~~.

Section 11. Cessation of Participation. (1) Upon a decision to terminate participation in the independent external review program as established in KRS 304.17A-621, an independent review entity shall:

(a) Immediately notify the department in writing of its decision to cease accepting new assignments; and

(b) Except for reasons beyond its control, submit the following to the department for approval at least thirty (30) days prior to termination:

1. Written notification of the termination, including:

a. Date of termination; and

b. Number of pending external reviews with corresponding assignment dates; and

2. A written action plan for terminating participation.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form HIPMC-IRE-1, "Application for Certification of an Independent Review Entity", 09/2020 edition;

(b) Form HIPMC-IRE-2, "Assignment of Independent Review Entity Form", 09/2020 edition;

(c) Form HIPMC-IRE-3, "External Review Decision Notification Form", 09/2020 edition;

(d) Form HIPMC-IRE-4, "Annual Independent Review Entity Report Form", 09/2020 edition;

(e) Form HIPMC-IRE-5, "Approval of *an External[Excess] Review Fee in Excess of \$800*", 09/2020 edition; and

(f) Form HIPMC-IRE-6, "External Review Information Face Sheet", 09/2020 edition.

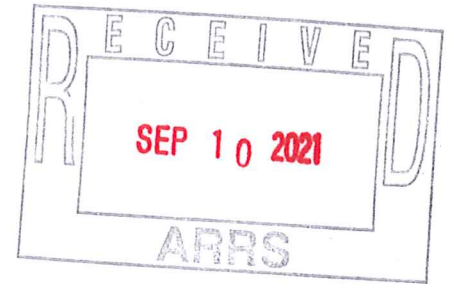
(2)[2.] This material may be inspected, copied or obtained subject to applicable copyright law, at the Department of Insurance, The Mayo-underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov>].

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



**Andy Beshear**  
Governor

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
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**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 17:370. Standardized health claim attachments.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:370, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:370.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final, 9-1-2021

**SUGGESTED SUBSTITUTE**

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

**806 KAR 17:370. Standardized health claim attachments.**

RELATES TO: KRS 304.17A-005, 304.17A-607, 304.17A-700-304.17A-730, 304.17C-010, 304.17C-090, 304.39-010-304.39-340, [~~2008 Acts ch. 127, Part XII, secs 18-20~~], 42 C.F.R. 411.32, 441.203, 441.206, 441.207, 441.208, 441.250, 441.255, 441.256, 441.258

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-720(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner [~~executive director~~] to promulgate reasonable 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 304.17A-720(1) requires the department to promulgate administrative regulations prescribing standardized health claim attachments to be used by insurers. [~~EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.~~] This administrative regulation establishes requirements for standardized health claim attachments and minimum requirements for routinely requested medical information health claim attachments.

Section 1. Definitions. (1) "Clean claim" is defined by [in] KRS 304.17A-700(3).

(2) "Health benefit plan" is defined by [in] KRS 304.17A-005(22).

(3) "Health care provider" or "provider" is defined by [in] KRS 304.17A-700(9) [~~as amended by 2008 Ky Acts ch. 127, Part XII, sec. 18~~].

(4) "Health claim attachments" is defined by [in] KRS 304.17A-700(10).

(5) "Insurer" is defined by [in] KRS ~~304.17A-005(29)~~ [304.17A-005(27)].

(6) "Limited health services benefit plan" is defined by KRS 304.17C-010(5).

(7) "Practitioner" means an individual licensed or certified to provide a health care service in Kentucky.

(8) "Reparation obligor" is defined by [in] KRS 304.39-020(13).

Section 2. Standardized Health Claim Attachments. If another payment source is identified by a provider, an insurer shall require the provider to include the following health claim attachments, as applicable, for a claim to qualify as a clean claim:

- (1) An explanation of benefits statement or noncoverage notice from another payer;
- (2) An electronic or paper-based Medicare remittance notice if the claim involved Medicare as a payer; and
- (3) A record of all payments by a reparations obligor pursuant to KRS 304.39-010 to 304.39-340.

Section 3. Routinely-requested Health Claim Attachments. An insurer offering a health benefit plan or a limited health service benefit plan for dental only, may routinely request the following health claim attachments in accordance with KRS 304.17A-706(2), as applicable:

- (1) A certification of medical necessity;
- (2) A complete medical record, or part of a medical record, including:
  - (a) Discharge summary:
    1. Patient identification, including name, age, gender, and medical record number;

2. Name of attending practitioner;
3. Dates of admission and discharge;
4. Final diagnosis;
5. Reason for the admission or visit;
6. Medical history;
7. Significant findings during length of stay or visit;
8. Procedures and treatments;
9. Patient condition at discharge;
10. Discharge medications; and
11. Discharge instructions;

(b) Emergency department report:

1. Patient identification, including name, age, gender, and medical record number;
2. Date of service;
3. Attending practitioner;
4. Chief complaint and symptoms;
5. History of present illness and physical exam;
6. Diagnostic test findings;
7. Clinical impression and diagnosis;
8. Treatment plan;
9. Discharge instructions; and
10. Practitioner orders;

(c) History and physical:

1. Patient identification, including name, age, gender, and medical record number;
2. Chief complaint;
3. Details of present illness;
4. Relevant past, social and family histories;
5. Inventory by body system;
6. Summary of psychological needs;
7. Report of relevant physical exam;
8. Statement relating to the conclusions or impressions drawn from the admission history and physical;
9. Statement relating to the course of action planned for this episode of care; and
10. Name of practitioner performing history and physical;

(d) Nurse's notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Vital signs with graphics, if available;
3. Intake and output record, if applicable;
4. Medication administration records;
5. Date of nurse's notes;
6. Nurse assessment;
7. Nursing intervention;
8. Observation; and
9. Name of nurse;

(e) Operative report:

1. Patient identification, including name, age, gender, and medical record number;
2. Date of procedure;
3. **Name of** operating practitioner;
4. Pre- and post-operative diagnoses;
5. List of procedures performed;
6. Operative description including indications and findings;
7. Anesthesia used; and

8. Specimens collected;

(f) Progress notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Discharge or treatment plan;
3. Practitioner orders;
4. Practitioner notes;
5. Attending practitioner name;
6. Results of tests and treatments;
7. Dates of notes; and
8. Chief complaint;

(g) Test results:

1. Patient identification, including name, age, gender, and medical record number;
2. Test findings, including date ordered and date completed~~completed~~; and
3. Ordering practitioner name;

(h) Practitioner orders or treatment plan, as applicable:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner orders;
3. Ordering practitioner name; and
4. Order dates;

(i) Practitioner notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner notes; and
4. Dates of notes;

(j) Consult notes and reports:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Findings and recommendations including notes and reports; and
4. Dates of notes and reports;

(k) Anesthesia record:

1. Patient identification, including name, age, gender, and medical record number;
2. Administering practitioner name;
3. Start and stop anesthesia times;
4. Route of administration;
5. Dates;
6. Notes;
7. Patient vital signs; and
8. Drug administered;

(l) Therapy notes:

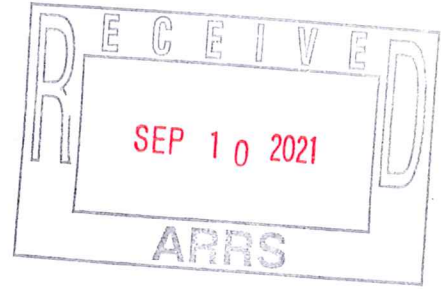
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner orders;
4. Treatment plan;
5. Number of treatments and dates;
6. Therapist's notes; and
7. Dates of notes;

(m) Office notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Any notes generated for dates of service; and
4. Dates of notes;

- (n) Dental records; and
- (o) Pharmacy records;
- (3) Certification and documentation as identified in 42 C.F.R. 441.203, 441.206, 441.207, 441.208, 441.250, 441.255, 441.256, and 441.258;
- (4) Itemized bill; and
- (5) Evidence of Medicare secondary payment pursuant to 42 C.F.R. 411.32.

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



**Andy Beshear**  
Governor

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**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 17:450. Insurance purchasing outlet requirements.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:450, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:450.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
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Frankfort, Kentucky 40601



Final 9-1-2021

SUGGESTED SUBSTITUTE

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

806 KAR 17:450. Insurance purchasing outlet requirements.

RELATES TO: KRS 304.1-050, 304.2-310, 304.4-010, 304.9-052, 304.17A-200, 304.17A-245, 304.17A-750-304.17A-770, 304.47-020

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-752(3), 304.17A-758(8), 304.17A-760(1)(i), 304.17A-762(3)(c), 304.17A-768(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~Executive Director~~] of Insurance to promulgate [~~make~~] reasonable 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 304.17A-752(3) authorizes the commissioner [~~executive director~~] to promulgate administrative regulations necessary to administer KRS 304.17A-750 through 304.17A-770. KRS 304.17A-758(8) requires the commissioner [~~executive director~~] to promulgate regulations to establish fees for the initial registration and renewal of registration of an insurance purchasing outlet. KRS 304.17A-760(1)(i) requires the commissioner [~~executive director~~] to promulgate administrative regulations to establish a process for insurance purchasing outlets to prepare and file annual reports on the operations of the insurance purchasing outlet. KRS 304.17A-762(3)(c) requires the commissioner [~~executive director~~] to promulgate administrative regulations to establish disclosures that are required to be made by the insurance purchasing outlet to insurance purchasing outlet members when the member enrolls. KRS 304.17A-768(8) requires the commissioner [~~executive director~~] to promulgate administrative regulations to implement the provisions of that section involving vouchers. ~~[The purpose of]~~ This [~~This~~] administrative regulation ~~establishes/is to establish~~ [~~establishes~~] insurance purchasing outlet requirements, procedures for registering insurance purchasing outlets, and the voucher process.

Section 1. Definitions. (1) "Business entity" means an applicant for a certificate of registration to act as an insurance purchasing outlet.

(2) "Commissioner" is defined by KRS 304.1-050(1) [~~"Executive Director" of Insurance~~].

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

(4) "Eligible employee" is defined by [~~in~~] KRS 304.17A-750(1).

(5) "Employer" is defined by [~~in~~] KRS 304.17A-750(3).

(6) "Insurance purchasing outlet" is defined by [~~in~~] KRS 304.17A-750(4).

(7) "Insurance purchasing outlet member" or "member" is defined by [~~in~~] KRS 304.17A-750(5).

(8) "Voucher" is defined by [~~in~~] KRS 304.17A-750(7).

Section 2. Application for Certificate of Registration. (1) A business entity seeking issuance of or renewal of a certificate of registration shall submit to the department [~~office~~] the following:

(a) A completed Insurance Purchasing Outlet Application for Registration, HIPMC-IPO-1 [~~(7/02)~~];

(b) All the documentation and information required by KRS 304.17A-754(4); and

(c) A fee as required by Section 3 of this administrative regulation.

(2) Since KRS 304.4-010(2) requires all fees payable under the insurance code to be collected in advance, the period of time in which the commissioner [~~executive director~~] may act on an

application for issuance of a certificate of registration, pursuant to KRS 304.17A-754(3), shall not commence, until the following are received by the department [office]:

(a) All the information required by KRS 304.17A-750 through 304.17A-768 and Sections 2 through 8 of this administrative regulation; and

(b) **The** appropriate fee pursuant to Section 3 of this administrative regulation.

(3) A business entity seeking to renew a certificate of registration to act as an insurance purchasing outlet shall file an application to renew a certificate of registration:

(a) Biennially in accordance with KRS 304.17A-758(6); and

(b) At least ninety (90) days prior to expiration of the certificate of registration.

(4) Upon receipt of an application for issuance or renewal of certificate of registration, the department [office] shall:

(a) Inform the applicant if supplemental information is or is not needed, **and if supplemental information is needed:**

1. **The** applicant shall submit **the** requested information within thirty (30) days; or

2. If requested information is not provided to the department [office] within thirty (30) days, the department [office] shall:

a. Deny the application for issuance or renewal of a certificate of registration to act as an insurance purchasing outlet; and

b. Not refund the application fee;

(b) Review the application and material required by KRS 304.17A-754(4) and Sections 2 through 8 of this administrative regulation; and

(c) Approve or deny issuance or renewal of the certificate of registration to act as an insurance purchasing outlet.

(5) Pursuant to KRS 304.17A-754(5), an insurance purchasing outlet shall submit to the department [office] a change to the original documentation or information that was submitted to the department [office] for issuance or renewal of a certificate of registration as follows:

(a) All updated documentation or information shall be submitted to the department [office] within thirty (30) days after the insurance purchasing outlet knew of the change; and

(b) A fee to submit updated information shall be paid in accordance with Section 3 of this administrative regulation.

Section 3. Fees. (1) An application for issuance of a certificate of registration to act as an insurance purchasing outlet shall be accompanied by a fee of \$200 [**dollars**] to pay administrative and other costs associated with carrying out the **provisions[provision]** of KRS 304.17A-750 through 304.17A-768.

(2) A submission to change the information filed by an insurance purchasing outlet, in accordance with KRS 304.17A-754(5), and Sections 2 through 8 of this administrative regulation, shall be accompanied by a fee of twenty-five (25) dollars to pay administrative and other costs associated with carrying out the provisions of KRS 304.17A-750 through 304.17A-768.

(3) An application to renew a certificate of registration as an insurance purchasing outlet, in accordance with KRS 304.17A-758(6), shall be accompanied by a fee of fifty (50) dollars to pay administrative and other costs associated with carrying out the provisions of KRS 304.17A-750 through 304.17A-768.

Section 4. Annual and Quarterly Financial Statements Required. In accordance with requirements and timeframes established in KRS 304.17A-758 and 304.17A-760, an insurance purchasing outlet shall:

(1) Annually, submit:

(a) In accordance with the **timeframes[timeframe]** established in KRS 304.17A-758(4), an annual financial statement **and, including** an audited financial statement, in accordance with

the **Annual Financial Statement of Insurance Purchasing Outlet**, HIPMC-IPO-3~~[, 9/02~~]; and

(b) Within sixty (60) days after the end of the fiscal year of the insurance purchasing outlet, a report on operations in accordance with the **Annual Report on Operations of Insurance Purchasing Outlet**, HIPMC-IPO-2~~[, 9/02 (9/02)]~~. The report shall include:

1. Membership enrollment in tabular form by:
  - a. Month;
  - b. Quarter; and
  - c. Year-to-date; and
2. Discussion and analysis of financial condition and results of operations.

(2) **In accordance with the timeframe established in KRS 304.17A-758(4)**, quarterly, submit a financial statement, in accordance with the format established in **the Quarterly Financial Statement of Insurance Purchasing Outlet**, HIPMC-IPO-4~~[, 9/02 (9/02)]~~.

(3) An insurance purchasing outlet shall file its financial statements, as required by KRS 304.17A-758, in accordance with Financial Accounting Standards Board Statements **available at <https://www.fasb.org/jsp/FASB/Page/PreCodSectionPage&cid=1176156317989>**.

Section 5. Advertising and Marketing Materials Required to be Filed. An insurance purchasing outlet shall file all advertising and marketing materials, of any nature, with the **commissioner** ~~[executive director]~~ for informational purposes:

- (1) Materials submitted shall contain a form number on the lower left hand corner of every page of the filed document; and
- (2) A filing fee of five (5) dollars for each form or marketing material shall be required to be submitted at the time of the filing.

Section 6. Disclosures Required. (1) In writing, and at the time of enrollment, an insurance purchasing outlet shall provide disclosures to its members as follows:

- (a) Premium payment procedures;
  - (b) Voucher payment procedures;
  - (c) The insurance purchasing outlet's reinstatement policy for members terminated for non-payment of premium; and
  - (d) As required by KRS 304.17A-762(3).
- (2) In writing, the insurance purchasing outlet shall provide the following disclosures to an eligible person or eligible employee when an application for membership is submitted:
- (a) The appeal rights for a person denied membership in the insurance purchasing outlet as required by KRS 304.17A-754(4)(c); and
  - (b) The enrollment procedures of the insurance purchasing outlet.

Section 7. Vouchers. (1) An insurance purchasing outlet shall:

- (a) Accept all vouchers; and
  - (b) Submit the voucher to the insurance purchasing outlet member's employer for payment within five (5) business days of receipt of the voucher from the member.
- (2) If the insurance purchasing outlet does not receive payment for the voucher from the member's employer within ten (10) business days of submission, the insurance purchasing outlet shall notify the member, within three (3) business days, by certified mail return receipt requested, that the member's employer failed to redeem the voucher within the required time. At the same time, the insurance purchasing outlet shall also notify the member that he may pay the premium amount directly to the insurance purchasing outlet pursuant to KRS 304.17A-768(2).
- (3) A voucher shall contain the following information:
- (a) The name of the employer;
  - (b) The mailing address of the employer;

- (c) The business telephone number of the employer;
- (d) The tax identification number of the employer;
- (e) The name of the employee;
- (f) The employee's Social Security number;
- (g) The dollar amount of the voucher;
- (h) The dates during which the voucher is valid; and
- (i) That the voucher is nonassignable and nontransferable pursuant to~~as specifically stated in~~ KRS 304.17A-768(1).

Section 8. Reinstatement Policy Required. (1) An insurance purchasing outlet shall have a reinstatement policy for an eligible employee and an eligible person who is terminated from the health benefit plan for nonpayment of premium.

(2) An eligible employee or an eligible person who has been terminated, pursuant to KRS 304.17A-245, shall be reinstated as a member of the insurance purchasing outlet if he or she meets the reinstatement requirements of the insurance purchasing outlet and the insurer.

(3) An insurance purchasing outlet shall not deny an eligible employee or an eligible person reinstatement based on any health status-related factor listed in KRS 304.17A-200 or consideration of medical loss ratio.

(4) If premium is not paid and the insurance purchasing outlet receives notification of termination for the member, pursuant to KRS 304.17A-245, the insurance purchasing outlet shall notify the member, within five (5) business days of receiving notification of termination from the insurer, that he or she is terminated. The insurance purchasing outlet shall notify the member of his or her termination by regular first class mail to the last known address of the member.

Section 9. Cessation of Operations of the Insurance Purchasing Outlet. (1) Upon a decision to cease operating as an insurance purchasing outlet, the insurance purchasing outlet shall:

(a) Immediately notify the department, in writing, its decision to cease accepting new members to the insurance purchasing outlet; and

(b) Submit the following to the department ~~[office]~~ ninety (90) days prior to ceasing operations:

1. Written notification of the cessation of operations, including the date of cessation and the number of current members of the insurance purchasing outlet; and

2. A written action plan for ceasing operations, which shall be approved by the department ~~[office]~~ and include:

a. Copies of letters that will be mailed to members and insurers notifying them of the decision to cease operating as an insurance purchasing outlet; and

b. The projected date for processing all voucher and premium payments.

(2) Upon receipt of a written notification as required in subsection (1) of this section, the department ~~[office]~~ shall review and act upon the action plan of the insurance purchasing outlet.

(3) Upon approval of an action plan to cease operations by the department ~~[office]~~, the insurance purchasing outlet shall send written notification, at least sixty (60) days in advance of the date that it will cease operations, to insurance purchasing outlet members and insurers issuing health benefit plans to its members.

(4) Upon being notified by the insurance purchasing outlet of its decision to cease operations, the insurer shall notify all members of the insurance purchasing outlet that the health benefit plan offered through the insurance purchasing outlet shall be terminated and that the member has the right to elect a conversion policy pursuant to KRS 304.17A-766.

Section 10. Hearing Process. (1) An insurance purchasing outlet may request a hearing pursuant to KRS 304.2-310(2)(b) if the commissioner ~~[executive director]~~:

(a) Denies an application for a certificate of registration to act as an insurance purchasing outlet;

(b) Suspends or revokes a certificate of registration held by an insurance purchasing outlet; or

(c) Imposes a civil penalty against an insurance purchasing outlet.

(2) The commissioner may take administrative action against an insurance purchasing outlet for any violation of KRS 304.17A-750 through 304.17A-770, 304.47-020, and Sections 2 through 9 of this administrative regulation.

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

(a) "Insurance Purchasing Outlet Application for Registration," HIPMC-IPO-1, 7/02 [~~7/02~~];

(b) "Annual Report on Operations of Insurance Purchasing Outlet," HIPMC-IPO-2, 9/02 [~~9/02~~];

(c) "Annual Financial Statement of Insurance Purchasing Outlet," HIPMC-IPO-3, 9/02 [~~9/02~~]; and

(d) "Quarterly Financial Statement of Insurance Purchasing Outlet," HIPMC-IPO-4, 9/02 [~~9/02~~].

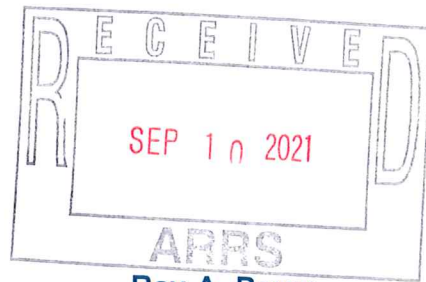
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [~~office~~] of Insurance, The Mayo-Underwood Building, 500 Mero Street [~~215 West Main Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the department Internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [~~<http://insurance.ky.gov/ppc/>~~] [~~<http://doi.ppr.ky.gov/kentucky/>~~].

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



**Andy Beshear**  
Governor

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
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**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 017:511. Repeal of 806 KAR 17:095, 806 KAR 17:170, and 806 KAR 17:510.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:511, the Department of Insurance proposes the attached agency amendments to 806 KAR 17:511.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final 9-2-2021

SUGGESTED SUBSTITUTE

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

806 KAR 017:511. Repeal of ~~[806 KAR 17:005,]~~ 806 KAR 17:095, 806 KAR 17:170, ~~[806 KAR 17:180,]~~ and 806 KAR 17:510.

RELATES TO: KRS ~~304.12-080(3), 304.12-085(2), (3), (4)~~~~[304.17A-149]~~, 304.14-120, 304.14-190, ~~304.17A-080,~~ 304.17A-095, 304.17A-096, ~~304.17A-149,~~ 304.17A-600-304.17A-629, ~~[304.12-085(2), (3), (4),]~~ 304.17A-200(1)(f), 304.17A-220(8)(d), 304.17A-230(3), ~~[304.17A-080,]~~ 304.17A-250, ~~[304.12-080(3), 304.14-120(1), 304.17A-250(10),]~~ 304.17A-505, 304.17A-540, 304.17A-600 -304.17A-633, 304.17B-015, 304.38-050

STATUTORY AUTHORITY: KRS ~~[13A.310,]~~ 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. ~~[KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. The intent of]~~ This administrative regulation ~~repeals~~~~[is to repeal 806 KAR 17:005,]~~ 806 KAR 17:095, 806 KAR 17:170, ~~[806 KAR 17:180,]~~ and 806 KAR 17:510. ~~[806 KAR 17:005, Health insurance forms and reports, because the forms incorporated in the regulation are currently being incorporated into the corresponding regulation to which they apply.]~~ 806 KAR 17:095, Reimbursement for general anesthesia and facility charges for dental procedures, ~~is~~~~[shall be]~~ repealed because ~~it removes limitations of provider's rights under~~ KRS 304.17A-149 ~~[prescribes the same or similar requirements]~~. 806 KAR 17:170, Genetic testing, ~~is~~~~[shall be]~~ repealed because the administrative regulation is now obsolete, as when it was originally promulgated the terms defined in the regulation were emerging, and now they are considered of common dictionary meaning. ~~[806 KAR 17:180, Standard health benefit plan, shall be repealed as the statute no longer requires the standard plan to be issued by insurers.]~~ 806 KAR 17:510, Health benefit plan exclusionary rider requirements, ~~is~~~~[shall be]~~ repealed because exclusionary riders are no longer permitted due to the federal law requirements related to essential health benefits that are required to~~[must]~~ be covered under all plans.

Section 1. The following administrative regulations are hereby repealed:

- (1) ~~[806 KAR 17:005, Health insurance forms and reports;~~
- ~~(2)]~~ 806 KAR 17:095, Reimbursement for general anesthesia and facility charges for dental procedures;
- ~~(2)]~~~~(3)]~~ 806 KAR 17:170, Genetic testing; and
- ~~(3)]~~~~(4)]~~ ~~806 KAR 17:180, Standard health benefit plan; and~~
- ~~(5)]~~ 806 KAR 17:510, Health benefit plan exclusionary rider requirements.

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

FISCAL NOTE

At the time that the agency files this staff suggested substitute it needs to file one (1) updated copy of a fiscal note that:

- Corrects its answer to Question 6

#### FEDERAL MANDATE COMPARISON

At the time that the agency files this staff suggested substitute it needs to file one (1) copy of a federal mandate comparison.



## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR 17:511  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: Abigail.gall@ky.gov

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310, KRS 304.2-110

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

(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? The administrative regulation will not generate any revenue for state or local government.

(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? The administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The cost to administer the program is indeterminable.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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

(4) Revenues (+/-): Neutral

(5) Expenditures (+/-): Neutral

(6) Other Explanation: This is a repealer regulation.

## FEDERAL MANDATE ANALYSIS COMPARISON

806 KAR 17:511 (repeal of 17:510)

Contact Person: Abigail Gall, phone 502-782-5260, email abigail.gall@ky.gov

(1) Federal statute or regulation constituting the federal mandate. Patient Protection and Affordable Care Act 42 USC 18001

(2) State compliance standards. By repealing 806 KAR 17:510, the Department is removing the health benefit plan exclusionary requirements, which would coincide with the no health status underwriting requirement in the ACA.

(3) Minimum or uniform standards contained in the federal mandate. Section 2704 of the "Subpart I- General Reform" in 42 U.S.C.

“(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such plan or coverage.”;

Also,

“SEC. 2705. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

“(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan or coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

“(1) Health status.

“(2) Medical condition (including both physical and mental illnesses).

“(3) Claims experience.

“(4) Receipt of health care.

“(5) Medical history.

“(6) Genetic information.

“(7) Evidence of insurability (including conditions arising

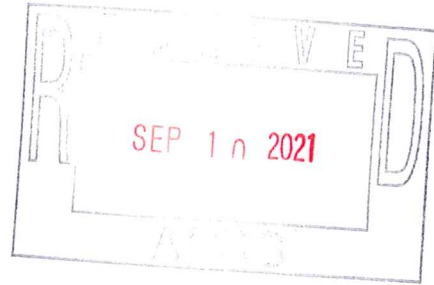
out of acts of domestic violence).

“(8) Disability.

“(9) Any other health status-related factor determined appropriate by the Secretary

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? By repealing 806 KAR 17:510, the Department is abiding by the same guidelines as set forth in 42 U.S.C.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.  
health Benefit Plan Exclusionary riders are no longer required, nor permitted.



**Andy Beshear**  
Governor

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
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**Ray A. Perry**  
Secretary

**Sharon P. Clark**  
Commissioner

September 7th, 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 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 46:050, the Department of Insurance proposes the attached agency amendments to 806 KAR 46:050.

Sincerely,

*Abigail Gall*

Abigail Gall, Regulations  
Coordinator  
Department of Insurance  
Mayo-Underwood Building  
500 Mero Street  
Frankfort, Kentucky 40601

Final, 9-1-2021

**SUGGESTED SUBSTITUTE**

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Property and Casualty**

**806 KAR 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings**

RELATES TO: KRS 304.1-050, 304.13-011, 304.13-051, KRS 304.14-120, 304.48-020(7), 304.48-180, **304.48-200**

STATUTORY AUTHORITY: KRS 304.48-180, 304.48-230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.48-230 authorizes the commissioner to promulgate reasonable administrative regulations consistent ~~[not inconsistent]~~ with KRS 304 Subtitle 48 that the commissioner deems necessary for the proper administration of the subtitle. KRS 304.48-180 requires liability self-insurance groups to file rates, underwriting guidelines, evidence of coverage and any changes therein with the commissioner. This administrative regulation establishes the procedures for liability self-insurance groups to submit these filings.

Section 1. Definitions.

(1) "Commissioner" is defined by ~~[in]~~ KRS 304.1-050(1).

(2) "Liability self-insurance group" is defined by ~~[in]~~ KRS 304.48-020(7).

(3) "Rates and underwriting guidelines" means any rating manuals and underwriting rules for all coverage types including any manual or plan of rates, loss costs, risk classifications, rating schedule, minimum premium, policy fees, premium payment plans, rating rules, supplementary rating information or any other similar information needed to determine the applicable coverage rate or premium for a member.

(4) "Supplementary rating information" is defined by ~~[in]~~ KRS 304.13-011(2).

Section 2. General Filing Requirements.

(1) All **liability self-insurance group rate, underwriting and evidence of coverage** filings shall be accompanied by a completed and signed Form LSI G F-1A P&C, ~~["]~~Face Sheet and Verification Form for Liability Self-Insurance Groups~~["]~~.

(2) All paper filings shall include one (1) full document set on 8 1/2" x 11" white paper with two (2) cover letters and a self-addressed stamped envelope.

(3) A filing may include any number of documents, filed together on a particular date. Rates and underwriting guidelines shall be filed separately from evidence of coverage forms.

(4)(a) A liability self-insurance group may submit a filing in an electronic format established by the National Association of Insurance Commissioners.

(b) An electronic filing shall be in lieu of a paper filing.

(5) The period of time in which the commissioner may affirmatively approve or disapprove the filing, as set forth in KRS 304.13-051, shall not begin until a complete filing and the filing fee in accordance with KRS 304.48-180, is received.

Section 3. Rate and Rule Filings.

(1) The rates and underwriting guidelines shall be filed not later than fifteen (15) days after the date of first use of the rates and underwriting guidelines, pursuant to KRS 304.13-051(1).

(2) A liability self-insurance group shall comply with the requirements of KRS 304.13-051(5).

(3) Form LSIG: S-1 P & C, ~~[""]~~Filing Synopsis for Rates and or Rules~~[""]~~ shall be filed with all rate and underwriting guideline filings. Separate forms shall be filed for each type of coverage.

(4)(a) Form LSIG: LC-1 P & C, ~~[""]~~Calculation of Loss Cost Multiplier~~[""]~~ shall be filed with all rate filings referencing loss costs formulated by any advisory organization. Separate forms shall be filed for each type of coverage.

(b) Form LSIG LC-2 P & C, ~~[""]~~Expense Constant Supplement~~[""]~~ shall be filed with all rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used. Separate forms shall be filed for each type of coverage.

(5)(a) **Form LSIG: EMA P & C, E-mod Affidavit, shall be filed with** all rate or underwriting guideline filings **that utilize~~utilizing~~** an experience modification plan, **and** shall include the experience rating plan by type of coverage with the formula used for calculating the experience modification factor for that coverage. Each experience modification factor applied shall be made available to the member upon request.

(b) All rate or underwriting guideline filings containing schedule rating plans shall identify the characteristics of the risk not reflected in an experience modification factor.

(c) Any application of the schedule rating plan shall be based on evidence contained in the liability self-insurance group's file at the time it is applied. The schedule rating plan debit or credit factor applied shall be made available to the member upon request.

(d) If the reason for application of any schedule debit is corrected by the member to the satisfaction of the liability self-insurance group, the debit may be removed at the time evidence of the correction is received by the group.

#### Section 4. Coverage Form Filings.

(1) Form LSIG: S-2 P & C, ~~[""]~~Filing Synopsis **Form~~for Forms~~** and Form LSIG: F-2 P & C, ~~[""]~~Forms Index~~[""]~~ shall be filed with all evidence of coverage form filings.

(2) An evidence of coverage form shall not be used until it has been approved by the commissioner. If the rates pertaining to an evidence of coverage form are required to be filed with or approved by the commissioner pursuant to KRS 304.13-051, the coverage form shall not be used until the appropriate rates have been filed or approved as required.

(3) A filing which amends, replaces, or supplements an evidence of coverage form previously filed and approved shall include an explanation setting forth all changes contained in the newly filed coverage form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and an explanation as to the effect on the rates applicable thereto.

(4) A change of signature of the executing officer on an evidence of coverage form shall not, because of this change alone, require a new filing.

#### Section 5. Advisory Organization Filings.

(1) A liability self-insurance group that is a member, subscriber, or service purchaser of an advisory organization, statistical agent, or forms provider may adopt coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or statistical agent **~~by doing so~~** in accordance with the procedures established in this administrative regulation and shall clearly identify each filing of the advisory organization or statistical agent it is adopting.

(2) If a liability self-insurance group chooses to adopt only a specific filing of an advisory organization, statistical agent, or form provider it shall do so in accordance with the procedures established in this administrative regulation, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting. Loss cost filings shall be specifically adopted.

(3)(a) If a liability self-insurance group chooses to adopt all of the current and future evidence of coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, of an advisory organization, statistical agent, or forms provider, it may file written notice with the commis-

sioner that it is adopting by blanket reference all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, as filed by the advisory organization, statistical agent, or forms provider. Loss cost filings shall not be adopted on this blanket reference basis.

(b) If a liability self-insurance group previously notified the commissioner of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to not adopt certain evidence of coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans, the group shall file notice of the nonadoption with the commissioner and shall pay the appropriate filing fee in accordance with KRS 304.48-180.

1. If a liability self-insurance group previously notified the commissioner of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to delay the effective date of its adoption, it shall submit a letter to the commissioner requesting the revised date upon which it will adopt the filing.

2. The delayed adoption date shall be within six (6) months of the original effective date.

3. If additional time is needed, a second letter shall be submitted to the commissioner, requesting a revised delayed adoption date.

4. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization, statistical agent, or forms provider.

5. If a liability self-insurance group fails to adopt the advisory organization, statistical agent, or forms provider filing within one (1) year of the original effective date as filed by the advisory organization, statistical agent, or forms provider, the insurer shall submit a filing to the commissioner indicating it is non-adopting.

#### Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form LSIG: F-1A P & C, "Face Sheet and Verification Form for Liability Self Insurance Groups," (7/2010);~~[-]~~

(b) Form LSIG: F-2 P & C, "Forms Index," (7/2010);~~[-]~~

(c) Form LSIG: S-1 P & C, "Filing Synopsis for Rates and or Rules," (7/2010);~~[-]~~

(d) Form LSIG: S-2 P & C, "Filing Synopsis Form," (7/2010);~~[-]~~

(e) **Form LSIG: LC-1 P & C, "Calculation of Loss Cost Multiplier", (7/2010);**

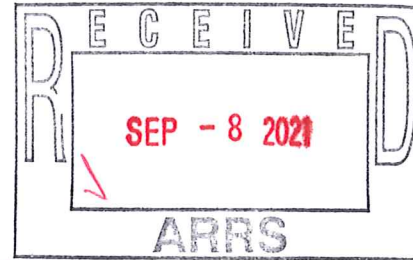
**(f) Form LSIG: LC-2 P & C, "Expense Constant Supplement," (7/2010); and[-]**

**(g)(#) Form LSIG: EMA P & C, "E-mod Affidavit," (7/2010).**

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the Department of Insurance Internet Web site, **<https://insurance.ky.gov/ppc/CHAPTER.aspx> [http://insurance.ky.gov]**.

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



**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of the Secretary**

**Andy Beshear**  
Governor

275 East Main Street, 4W-C  
Frankfort, KY 40621  
[www.chfs.ky.gov](http://www.chfs.ky.gov)

**Eric C. Friedlander**  
Secretary

September 7, 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 3:010.** Reimbursement for physicians' services.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 3:010, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 3:010.

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



KENTUCKY CABINET FOR  
HEALTH AND FAMILY SERVICES



Final 9-7-2021

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 205.565, 210.370-210.485, 311.840, 42 C.F.R. 400.203, Part 414, 415.110, 438.2, 440.50, 447.10, 447.200-447.205, 447.325, 42 U.S.C. 1395m, 1395w-4, 1395x(t)(1), 1396a, 1396b, 1396c, 1396d, 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

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 method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code that may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Anesthesia under medical direction" means a service that is:

(a) Directed by an anesthesiologist;

(b) Delivered by an appropriate and qualified anesthesia provider, including a certified registered nurse anesthetist; and

(c) Provided concurrently to no more than four (4) patients by the anesthesiologist.

(3) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(4)~~(3)~~ "Community mental health center" means a facility that meets the community mental health center requirements established in 902 KAR 20:091.

(5)~~(4)~~ "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(6)~~(5)~~ "Department" means the Department for Medicaid Services or its designee.

(7)~~(6)~~ "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(8)~~(7)~~ "Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).

(9)~~(8)~~ "Federal financial participation" is defined by 42 C.F.R. 400.203.

(10)~~(9)~~ "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(11)~~(10)~~ "Healthcare common procedure coding system" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(12)~~(11)~~ "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) 1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

~~(13)~~~~(42)~~ "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

~~(14)~~~~(43)~~ "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

~~(15)~~~~(44)~~ "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

~~(16)~~~~(45)~~ "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

~~(17)~~~~(46)~~ "Medicaid Physician Fee Schedule" means a list, located at <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>~~[http://chfs.ky.gov/dms]~~, that:

(a) Contains the current reimbursement rates for physician services established by the department in accordance with this administrative regulation; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.[]

~~(17)~~ "Medical direction" means a service provided:

~~(a)~~ Under direct orders from a physician who is:

~~1.~~ Not physically present with the recipient during the provision of the service; and

~~2.~~ Communicating with the service provider during the provision of the service; or

~~(b)~~ Based on a set of written instructions from a physician who is not physically present with the recipient during the provision of the service.[]

(18) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(19) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(20) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(21) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(22) "Physician administered drug" or "PAD" means any rebateable covered outpatient~~[out-patient]~~ drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(23) "Physician assistant" is defined by KRS 311.840(3).

(24) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(25) "Provider group" means a group of at least two (2) individually licensed physicians who:

(a) Are enrolled with the Medicaid Program individually and as a group; and

(b) Share the same Medicaid provider number.

(26) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code that takes into consideration the physician's work, practice expense, and liability insurance.

(27) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(28) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and that are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(29) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(30) "Usual and customary charge" means the uniform amount that a physician charges the general public in the majority of cases for a specific medical procedure or service.

Section 2. Standard Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician who provided the covered service; or

(b) The physician:

1. In a provider group enrolled in the Kentucky Medicaid Program; and

2. Who provided the covered service.

(2) Except as provided in subsection (3) of this section and Sections 3 through ~~11~~[40] of this administrative regulation, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with this administrative regulation.

(3) If there is not an established fee for a listed service in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

Section 3. Rates Established Using a Relative Value Unit and a Dollar Conversion Factor.

(1) Except for a service specified in Sections 4 through ~~10~~[9] of this administrative regulation:

(a) The rate for a non-anesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all non-anesthesia related services.

Section 4. Medicare Part B Covered Services. Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

Section 5. Services with a Modifier. Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as established in this section.

(1) A service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service.

(2) A professional component of a service reported by the addition of the two (2) digit modifier "26" shall be reimbursed at the product of:

(a) The Medicare value assigned to the physician's work; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(3) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

(a) The Medicare value assigned to the practice expense involved in the performance of the procedure; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(4) A bilateral procedure reported by the addition of the two (2) digit modifier "50" shall be reimbursed at 150 percent of the amount assigned to the CPT code.

(5) An assistant surgeon procedure reported by the addition of the two (2) digit modifier "80" shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon.

(6) A procedure performed by a physician acting as a locum tenens physician for a Medicaid-participating physician reported by the addition of the two (2) character modifier "Q6" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code.

(7) An evaluation and management telehealth consultation service provided by a telehealth provider or telehealth practitioner in accordance with 907 KAR 3:170 and reported by the appropriate ~~two (2)~~ letter modifier, as applicable, ["GT"] shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code.

(8) A level II national healthcare common procedure coding system modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

Section 6. Laboratory, Venipuncture, and Catheter. (1) Except for a service specified in paragraph (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:028.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital, or emergency room visit or in addition to a laboratory test.

(2) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital, or emergency room visit if performed by the same provider.

(3) A laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code.

Section 7. Delivery-Related Anesthesia, Anesthesia Add-On Services, and Oral Surgery-Related Anesthesia ~~and Anesthesia Under Medical Direction~~. (1) The department shall reimburse as follows for the following delivery-related anesthesia services:

(a) For a vaginal delivery, the lesser of:

1. \$215; or

2. The actual billed charge;

(b) For a cesarean section, the lesser of:

1. \$335; or

2. The actual billed charge;

- (c) For neuroxial labor anesthesia for a vaginal delivery or cesarean section, the lesser of:
1. \$350; or
  2. The actual billed charge;
- (d) For an additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery, the lesser of:
1. Twenty-five (25) dollars; or
  2. The actual billed charge; or
- (e) For an additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia, the lesser of:
1. Twenty-five (25) dollars; or
  2. The actual billed charge.
- (2) For an anesthesia add-on service provided to a recipient under the age of one (1) year or over the age of seventy (70) years, the department shall reimburse the lesser of:
- (a) Twenty-five (25) dollars; or
  - (b) The actual billed charge.
- (3) For deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon, the department shall reimburse the lesser of:
- (a) \$150; or
  - (b) The actual billed charge.[]
- (4) ~~The department shall not reimburse for an anesthesia service if the claim for the service is submitted with a modifier indicating that a service of medical direction was performed.~~]

Section 8. Medical Direction of Anesthesia and Anesthesia Under Medical Direction Services. (1) A provider or facility performing medical direction shall comply with all Medicare requirements to perform medical direction services located in 42 C.F.R. 415.110 and as found in the Medicare Claims Processing Manual, Chapter 12, Section 50, Paragraph C, as those Medicare requirements[they] existed at the time of the applicable claim submission. This is a link to the Medicare Claims Processing Manual, Chapter 12, as it existed in July 2021: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c12.pdf>.

(2) A[No] reimbursement shall not be made for an anesthesiologist assistant or a student registered nurse anesthetist unless those provider types are:

(a) Otherwise eligible for licensure or certification;

(b) [and] Appropriately enrolled with the department; and

(c);] If applicable, a managed care organization[Anesthesia Under Medical Direction.

(1) An anesthesia under medical direction service that complies with this section shall be eligible for reimbursement.

(2) An anesthesiologist performing anesthesia under medical direction, regardless of the type of anesthesia provided, shall personally document performing each element described in subsection (3) of this section.

(3) An anesthesia under medical direction service shall meet the requirements established in paragraphs (a) through (i) of this subsection.

(a) The anesthesiologist shall perform a face-to-face examination and evaluation, by telehealth if appropriate pursuant to 907 KAR 3:170, prior to the anesthetic session. The examination and evaluation shall indicate the body system or area examined and the anesthesiologist's findings.

(b) The anesthesiologist shall personally decide on the appropriate anesthetic for the procedure and shall document that decision.

(c) The anesthesiologist shall personally participate in person for the most demanding procedures in the treatment plan developed pursuant to this section. This personal par-

~~icipation shall include that the anesthesiologist be in the room and participating in the service if induction and emergence are part of the anesthesia service provided.~~

~~(d) Any services not provided by the anesthesiologist shall be conducted by a qualified individual.~~

~~(e) A qualified individual providing services pursuant to this section shall document and sign their delivery of the service. Any signature shall also include the qualified individual's licensure or certification.~~

~~(f) The anesthesiologist shall monitor the course of anesthesia administration at frequent intervals during the course of treatment.~~

~~(g) The anesthesiologist shall:~~

~~1. Remain physically present for all key and critical portions of the procedure; and~~

~~2. Be immediately available for immediate diagnosis and treatment of an emergency.~~

~~(h)1. The following services may be performed on another patient or case by an anesthesiologist while complying with paragraph (g) of this subsection:~~

~~a. Addressing an emergency of short duration in the immediate area;~~

~~b. Administering an epidural or caudal anesthetic to ease labor pain;~~

~~c. Periodically, but not continuously, monitoring an obstetrical patient;~~

~~d. Receiving patients entering an operating suite for surgery;~~

~~e. Assessing or discharging patients in the recovery room; or~~

~~f. Managing scheduling matters.~~

~~2. A service performed in subparagraph 1. of this paragraph shall not be anesthesia under medical direction if:~~

~~a. The anesthesiologist leaves the immediate area of the operating suite for longer than a short amount of time;~~

~~b. The anesthesiologist is not available to respond to the immediate needs of surgical patients, for example, if the anesthesiologist devotes extensive time to an emergency case; or~~

~~c. The anesthesiologist's services to the anesthesia patients are supervisory in nature.~~

~~(i) The anesthesiologist shall perform and document all appropriate and necessary post-anesthesia care as indicated. Compliance with this paragraph shall include documentation that transfer was done safely to another level of care].~~

Section 9. Vaccines. (1) The department shall reimburse administration of a:

(a) Pediatric vaccine to a recipient under the age of nineteen (19) years; or

(b) Flu vaccine to a recipient of any age.

(2)(a) The department shall reimburse for the cost of a vaccine administered to a recipient under nineteen (19) years of age, in addition to administration of the vaccine, for a vaccine that is:

1. Administered to the recipient by a physician; and

2. Not available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(b) The department shall not reimburse for the cost of a vaccine if the vaccine is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

Section 10[9]. Physician Assistant. Reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this administrative regulation.

Section 11[40]. Reimbursement Limits and Related Requirements. (1)(a) Except for chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an

evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per provider per calendar year.

(b) A claim for an evaluation and management service with a corresponding CPT code of 99214 or 99215 submitted in excess of the limit established in paragraph (a) of this subsection shall be reimbursed as an evaluation and management service with a corresponding CPT code of 99213.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of the limit established in paragraph (a) of this subsection shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

- (a) Preoperative and postoperative visits;
- (b) Administration of the anesthetic;
- (c) Administration of fluids and blood incidental to the anesthesia or surgery;
- (d) Postoperative pain management until discharge from the recovery area;
- (e) Preoperative, intraoperative, and postoperative monitoring services; and
- (f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance to a recipient by epidural or spinal injection for the control of chronic pain shall be limited to three (3):

- (a) Injections per date of service; and
- (b) Dates of service per six (6) month period.

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

- (a) A preoperative service;
- (b) An intraoperative service; and
- (c) A postoperative service and follow-up care within:
  1. Ninety (90) calendar days following the date of major surgery; or
  2. Ten (10) calendar days following the date of minor surgery.

(5) Reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104, Section 3(4).

(6) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(7) If/When performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(8) The department shall not reimburse for an evaluation and management CPT code unless:

- (a) Direct physician contact occurred during the visit; or
- (b) Direct physician contact is not required in accordance with 907 KAR 3:005, Section 3(2).

Section 12[44]. Other Provider Preventable Conditions. In accordance with 907 KAR 14:005, the department shall not reimburse for other provider preventable conditions.

Section 13[42]. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 11[49] of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician:

(a) Who:

1. Is licensed to practice medicine or osteopathy in Kentucky;
2. Is enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672;
3. Is participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671;
4. Is employed by a state university teaching hospital, a pediatric teaching hospital, or a state university school of medicine that is part of a university health care system; and
5. Agrees to assign his or her Medicaid reimbursement, in accordance with 42 C.F.R. 447.10, to the state university entity with whom the physician is employed; and

(b) For services provided:

1. Directly by the medical school faculty physician; or
  2. By a resident working under the supervision of the medical school faculty physician.
- (2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall:
- (a) Not exceed the physician's charge for the service provided; and
  - (b) Be paid directly or indirectly to the medical school.
- (3) A supplemental payment made in accordance with this section shall be:
- (a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;
  - (b) Consistent with the requirements of 42 C.F.R. 447.325; and
  - (c) Made on a quarterly basis.

Section ~~14~~[43]. The department shall reimburse for physician administered drugs in accordance with 907 KAR 23:020.

Section ~~15~~[44]. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse the same amount for physician services as the department does.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a physician service reimbursed by the department via this administrative regulation.

Section ~~16~~[45]. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services approval for the reimbursement.

Section ~~17~~[46]. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

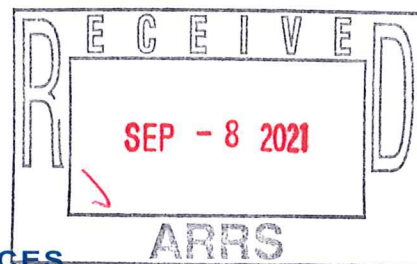
(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

CONTACT PERSON: Krista Quarles, 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**  
**Office of the Secretary**



**Andy Beshear**  
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**Eric C. Friedlander**  
Secretary

September 7, 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: 921 KAR 1:020

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 921 KAR 1:020, the Cabinet for Health and Family Services proposes the attached amendments to 921 KAR 1:020.

Sincerely,

Lucie Estill  
Executive Staff Advisor  
Office of Legislative and Regulatory Affairs

Attachments



KENTUCKY CABINET FOR  
HEALTH AND FAMILY SERVICES

**SUGGESTED SUBSTITUTE**

Final Version: 8/31/2021 2:45 PM

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Income Support  
Division of Child Support Enforcement**

**921 KAR 1:020. Child Support Enforcement Program: confidentiality, program administration contracts, and agreements.**

RELATES TO: KRS Chapter 45A, **69.210**, [194A.050(1)], 205.175, 205.177, 205.710, 205.712, 205.730, 205.735, 205.7685, 205.772, 205.774, 205.776, [-]205.800, 205.990(1), (2), (4), [(5);] (6), 403.211, 405.430(9), (13), 406.035, 434.845, 45 C.F.R. 302.34, 303.21, 303.70(e)(3) [(d)(2)], 303.107, 304, 307.13, **406.021(1)**, 26 U.S.C. 6103(a), (b), 7213(a)(2)[1], 31 U.S.C. 7502, 42 U.S.C. 651, 654(7), (26), 666(a)(17), (c)(1)(D)[et seq.]

STATUTORY AUTHORITY: KRS 194A.050(1), 405.520, 42 U.S.C. 654(26)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 405.520 authorizes the cabinet to promulgate administrative regulations to implement the Child Support Enforcement [Recovery] Program. This administrative regulation establishes the procedures for safeguarding information and entering into program administration contracts and cooperative agreements.

Section 1. Definition. "CSEP" means the Child Support Enforcement Program.

Section 2. Safeguarding Information.

(1) Use or disclosure of information obtained exclusively for the [Child Support Enforcement Program-[CSEP]] shall be restricted from release to **any party except** the appropriate party or entity pursuant to **KRS 205.175, 205.730, 205.735, 205.7685 (2), 205.772(4), and 205.776, 45 C.F.R. 303.70(e)(3) and 302.34, 26 U.S.C. 6103(a), (b), 7213(a)(2), and 42 U.S.C. 654(26)[applicable state and federal laws]** [pursuant to KRS 205.175, 205.730, 205.735, 205.7685 (2), 205.772(4), and 205.776, 45 C.F.R. 303.70(d)(2) and 302.34, 26 U.S.C. 6103(a), (b), 7213(a)(2), and 42 U.S.C. 654(26)].

(2) Unless an applicant for or recipient of child support services has given informed consent, information concerning the applicant or recipient of child support services shall only be released in accordance with KRS 205.177.

Section 3. Program Administration Contract.

(1) A program administration contract initiated by the cabinet with another government entity shall comply with KRS Chapter 45A and shall:

(a) Contain a clear description of specific duties, functions, and responsibilities of the parties in administration of the CSEP;

(b) Specify clear and definite terms and requirements of the contract;

(c) Specify financial reimbursement arrangements including:

1. Budget estimates;

2. Covered expenditures;

3. Methods of determining costs; and

4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain reporting requirements;

(f) Contain the requirements for compliance with 31 U.S.C. 7502;

(g) Provide the beginning and end dates of the program administration contract, review or renewal provisions, and termination circumstances; and

(h) Provide audit criteria.

(2) If another government entity contracts with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:

- (a) Established by the cabinet; and
- (b) Specified in the contract.

(3) The contracted government entity shall provide to the cabinet ~~[in a timely fashion]~~ statistical information concerning CSEP activities as ~~established~~~~[prescribed]~~ by the cabinet and specified in the contract.

(4) If no contract is executed with a local law enforcement official, a referral for child support activities may be made to a local law enforcement official. **A referral for child support activities made to a local law enforcement official shall be** in accordance with the official's statutory obligations **as established by KRS 69.210, 205.712(7), and 406.021(1)**, but the official shall not be eligible for reimbursement as ~~established~~~~[specified]~~ in subsection (2) of this section.

#### Section 4. An Agreement with a Financial Institution.

(1) The cabinet shall enter into an agreement with a financial institution pursuant to KRS 205.712~~(15)~~~~[(44)]~~, 205.772, and 205.774 to conduct a financial data match.

~~(2)~~~~[(4)]~~ The cabinet or its agent shall implement the data exchange and ~~[The cabinet or its agent]~~ shall **have access to identifying information**:

(a) ~~[Have access to identifying information]~~ For an obligated parent who owes an arrearage and who the cabinet has identified to a financial institution through a data match for the purpose of monitoring and auditing; and

(b) ~~[Have access to identifying information]~~ Available to a financial institution if deemed necessary by the cabinet to provide service to a recipient of child support services.

~~(3)~~~~[(2)]~~ The cabinet shall pay a financial institution a fee not to exceed \$250 per fiscal year quarter, or the actual cost to the financial institution for operating the data match, whichever is less.

~~(4)~~~~[(3)]~~ A financial institution shall:

(a) Exchange information by way of an automated data exchange system;

(b) Maintain security to assure that information received from the cabinet or its agent concerning a recipient of child support services shall:

- 1. Be maintained and safeguarded as confidential; and
- 2. Not be copied or given to any other entity without the written permission of the cabinet or the recipient of child support services; and

(c) Incur no liability for:

1. Disclosing a financial record to the cabinet for the establishment, modification, or enforcement of a child support obligation of the account holder;

2. Encumbering or surrendering an asset held by a financial institution in response to an order to withhold or order to deliver issued by the cabinet, or any other action taken by a financial institution in good faith; or

3. Providing a file to the cabinet or its authorized agent in accordance with an approved format as **established**~~[described]~~ by the Multistate Financial Institution Data Match Specifications Handbook ~~[incorporated by reference in Section 5 of this administrative regulation]~~.

~~(5)~~~~[(4)]~~ If a financial data match occurs, a financial institution shall:

(a) Hold, encumber, or surrender an account to the cabinet upon receipt of an order to withhold or order to deliver;

(b) Address and send to the cabinet or its authorized agent as designated, notices, paperwork, ~~[tapes]~~ or other communication resulting from a financial institution data match program; and

(c) Submit data files to the cabinet or its authorized agent as designated.

~~(6)~~~~[(5)]~~ The match of an account holder to a delinquent obligor record provided by the cabinet does not constitute a levy, and an account shall not be held, encumbered, or surrendered to the

cabinet without a financial institution having received an order to withhold or order to deliver from the cabinet.

~~(7)~~~~(6)~~ The information provided to the cabinet on a quarterly basis by a financial institution shall be provided in the format **~~established~~***prescribed***** by the Multistate Financial Institution Data Match Specifications Handbook~~], incorporated by reference in Section 4 of this administrative regulation,~~ using either method one or method two.

(a) If a financial institution agrees to provide the information according to method one, the financial institution shall:

1. Submit by March 31, June 30, September 30, and December 31 of a calendar year, data files of open accounts to the cabinet, or the cabinet's authorized agent, for the data match; and

2. Report information **~~requested~~***required***** by the cabinet or the cabinet's authorized agent on any account maintained by a financial institution.

(b) If a financial institution agrees to provide the information according to method two, the financial institution shall:

1. Request the cabinet or its authorized agent to send the inquiry file to the financial institution~~[institution's]~~ or its agent;

2. Match the inquiry file of obligors identified and provided by the cabinet, or by the cabinet's authorized agent, against open accounts maintained by a financial institution; and

3. Submit a report of matched accounts to the cabinet or its authorized agent within thirty (30) to forty-five (45) days of receipt of the inquiry file.

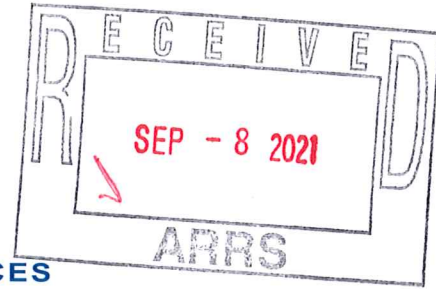
Section 5. Incorporation by Reference. (1) "Multistate Financial Institution Data Match Specifications Handbook", edition 12/2020 ~~[edition 11/07]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, 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/dis/Pages/regs.aspx> [<https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>].

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.



**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of the Secretary**



**Andy Beshear**  
Governor

275 East Main Street, 4W-C  
Frankfort, KY 40621  
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**Eric C. Friedlander**  
Secretary

September 7, 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: 921 KAR 1:390

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 921 KAR 1:390, the Cabinet for Health and Family Services proposes the attached amendments to 921 KAR 1:390.

Sincerely,

Lucie Estill  
Executive Staff Advisor  
Office of Legislative and Regulatory Affairs

Attachments



KENTUCKY CABINET FOR  
HEALTH AND FAMILY SERVICES

**SUGGESTED SUBSTITUTE**

Final Version: 8/25/2021 9:11 AM

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Income Support  
Division of Child Support Enforcement**

**921 KAR 1:390. Child Support Enforcement Program paternity establishment.**

RELATES TO: KRS 186.570(2), 205.710, 205.712, 205.721, 205.730 [~~205.800~~], 213.036(5), 213.046(3), (4), (5), (9), (10), 213.071, 237.110(4)(g), 405.430, 406.011, 406.021, 406.025, 406.180, 45 C.F.R. 302.31, 302.33, 303.5, 304, 42 U.S.C. 651, 652, 653, 654, 666, 668 [~~699b~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 authorizes the secretary to promulgate administrative regulations consistent with the purpose and intent of KRS 205.710 **through[te]** 205.800. This administrative regulation establishes the requirements for the establishment of paternity for the Child Support Enforcement Program.

Section 1. Requirement for Paternity Establishment. The cabinet shall bring action, as **established[specified]** in KRS 406.021(1) and (3) if:

- (1) The child is born out of wedlock; and
- (2) An assignment of rights to the cabinet is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Cabinet Action. (1) A case requiring paternity action shall be opened upon receipt of:

- (a) A public assistance case referral; or
  - (b) A nonpublic assistance application, in accordance with KRS 205.721.
- (2) The cabinet shall open a case pending determination of good cause.
- (a) If good cause for failure to cooperate is determined, the child support case shall be closed.
  - (b) Good cause shall be established in accordance with the requirements of 921 KAR 2:006, Section 18(4) and (5).
- (3) In a case referred to the cabinet in which paternity has not yet been established, the cabinet shall, within ninety (90) days of locating the alleged father or custodial parent:
- (a) Obtain a voluntary acknowledgment of paternity as **established[specified]** by KRS 213.036(5) and 213.046(3), (9);
  - (b) File for establishment of paternity;
  - (c) Complete service of process to establish paternity; or
  - (d) Document unsuccessful attempts to serve process.
- (4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:
- (a) Successful service of process; or
  - (b) The child reaching the age of six (6) months.
- (5) The voluntary acknowledgment of paternity may be rescinded, **Rescinded acknowledgement of paternity shall be accomplished** in accordance with KRS 213.071 [~~901-KAR 5:070~~].
- (6) [~~The cabinet shall recover a reasonable fee for genetic tests from the administratively or judicially determined father pursuant to KRS 205.712(2)(h), utilizing the CS-77, Administrative Order for Genetic Testing.~~]

(7) The cabinet shall request denial, suspension, or revocation of a license or certification for failure to comply with a subpoena or warrant relating to paternity pursuant to KRS 186.570(2) and 237.110(4)(g).]

~~Section 3. Incorporation by Reference. (1) CS-77, "Administrative Order for Genetic Testing", edition 3/09, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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