



DANIEL CAMERON ATTORNEY GENERAL

November 8, 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, the Office of the Attorney General proposes the attached suggested substitute to 40 KAR 3:020.

Sincerely,

Catherine York

**Deputy Executive Director** 

Office of Trafficking and Abuse Prevention and Prosecution

**Suggested Substitute DEPARTMENT OF LAW** 

**Department of Criminal Litigation** 

Office of Trafficking and Abuse Prevention and Prosecution

(Amendment)

40 KAR 3:020. Protocol for operation of local multidisciplinary teams on child

sexual abuse.

RELATES TO: KRS 431.600-431.660, 620.020-620.050

STATUTORY AUTHORITY: KRS 431.600(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 431.600 requires the Kentucky Multi-

disciplinary Commission on Child Sexual Abuse to develop and the Attorney General to

promulgate administrative regulations for a model protocol. *This administrative* 

regulation establishes a [The] model protocol that shall be used by local teams in

defining the roles of members in the investigation of child sexual abuse when teams

include members in addition to staff from the Department for Social Services and law

enforcement.

Section 1. Model Protocol. The Kentucky Multidisciplinary Commission on Child Sexual

Abuse shall:

(1)[(a)] Review the Model Protocol for revision at least every six (6) years;

(2)[(b)] Amend the Model Protocol as necessary; and

1

- Section 2. Local Protocols. (1) KRS 431.600 requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to approve local protocols. *If[In those instances in which]* the Commission rejects local protocols submitted by local multidisciplinary teams, the Commission shall provide the reasons for rejection and request revisions and resubmission.
- (2) Local protocols shall be approved for no longer than a six <u>(6)</u> year term.

(3)[(c)] Distribute the Model Protocol to local multidisciplinary teams.[;]

(3) To seek the Commission's review and approval, a local multidisciplinary team shall submit its local protocols to the Kentucky Multidisciplinary Commission on Child Sexual Abuse at 1024 Capital Avenue, Frankfort, Kentucky 40601.

Section 3. Incorporation of Reference. (1) The "Model Protocol for [the Operation of] Local Multidisciplinary Teams on Child Sexual Abuse, July 2015 [September 1995] Edition", developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby incorporated by reference.

(2) This document may be inspected, copied or obtained, *subject to applicable copyright law*, at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday. The material incorporated by reference is also available on the Attorney General's Web site at ag.ky.gov.



DANIEL CAMERON ATTORNEY GENERAL



November 8, 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, the Office of the Attorney General proposes the attached suggested amendment to 40 KAR 6:010.

Sincerely,

hering WK Catherine York

**Deputy Executive Director** 

Office of Trafficking and Abuse Prevention and Prosecution

#### **Suggested Amendment**

#### Department of Law Department of Criminal Litigation

40 KAR 6:010. Kentucky Victim and Witness Protection Program.

Page 1

```
NECESSITY, FUNCTION, & CONFORMITY
Line 7
       After "15.247", insert "requires".
       Delete "provides that".
Line 8
       After "General", insert the following:
              to promulgate administrative regulations establishing requirements for
       Delete the following:
              shall develop and administer
Page 2
Section 1(6)(a)1.
Line 5
       After "421.500(1);", delete "or".
Page 2
Section 1(6)(a)3.
Line 8
       After "witness;", delete "and".
Page 2
Section 1(6)(b)
Line 10
       After "case;", delete "and".
Page 2
Section 2(3)(a)1.
Line 21
       After "agency;", delete "or".
Page 2
Section 2(3)(a)2.
Line 22
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After "court;", delete "or".

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Page 2
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Section 2(3)(a)4.

Line 24

After "agency;", delete "and".

#### Page 3

Section 2(5)(a)

Line 8

After the second occurrence of "rate", insert "<u>if</u>". Delete "when".

#### Page 6

Section 4(1)

Line 19

After "determine", insert "whether he". Delete "whetherhe".

#### Page 11

Section 7(2)

Line 18

After "obtained", insert the following:
, subject to applicable copyright law,

#### Line 20

After "p.m.", insert the following: , or at ag.ky.gov





DANIEL CAMERON ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE SUITE 200 FRANKFORT, KY 40601

November 8, 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, the Office of the Attorney General proposes the attached suggested amendment to 40 KAR 6:020.

Sincerely,

resine lpla Catherine York

**Deputy Executive Director** 

Office of Trafficking and Abuse Prevention and Prosecution

#### **Suggested Amendment**

### Department of Law Department of Criminal Litigation

40 KAR 6:020. Funding Assistance from the child victims' trust fund.

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Page 1
NECESSITY, FUNCTION, & CONFORMITY
Line 9
       After "CONFORMITY:", insert the following:
              KRS 15.180 authorizes the Attorney General to promulgate administrative
              regulations to facilitate performing the duties and exercise the authority vested in
              the Attorney General and the Department of Law.
Page 1
Section 1(1)
Line 20
       After "(1)", insert the following:
              "Board" means the "state board" as defined by KRS 15.900(4).
              (2)
Page 2
Section 1(2)
Line 11
      Before "Child", insert "(3)".
       Delete "(2)".
Page 2
Section 1(3)
Line 14
       Before "Eligible", insert "(4)".
       Delete "(3)".
Page 2
Section 1(4)
Line 19
       Before "Office", insert "(5)".
       Delete "(4)".
Page 2
Section 1(5)
Line 20
       Delete subsection (5) in its entirety.
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Page 2
Section 2(1)
Line 21
       After "(1)", insert the following:
               The board may disperse
       Delete "Disbursement of".
Page 2
Section 2(1)
Line 22
       After "fund" insert the following:
               , in accordance with
       Delete the following:
               shall be at the discretion of the Board for the purposes of and subject to the order
               of preference for expenditure stated in
Page 3
Section 2(2)
Line 1
       After "Board", insert the following:
               may, in accordance with KRS 15.935(1),
       Delete "shall only".
Line 2
       After "applicants that", insert ": (a)".
       Capitalize "are".
       After "organizations", insert semicolon.
       After "and", insert "(b)".
       Delete "that".
       Capitalize "have".
Page 3
Section 2(3)(b)2.
Line 16
       After "and 3.;", insert "or".
Page 3
Section 2(3)(c)
Line 21
       After "assistance", insert period.
       Delete semicolon.
Page 3
Section 2(3)(d)
Line 22
        After "disbursed,", insert "shall agree".
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Delete "agrees".

Page 3 Section 2(3)(d)1. Line 24

After "maintenance;", insert "and".

Page 4
Section 3(3)(a)3.

Line 15

After "pay;", delete "and".

Page 4 Section 3(3)(c)

Line 18

After "(c)", capitalize "the".





FRANKFORT, KY 40601

DANIEL CAMERON ATTORNEY GENERAL

November 8, 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, the Office of the Attorney General proposes the attached suggested substitute to 40 KAR 6:030.

Sincerely,

Catherine York

**Deputy Executive Director** 

Office of Trafficking and Abuse Prevention and Prosecution

#### SUGGESTED SUBSTITUTE

#### **DEPARTMENT OF LAW**

# Department of Criminal Litigation Office of Trafficking and Abuse Prevention and Prosecution (New Administrative Regulation)

#### 40 KAR 6:030. Human Trafficking Victims Fund.

RELATES TO: KRS 529.010, 529.130, 529.140, 529.150

STATUTORY AUTHORITY: KRS 529.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 529.140 creates the "human trafficking victims fund" as a separate revolving fund within the Office of the Attorney General. Moneys in the fund must be distributed to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies. The Office of the Attorney General must promulgate administrative regulations to develop procedures for distributing funds pursuant to this section. This administrative regulation governs the distribution of funds from the Human Trafficking Victims Fund.

Section 1. Office of the Attorney General's Use of Funds. (1) <u>In accordance with KRS 529.140(3)</u>, the Office of the Attorney General shall use funds received to maintain programs for:

- (a) The prevention of human trafficking:[,]
- (b) The provision of[provide] education, training, or public outreach programs about human trafficking:[,] and
- (c) Conducting[conduct] human trafficking investigations.
- (2) When distributing funds under this subsection, the Office of Attorney General shall document the activity for which funds were distributed and the total cost of the activity.
- Section 2. Distribution of Funds. (1) The Office of Attorney General may distribute funds to agencies serving victims of human trafficking, <u>such as[including but not limited to]</u> law enforcement agencies, prosecutorial agencies, and victim service agencies.
- (2) The Office of the Attorney General may also recoup costs for conducting any programs or trainings, *in accordance with KRS 529.140(3)*.
- (3) An agency wishing to receive funds from the Human Trafficking Victims Fund shall complete the Human Trafficking Victims Fund Application.

Section 3. Limitation on Use of Funds Under KRS 529.140(3)(b). The Cabinet for Health and Family Services shall use funds received to serve minor victims of human trafficking under KRS 620.029.

Section 4. Incorporation by Reference. (1) "Human Trafficking Victims Fund Application, August 2021," is incorporated by reference.

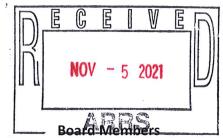
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Andy Beshear Governor

#### **KENTUCKY BOARD OF PHARMACY**

125 Holmes Street, Suite 300 State Office Building Annex Frankfort KY 40601 Phone (502) 564-7910 Fax (502) 696-3806 pharmacy.ky.gov



Peter P. Cohron, R.Ph. Jody Forgy, Consumer John Fuller, R.Ph. Chris Harlow, Pharm D. Jonathan Van Lahr, R.Ph. Jill Rhodes, Pharm.D.

Executive Director Larry A. Hadley, R.Ph.

November 4, 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 2:076

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:076, the Board of Pharmacy proposes the attached amendment to 201 KAR 2:076.

Sincerely,

Larry A. Hadley, R.Ph. Executive Director

Kentucky Board of Pharmacy



#### Suggested Amendment Kentucky Board of Pharmacy

#### 201 KAR 2:076. Compounding.

#### Page 1 RELATES TO

Line 5

After "315.035(6),", insert "315.121,".

#### Page 1

#### **NECESSITY, FUNCTION, & CONFORMITY**

Line 11

After "to assure", insert the following:

that proper equipment and reference material is on hand considering the nature of the pharmacy practice conducted at the particular pharmacy and to assure reasonable health and safety standards for areas within the pharmacies, which are not subject to these standards under CHFS

Delete from "minimum standards" to "Commonwealth".

#### Page 2

Section 2(1)

Line 6

After "compounding,", insert "if the". Delete "when such".

#### Page 2

Section 2(5)

Line 19

After "safety", insert comma.

#### Page 3

Section 4(1)(a)

Line 15

After "name", delete comma. After "species", insert comma.

#### Page 4

Section 4(3)(g)

Line 23

After "warnings,", insert "<u>if</u>". Delete "where".

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Page 5
Section 4(3)(j)
Line 3
       After "requirements," insert "if".
       Delete "when".
Page 5
Section 4(3)(k)
Line 4
       After "labels," insert "if".
       Delete "when".
Page 5
Section 4(4)
Line 5
      After "appropriate,", insert "these".
       Delete "such".
Page 5
Section 4(4)(g)
Line 16
       After "(g)", delete "Such".
       Capitalize "other".
      After "required by", insert the following:
             KRS 217 or 315 and 201 KAR Chapter 2.
       Delete the remainder of paragraph (g) in its entirety.
Page 6
Section 7(1)(a)
Line 12
       Add quotation marks around the title.
Page 6
Section 7(1)(b)
Line 13
       Add quotation marks around the title.
Page 6
Section 7(1)(c)
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Add quotation marks around the title.

Line 14

2



NOV - 4 2021

#### KENTUCKY BOARD OF LICENSURE FOR LONG-TERM CARE ADMINISTRATORS

ARAS

**Andy Beshear** Governor

PO Box 1360 Frankfort, KY 40602 Phone (502) 892-4255 Fax (502) 564-4818 http://ltca.ky.gov

November 4, 2021

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

RE:

Kentucky Board of Licensure for Long-term Care Administrators

Proposed Regulation 201 KAR 6.020 Other Requirements for Licensure

Agency Amendment

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 6:020, the Board of Licensure for Long-term Care Administrators proposes the attached agency amendment to 201 KAR 6:020.

Sincerely,

/s/ Leah Cooper Boggs

Leah Cooper Boggs, Attorney for the Board Department of Professional Licensing Public Protection Cabinet Office of Legal Service 500 Mero Street Frankfort, Kentucky, 40601 502-782-0562 (office) 502-352-8095 (cell) lboggs@ky.gov



#### **Agency Amendment**

### BOARDS AND COMMISSIONS Board of Licensure for Long-Term Care Administrators

201 KAR 6:020. Other requirements for licensure.

Page 2 Section 2(3)(c)5. Line 16

After "quality improvement", insert the following:

in the context of a long-term care facility

Page 3 Section 6(1)(a) Line 21

After "Application for Licensure"," insert "November".

Delete "June".





#### KENTUCKY BOARD OF LICENSURE FOR LONG-TERM CARE ADMINISTRATORS

Andy Beshear Governor PO Box 1360 Frankfort, KY 40602 Phone (502) 892-4255 Fax (502) 564-4818 http://ltca.ky.gov

November 4, 2021

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

RE: Kentucky Board of Licensure for Long-term Care Administrators

Proposed Regulation 201 KAR 6.020 Other Requirements for Licensure

#### Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 6:020, the Board of Licensure for Long-term Care Administrators proposes the attached staff suggested amendment to 201 KAR 6:020.

Sincerely,

#### /s/ Leah Cooper Boggs

Leah Cooper Boggs, Attorney for the Board Department of Professional Licensing Public Protection Cabinet Office of Legal Service 500 Mero Street Frankfort, Kentucky, 40601 502-782-0562 (office) 502-352-8095 (cell) lboggs@ky.gov



#### **Subcommittee Substitute**

## BOARDS AND COMMISSIONS Board of Licensure for Long-Term Care Administrators (As Amended at ARRS)

#### 201 KAR 6:020. Other requirements for licensure.

RELATES TO: KRS 216A.070(1), 216A.080(1)

STATUTORY AUTHORITY: KRS 216A.070, 216A.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070 requires the Kentucky Board of Licensure for Long-Term Care Administrators to develop, impose, and enforce standards for licensure, and authorizes the Board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.080 authorizes the board to promulgate administrative regulations to establish requirements for applicants seeking licensure. This administrative regulation establishes requirements for examination and licensure.

Section 1. Examination. (1) The examination administered and verified by the National Association of Long-Term Care Administrator Boards (NAB) shall serve as the board approved examination required by KRS 216A.080(d).

- Section 2. Requirements. <u>In addition to meeting all of the requirements set forth in KRS 216A.080(1)</u>, an applicant for a long-term care administrator license shall <u>[, in addition to meeting all of the requirements set forth in KRS 216A.080(1)</u>]:
- (1) Have satisfactorily completed a course of study for, and have been awarded a baccalaureate degree from, an accredited college or university accredited by an agency recognized by the United States Department of Education;
- (2) Submit to the Board of Licensure for Long-Term Care Administrators documentation of a passing NAB exam score, as defined by NAB for the period in which the exam was completed. Passing scores may be from up to two (2) years before or one (1) year following the filing of an application for licensure or reinstatement;
- (3)(a) <u>Have a bachelor's or master's degree from an academic program accredited by NAB which was awarded within two (2) years of the date of the application; *[er]*</u>
- (b) Have completed an internship, that is at least 1,000 hours in length, which is a part of a degree in long-term care administration or a related field; or
- (c) Have six (6) months of continuous management experience in a long-term care facility. If part-time, not less than 1,000 hours of management experience within a twenty-four (24) month period. This experience shall be completed up to two (2) years before or one (1) year following the date of application. The management experience shall include evidence of responsibility for:
  - 1. Personnel management;
  - 2. Budget preparation;
  - 3. Fiscal management;
  - 4. Public relations; and
  - 5. Regulatory compliance and quality improvement.[

- (b) An internship, that is at least 1,000 hours in length, which is a part of a degree in long-term care administration or a related field; or
- (c) A bachelor's or master's degree from an academic program accredited by NAB which was awarded within two (2) years of the date of the application;
  - (4) Submit two (2) professional letters of reference; and
- (5) Submit Form 1, [an] Application for Licensure[-] and Form 2, [a] "Work Verification Form", if required.
- Section 3. Qualification. An applicant currently holding a Health Services Executive (HSE) qualification from NAB shall be considered to have met the requirements of Section 2 of this administrative regulation and [. Applicants] shall submit documentation of a current HSE qualification from NAB.
- Section 4. Any application not completed within one (1) year of the date of application shall be deemed incomplete and withdrawn.

Section 5. Notification. A licensee shall provide the board with written notification within thirty (30) days of the occurrence of any of the following:

- (1) Change of home address;
- (2) Change of employer;
- (3) Conviction of a felony or misdemeanor:
- (a) A licensee providing notice of a conviction shall provide a copy of the judgment in the case.
- (b) A plea of nolo contendere or an Alford plea shall not absolve the licensee of an obligation to report a conviction; or
- (4) Immediate Jeopardy or Substandard Level of Care notice received from the Cabinet for Health and Family Services by the long-term care facility at which the licensee serves as the administrator of record. A licensee providing notice of a citation shall provide a copy of the inspection report and submitted plan of correction.
- Section 6. Incorporation by Reference. (1) <u>The following materials are incorporated by reference:</u>
  - (a) Form 1, "Application for Licensure", June 2021; and May 2018, is incorporated by reference.]
  - (b) Form 2, "Work Verification Form", June 2021.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, [Department for Professional Licensing,] 500 Mero Street, [2SC32] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available at https://ltca.ky.gov/.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, office phone (502) 782-0562; cell phone (502) 352-8095; fax (502) 564-3969, email LBoggs@ky.gov.



## KENTUCKY BOARD OF LICENSURE FOR LONG-TERM CARE ADMINISTRATORS

P.O. Box 1360, Frankfort, Kentucky 40602 - 500 Mero St., 2SC32, Frankfort, Kentucky 40601 (502) 892-4255 - <a href="http://ltca.ky.gov">http://ltca.ky.gov</a>

#### **APPLICATION FOR LICENSURE**[APPLICATION]

NOTE: Please send the appropriate application fee as stated below, payable to the Kentucky State Treasurer, with this application in order to process. <u>DO NOT SEND CASH</u>

| (Select One):                                       |   |                        |   |
|---|---|------------------------|---|
| ☐ \$175 - Emergency Temporary Permit for            | Long-Term Care Ad   | ministrator*           |   |
| ☐ \$250 – <u>Initial[or Renewal</u> ] Licensed Long | -Term Care Adminis  | trator*                |   |
| ☐ \$400 - Licensed Long-Term Care Adminis           | trator by Reciprocit  | y/Endorsement*         |   |
| ☐ \$ 50 - Reactivation as a Licensed Long-Te        | erm Care Administra   | ator                   |   |
| ☐ \$300 – Reinstatement as a Licensed Long          | g-Term Care Admini  | strator                |   |
| (*) – Includes \$100 Application Fee                |   |                        |   |
| Personal Information                                |   |                        |   |
| 1. Full Name:                                       |   | ····                   |   |
| (Last)  | (First)   | . (                    | Middle)   |
| 2. Maiden and all other names used:                 | 79-794-1  | 99-90-HV-111400        | AND AND SHE |
| <u>3[<del>2</del></u> ]. Date of Birth:/            |   |                        |   |
| 1[3]. Social Security Number:                       |   | -                      |   |
| 5[4]. Home Mailing Address:                         | MATERIA CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONT | er inn andring seasons |   |
| (Street)  | (City)  | (State)                | (Zip Code)                                      |
| 5. Personal Phone Number:                           |   |                        |   |

| . Business Name:   |  |  |  |  | <del></del> |
|--|--|--|--|--|-------------|
| Business Address:  |  |  |  |  |             |
|  | (Street)   | (City)   | (State)  | (Zip   | Code)       |
| Business Phone <u>Numk</u>   | oer:   |  |  |  |             |
| <del>S</del> ]. <u>Business</u> Email Add  | lress:   |  |  |  |             |
|  | Note: This field is  | not optional.  |  |  |             |
| 7].Are you a US Citizer  | n? ②Yes ②No  | ų.   |  |  |             |
|  | a. <u>If "No", do you have</u>   | a green card? ② Ye   | s PNo  |  |             |
|  |  |  |  |  |             |
|  | b. If "No", have you file  | ed an application for  | r citizenship?   | 2 Yes 2 No   |             |
| er Applications and Li   |  |  |  |  | zainst v    |
|  | b. <u>If "No", have you file</u><br>icenses – You must send  |  |  |  | gainst y    |
| nse.   | icenses – You must send  | documentation of   | all disciplina   | ry actions taken ag  |             |
| nse.<br>ist other states in which yo   | icenses – You must send  | documentation of   | all disciplina   | ry actions taken as  |             |
| inse.<br>ist other states in which yo<br>ave you made application f  | icenses — You must send ou have previously held or cur   | rently hold a Long Term  | all disciplina   | ry actions taken as  |             |
| nse.<br>ist other states in which yo<br>ave you made application f<br>No f yes, give   | icenses – You must send  ou have previously held or cur  or a Long Term Care Adminis explanation:  | documentation of rently hold a Long Term   | all disciplina  Care Administr  cky or any othe  | ry actions taken as  |             |
| nse.  ist other states in which ye  ave you made application f  No f yes, give  *If yes, give e  | icenses — You must send  ou have previously held or cur  or a Long Term Care Adminis explanation:  xplanation:   | documentation of   | all disciplina  Care Administi  cky or any othe  | ry actions taken agrator orsimilar license:  |             |
| ense.  List other states in which you ave you made application for the North Yes, give expenses the control of  | icenses — You must send  bu have previously held or cur  or a Long Term Care Adminis explanation:  xplanation: and documentation of all disc   | rently hold a Long Term<br>trator's license in Kentu   | all disciplina Care Administrately or any other  | ry actions taken agrator orsimilar license: r state? Yes  icense.)]                                |             |
| nse.  ist other states in which you made application for the North form of the North | icenses — You must send  ou have previously held or cur  or a Long Term Care Adminis explanation:  xplanation:   | rently hold a Long Term<br>trator's license in Kentu   | all disciplina Care Administrately or any other  | ry actions taken agrator orsimilar license: r state? Yes  icense.)]                                |             |
| nse. ist other states in which you have you made application for the North Year, give the state of the North Year, give the state of the North Year of The N | icenses — You must send  ou have previously held or cur for a Long Term Care Adminis explanation:  xplanation: and documentation of all disc   | rently hold a Long Term<br>trator's license in Kentu<br>ciplinary actions taken                                    | all disciplina Care Administr cky or any othe against your l or's license in   | ry actions taken agrator orsimilar license: r state? Yes  icense.)] n Kentucky?                    |             |
| nse. ist other states in which you made application for the North Yes, give expenses and the Yes, give expenses and the Yes an | icenses — You must send  ou have previously held or cur for a Long Term Care Adminis explanation:  explanation:  nd documentation of all disc sly applied for a Long-Ter at name, when did you a     | rently hold a Long Term<br>trator's license in Kentu<br>ciplinary actions taken                                    | all disciplina Care Administr cky or any othe against your l or's license in   | ry actions taken agrator orsimilar license: r state? Yes  icense.)] n Kentucky?                    |             |
| nse. ist other states in which you have you made application for the No of yes, give early for must ser  13. Have you previous 12 Yes 12 No  | icenses — You must send  ou have previously held or cur for a Long Term Care Adminis explanation:  explanation:  nd documentation of all disc sly applied for a Long-Ter at name, when did you a     | rently hold a Long Term<br>trator's license in Kentu<br>ciplinary actions taken                                    | all disciplina Care Administr cky or any othe against your l or's license in   | ry actions taken agrator orsimilar license: r state? Yes  icense.)] n Kentucky?                    |             |
| ist other states in which you made application for No. If yes, give expenses the control of the  | icenses — You must send  ou have previously held or cur for a Long Term Care Adminis explanation:  explanation:  nd documentation of all disc sly applied for a Long-Ter at name, when did you a     | rently hold a Long Term<br>trator's license in Kentu<br>ciplinary actions taken                                    | all disciplina Care Administr cky or any othe against your l or's license in   | ry actions taken agrator orsimilar license: r state? Yes  icense.)] n Kentucky?                    |             |
| ense.  ist other states in which you made application for the North House, give expenses the control of the con | icenses — You must send  ou have previously held or cur for a Long Term Care Adminis explanation:  explanation:  nd documentation of all disc sly applied for a Long-Ter at name, when did you a     | rently hold a Long Term<br>trator's license in Kentu<br>ciplinary actions taken                                    | all disciplina Care Administr cky or any othe against your l or's license in   | ry actions taken agrator orsimilar license: r state? Yes  icense.)] n Kentucky?                    |             |
| ense.  ist other states in which you made application for the North House, give expenses the control of the con | icenses — You must send  ou have previously held or cur for a Long Term Care Adminis explanation:  explanation:  nd documentation of all disc sly applied for a Long-Ter at name, when did you a     | rently hold a Long Term<br>trator's license in Kentu<br>ciplinary actions taken                                    | all disciplina Care Administr cky or any othe against your l or's license in   | ry actions taken agrator orsimilar license: r state? Yes  icense.)] n Kentucky?                    |             |
| *If yes, give e:  (You must ser  13. Have you previous  If "yes", under which you reason for the den   | icenses — You must send bu have previously held or cur for a Long Term Care Adminis explanation:  xplanation: and documentation of all disc sly applied for a Long-Ter at name, when did you a nial: | rently hold a Long Term<br>trator's license in Kentu<br>ciplinary actions taken<br>m Care Administrat              | all disciplina Care Administrately or any other against your lor's license in  | ry actions taken agrator orsimilar license: r state? Yes icense.)] n Kentucky? ense, and if denied | l, state    |
| ist other states in which you made application for the states in which you made application for the dental states in which you made application for the dental states in which you made application for the dental states in which yes, give or states in which yes application for the states in the  | icenses — You must send  ou have previously held or cur for a Long Term Care Adminis explanation:  explanation:  nd documentation of all disc sly applied for a Long-Ter at name, when did you a     | rently hold a Long Term<br>trator's license in Kentu<br>ciplinary actions taken<br>m Care Administrat              | all disciplina Care Administrately or any other against your lor's license in  | ry actions taken agrator orsimilar license: r state? Yes icense.)] n Kentucky? ense, and if denied | l, state    |
| *If yes, give exercises in which yes ave you made application for the dental series in which yes are you made application for the dental series in which yes are as a series in which yes are a series in which yes are as a series in which yes are a series in which yes are as a series in which yes are as a series in which yes are as a series in which yes are a series in which yes | icenses — You must send bu have previously held or cur for a Long Term Care Adminis explanation:  xplanation: and documentation of all disc sly applied for a Long-Ter at name, when did you a nial: | rently hold a Long Term trator's license in Kentu ciplinary actions taken m Care Administrat pply, what is the sta | all disciplina Care Administration Care Admini | ry actions taken agrator orsimilar license: r state? Yes icense.)] n Kentucky? ense, and if denied | l, state    |

| . <u>Have you previous</u>                                  | sly applied for or are you currently apply  | ving for a Long-Term Care Administrator license i  |
|---|---|--|
| other state?  |   |  |
| <pre>2 Yes</pre> <pre>2 No</pre>                            |   |  |
| If "yes", under wh  | at name, when did you apply, what is th   | e status of the license, and if denied, state the  |
| reason for the der  | <u>nial:</u>  |  |
|   |   |  |
| .Do you currently h   | old a health professions license in Kenti   | ucky or any other state?   |
| ? Yes ? No  |   |  |
| · · ·   | what licenses are held, when they were  | e held, in what states, and describe any discipline  |
| [List states:   |   |  |
| *If yes, has that lie                                       |   | n been suspended, revoked, or disciplined?   |
| ☑ Yes ☑ No  | , ,   |  |
| *If yes, give explar  | nation:   | **************************************   |
|   | ocumentation of all disciplinary actions t  |  |
| .Have you ever bee<br>② Yes  ② No                           | n <u>convicted</u> of a felony or a misdemean   | or?  |
|   | ate, nature of offense, and a copy of the   | e judgment of conviction:  |
|   | [Applicant's Affida   | <u>vit</u>   |
| herein is true, cor<br>investigation at a                   | rect, and complete to the best of my knowle   | penalty of law that the information contained edge and belief. I am aware that, should an on or falsification, my application could be ensure for Long-Term Care Administrators. |
| Date:   | Applicant's Signature:  |  |
| ;   | Additional Affidavit: Applicants for Reactivat  | ion or Reinstatement ONLY  |
| I have earned   | hours of continuing education within  | the twenty-four (24) months immediately  |
|   |   |  |
|   |   | instatement is submitted to the board,and I  |
| preceding the dat   | te on which this request for reactivation/re  | instatement is submitted to the board,and I<br>of those courses for the board to consider. I   |
| preceding the date am submitting wi                         | te on which this request for reactivation/re<br>ith this application evidence of completion | · · · · · · · · · · · · · · · · · · ·  |
| preceding the date<br>am submitting wi<br>understand that t | te on which this request for reactivation/re<br>ith this application evidence of completion | of those courses for the board to consider. I<br>or the purpose of reactivation/reinstatement  |

ucation and Experience

<u>J. Do you currently hold a health services executive qualification (HSE) from the National Association of Long-Term Care Administrator Boards (NAB)?</u>

Yes
No

- a. If "yes", provide documentation of a current HSE qualification from NAB. Then advance to Question 23.
- b. If "no", proceed to Question 19.

19. Please list your undergraduate school, including name, location, dates of attendance, number of credit hours, and degree(s) obtained.

| <u>Name</u> | <u>Location</u> | <u>Dates of</u><br><u>Attendance</u> | Number<br>of Credit<br>Hours | Degree(s) obtained |
|-------------|-----------------|--------------------------------------|------------------------------|--------------------|
|             |                 |                                      |                              |                    |
|             |                 |                                      |                              |                    |
|             |                 |                                      |                              |                    |

- a. <u>Is each of the school(s) accredited?</u> 2 Yes 2 No
- b. Provide a copy of an official transcript from each school attended. NOTE: All degrees applicable must be documented by a CERTIFIED TRUE COPY of the official transcript with the DEGREE CONFERRED and sent from the university directly to this office. "Issued to student copy" will not be accepted
- 20. Did NAB certify the program in which your degree was obtained? Information regarding what programs are accredited can be found on their website https://www.nabweb.org/ ② Yes ② No
- 21. If you answered "no" to Question 20, did the program include 1,000 hours of internship?

  2 Yes 2 No
  - a. If "yes", provide documentation evidencing the 1,000 hours of internship.
- 22. If you answered "no" to Question 21, please complete the attached Form 2, "Work Verification Form" showing six (6) months continuous management experience described in 201 KAR 6:020(3)(a).

#### **Examination**

23. Have you passed the NAB exam? 2 Yes 2 No

If "yes", attach proof of having passed the NAB exam, or contact NAB and request that your score be transferred to Kentucky.

24. If "no", are you scheduled to take the exam? 2 Yes 2 No

| FOR EMERGENCY   |                     |                       |                              |                                 |  |
|---|---------------------|-----------------------|------------------------------|---------------------------------|--|
| Please answer [an   | swers] Questions    | <u>1-26 and the f</u> | ollowing ques                | tions:                          |  |
| 27. Is the facility for   | or which you are a  | pplying for a         | oermit [ <del>for</del> ] wi | thout a licensed administrator? |  |
| 2 Yes 2 N   | <u>lo</u>           |                       |                              |                                 |  |
| 28. Is a licensed ac  | dministrator availa | ble to fill the       | position? 2 Ye               | es 🛮 No                         |  |
| 29. Have you previously been granted an Emergency Temporary Permit in Kentucky during the last 5 years? 2 Yes |                     |                       |                              |                                 |  |
| No  |                     |                       |                              |                                 |  |
|   |                     |                       | <u>5</u>                     |                                 |  |
|   |                     |                       | _                            |                                 |  |

25. Provide two (2) professional letters of reference on official letterhead, dated, and signed with a signature.

26. Begin with your present or most recent job and list fully and accurately the details of each job you have held since you obtained your degree. You may attach a resume in lieu of answering this question if it contains all of the required

<u>Title</u>

<u>Dates</u> Employed <u>Duties</u>

If "yes", when?

**Letters of Reference** 

**Employment History** 

information.

Name of

<u>Employer</u>

Address of

<u>Employer</u>

#### . Are you the spouse of an Active Military member? 2 Yes 2 No

- a. If "yes", provide proof of:
  - i. your marriage to an active military member;
  - ii. <u>assignment to a duty station in Kentucky; AND</u>
  - iii. <u>a valid license or certificate for the profession issued by another state, the District of Columbia,</u> or any possession or territory of the United States.
- 31. Have you completed all of the requirements listed in Questions 1-26 above except for the examination and the management experience, if required? ② Yes ② No

#### FOR REACTIVATION OR REINSTATEMENT APPLICATIONS ONLY

Please answer [answers] Questions 1-26 and the following question:

32. Have you completed thirty (30) hours of continuing education within the last twenty-four (24) months?

#### 2 Yes 2 No

- a. If "yes", provide proof of satisfactory completion of the required hours.
- b. If "no", you have six (6) months from when the application is approved to obtain this continuing education pursuant to 201 KAR 6:070 Section 10.

#### FOR RECIPROCITY/ENDORSEMENT APPLICATIONS ONLY

Please answer [answers] Questions 1-26 and the following questions:

. Are you currently designated as a certified long-term care administrator by the American College of Health Care Administrators (ACHCA)? 2 Yes 2 No

- a. If "no", do you currently hold a Health Services Executive (HSE) qualification from the National Association of Long-Term Care Administrator Board (NAB)? ② Yes ② No

  [If "no", you have six (6) months from when the application is approved to obtain this continuing education pursuant to 201 KAR 6:070 Section 10.]
- 34. Are you currently licensed in another jurisdiction as a long-term care administrator? 2 Yes 2 No
  - a. <u>Provide a copy of the license and other documentation from the appropriate long-term care licensing</u> authority in the endorsing jurisdiction that confirms the following:
    - i. That the license is active;
    - ii. That the license is valid;
    - iii. That the license is in good standing;
    - iv. That the license does not have an unresolved complaint pending against it; and
    - v. That the license has not been subject to disciplinary action during the five (5) years immediately preceding the application.
- 35. Does the other state maintain a system and standard of qualifications and examinations for a long-term care administrator substantially equivalent to those in Kentucky? 2 Yes 2 No

#### [EDUCATION

#### Dates Attended Date of Graduation

| SCHOOL                | NAME AND LOCATION | From | Ŧo | Month | Year | Number of Hours<br>or Credits | Degrees<br>Obtained |
|-----------------------|-------------------|------|----|-------|------|-------------------------------|---------------------|
| Under-Graduate School |                   |      |    |       |      |                               |                     |
|                       |                   |      |    |       |      |                               |                     |
| Graduate School       |                   |      |    |       |      |                               |                     |
|                       |                   |      |    |       |      |                               |                     |

NOTE: All degrees applicable must be documented by a CERTIFED TRUE COPY of the official transcript with the DEGREE CONFERRED and sent <u>from the university directly to this office</u>. "Issued to student copy" will not be accepted.

PLEASE NOTE: THE FOLLOWING SUPPLEMENTS MUST BE RECEIVED BEFORE YOUR APPLICATION WILL BE REVIEWED BY THE BOARD. NO ACTION WILL BE TAKEN UNTIL ALL REQUIREMENTS HAVE BEEN MET.

- Current Job Description
- Work Verification Form

#### **EMPLOYMENT HISTORY**

Begin with your present or most recent job and list fully and accurately the details of each job you have held during the past three years. List all other administrative positions held in a health care field.

| th                                | e past thre      | e years. List all | other adm | inistrative positions held in a health care field. |
|-----------------------------------|------------------|-------------------|-----------|--|
| Employed from:                    | Mo.              | Yr. To:           | Mo.       | Yr.  |
| Title or Position:                |                  |                   | 1         | Describe your duties:                              |
| Name of Employer:                 |                  |                   |           |  |
| Address of Employer               | :                |                   |           |  |
|                                   |                  |                   |           |  |
| Employed from:                    | Mo.              | Yr. To:           | Mo.       | ¥r.  |
| Employed from: Title or Position: | <del>IVIO.</del> | 11. 10:           | IVIO.     | Describe your duties:                              |
| Name of Employer:                 |                  |                   |           | <del>Describe your duties.</del>                   |
| Address of Employer               |                  |                   |           | _  |
| Addiess of Employer               |                  |                   |           |  |
|                                   |                  |                   |           |  |
| Employed from:                    | Mo.              | Yr. To:           | Mo.       | Yr.  |
| Title or Position:                |                  |                   |           | Describe your duties:                              |
| Name of Employer:                 |                  |                   |           |  |
| Address of Employer               | ÷                |                   |           |  |
|                                   |                  |                   |           |  |
|                                   | N.A              | T 7/2 = = -       | - NA-     | T. V.  |
| Employed from:                    | <del>Mo.</del>   | Yr. To:           | Mo.       | Yr.  |
| Title or Position:                |                  |                   |           | Describe your duties:                              |
| Name of Employer:                 |                  |                   |           |  |
| Address of Employer               | ÷                |                   |           |  |
|                                   |                  |                   |           |  |
| Employed from:                    | Mo.              | Yr. To:           | Mo.       | Yr.  |
| Title or Position:                |                  |                   | 1         | Describe your duties:                              |
| Name of Employer:                 |                  |                   |           |  |
| Address of Employer               | 7                |                   |           | ·  |
|                                   |                  |                   |           |  |
| <del></del>                       |                  |                   | T 8.4 -   | L V.   |
| Employed from:                    | Mo.              | Yr. To:           | Mo.       | <del>Yr.</del>                                     |

| Title or Position:   | Describe your duties: |
|----------------------|-----------------------|
| Name of Employer:    |                       |
| Address of Employer: |                       |

|   |  | WORK VERIFI  | CATION FORM  |   |
|---|--|--|--|---|
| licensure. If yo<br>supervisor of t                     | our current superv   | <del>isor cannot verify you</del>  | m and submit it with your app<br>r management experiences, pl<br>rience in each of the five dom  | ease havethe  |
| Name of Appli   | cant   |  |  |   |
| Name of Empl  | oyer   |  |  |   |
| Facility<br>Type  | Hospital   | Nursing<br>Home  | Personal Care  | Other   |
| Dates of Emplo  | oyment F   | rom: / /   | ' to / /   |   |
| experience to within two (in application.  Personnel mo | o be completed<br>2) years of the c<br>The manageme<br>anagement; 2. B | in a long-term care<br>late of application<br>ent experience shal<br>udgetpreparation; 3 | stinuous management exposers the state of th | nall be completed<br>or the filing of the<br>ponsibility for: 1.<br>blic relations; and |
| <del>Detail below t</del>                               | <del>ne work experienc</del>   | equired amount of a  |  |   |
| 1. Personne (include nu                                 | el Management<br>umber of individu                                     | ÷<br><del>≀als supervised)</del>   | Description of Experience  | ee:   |
| 2. Budget P   | reparation:  |  | Description of Experience  | e:  |
| 3. Fiscal Ma  | <del>inagement:</del>  |  | Description of Experience  | e:  |
| 4. Public Re  | elations:  |  | Description of Experience  | e:  |
| 5. Regulator  | y Compliance a<br>t:   | and Quality  | Description of Experience  | <del>:e:</del>  |

|  | Name of person completing form:               |  |
|--|---|--|
|  | Title:  |  |
| _  | Address:                                      |  |
|  | Contact Phone:                                |  |
|  | E-mail:                                       |  |
|  | Date:   |  |
|  | Signature:]                                   |  |
|  |   |  |
|  | <u>Applic</u>                                 | ant's Affidavit  |
| I the ani  | nlicant named in the above, do hereby cort    | fy under penalty of law that the information contained       |
|  |   | my knowledge and belief. I am aware that, should an          |
|  |   |  |
|  |   | sentation or falsification, my application could be rejected |
| or my lic  | ense revoked by the Kentucky Board of Lice    | nsure for Long-Term Care Administrators.                     |
| Date:  | Applicant's Signature:                        |  |
|  |   |  |
|  |   |  |
|  |   |  |
|  | Additional Affidavit: Applicants f            | or Reactivation or Reinstatement ONLY                        |
| _  |   |  |
| <u>I have ea</u>   |   | tion within the twenty-four (24) months immediately          |
| <u>precedin</u>  | g the date on which this request for reactive | ation/reinstatement is submitted to the board, and I am      |
| <u>submittir</u>   | ng with this application evidence of comple   | tion of those courses for the board to consider. I           |
|  |   | submitted for the purpose of reactivation/reinstatement      |
|  |   | ntinuing education hours required for renewal.               |
|  |   | remains education frouts required for herrewall.             |
| /  |   |  |
| Date:  | Applicant's Signature:                        |  |
|  |   |  |
|  |   |  |
|  |   |  |
|  |   |  |
|  | DO NOT WRITE BELOW THIS LIN                   | E – FOR BOARD AND OFFICE USE ONLY                            |
| Market Market Assert As |   |  |
|  |   |  |
|  |   |  |
|  | pproved                                       |  |
|  | enied   |  |
|  | eferred                                       |  |
|  |   |  |
| <b>Board Re</b>  | view Date:                                    | Comments:  |
|  |   |  |
| Signature  | 2:  | Signature:   |
|  |   |  |
|  |   |  |
|  |   |  |
|  |   |  |
|  |   |  |
| [ <del>Rev.5/20</del>  | <del>)18</del> ]                              |  |

<u>9</u>



#### KENTUCKY BOARD OF LICENSURE FOR LONG-TERM CARE ADMINISTRATORS

P.O. Box 1360, Frankfort, Kentucky 40602 - 500 Mero St., 2SC32, Frankfort, Kentucky 40601 (502) 892-4255 - http://ltca.ky.gov

#### **APPLICATION FOR LICENSURE**

NOTE: Please send the appropriate application fee as stated below, payable to the Kentucky State Treasurer, with this application in order to process. <u>DO NOT SEND CASH</u>

| (Select One):                  |                                      |                   |              |             |          |            |
|--------------------------------|--------------------------------------|-------------------|--------------|-------------|----------|------------|
| ☐ \$175 - Emergency Te         | mporary Pern                         | nit for Long-Term | n Care Admi  | nistrator*  |          |            |
| ☐ \$250 – Initial License      | d Long-Term (                        | Care Administrat  | or*          |             |          | •          |
| ☐ \$400 - Licensed Long        | -Term Care Ad                        | dministrator by R | eciprocity/l | Endorsement | *        |            |
| ☐ \$ 50 - Reactivation a       | s a Licensed L                       | ong-Term Care A   | .dministrato | or          |          |            |
| ☐ \$300 – Reinstatemer         | it as a License                      | d Long-Term Car   | e Administr  | ator        |          |            |
| (*) – Includes \$100 Applicati | on Fee                               |                   |              |             |          |            |
| Personal Information           | 0111100                              |                   |              |             |          |            |
| 1. Full Name:                  |                                      |                   |              |             |          |            |
| 2. Maiden and all other nar    | (Last)<br>nes used:                  |                   | (First)      | •           | (Middle) | ·          |
| 3. Date of Birth:              |                                      |                   |              |             |          |            |
| 4. Social Security Number: _   | MENANTO OFF THE WALLOW MY WILLIAM TO |                   |              |             |          |            |
| 5. Home Mailing Address:       | (Street)                             | (City)            |              | (State)     |          | (Zip Code) |
| 6. Personal Phone Number:      | <u></u>                              |                   |              |             |          |            |
| 7. Personal Email Address: _   |                                      |                   |              |             |          |            |

| 9. Business Address:  |    |
|---|----|
| (Street) (City) (State) (Zip Code)  10. Business Phone Number:  |    |
| 10. Business Phone Number:  11. Business Email Address:  Note: This field is not optional.  12. Are you a US Citizen? ② Yes ② No  a. If "No", do you have a green card? ② Yes ② No b. If "No", have you filed an application for citizenship? ② Yes ② No  Other Applications and Licenses — You must send documentation of all disciplinary actions taken against your license. |    |
| 11. Business Email Address:  Note: This field is not optional.  12. Are you a US Citizen? ② Yes ② No  a. If "No", do you have a green card? ② Yes ② No b. If "No", have you filed an application for citizenship? ② Yes ② No  Other Applications and Licenses – You must send documentation of all disciplinary actions taken against your license.                             | )  |
| Note: This field is not optional.  12. Are you a US Citizen? ② Yes ② No  a. If "No", do you have a green card? ② Yes ② No  b. If "No", have you filed an application for citizenship? ② Yes ② No  Other Applications and Licenses – You must send documentation of all disciplinary actions taken against your license.   |    |
| Note: This field is not optional.  12. Are you a US Citizen? ② Yes ② No  a. If "No", do you have a green card? ② Yes ② No  b. If "No", have you filed an application for citizenship? ② Yes ② No  Other Applications and Licenses – You must send documentation of all disciplinary actions taken against your license.   |    |
| a. If "No", do you have a green card? 2 Yes 2 No b. If "No", have you filed an application for citizenship? 2 Yes 2 No Other Applications and Licenses – You must send documentation of all disciplinary actions taken against your license.  |    |
| a. If "No", do you have a green card? 2 Yes 2 No b. If "No", have you filed an application for citizenship? 2 Yes 2 No Other Applications and Licenses – You must send documentation of all disciplinary actions taken against your license.  |    |
| b. If "No", have you filed an application for citizenship? ② Yes ② No Other Applications and Licenses – You must send documentation of all disciplinary actions taken against your license.   |    |
| your license.   |    |
| 13. Have you previously applied for a Long-Term Care Administrator's license in Kentucky?   | :  |
| ② Yes ② No If "yes", under what name, when did you apply, what is the status of the license, and if denied, state the reason for the denial:  | :e |
| 14. Do you hold or have you held a Long-Term Care Administrator license or similar license in any other state.   ② Yes ② No  If "yes", under what name, when, what is the status of the license, and describe any discipline imposon the license:   |    |
| 15. Have you previously applied for or are you currently applying for a Long-Term Care Administrator licens any other state?  ② Yes ② No  If "yes", under what name, when did you apply, what is the status of the license, and if denied, state the reason for the denial:   |    |
| 16. Do you currently hold a health professions license in Kentucky or any other state?  |    |

| If "yes", please list w<br>discipline imposed:                                     |   | · · ·   |   | hat states, and describe any  |
|--|---|---|---|---|
| 17. Have you ever been con ② Yes ② No If "yes", provide dat                        |   |   |   | of conviction:  |
| Education and Experience   |   |   |   |   |
| Term Care Administrator Bo ② Yes ② No a. If "yes", provide 23. b. If "no", proceed | pards (NAB)?  documentation of  to Question 19.  aduate school, inc | a current HSE o   | qualification fro                         | n the National Association of Long m NAB. Then advance to Question attendance, number of credit   |
| Name   | Location  | Dates of<br>Attendance                                  | Number<br>of Credit<br>Hours              | Degree(s) obtained  |
|  |   |   |   |   |
| must be docume<br>CONFERRED and<br>accepted  | of an official transcented by a CERTIFII I sent from the uni        | ript from each s<br>ED TRUE COPY of<br>versity directly | of the official tra<br>to this office. "I | l. NOTE: All degrees applicable<br>anscript with the DEGREE<br>ssued to student copy" will not be |
| are accredited can be found  | d on their website  | - https://www.r   | nabweb.org/ 🛚                             |   |
| 21. If you answered "no" to  | Question 20, did  | the program inc   | lude 1,000 hou                            | rs of internship?   |
| ② Yes ② No   | provide documenta   | ation evidencing  | the 1 000 hou                             | rs of internshin  |

|   | Examination          |                                    |                |                  |   |
|---|----------------------|------------------------------------|----------------|------------------|---|
|   | 23. Have you passe   | ed the NAB exam?                   | Yes 2 No       | )                |   |
|   | • •                  | ach proof of havii<br>to Kentucky. | ng passed the  | NAB exam, or     | contact NAB and request that your score be  |
|   | 24. If "no", are you | ı scheduled to tak                 | e the exam? [  | ?Yes ?No         |   |
|   | If "yes", wh         | ien?                               |                | ******           |   |
|   | Letters of Referen   | ce                                 |                |                  |   |
|   | 25. Provide two (2   | ) professional lett                | ers of referen | ce on official l | etterhead, dated, and signed with a signature   |
|   | Employment Histo     | ory                                |                |                  |   |
|   | -                    | ained your degree                  |                |                  | accurately the details of each job you have in lieu of answering this question if it contains |
| 1 | Name of              | Address of                         | Dates          | Title            | Duties  |
|   | Employer             | Employer                           | Employed       |                  |   |
|   |                      |                                    |                |                  |   |

22. If you answered "no" to Question 21, please complete the attached Form 2, "Work Verification Form"

showing six (6) months continuous management experience described in 201 KAR 6:020(3)(a).

| Name of Fmployer | Fundamental Address of | Employed | ritie | Duties            |
|------------------|------------------------|----------|-------|-------------------|
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|                  | Employer               |          |       | Employer Employed |

#### FOR EMERGENCY TEMPORARY PERMIT APPLICATIONS ONLY

Please answer Questions 1-26 and the following questions:

27. Is the facility for which you are applying for a permit [for] without a licensed administrator?

2 Yes 2 No

- 28. Is a licensed administrator available to fill the position? 2 Yes 2 No
- 29. Have you previously been granted an Emergency Temporary Permit in Kentucky during the last 5 years? 

  Yes 

  No
- 30. Are you the spouse of an Active Military member? 2 Yes 2 No
  - a. If "yes", provide proof of:
    - i. Your marriage to an active military member;
    - ii. Assignment to a duty station in Kentucky; and
    - iii. A valid license or certificate for the profession issued by another state, the District of Columbia, or any possession or territory of the United States.
- 31. Have you completed all of the requirements listed in Questions 1-26 above except for the examination and the management experience, if required? ② Yes ② No

#### FOR REACTIVATION OR REINSTATEMENT APPLICATIONS ONLY

Please answer Questions 1-26 and the following question:

32. Have you completed thirty (30) hours of continuing education within the last twenty-four (24) months?

2 Yes 2 No

- a. If "yes", provide proof of satisfactory completion of the required hours.
- b. If "no", you have six (6) months from when the application is approved to obtain this continuing education pursuant to 201 KAR 6:070 Section 10.

#### FOR RECIPROCITY/ENDORSEMENT APPLICATIONS ONLY

Please answer Questions 1-26 and the following questions:

- 33. Are you currently designated as a certified long-term care administrator by the American College of Health Care Administrators (ACHCA)? ② Yes ② No
  - a. If "no", do you currently hold a Health Services Executive (HSE) qualification from the National Association of Long-Term Care Administrator Board (NAB)? 2 Yes 2 No
- 34. Are you currently licensed in another jurisdiction as a long-term care administrator? 2 Yes 2 No
  - a. Provide a copy of the license and other documentation from the appropriate long-term care licensing authority in the endorsing jurisdiction that confirms the following:
    - i. That the license is active;
    - ii. That the license is valid;
    - iii. That the license is in good standing;
    - iv. That the license does not have an unresolved complaint pending against it; and
    - v. That the license has not been subject to disciplinary action during the five (5) years immediately preceding the application.

35. Does the other state maintain a system and standard of qualifications and examinations for a long-term care administrator substantially equivalent to those in Kentucky? ② Yes ② No

#### **Applicant's Affidavit**

| herein is true, corre-<br>investigation at any                 | ct, and complete to the best of my k<br>time disclose any such misrepresent                                 | nder penalty of law that the information contained nowledge and belief. I am aware that, should an tation or falsification, my application could be rejected re for Long-Term Care Administrators.   |  |  |  |  |  |
|--|---|--|--|--|--|--|--|
| Date:  | Applicant's Signature:  |  |  |  |  |  |  |
| А  | dditional Affidavit: Applicants for R   | leactivation or Reinstatement ONLY   |  |  |  |  |  |
| preceding the date of submitting with this understand that the | on which this request for reactivation application evidence of completion e continuing education hours subr | within the twenty-four (24) months immediately n/reinstatement is submitted to the board, and I am of those courses for the board to consider. I mitted for the purpose of reactivation/reinstatement uing education hours required for renewal. |  |  |  |  |  |
| Date:  | Applicant's Signature:  |  |  |  |  |  |  |
|  | DO NOT WRITE BELOW THIS LINE –  | FOR BOARD AND OFFICE USE ONLY  |  |  |  |  |  |
| ☐ Approved<br>☐ Denied<br>☐ Deferred                           |   |  |  |  |  |  |  |
| Board Review Date:   | · · · · · · · · · · · · · · · · · · ·   | Comments:  |  |  |  |  |  |
| Signature:   |   | Signature:   |  |  |  |  |  |



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

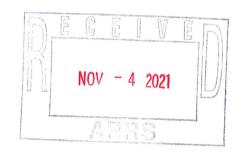
**Andy Beshear** Governor

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

Rich Storm Commissioner

November 4, 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 301 KAR 2:015, the Kentucky Department of Fish and Wildlife Resources proposes the attached agency amendment to 301 KAR 2:015.

Sincerely,

Rich Storm

Commissioner

# Agency Amendment Tourism, Arts and Heritage Cabinet Department of Fish and Wildlife Resources

301 KAR 2:015. Feeding of Wildlife.

Page 3 Section 2(3) Line 7

After "year round.", insert the following:

Section 3. Chronic Wasting Disease. In a department-designated Chronic Wasting Disease Surveillance Zone or Management Zone county, specified on the department's website at fw.ky.gov, persons shall not bait or feed using grain, salt, mineral, or other ingested attractants, except that the following shall be exempted:

- (1) Normal agricultural practices;
- (2) Wildlife food plots or plantings;
- (3) Bird feeders within the curtilage of the home; and
- (4) Furbearer trapping, except that trappers shall not use grain, salt, or mineral.



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 3, 2021

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



Re: 501 KAR 1:050. Granting final discharge from parole.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 1:050, the Justice and Public Safety Cabinet, Parole Board proposes the attached amendment to 501 KAR 1:050.

Sincerely,

Heather M. Lee

Heather M. Lee Paralegal Consultant

enclosure



#### 10/28/21

#### SUGGESTED SUBSTITUTE

### JUSTICE AND PUBLIC SAFETY CABINET Parole Board

501 KAR 1:050. Granting final discharge from parole.

RELATES TO: KRS 439.352, 439.356, 439.358, 439.563, 532.043[523.043], 532.060(3) STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.340(3)(b), 439.354, 439.563 NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3)(b) authorizes the Parole Board to establish administrative regulations concerning matters that come before it. KRS 439.330(1)(g) authorizes [establishes the authority of] the Parole Board to grant a final discharge from parole. KRS 439.563 prohibits final discharge from parole if an identified victim of the crime or a government agency to whom restitution has been ordered has not yet been paid in full. This administrative regulation establishes the procedure for final discharge for parole.

Section 1. If an offender paroled prior to July 15, 1998, reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board.

Section 2. (1) If an offender paroled on or after July 15, 1998, owes restitution, he shall not automatically receive a final discharge from parole upon reaching the maximum expiration of his sentence.

- (2) The board shall not issue a final discharge to a parolee until he pays restitution in full <u>in</u> compliance with KRS 439.563(5).
  - (3) Verification of payment of restitution shall be obtained from the parole officer.

The Kentucky Parole Board approved this administrative regulation at its meeting on July 26, 2021 prior to its filing with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

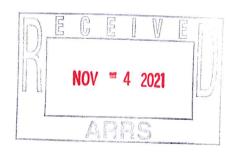


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 4, 2021

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill Administrative Regulation Review Subcommittee Legislative Research Commission 702 Capital Avenue Room 29, Annex Frankfort KY 40601



Re: 501 KAR 2:020. Definitions for 501 KAR Chapter 2

Dear Co-Chairs West and Hale:

The Justice and Public Safety Cabinet, Department of Corrections requests that the attached amendments be made to 501 KAR 2:020.

Sincerely,

Deanna Smith

Paralegal Consultant

enclosure



#### **AGENCY AMENDMENT**

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

Page 2 Section 1(6) Lines 12-16

After "means an inmate who", insert "has a hearing loss, which qualifies the inmate as an individual with a disability under the Americans with Disability Act (ADA)".

Delete "is unable to hear well enough to rely on hearing as a means of processing information, who relies on auxiliary aids and services to effectively communicate, and who qualifies as an individual with a disability under the Americans with Disabilities Act (ADA), including deaf, hard of hearing, or hearing impaired person.".



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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

Re: 501 KAR 2:020. Definitions for KAR Chapter 2.

501 KAR 2:060. Procedures for housing of Class C and D felons.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 2:020 and 501 KAR 2:060, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 2:020 and 501 KAR 2:060.

NOV \_ 3 2021

Sincerely,

Heather M. Lee

Heather M. Lee Paralegal Consultant

enclosures



#### 10/28/21

#### SUGGESTED SUBSTITUTE

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

RELATES TO: KRS 532.060, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5)[(4)] requires [the Department of Corrections to house] qualifying Class D and Class C felons to serve their sentences in [county] jails [and promulgate administrative regulations establishing required programs for the jails where they are housed]. KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. This administrative regulation establishes the definitions used in 501 KAR Chapter 2 for the Class C and D felons serving their sentences in the jails pursuant to the statute instead of in a state correctional institution[, which implements the required housing program].

- Section 1. Definitions. (1) "Assessment and Classification Center" or "AC Center" means the units at Roederer Correctional Complex, [and] Kentucky Correctional Institution for Women, and Ross Cash Center that initially receive all convicted felons, except for those sentenced to the death penalty, who are committed to the Kentucky Department of Corrections.
- (2) "Class C felon" means an inmate convicted of a Class C felony that meets the requirements established in KRS 532.100(5)(c)[532.100(4)(c)1.]
- (3) "Class D felon" means an inmate convicted of a Class D felony that meets the requirements established in KRS 532.100(5)[(4)] (a), (b), or (c).
- (4) ["Classification branch manager" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state and oversees the prerelease programs.
- (5) "Close custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.
- (6)] "Community custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.
- $(\underline{5}[7])$  "Controlled intake inmate" means a convicted felon who is entering into the Kentucky adult correctional system.
- (6) "Deaf or hard of hearing inmate" means an inmate who is unable to hear well enough to rely on hearing as a means of processing information, who relies on auxiliary aids and services to effectively communicate, and who qualifies as an individual with a disability under the Americans with Disabilities Act (ADA), including deaf, hard of hearing, or hearing impaired person. See 42 U.S.C. § 12102(4).
  - (7[8]) "Department" is defined by KRS 441,005(5).
- (8) "Director of Population Management" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state.
- (9) "Educational good time" means a credit on an inmate's sentence for an educational accomplishment pursuant to KRS 197.045(1)(a)2.
  - (10) "Escape" is defined by KRS 520.010(5).

- (11) "Jail" means a jail as defined by KRS 441.005(1) or a regional jail as defined KRS 441.005(7).
- (12) "Jail administrator" means the official appointed by a regional jail authority and charged with the responsibility of administering the regional jail.
  - (13) "Jail personnel" is defined by KRS 441.005(6).
  - (14) "Jailer" means:
- (a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;
  - (b) The administrator or executive director of a department as defined by KRS 67B.020(1); [e-f]
- (c) The administrator or director of a correctional services division as described by KRS 67A.028; or
  - (d) The administrator of a regional jail as defined by KRS 441.005(7).
  - (15) "KOMS" means Kentucky Offender Management System.
- (16) "Maximum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.
- (17) "Medium custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.
- (18) "Meritorious good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)2.
- (19) "Minimum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.
- (20) "Qualified inmate" means an inmate that may be housed in [county] jails electing to house state inmates as described in KRS 532.100(5)[(4)].
- (21) ["Restricted custody" means that the inmate meets the requirements for that subcategory of the minimum custody classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.
- (22)] "Statutory good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)1.
- (22[23]) "Waiver" means that the department has granted the county an exemption from housing any Class D or Class C felons in its **[county]** jail pursuant to KRS 532.100.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, Justice.RegsContact@ky.gov.



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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

Re: 501 KAR 2:020. Definitions for KAR Chapter 2.

501 KAR 2:060. Procedures for housing of Class C and D felons.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 2:020 and 501 KAR 2:060, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 2:020 and 501 KAR 2:060.

NOV \_ 3 2021

Sincerely,

Heather M. Lee

Heather M. Lee Paralegal Consultant

enclosures



#### 11/3/21

#### SUGGESTED SUBSTITUTE

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 2:060. Procedures for housing of Class C and D [and Class C] felons.

RELATES TO: KRS 196.035, 197.020, 197.045, 431.215, 441.045, 441.075, 441.510, 532.100 STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5) [532.100(4)] requires the Department of Corrections to house qualifying Class C and D [and Class C] felons in [county] jails. KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. This administrative regulation establishes the procedures to implement the required housing program.

Section 1. Eligibility. Any county housing qualified inmates pursuant to KRS <u>532.100(5)</u> [<del>532.100(4)</del>] shall be eligible to continue to do so unless the department, through its minimum jail standards enforcement procedures established by KRS 441.075, orders a [county] jail to cease housing Class <u>C</u> and D [and Class <u>C</u>] felons.

Section 2. Submission of Documents for Class D Felons. In any [eounty] jail housing Class D felons, the jailer shall forward to the assessment and classification center the following documents, within ten (10) working days of receipt of the judgment, for each Class D felon for whom a transfer has not been requested:

- (1) Picture, which shall be updated annually in accordance with Section <u>12</u> [13] of this administrative regulation;
  - (2) Any detainers:
  - (3) Any incident or disciplinary reports; and
  - (4) Body identification sheet.

Section 3. Custody Assignment for Class D Felons. (1) The assessment and classification center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody classification level to the Class D felon.

- (2) The AC Center staff shall notify the jailer of the custody classification level assignment. Offender Information Services[Branch], Central Office, shall audit the file within five (5) working days of receipt.
  - (3) If the custody level assigned is minimum or community, the Class D felon may:
- (a) Participate in community service work or any program offered inside or outside the secure perimeter of the jail; and
- (b) Be housed inside the secure perimeter of the jail, in the restricted custody area of the jail, or in a restricted custody center.
  - (4) If the custody level assigned is [restricted, the Class D felon:
  - (a) May only participate in community service work under direct supervision of jail personnel;
  - (b) Shall not participate in any outside program; and
  - (c) Shall be housed:
  - 1. Inside the secure perimeter of the jail;
  - 2. In a restricted custody area with a barrier fence; or

- 3. In a restricted custody center with a barrier fence.
- (5) If the custody level assigned is] medium[, close,] or maximum, the Class D felon:
- (a) Shall not be eligible to participate in any program or work outside the secure perimeter of the jail; and
  - (b) Shall be housed in the secure perimeter of the jail.
- (5)[(6)] The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Any additional custody review may be completed as deemed necessary by the <u>Director of Population Management</u> [Classification Branch Manager].
- Section 4. Assignment of Class C Felons. (1) The assessment and classification center shall identify and inform the jailer of a Class C felon who qualifies under KRS  $\underline{532.100(5)(c)1}$ . [532.100(4)(c)1.] to be housed in a **[county]** jail.
  - (2) The AC center shall notify the jailer when an inmate has been assigned as a Class C felon.
- Section 5. <u>Parole Board</u>[Assessment Summary Reports]. (1) Prior to the meeting of the Parole Board, jail personnel shall <u>provide each *qualified* inmate scheduled for review by the board with a jail offender Information *to the Kentucky Parole Board* form. Jail personnel shall submit the <u>completed form to the Division of Local Facilities[prepare and submit an assessment summary report on each qualified inmate to the Offender Information Branch] via KOMS or electronically, as requested by the Parole Board.</u></u>
- (2) Jail personnel shall inquire if a qualified inmate scheduled for review by the board would like to waive his or her Parole Board hearing and request a serve out if the qualified inmate scheduled to meet the Parole Board has ninety (90) days or less remaining until his or her minimum expiration date. If the qualified inmate decides to waive his or her Parole Board hearing and request a serve out, jail personnel shall have the inmate sign the Request Declining Parole form and submit it to the Parole Board via KOMS or electronically.
  - (3) Deaf or Hard of Hearing Inmate.
- (a) If a deaf or hard of hearing inmate has a hearing before the Parole Board, the jail shall assist the Parole Board with appropriate accommodation necessary for effective communication for the inmate for the hearing.
- (b) The jail shall provide headphones if headphones are necessary to meet the needs of deaf and hard of hearing inmates for effective communication or work with the Parole Board to provide other necessary hearing accommodation services for the Parole Board hearing.
- Section 6. Transportation. Jail personnel shall be responsible for the transportation of a qualified inmate except as specified in KRS 431.215(1) and 441.510.
- Section 7. Release Procedures. (1) The release of a qualified inmate shall follow the procedure established by CPP 25.6, incorporated by reference in 501 KAR 6:020.
- (2)(a) Jail personnel shall not release a qualified inmate to any other **[county]** jail or agency without submission of external movement information to the Director of Local Facilities or designee. The information shall include:
  - 1. Name:
  - 2. Inmate number;
  - 3. Facility transferring felon;
  - 4. Facility receiving felon; and
  - 5. Date transferred and received.
- (b) Any jail that is under order of the department relating to restrictions on state inmates shall receive prior authorization from the Director of Local Facilities before requesting state inmates from the department or any other [county] jail.

- (c) A qualified inmate shall not be released to another state or to federal authorities without advance notice and approval of the Director of Local Facilities or designee.
- (3) Jail personnel shall notify the Director of Local Facilities or the Offender Information Services[Branch] of any detainer or holder lodged against the qualified inmate by another jurisdiction.

### Section 8. (1) Furlough requests shall be submitted to the Classification Branch Manager.

### (2) Furloughs shall be governed by CPP 25.4, incorporated by reference in 501 KAR 6:020.

<u>Section 9.</u> [Furlough Program. (1) The Classification Branch Manager shall have the authority and responsibility to grant and monitor any furloughs of a qualified inmate.

- (2) Eligibility for a furlough shall be determined in accordance with this subsection.
- (a) The furlough of a qualified inmate shall be a privilege, not a right.
- (b) To be considered for a furlough, a community or minimum custody qualified inmate shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.
- (c) A Class D felon who is community custody or minimum custody or a Class C felon, who meets the requirement established in paragraph (b) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his final sentencing date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.
- (d) To be considered for a furlough, a probation or parole violator who is a community or minimum custody qualified inmate shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.
- (e) A probation or parole violator who is a community or minimum custody qualified inmate, who meets the requirement established in paragraph (d) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his commitment date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.
- (f) To be considered for a furlough, a qualified inmate shall meet the furlough criteria established in CPP 25.4, incorporated by reference in 501 KAR 6:020, with the exception of the six (6) continuous months of minimum or community custody requirement.

Section 9.] Escape. If a qualified inmate escapes, the jailer, jail administrator, or jail personnel shall immediately:

- (1) Notify the Division of Local Facilities jail inspector;
- (2) Notify Kentucky State Police (KSP) or local law enforcement;
- (3) Activate VINE through use of the Emergency Override Line (EOL); and
- (4) Enter the prisoner's escape status into the jail management system.

Section <u>10[9][10]</u>. Medical Needs. The department shall pay each jail a per diem for state prisoners as established by KRS <u>532.100(7)</u> [<del>532.100(6)</del>]. The jail shall pay for routine medical and medication expenses <u>but may charge a copay as provided by KRS 441.045(13)</u>. If the inmate requires an admission to a hospital with at least one (1) night stay or outpatient surgery in which a general anesthesia is used, the cost shall be paid by the department. The jailer, jail administrator, or jail personnel shall notify the Department of Corrections Medical Division designee if any qualified inmate is admitted to the hospital for twenty-four (24) hours or longer.

Section <u>11[10][11]</u>. Inmate Pay. A qualified inmate on a work assignment shall be paid in accordance with CPP 19.3.

Section <u>12[11][12]</u>. Good Time. For a qualified inmate housed in a [county] jail, the awarding of good time or sentence credit shall be in accordance with this section.

(1) Statutory good time shall follow the procedures established in KRS 197.045(1)(b)1.

(2) Meritorious good time shall follow procedures established in KRS 197.045(1)(b)2. and CPP 15.3, incorporated by reference in 501 KAR 6:020.

(3) Educational good time shall follow procedures established in KRS 197.045(1)(a)2. and CPP

20.1, incorporated by reference in 501 KAR 6:020.

(4) If the jail has a substance abuse program approved by the department, then the felon shall receive credit to his sentence allowed by KRS 197.045(1)(a)3.

Section <u>13[12]</u>[13]. Annual Photograph. The jailer, jail administrator, or jail personnel shall take a photograph each year of each qualified inmate and immediately send it by United States mail, [er] electronically, or via KOMS to <u>Department of Corrections</u>, Offender Information Services, [Central Office,] P.O. Box 2400, Frankfort, Kentucky 40602.

Section 14[13]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Information to the Kentucky Parole Board", [{]2021[}, is incorporated by reference]; and

(b) "Request Declining Parole", [{]2021[}].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Corrections, Division of Population Management, 275 East Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at https://corrections.ky.gov/About/Pages/Ircfilings.aspx.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, Justice.RegsContact@ky.gov.

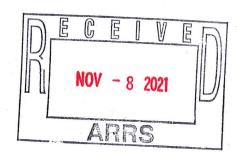


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 3:110. Classification.

501 KAR 3:130. Prison programs; services.

501 KAR 3:150. Hearings, procedures, disposition.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 3:110, 501 KAR 3:130, and 501 KAR 3:150, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 3:110, 501 KAR 3:130, and 501 KAR 3:150.

Sincerely,

Deanna Smith

Paralegal Consultant

enclosures

#### 11/03/21

#### SUGGESTED SUBSTITUTE

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

#### 501 KAR 3:110. Classification.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020 requires the Department of Corrections [Correction] to promulgate administrative regulations that include a requirement of a physical barrier between male and female prisoners. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for the classification of prisoners in full-service jails.

Section 1. Procedure. (1) Each jail shall develop a prisoner classification system, which shall be included in the facility's written policy and procedure manual.

- (2) The prisoner classification system shall provide for separation of the following categories of prisoners:
- (a) Male and female prisoners, which shall be separated by a physical barrier, except in diversion holding areas[/holding];
  - (b) Mental inquest detainee and other prisoners;
  - (c) Mentally ill or intellectually disabled [mentally retarded] prisoner and other prisoners;
  - (d) Chemically incapacitated prisoner and other prisoners;
- (e) A prisoner with a tendency to harm others, be harmed by others, or requiring administrative segregation and other prisoners; and
  - (f) A prisoner with a communicable disease and other prisoners.
  - (3) The criteria to be used in the classification of other prisoner categories shall be as follows:
  - (a) Seriousness of current offense:
  - (b) Institutional behavioral history:
  - (c) Special needs:
  - (d) Known criminal history; and
  - (e) Trustees.
- (4) Trustees. The jailer or his designee shall base selection of prisoners for trustee status on the following criteria:
  - (a)[4.] The nature of the prisoner's offense and sentence;
  - (b)[2.] Previous escape attempts; and
  - (c)[3-] The generally positive nature of the prisoner's daily ["day-to-day"] behavior.
- (5)[(4)] A prisoner's classification shall be reevaluated if the prisoner's status changes based on factors to include the following:[;]
  - (a) Results of a court appearance by the prisoner, such as being sentenced;
  - (b) Disciplinary hearing and action; and
  - (c) Reevaluation of the prisoner's physical, emotional, or mental condition.
- (6)[(5)] The prisoner classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

Section 2. (1) Each <u>jail</u> [detention facility] with <u>a</u> direct supervision <u>area</u> [areas] shall, and other <u>jails</u> [detention facilities] may, develop a system of prisoner classification to assess prisoners for the <u>purposes[purpose]</u> of:

(a) Protecting public or institutional safety;

(b) Providing an acceptable level of health care services; and

- (c) Considering the opportunity to provide programs intended to reduce the likelihood of reincarceration.
- (2) The classification system shall provide for the assessment of prisoner risk and need, considering elements including:

(a) Need for medical care;

(b) Need for mental health care;

(c) Propensity for suicidal behavior;

(d) Potential conflict arising from contact with another individual or group within the facility[institution];

(e) Potential threat of escape;

(f) Potential threat to public safety if placed in a community release program;

(g) Potential risk to staff or another prisoner;

(h) Record of previous institutional behavior; and

- (i) Assessment for participation in educational, vocational, rehabilitative, or work-related programming.
  - (3) Each classification system shall consider the development of the following components:
  - (a) An assessment of a prisoner upon intake to the facility to determine:

1. Legal custody;

2. Medical fitness for acceptance; and

- 3. Information asked of the arresting or transporting agent concerning the prisoner's potential risk and needs.
- (b) A screening component to assess, as soon as practical after acceptance into the facility, the prisoner's risk and need for the purpose of determining appropriate housing, supervision requirements, and the need for providing immediate health care or other services.
- (c) A primary classification of a prisoner shall be accomplished as soon as practical after his initial court appearance, or prior to a permanent housing placement within the <u>facility[institutional]</u> population to address the long term housing, supervision, and health care needs of the prisoner. Primary classification may also address the appropriateness of program placement in consideration of the needs of the prisoner and the potential risks to the community and the <u>facility[institution]</u> associated with the placement.

(4) A reclassification component shall be developed that reassesses the prisoner's risk, need, [and] housing assignment, and supervision based upon either time, event, change of status, or request.

(5) An instrument of assessment shall be developed for each of the classification components using sources including charged offense, criminal history of the prisoner, available institutional behavior history, interview, and observation of the prisoner, or other information sources available to the facility[institution].501 KAR 3:110. Classification.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

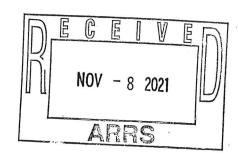


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 3:110. Classification.

501 KAR 3:130. Prison programs; services.

501 KAR 3:150. Hearings, procedures, disposition.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 3:110, 501 KAR 3:130, and 501 KAR 3:150, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 3:110, 501 KAR 3:130, and 501 KAR 3:150.

Sincerely,

Deanna Smith
Paralegal Consultant

enclosures

#### 10/28/21

#### SUGGESTED SUBSTITUTE

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 3:130. Prison programs; services.

RELATES TO: KRS 439.179, 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 532.100(5)[(4)](d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes [requires] the secretary to promulgate administrative regulations he or she deems necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet, including qualification for the receipt of federal funds and for cooperation with other state and federal agencies. KRS 532.100(5)[(4)](d) requires the Department of Corrections to promulgate administrative regulations establishing required programs for a jail that houses state inmates under KRS 532.100(5)[this subsection]. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for prisoner programs and services in those jails.

- Section 1. Work Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities, and library services.
- (2) Sentenced prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.
- (3) Written policy and procedure shall provide that unsentenced prisoners shall not be required to work except to do personal housekeeping.
- Section 2. Education Programs. (1) The jail shall develop a policy and procedure that encourages the implementation of education programs in the jail. The <u>use[utilization]</u> of community resources in these efforts shall also be encouraged to offset the costs of the programs.
  - (2) Education programs may be made available in accordance with KRS 439.179.
- (3) State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.
- Section 3. Library Services. If resources are available in the community, library services may be made available to all prisoners.
- Section 4. Religious Programs. (1) Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the jail.
- (2) The jailer or designee shall ensure that an inmate has the opportunity to participate in practices of his religious faith in accordance with the Religion Reference Manual incorporated by reference in 501 KAR 6:080. For specific situations not addressed in the Religion Reference Manual, the jailer or designee may refer to department Policy and Procedure 23.1 incorporated by reference in 501 KAR 6:020.
  - (3) Inmate responsibilities.
- (a) Upon entry into the correctional system, an inmate's religious preference shall be recorded on the inmate I.D. form.

- (b) After three (3) months, an inmate may change his religious preference by contacting the jailer or designee.
- (c) It shall be the inmate's responsibility to seek a job or program assignment that does not conflict with his religious beliefs and practices.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all prisoners with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week if weather permits. Prisoners who pose a threat to the safety and security of the jail shall be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit prisoners to participate in board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.

Section 6. Programs for State Prisoners. (1) State prisoners may be provided the opportunity to participate in work programs in accordance with KRS 441.125.

- (2) Substance abuse programs. State prisoners shall be provided the opportunity to participate in self-help substance abuse programs offered within the jail. State prisoners who apply for treatment and are accepted by the Division of <u>Addiction Services[Mental Health]</u>, shall be allowed to participate in the substance abuse program (SAP), if space is available or may be housed in jails offering the program, if space is available.
- (3) Evidence based programs. Eligible state prisoners may be provided the opportunity to participate in evidence based programming offered within the jail with the approval of department staff. State prisoners who complete evidence based programming may be eligible to receive program completion credit, in accordance with CPP 15.4 incorporated by reference in 501 KAR 6:020.

### <u>Section 7. Required Documents. The jail may provide required documents to prisoners in an electronic format.</u>

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

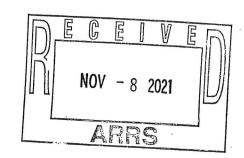


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 3:110. Classification.

501 KAR 3:130. Prison programs; services.

501 KAR 3:150. Hearings, procedures, disposition.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 3:110, 501 KAR 3:130, and 501 KAR 3:150, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 3:110, 501 KAR 3:130, and 501 KAR 3:150.

Sincerely,

Deanna Smith

Paralegal Consultant

enclosures

#### 10/28/21

#### SUGGESTED SUBSTITUTE

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 3:150. Hearings, procedures, disposition.

RELATES TO: KRS Chapter 13B, 441

STATUTORY AUTHORITY: KRS 13B.170, 196.035, 441.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. The Commissioner of the Department of Corrections is authorized by KRS 441.075(4) to hear matters covered by the order of the department requesting [county] jails, correctional or detention facilities to comply with the minimum standards for local jails pursuant to KRS 441.055 and to issue, modify or repeal the order at the conclusion of the hearing. This administrative regulations establishes procedures and definitions for administrative hearings.

Section 1. Definitions. (1) "Day" means a calendar day.

- (2) "Hearing officer" means a hearing officer appointed by the commissioner pursuant to KRS 441.075.
- (3) "Order" means the order of the commissioner requiring the petitioner or petitioners to comply with the minimum jail standards for local jails as specified in the order.
- (4) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the commissioner's order.
  - (5) "Proceeding" means any proceeding before the commissioner or before a hearing officer.
- (6) "Standards" means the minimum jail standards for local jails as established by the department in 501 KAR Chapters 3, 7, and 13.
- Section 2. Assignment of Hearing; Filings. (1) Pursuant to KRS 441.075(4), cases coming before the commissioner may be assigned to a hearing officer within the discretion of the commissioner for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commissioner.
- (2) A recommended order or adjudication by the hearing officer or the initial order of the commissioner, if dismissed or disposed of as provided in subsection (1) of this section, or any modification <u>or [ef]</u> repeal of the initial order, shall become the final order of the commissioner under the provisions of KRS 441.075(4), appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.
- (3) Prior to the assignment of a case to a hearing officer, the [eounty] jailer or county judge/executive shall, within seventy-two (72) hours of receipt of notification of the order, request in writing a public hearing before the commissioner or his designee on the matters covered by the order to the Commissioner of the Department of Corrections, Division of Local Facilities, P.O. Box 2400, Frankfort, Kentucky 40602-2400. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.
  - (4) All evidence and witnesses of both parties and interveners and all proof shall be presented

at the hearing. Additional evidence shall not be permitted after the hearing except in unusual circumstances and within the discretion of the commissioner or the hearing officer.

- (5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the commissioner.
  - (6) Unless otherwise ordered, all filing may be accomplished by:
  - (a) First class mail; or
- (b) Sending to Jail.Inspections@ky.gov and including "Hearing" in the subject line of the message.
- (7) Filing shall be deemed effective when mailed, if sent by first class mail, or when the email is received in the designated email account.
- Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) This administrative regulation shall govern all proceedings before the department and its hearing officers.
- (2) In the absence of a specific provision, procedure shall be in accordance with KRS Chapter 13B and the Kentucky Rules of Civil Procedure.
- Section 4. Computation of Time. If service of a pleading or documents is by mail pursuant to Section 2 of this administrative regulation, three (3) days shall be added to the time allowed by this administrative regulation for the filing of a responsive pleading.
- Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and interveners within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the commissioner or his designee. A hearing shall not be held later than ninety (90) days from the date of request.
  - (2) The notice of hearing shall comply with KRS 13B.050(3).

Section 6. Continuance of Hearing. (1) Continuance of a hearing shall not be allowed except in the case of an extreme emergency or in usual circumstances.

- (2) A request for a continuance shall be provided to the department at least three (3) days in advance of the time set for the hearing. The request for continuance shall include the reasons for the continuance.
- (3) The hearing officer may consider a request for an extension during the hearing, if extenuating circumstances:
  - (a) Arise during the hearing; or
  - (b) Prevented compliance with the timing provisions of subsection (2) of this section.
- (4) Continuance of the hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. An additional continuance shall not be granted without approval of the commissioner.
- Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the right[rights] to be served with a copy of the decision of the hearing officer.
- (2) Requests for a newly scheduled hearing shall be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.
- (3) The commissioner or the hearing officer, upon a showing of good cause, may excuse a failure to appear. If the failure to appear is excused, the hearing shall be rescheduled.

- Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commissioner's own motion, if there exist common parties, common questions of law or fact, or both, or in other appropriate circumstances.
- Section 9. Severance. Upon <u>his or her[its]</u> own motion, or upon motion of any party or intervener, the commissioner or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.
- Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal, before issuance of a recommended order.
- (2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.
- (3) The commissioner or the hearing officer may grant a petition for intervention to the extent and upon the terms <u>determined</u> by [as] the commissioner or the hearing officer [determines].
- (4) The caption of all cases where intervention is allowed shall reflect the intervention by adding to the caption after the name of the respondent the name of the intervener, followed by the designation "intervener."
- Section 11. Service. (1) If filing pleadings or other documents, the filing party or intervenor shall serve a copy on every other party or intervener.
- (2) Service upon a party or intervener who has appeared through a representative shall be made only upon the representative.
- (3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail, [er] by personal delivery, or by email to the email address provided by the party. Service shall be deemed effected at the time of mailing (if by mail), [er] at the time of personal delivery (if by personal delivery), or at the time the email is received in the email account.
- (4) Proof of service shall be accomplished by a written statement of service which sets forth the date and manner of service. The statement shall be filed with the pleading or document.
- Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.
- Section 13. Response to Motions. Any party or intervener upon whom a motion is served shall have ten (10) days from service of the motion to file a response.
- Section 14. Failure to File. Failure to file any pleading pursuant to this administrative regulation when due, may, in the discretion of the commissioner or the hearing officer, constitute a waiver of right to further participation in the proceedings.
- Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the commissioner.
- Section 16. Prehearing Conference. (1) At any time before a hearing, the commissioner or the hearing officer, on his or her own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the

purpose of considering matters which will tend to simplify the issues or expedite the proceedings, or for any other matter in accordance with KRS 13B.070(1).

(2) The commissioner or the hearing officer may issue a prehearing order in accordance with KRS 13B.070(2). The order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within a shorter or longer time as the commissioner or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with this administrative regulation and filed with the commissioner within the time allotted and shall be a

part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the commissioner or the hearing officer, discovery depositions of parties, interveners, or witnesses, and interrogatories directed to parties, interveners, or witnesses shall not be allowed.

(2) If the commissioner or the hearing officer grants an application to conduct discovery depositions or interrogatories, the order shall set forth appropriate time limits governing the

discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervener fails to comply with an order of the commissioner or the hearing officer to permit discovery in accordance with the provisions of this administrative regulation, the commissioner or the hearing officer may issue appropriate orders.

Section 20. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, ensure that the facts are fully elicited, adjudicate all issues, and avoid delay. The hearing officer, in cases assigned to him, between the time he is designated and the time he issues his decision, subject to the administrative regulations of the department, may:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receive relevant evidence;

(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(4) Hold conferences for the settlement or simplification of the issues;

(5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commissioner and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated;

(6) Examine witnesses and to introduce into the record documentary or other evidence;

(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof; and

(8) Adjourn the hearing as the needs of justice and good administration require.

Section 21. Exhibits. (1) All exhibits offered in evidence shall be marked with a designation identifying the party or intervener by whom the exhibit is offered.

(2) In the absence of objection by another party or intervener, exhibits shall be numbered and

admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to this administrative regulation.

- (3) Unless the hearing officer finds it impractical, a copy of each exhibit shall be given to the other parties and interveners.
- (4) All exhibits offered, but denied admission into evidence, shall be identified as required by subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 22. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. An objection shall not be deemed waived by further participation in the hearing.

(2) If evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 23. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the commissioner disposing of all issues before him in accordance with KRS 13B.110.

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order in accordance with KRS 13B.110(4).

(3) The commissioner shall issue a final order in accordance with KRS 13B.120.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

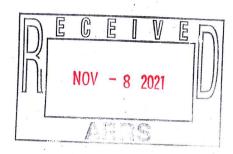


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders. 501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure. 501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 6:190, 501 KAR 6:200 and 501 KAR 6:250, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendment to 501 KAR 6:190, 501 KAR 6:200 and 501 KAR 6:250.

Sincerely,

Deanna Smith
Paralegal Consultant

enclosure

#### 10/28/21

#### SUGGESTED SUBSTITUTE

## JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections Sex Offender Risk Assessment Advisory Board

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(1), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(1) requires the Sex Offender Risk Assessment Advisory Board to approve providers to conduct court-ordered comprehensive sex offender presentence evaluations and treatment of sex offenders. KRS 17.564(1) authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991. This administrative regulation establishes approval requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).

- (2) "Board" is defined by KRS 17.550(1).
- (3) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the factors listed in KRS 17.554(2).
- (4) "Corrective action plan" means a plan submitted by the approved provider and accepted by the board or a plan imposed by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.
  - (5) "Sex offender" is defined by KRS 17.550(2).
  - (6) "Victim" is defined by KRS 17.550(4).
- Section 2. Qualifications of Approved Providers. (1) To qualify as an approved provider, [an applicant shall,] in addition to meeting the requirements of KRS 17.550(3), an applicant shall:
- $\underline{(a)[(1)]}$  Have completed forty (40) hours of specialty training provided or approved by the board under Section  $\underline{7}[8]$  of this administrative regulation including the following:
  - 1.[(a)] Characteristics and offense patterns of sex offenders;
  - 2.[(b)] Treatment modalities used with sex offenders;
  - 3.[(e)] Legal and ethical issues in the risk assessment of sex offenders;
  - 4.[(d)] Victim's issues, not to exceed two (2) hours of credit against the total requirement;
  - 5.[(e)] Issues related to the assessment of juvenile and female sex offenders; and
  - 6.[(f)] Use of the appropriate actuarial or evaluation instruments;
- (b)[(2)] Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the applicant[he] has professional status; and
- (c) 1.[(3)] Have a minimum of [250 hours documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of]:
- <u>a.[(a)]</u> Sixty (60) hours documented experience conducting sex offender evaluations or completion of a practicum as described in <u>subsection (2) of this</u> section [2(2)[6] of this administrative regulation]; and

- <u>b.[(b)]</u> 190 hours documented clinical contact conducting sex offender treatment or completion of a practicum as described in <u>subsection (2) of this</u> section; [2(2)[6] of this administrative regulation][.]
- 2. Complete a practicum as described in subsection (2) of this section [2(2) of this administrative regulation];
- 3. Have a current approval or certification as a sex offender treatment provider in another state and be in good standing with that credentialing authority; or
- 4. Have had an approval or certification as a sex offender treatment provider within the last five (5) years in Kentucky or another state and was in good standing with the credentialing authority during the period of approval or certification.
  - (2) Practicum Requirements.
  - (a) To successfully complete the practicum, the practicum participant being supervised shall:
- 1. Have a minimum of 100 hours of face-to-face supervision by the practicum supervisor, which shall include:
  - a. Case discussion;
  - b. Review of reading assignments;
  - c. Skill building; and
  - d. (i) Supervised actual clinical practice; or
  - (ii) Review of audio or video recording of actual clinical practice;
  - 2. Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations:
- 3. Obtain a minimum of 190 hours of supervised clinical experience conducting sex offender treatment; and
  - 4. Participate in the practicum for a minimum of eighteen (18) months.
  - (b) A practicum supervisor shall:
- 1. Have a minimum of 2,000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:
  - a. 500 hours conducting sex offender evaluations; and
  - b. 1,500 hours of clinical contact in sex offender treatment;
  - 2. Be an approved provider in good standing with the board;
- 3. Submit a written request to conduct a practicum for each participant and receive prior approval by the board to conduct the practicum by:
  - a. Email to SORAABoard@ky.gov; or
- b. Mail to SOTP/SORAA Board, Kentucky State Reformatory, 3001 W. Highway 146, LaGrange, Kentucky 40032;[-]
- 4. Directly observe the practicum participant's clinical practice in person or through video or audio recording:
- 5. Examine, approve, and sign all comprehensive sex offender presentence evaluations performed by the practicum participant;
- 6. Give written notice to the board if the practicum supervisor determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220; and
- <u>7. Give written notice to the board if the practicum supervisor stops supervising the practicum prior to its completion.</u>
- Section 3. Duties. (1) [If an approved provider performs a comprehensive sex offender presentence evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.
- (2)] If an approved provider has provided treatment for a sex offender, the approved provider [he] shall not perform a comprehensive sex offender presentence evaluation [for personal financial gain] for the sex offender. [for six (6) months following the treatment.]
  - (2)[(3)] An approved provider shall:

- (a) Submit the first four (4) evaluations prepared after becoming an approved provider for review by the board;
- (b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the approved provider[he] has professional status;
  - (c) Provide the board with the following contact information:
  - 1. Mailing address that may be included on approved provider list sent to courts;
- 2. Mailing address to be used by board for contact with approved provider if different than address included on approved provider list sent to courts;
  - 3. Phone number that may be included on approved provider list sent to courts; and
- 4. Email address, if approved provider has one, that may be included on approved provider list sent to courts:
- (d) Provide the board with changes in the contact information listed in paragraph (c) of this subsection within thirty (30) days of a change in information; [and]
  - (e) Notify the board within thirty (30) days of the occurrence of:
  - 1. Discontinuance of practice as an approved provider;
  - 2. Being convicted of, pleading guilty to, or entering an Alford plea for a felony;
- 3. Being convicted of, pleading guilty to, or entering an Alford plea for a misdemeanor against a person;
  - 4. A domestic violence order issued against the approved provider;
  - 5. An interpersonal protective order issued against the approved provider; or
- 6. Suspension, revocation, or other disciplinary action taken by the licensing or certifying body under which the approved provider has professional mental health treatment status; and
- (f)[(e)] Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes an approved provider.
- 1. A minimum of six hours of the required continuing education hours shall cover one or more of the areas indicated in Section 2(1)(a)1-6. [—(f);]
- 2. The approved provider shall submit continuing education hours earned each year to the board by January 31 of the year following the year in which the hours were obtained by:
  - a. Email to SORAABoard@ky.gov; or
- b. Mail to SOTP/SORAA Board, Kentucky State Reformatory, 3001 W. Highway 146, LaGrange, Kentucky 40032.
- 3. The board may grant an extension of twelve (12) [six (6)] months in which to complete hours of continuing education if:
  - a. Requested by the approved provider for good cause shown; and
- b. A plan to make up uncompleted hours has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years.
  - 4.[2.] To request an extension, an approved provider shall:
- a. Submit a plan detailing how the uncompleted hours will be obtained within the next <u>twelve</u> (12)[six (6)] months;
- b. Submit a plan detailing how the next year's eight (8) hours will be obtained within the next calendar year; and
  - c. State the reasons for the request for extension.
  - 5.[3.] The extension request shall:
  - a. Be made in writing;
  - b. Include the number of hours that need to be completed for the calendar year;
  - c. Include proof of any hours that were completed; and
- d. Be postmarked on or before December 31 of the calendar year for which the hours were required.
  - (3)[(4)] An approved provider shall not:

- (a) Identify himself <u>or herself</u> as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 if performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500; <u>andf-1</u>
- (b) Refer to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of a sex offender as established in KRS 17.550.
- Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if the applicant[he] meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.
- (2) An individual may apply to the board for approval status as an approved provider by submitting:
  - (a) A written request for approval, which shall include the following:
  - 1. Full name;
  - 2. Business address:
  - 3. Home address:
  - 4. Daytime telephone number;
  - 5. Fax number, if available; and
  - 6. Social Security number;
  - (b) Documentary evidence of the applicant's[his] qualifications; and
- (c) Evidence that the applicant[he] has remedied the cause for the denial or revocation, if approval was previously denied or revoked under Section 5 of this administrative regulation.
  - (3) The board shall determine that an application is incomplete if:
- (a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;
  - (b) The board is unable to verify the authenticity of the documentation of qualifications; or
  - (c) Any of the information required in subsection (2) of this section is not submitted.
- (4) If the board determines that an application is incomplete, the board shall specify to the applicant additional documentation or information that is required or identify the information that cannot be verified.
- (5) The board shall notify the applicant of its intent to approve or deny the application for approval in writing no later than 120[ninety (90)] days after receiving a complete application for approval.
- (6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:
- (a) <u>The approved provider</u>[He] submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section  $\underline{7}[8]$  of this administrative regulation; and
- (b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.
- (7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.
- Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend, or revoke approval if an applicant or an approved provider has:
- (a) [Been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;
- (b) Had a domestic violence protective order issued against him within the previous five (5) years;

- (c)] Failed to meet the qualifications for approval set forth in Section 2 of this administrative regulation;
- (b)[(d)] Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the applicant or approved provider[he] has professional status;
- (c)[(e)]A substance use disorder as defined by KRS 222.005(12)[An alcohol or drug abuse problem as defined in KRS 222.005(3)]:
- (d)[(f)]Falsified any information or documentation, or has concealed a material fact, in the[his] request for approval;
- (e)[(g)] Failed to implement a corrective action plan imposed by the board in accordance with Section 6[7] of this administrative regulation;
  - (f)[(h)] Three (3) or more evaluations which the board finds are below standard upon review;
- (g)[(i)] Failed to comply with the comprehensive sex offender presentence evaluation procedure established in 501 KAR 6:200;
  - (h)[(i)] Shown an inability to conduct an evaluation with reasonable skill;
- (i)[(k)] Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent;
- (j)[(+)] Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent;
  - (k)[(m)]-Failed to comply with an order of the board; or
  - (I)[(n)] Failed to comply with instructions of the board during an investigation.
- (2) The board may deny, suspend, or revoke approval if an applicant or an approved provider has:
- (a) Been convicted of or pled guilty to <u>a felony criminal offense or a[any]</u> misdemeanor criminal offense [that is not against a person];
- (b) Has a current active domestic violence or interpersonal protective order issued against the applicant or approved provider;
- (c) Had a domestic violence or interpersonal protective order issued against the applicant or approved provider within the previous three (3) years;
- (d)[(b)] Had a sanction applied against the applicant or approved provider's[his] mental health professional licensure or certification at any time in the past two (2) years;
- (e)[(c)] Failed to comply with the duties established [set forth] in Section 3 of this administrative regulation;
  - (f)[(d)] Less than three (3) evaluations that the board finds are below standard upon review;
  - (g)[(e)] Failed to comply with the treatment requirements established in 501 KAR 6:220;
  - (h)[(f)] Failed to comply with the evaluation procedure established in 501 KAR 6:200;
- (i)[(g)] Failed to comply with the requirements <u>established</u> [set forth] by the board for the practicum or to successfully complete the practicum, if so required by Section 2 of this administrative regulation;
- (i)[(h)] Identified himself or herself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 if performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500; or
- (k)[(i)] Referred to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of sex offender established in KRS 17.550.
  - (3) If the board intends to deny, suspend or revoke approval, it shall:
- (a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider; and
- (b) Notify the applicant or approved provider of the [his] hearing [rights], in accordance with KRS Chapter 13B and KRS 17.560.

(4) An approved provider who has had [his] approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date the [his] approval was revoked unless the [his] revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.

Section 6. Practicum Requirements. (1) A practicum required by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:

- (a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:
  - 1. 500 hours conducting sex offender evaluations; and
  - 2. 1,500 hours of clinical contact in sex offender treatment:
  - (b) Be an approved provider in good standing with the board;
- (c) Submit a request to conduct a practicum for each participant and be approved by the board to conduct the practicum;
- (d) Directly observe the practicum participant's clinical practice in person or through video or audio tape;
- (e) Examine and approve all comprehensive sex offender presentence evaluations performed by the practicum participant; and
- (f) Give written notice to the board if he determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220.
  - (2) To complete a practicum required by this administrative regulation, the participant shall:
- (a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;
  - (b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;
- (c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;
  - (d) Participate in the practicum for a minimum of six (6) months; and
  - (e) Meet the requirements of the practicum within a maximum of eighteen (18) months.
- (3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in subsections (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.]

#### Section 6.[Section 7.] Monitoring. (1) The board may:

- (a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220;
- (b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider's scope of practice, to the appropriate Kentucky licensure or certification board; and
- (c) Investigate and evaluate an approved provider's adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 6:220, on its own initiative.
- (2) The board or staff that assists the board may monitor an approved provider by the following activities:
- (a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;
- (b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;
  - (c) Direct observation of the evaluation or treatment of a sex offender; or

- (d) Interviewing judicial, correctional, <u>or</u> law enforcement officials or other individuals that interact with an approved provider in relation to comprehensive sex offender presentence evaluations or treatment of sex offenders.
- (3) If an approved provider fails to comply with provisions of this administrative regulation, 501 KAR 6:200, or 6:220, the board shall notify him in writing of its determination and may:
  - (a) Require the approved provider to submit a corrective action plan for approval by the board;

(b) Impose a corrective action plan; or

(c) Revoke approval in accordance with Section 5 of this administrative regulation.

(4) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within 120[ninety (90)] days.

<u>Section 7.[Section 8.]</u> Approval of Specialty Training and Continuing Education. (1) Specialty training.

- (a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.
- (b) An applicant seeking approval of a specialty training course shall submit to the board the following:
  - 1. A certificate of attendance which shall include the number of hours of training received; or
- 2. a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and
- b. An agenda from the training seminar that describes topics and length of time spent on each topic.
- (c) The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under <u>paragraph</u> (b) of this subsection [(1)(b) of this section].
  - (2) Continuing education.
- (a) Continuing education, as required in Section 3 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.
- (b) An approved provider seeking approval of continuing education hours shall submit to the board the following:
  - 1. A certificate of attendance that shall include the number of hours of education received; or
- 2. a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and
  - b. An agenda from the seminar, which describes topics and length of time spent on each topic.
- (c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under <u>paragraph</u> (b) of this subsection [(1)(b) of this section].

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-668, email Justice.RegsContact@ky.gov.

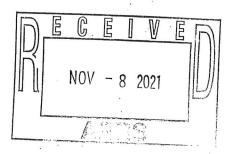


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 6:190, 501 KAR 6:200 and 501 KAR 6:250, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendment to 501 KAR 6:190, 501 KAR 6:200 and 501 KAR 6:250.

Sincerely,

Deanna Smith
Paralegal Consultant

enclosure



#### 11/4/21

#### SUGGESTED SUBSTITUTE

## JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections Sex Offender Risk Assessment Advisory Board

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(2), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) <u>requires</u> [authorizes] the Sex Offender Risk Assessment Advisory Board to establish a comprehensive sex offender presentence evaluation procedure for court-ordered evaluations of sex offenders. KRS 17.564(1) authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991. This administrative regulation establishes the evaluation procedure to ensure the quality of court-order comprehensive sex offender presentence evaluations.

Section 1. Definitions. (1) "Amenability to treatment" means the offender is free from <u>intellectual disability[organic]</u> or psychological <u>disturbance[impairment]</u> that would prevent the offender from engaging meaningfully in sex offender treatment and he is[-] at least minimally <u>able[-, receptive]</u> to <u>participate in</u> the treatment process.

- (2) "Appropriate setting" means a secure institutional setting or a community-based setting.
- (3) "Approved provider" is defined by KRS 17.550(3).
- (4) "Board" is defined by KRS 17.550(1).
- (5) "Clinically adjusted" means a change in the risk level recommendation based on <a href="mailto:compelling">compelling[facts or]</a>] evidence which <a href="mailto:indicates[indicate]">indicates[indicate]</a>] to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender, such as a risk factor being in an acute <a href="mailto:phase">phase of severity</a>.
- (6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) areas of assessment listed in KRS 17.554(2).
  - (7) "Evidence based standards of care" means standards and practices that:
- (a) Are based on the best available clinical scientific research or evidence for treatment of sex offenders;
- (b) Take into account the offender's current clinical state and factors that may influence treatment gain; and
  - (c) Are generally accepted by reasonable providers within the sex offender treatment field.
- (8)[(7)] "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.
- (9) "Responsivity factors" means factors that impact an offender's ability to begin, engage in, and complete treatment and can interfere with the ability of the offender to respond to treatment.
- (10)[(8)] "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument used or other clinically relevant data that suggests sexual reoffense is more likely than not.
  - (11)[(9)] "Sex offender" is defined by KRS 17.550(2).
- (12) "Stages of change" means the change process occurs gradually over time and includes levels or stages as follows:

- (a) Precontemplation, in which the individual does not intend to make a change in the behavior;
- (b) Contemplation, in which the individual has an awareness of the problem and may consider the pluses and minuses of change;
- (c) Preparation, in which the individual intends to take action within one (1) month and may make small behavioral changes;
- (d) Action, in which the individual modifies the problem behavior for one (1) to six (6) months; and
- (e) Maintenance, in which the behavior change extends from six (6) months and the individual works to prevent relapse.
- Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures. (1)(a) An approved provider shall conduct a comprehensive mental health evaluation following <u>evidence based[the professional]</u> standards of care.[in the area of his certification or licensure.]
- (b) The evaluation shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview.
- (c) If the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.
  - (2) Risk of recommitting a sex crime shall be determined in the following manner:
- (a) If applicable, an actuarial instrument shall be used which is appropriate to the sex offender. An actuarial instrument shall be appropriate for use if:
- 1. The instrument's developmental sample or subsequent study samples contained individuals with characteristics similar to the offender being evaluated; and
- 2. The instrument's reliability and validity has been demonstrated through research. The results of the instrument may be clinically adjusted at the discretion of the approved provider.
- (b) If an actuarial instrument is not appropriate, an empirically guided approach shall be used. An empirically-guided approach shall mean that the approved provider shall consider risk factors that research has demonstrated to be associated with risk for recidivism.
  - (3) The threat to public safety shall be determined in the following manner:
- (a) The approved provider shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:
  - 1. The sex offender's amenability to treatment;
- 2. The degree of threat of harm or actual force employed in the index offense and in prior offenses:
  - 3. The nature and duration of the offending;
  - 4. The sex offender's psychological adjustment;
  - 5. The sex offender's social and occupational adjustment; and
  - 6. The sex offender's statements or indications of harm directed to another.
- (b) The approved provider shall make a recommendation as to the appropriate setting in which treatment, if indicated, should be provided for the sex offender.
- (4) [To assess amenability,] The approved provider shall <u>assess[address]</u> the following factors for amenability:
  - (a)[-] The sex offender shall[-
- (a)]Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment participation:
- (b) The sex offender shall exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he will be referred;

- (c) Whether the sex offender will receive a benefit from treatment designed for sex offenders with intellectual developmental disorder, if the sex offender has an intellectual developmental disorder:
- (d) Whether the sex offender acknowledges[Acknowledge] involvement in the sex offense for which he <u>or she</u> is <u>convicted[charged]</u>;
- (e) Whether the sex offender considers [(d) Consider] his or her involvement in the sex offense to be a problematic behavior that he or she does not want to repeat; and
- (f) The level of acknowledgment and current stage of [desire to] change expressed by the sex offender[(e) Verbalize a willingness to enter and fully participate in treatment].
- (5) In assessing the nature of required sex offender treatment, the approved provider shall address management issues including:
  - (a) Recommendations for the focus of treatment:
  - (b) Special treatment considerations, including:
  - 1. Recommendations to address identified responsivity factors; and
  - 2. Other issues that impact the offender's ability to engage in treatment;
  - (c) Further evaluation; and
  - (d) Restrictions to minimize the risk of recidivism.
- Section 3. Evaluation Report. (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.
- (2) The first section of the report shall consist of information prepared specifically for the court and shall contain the following headings:
  - (a) Identifying information including:
  - 1. Name:
  - 2. Social Security number;
  - 3. Date of birth:
  - 4. Age; and
  - 5. Indictment number or county;
  - (b) Referral information, including reason for referral, informed consent, and procedures:
  - (c) Information sources; and
  - (d) Summary, conclusions, and recommendations.
- (3) The second section shall include the following information from which the summary and conclusions were reached:
  - (a) Criminal justice information, including index offense, prior sex offense, or other legal history:
  - (b) Psychosocial history including:
  - 1. Family of origin:
  - 2. Education;
  - 3. Military;
  - 4. Occupational:
  - 5. Financial:
  - 6. Sexual;
  - 7. Relationship:
  - 8. Mental health; and
  - 9. Medical:
  - (c) Behavioral observations and mental status:
  - (d) Standardized assessment or psychological testing;
  - (e) Diagnosis impressions;
  - (f) Treatment considerations; and
  - (g) The statutory factors found in KRS 17.554(2).
  - (4) The report shall be entitled "Comprehensive Sex Offender Presentence Evaluation."

- (5) An approved provider shall place his <u>or her</u> signature at the end of the recommendation report if <u>the approved provider[he]</u>:
  - (a) Conducted the comprehensive sex offender presentence evaluation; or
  - (b) Reviewed and approved the evaluation.
- (6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.

Section 4. Recordkeeping. (1) An approved provider shall <u>maintain the evaluation records for the period of time required for the approved provider to maintain patient files by the licensing or certifying body under which the approved provider has professional status[-</u>

(a) Transmit all comprehensive sex offender presentence evaluation information to the board;

<del>or</del>

(b) Maintain the information for a period of fifteen (15) years].

- (2) The original or a copy of all comprehensive sex offender presentence evaluation information shall be provided to the board[-
  - (a)] upon request[; or
  - (b) At the death of the approved provider].

The Sex Offender Risk Assessment Advisory Board approved this administrative regulation at its meeting on March 8, 2021 prior to its filing with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-668, email Justice.RegsContact@ky.gov.

Andy Beshear GOVERNOR

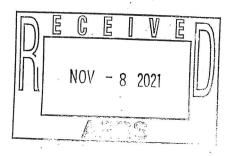


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders. 501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure. 501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 6:190, 501 KAR 6:200 and 501 KAR 6:250, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendment to 501 KAR 6:190, 501 KAR 6:200 and 501 KAR 6:250.

Sincerely,

Deanna Smith
Paralegal Consultant

enclosure

#### 11/4/21

#### SUGGESTED SUBSTITUTE

# JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

RELATES TO: KRS 196.030, 439.250, 439.3105-439.3108, 439.551, 439.553, 446.010 STATUTORY AUTHORITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions and to establish a system of graduated sanctions for probation violations. This administrative regulation establishes graduated sanctions for responding to violations of probation.

- Section 1. Definitions. (1) "Conditions of supervision" or "conditions of probation" means general and specific directives given to an offender placed on probation by the sentencing judge or the Division of Probation and Parole.
- (2) "Demonstrated pattern of failure to comply with conditions of supervision" means that the offender has a major violation of the same or similar condition of supervision more than three (3) times over the course of the offender's supervision.
  - (3) "Division" means the Kentucky Department of Corrections Division of Probation and Parole.
  - (4[3]) "Graduated sanctions" is defined **by [in]** KRS 446.010(20).
- (5[4]) "High risk behavior" means an action or [a lifestyle] activity that places a person at risk of violating a condition of supervision or committing a crime [suffering a particular harmful condition].
- $(\underline{6}[5])$  "Offender" means a person placed under the supervision of the division by a court with jurisdiction over the sentence.
- $(\underline{7}[6])$  "Officer" or "probation and parole officer" means a person employed by the division who supervises, counsels, and directs an offender on probation.
- (8[7]) "Releasing authority" means the court with jurisdiction over the sentence that granted probation.
- (9[8]) "Revocation" means an offender having his probation ended and being incarcerated as a result of a hearing for violations of conditions of supervision.
  - (10[9]) "Risk and needs assessment" is defined by [in] KRS 446.010(38).
- (11) "Probation and parole violation matrix" means the table *in Section 6 of [within]* this administrative regulation that addresses sanction decisions.
- Section 2. <u>Informal Response and Mandatory Return to Court.</u> (1) [Application of Graduated Sanctions. If the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:
  - (1) The officer shall consider the:
  - (a) Offender's assessed risk and needs level;
  - (b) Offender's adjustment on supervision;
  - (c) Severity of the current violation;

- (d) Seriousness of the offender's previous criminal record;
- (e) Number and severity of any previous supervision violations; and
- (f) Extent to which graduated sanctions were imposed for previous violations.
- (2) The officer shall review the circumstances of the offender and the violations at issue to determine if the violation behavior is appropriately responded to with graduated sanctions.
  - (a) Informal response.
- (a) Unless otherwise ordered by the court[In lieu of graduated sanctions], the officer may resolve the following minor violations through an informal case management strategy:
  - 1. Missing scheduled report day;
  - 2. Traffic offense without arrest;
  - 3. Failure to seek employment;
  - 4. Failure to enroll or maintain school attendance; and
  - 5. Failure to notify officer prior to change of address.
- (b) The officer shall compile a violation report documenting the reason and the informal response.
  - (c) The officer shall meet with the offender to discuss and sign the violation response.
  - (2)[(b)] Violations which shall be returned to the releasing authority.
- (a) Graduated sanctions shall not be used by the officer and violation documentation shall be submitted to the releasing authority for violation proceedings up to and including revocation for the following violations:
  - 1. Absconding supervision;
  - 2. New felony conviction;
  - 3. New misdemeanor conviction of assault:
- 4. New misdemeanor conviction of violation of emergency protective, [er] domestic violence, or interpersonal protective order;
  - 5. New misdemeanor conviction for sexual offense;
  - 6. New misdemeanor conviction for driving under the influence;
  - 7. Possession or use of a firearm;
  - 8. Failure to complete sex offender treatment program; [or]
  - 9. Demonstrated pattern of failure to comply with conditions of supervision; or
  - 10. Violations of an assaultive nature.
- (b) The officer shall provide the violation documentation to a supervisor and discuss the case prior to submitting the violation documentation to the releasing authority.

Section 3. Review for Graduated Sanctions and Use of the Matrix. If the violation is not handled by an informal response as established in Section 2 of this administrative regulation and the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:

- (1) The officer shall consider the:
- (a) Offender's assessed risk and needs level;
- (b) Offender's adjustment on supervision;
- (c) Severity of the current violation;
- (d) Seriousness of the offender's previous criminal record;
- (e) Number and severity of any previous supervision violations;
- (f) Extent to which graduated sanctions were imposed for previous violations; and
- (g) Any other factors related to public safety.
- (2)[(3) If the officer determines that an informal response and graduated sanctions are not appropriate, then the officer shall report the violation to the releasing authority.
- (4) If a determination is made by the officer to proceed with graduated sanctions] The officer shall:

- (a) Determine whether the violation is a major or minor violation in accordance with Sections 4[3] and 5[4] of this administrative regulation; and
- (b) Review the probation and parole violation matrix in Section <u>6</u>[5] of this administrative regulation to impose sanctions <u>or determine other appropriate action as directed in this administrative regulation.</u>
- (3)[(5)] The officer shall consider the following when reviewing the violation behavior with the matrix:[-]
- (a) If there are multiple violations, the officer shall use the most serious violation for the review for sanctions.
- (b) If the possible sanctions in a response range have been exhausted on previous violations, the officer may use sanctions in the next highest response range.
- (c) If the offender has violated conditions of supervision imposed in more than one (1) case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for probation and parole or other form of community supervision), the officer shall determine the criminal conviction in the case for which the graduated sanctions will be imposed. A graduated sanction shall not be imposed on more than one case at a time and cases shall not be sanctioned separately for individual violations arising from the same series of violations.
  - (4)[(6)] In order to determine the range of sanctions that may be imposed, the officer shall:
- (a) Determine the offender's risk and needs level based on the offender's most recent risk and needs assessment; and
- (b) Use the probation and parole violation matrix in Section  $\underline{6}[\underline{5}]$  of this administrative regulation to cross reference the violation behavior category as determined in subsection  $\underline{(3)}[\underline{(5)}]$  of this section with the offender's risk and needs level to determine the sanctions available in the indicated response range.
  - (5) If the officer recommends a graduated sanction or discretionary detention, the officer shall:
- (a) Discuss with a supervisor an appropriate graduated sanction for the violation *f*, *if* necessary, prior to completing the violation report;
- (b) Complete and provide the violation report to the supervisor including information about compliance with the probation and parole matrix in Section 6 [(6)] of this administrative regulation;
- (c) State the reasons for a recommendation of an alternative response outside of the responses outlined in the probation and parole matrix, if the officer makes an alternative response recommendation. The reasons may include:
- 1. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;
- 2. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation;
- 3. Interventions not included in the matrix are appropriate for the circumstances of the violation; or
- 4. The officer determines that the offender has failed to comply with prior graduated sanctions imposed and further implementation of graduated sanctions would be futile;
- (d) Obtain approval from a supervisor for the violation response prior to imposing the sanction; and
- (e) Document the approval, denial, or resubmission of an alternative graduated sanction action in the offender management system. [
- (7) If the officer determines that the indicated response range or a lower response range contains an appropriate sanction for the circumstances of the violation, then the officer shall impose the sanction.
  - (8) The officer shall seek approval from the supervisor, if the officer determines that:
- (a) More than two sanctions from response range 3 or higher are appropriate for the circumstances of the violation;

- (b) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;
- (c) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation; or
- (d) Interventions not included in the matrix are appropriate for the circumstances of the violation.]
- (6)[(9)] Upon receiving a recommendation for graduated sanctions, [which requires approval before being implemented][::][
  - (a)] the [district] supervisor [or designee] shall review the recommendation and [may]:
  - (a)[4.] Approve the recommendation; or
- **(b)[2-]** Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.[; and
  - (b) The officer shall document the action in the offender management system.
- (10) If the officer determines that the offender has failed to comply with graduated sanctions and further implementation of graduated sanctions would be futile, the officer shall seek approval from the district supervisor or designee to submit violation documentation to the releasing authority for violation proceedings.
- (11) Upon receiving a recommendation to submit violation documentation to the releasing authority for violation proceedings:
  - (a) The district supervisor or designee shall review the recommendation and:
  - 1. Approve the recommendation; or
- 2. Reject the recommendation and refer the violation back to the officer for alternative sanctions; and
  - (b) The officer shall document the action in the offender management system.]

Section 4[3]. Minor Violations. Minor violations shall include the following:

- (1) Failure to report a citation or arrest;
- (2) Failure to report;
- (3) Being in an establishment where alcohol is sold as a primary commodity;
- (4) Traffic offenses unless arrested:
- (5) Failure to pay financial obligations as ordered by the releasing authority;
- (6) Failure to seek employment;
- (7) Failure to enroll or maintain school attendance:
- (8) Falsifying a release report;
- (9) Violation of other special conditions unless ordered by releasing authority;
- (10) Association with convicted felon;
- (11) Violation of travel restrictions:
- (12) Visiting a correctional facility without prior approval;
- (13) Issuance of an emergency protective order, [or] domestic violence order, or interpersonal protective order;
  - (14) Violation of curfew:
  - (15) First or second positive drug or alcohol test;
  - (16) Failure to comply with re-entry programming:
  - (17) Failure to complete community service; and
  - (18) Other violations of similar magnitude.

Section 5[4]. Major Violations. Major violations shall include the following:

- (1) Misdemeanor conviction that does not require submission to the releasing authority pursuant to Section 2(2)(a[b]) of this administrative regulation:
  - (2) Failure to complete [comply with] treatment;

(3) Failure to complete halfway house program;

(4)[(3)] Multiple minor violations within ninety (90) days;

(5)[(4)] Multiple positive drug or alcohol tests or high risk behavior;

(6)[(5)] Refusal to submit to an alcohol or drug test;

(7) Altering or attempting to alter the results of a drug screen;

(8)[(6)] Harassing[Intimidating] or threatening a probation and parole officer;

(9)[(7)] Possession or use of a weapon other than a firearm by an offender;

(10)[(8)] Failure to comply with sex offender registry;

(11)[(9)] Over three (3) months behind on restitution;

(12)[(10)] Violation of a special condition ordered by the releasing authority;

(13)[(11)] Violation of travel restrictions to another state;

(14)[(12)] Violation of curfew with electronic monitoring device;

(15)[(13)] Change of residence without officer's permission;

(16)[(14)] Failure to notify probation and parole officer about address change;

(17)[(15)] Failure to participate in a required program or service; and

(18)[(16)] Other violations of similar magnitude.

Section <u>6[5]</u>. Probation and Parole Violation Matrix. The following matrix shall be used to <u>determine allowable graduated sanctions</u> for probation violations:

| determine allowable graduated sanctions for probation violations:                     |  |                        |  |   |                      |   |  |  |  |
|---|--|------------------------|--|---|----------------------|---|--|--|--|
| PROBATION AND PAROLE VIOLATION MATRIX   |  |                        |  |   |                      |   |  |  |  |
|   | OFFENDER RISK LEVEL  |                        |  |   |                      |   |  |  |  |
| VIOLATION   | Very High  | Hi                     | gh   | Moderate                                  | Low                  | , | Admin  |  |  |
| 1st Minor   | 2  | 1                      |  | 1   | 1                    |   | 1  |  |  |
| 2nd Minor   | 3  | 2                      |  | 2   | 2                    |   | 1  |  |  |
| 3rd (or more) Minor   | 4  | 3                      |  | 3   | 2                    | *************************************** | 2  |  |  |
| 1st Major   | 4  | 3                      |  | 3   | 2                    |   | 2  |  |  |
| 2nd Major   | 4  | 3                      |  | 3   |                      |   |  |  |  |
| 3rd (or more) Major   | 4  | 4                      |  | 4   |                      |   |  |  |  |
| Response Range 1  | Response Range   | Response Range 2 Respo |  | se Range 3                                |                      | Response<br>Range 4                     |  |  |  |
|   | , ,  | or<br>of<br>ge         | Any<br>combinat<br>ranges 1                              | response<br>tion of response<br>-2 or:    | or<br>es in          | com<br>resp                             | response or<br>bination of<br>onses in<br>es 1-3 or: |  |  |
| Verbal or Written Warning  Evidence Based Programming  Coaching by                    | Curfew up to 6 days  Community Service 20-30 hours                     |                        |  | ip to 120 days<br>hity Service 3<br>House | 0-40                 |   | munity<br>ice 40-50                                  |  |  |
| supervisor & officer Increase[Increased] Reporting Increase Frequency of Drug Testing | Electronic<br>Monitoring<br>Increased<br>Treatment Up 1<br>Residential | Го                     | Detention<br>Approval  Jail Time<br>days [u<br>(requires | e <u>in excess o</u>                      | <u>visor</u><br>f 10 | 60<br>(requ<br>heari<br>relea           | ing with   |  |  |

| Referral to programming approved by the Department  | Up to 5 days Discretionary Detention [up to 10 days] with | Additional jail time at the discretion of the releasing |
|---|---|---|
| Up to 3 days Discretionary Detention with Supervisor Approval                                     | Supervisor<br>Approval                                    | authority  Request  Revocation                          |
| Increase Level of<br>Supervision  |   |   |
| Loss of Travel or Other Privileges  |   |   |
| Curfew up to 30 days  |   |   |
| Referral to the Social<br>Service Clinician for<br>substance abuse<br>assessment and<br>treatment |   |   |
| Referral to Community Service Agency for Counseling or Treatment                                  |   |   |
| Community Service up to 8 hours   |   |   |

\*Upon consideration of the totality of the circumstances and with supervisory approval, the officer may direct the offender into appropriate interventions not included in the violation matrix or seek to impose a high lever sanction, up to and including revocation. Discretionary detention for probationers shall be implemented pursuant to this administrative regulation to the extent that it is not in conflict with the orders of the court.

Section 7[6]. Documentation and Notice of Graduated Sanctions. (1) Prior to imposing the graduated sanctions, the officer shall prepare a probation violation report with graduated sanctions. The report shall include:

- (a) A description of the violation behavior;
- (b) A description of the sanctions which will be imposed; and
- (c) Notice of the offender's right to:
- 1. A violation hearing before the court;
- 2. Representation by an attorney at the hearing; and
- 3. Have an attorney appointed for him at state expense if he cannot afford one.
- (2) The officer shall:
- (a) Provide a copy of the probation <u>graduated sanctions</u> violation report to the offender prior to the imposition of sanctions;

- (b) Ask the offender if he can read the probation <u>graduated sanctions</u> violation report. If the offender states that he cannot read, then the officer shall read the report to the offender; and
- (c) Ask the offender if he can understand English. If the offender informs the officer that he cannot understand English, the officer shall provide the offender with a probation <u>graduated sanctions</u> violation report in the offender's language or a language interpreter, if available. If the report cannot be provided in the offender's language and a language interpreter is not available, then the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated <u>sanctions[sanctioning]</u> process.
- (3) If the offender indicates to the officer that he does not understand his rights as stated in the probation graduated sanctions violation report, the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctions[sanctioning] process.
- (4) If the offender chooses to waive his right to a violation hearing and elects to participate in the graduated <a href="mailto:sanctions[sanctioning">sanctions[sanctioning]</a>] process, then:
- (a) The offender shall note his choice and sign the probation graduated sanctions violation report;
  - (b) The officer shall sign the probation graduated sanctions violation report;
- (c) The district supervisor or designee shall sign the probation graduated sanctions violation report;
- (d) The officer shall provide the probation graduated sanctions violation report to the releasing authority; and
  - (e) The officer shall document the actions taken in the offender management system.
- (5) If the offender contests the graduated sanction to be imposed for minor violations, the officer shall report the contest to the supervisor. The supervisor shall deny the offender's contest or grant an alternative sanction.
- (6) If the offender chooses not to waive his right to a violation hearing, the officer shall report the violation to the releasing authority for proceedings.

Section 8[7]. Discretionary Detention [Up to Ten Days].

- (1) Discretionary Detention Up to Ten (10) Days.
- (a) If the officer recommends discretionary detention as a graduated sanction, the officer shall review the offender's record to determine if the recommended days of detention will cause the offender to serve more than <u>sixty[thirty]</u> days in discretionary detention during the calendar year as limited by KRS 439.3108.
- (b)[(2)] The officer shall determine a period of detention, not to exceed ten days in compliance with the probation and parole matrix in Section 6 of this administrative regulation.
- $\underline{\text{(c)[(3)]}}$  The officer shall seek approval from  $\underline{a}[\text{the district}]$  supervisor for the detention. If the officer takes the offender into custody, the officer shall:
  - 1.[(a)] Obtain approval from a[the District] supervisor within four (4) hours;
  - 2.[(b)] If the detention is not approved, follow directives of a[the District] supervisor;
  - 3.[(c)] Continue the detention if other legal process permits; or
  - 4.[(d)] Release the offender from detention.
  - (d)[(4)] Upon receiving a recommendation for detention, [;
  - 1.][(a)] the [district] supervisor shall:
  - 1.[a.][1.] Approve the recommendation; or
- 2.[b-][2-] Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.[; and]
  - (e)[(b)] The officer shall document the action in the offender management system.
  - (2) Discretionary detention for more than ten (10) days.
- (a) If the officer recommends discretionary detention as a graduated sanction in excess of ten (10) consecutive days:
  - 1. Discuss the detention days in excess of ten (10) days with a supervisor;

- 2. Complete a violation report with reasons for the additional period of detention;
- 3. Submit the violation report to a supervisor for approval;
- 4. Submit the violation report to the releasing authority with the reason for the additional detention days, if approval is received from a supervisor; and
  - 5. Document the actions in the offender management system.
  - (b) Upon receiving a recommendation for detention the supervisor shall:
  - 1. Approve the recommendation; or
- 2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.
- (3)[(5)] The officer shall determine if the offender is employed and whether it is feasible for the offender to serve the approved detention at times that the offender is not scheduled to work.
- (4)[(6)] The officer shall document the violation and provide notice to the offender and the releasing authority pursuant to the provisions of Section 7[6] of this administrative regulation.

Section 9. After consideration of the totality of the circumstances, if the officer determines that graduated sanctions are not appropriate for the violation and seeks to return the offender to the releasing authority for violation proceedings, the officer shall discuss the case with a supervisor.

- (1) The supervisor and officer shall review the following factors:
- (a) The offender has demonstrated an inability to comply with supervision;
- (b) Graduated sanctions have been previously imposed or the serious nature of the violation merits return to the releasing authority;
  - (c) The offender refuses graduated sanctions;
  - (d) All resources available in the community have been exhausted; and
  - (e) The offender poses a safety risk to himself or the community.
- (2) The case review shall be documented in the offender management system by the supervisor, including why graduated sanctions were not appropriate and the factors used to make the recommendation to the releasing authority.

Section <u>10[8]</u>. Compliance Incentives. An officer may use proportionate incentives for compliance with conditions of supervision including:

- (1) Reduced reporting requirements;
- (2) Lower levels of supervision as indicated by the offender's risk and needs assessment:
- (3) Removal of supervision conditions, for example home detention or curfew;
- (4) Eligibility for early termination of probation;
- (5) Awarding certificates of achievement:
- (6) Deferring a monthly supervision fee payment:
- (7) Asking the supervised individual to be a mentor to others; or
- (8) Other similar incentives.

This administrative regulation has been through the process advised for consultation with the Supreme Court prior to its filing with the Legislative Research Commission as required by KRS 439.551, 13A.120(3), and 13A.220(6)(a).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Justice.RegsContact@ky.gov, telephone number (502) 564-8207, facsimile number (502) 564-6686.

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 7:130. Prisoner programs; services.

501 KAR 7:140. Prisoner rights.501 KAR 7:150. Training.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 7:130, 501 KAR 7:140 and 501 KAR 7:150, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 7:130 501 KAR 7:140 and 501 KAR 7:150.

Sincerely,

Deanna Smith

Paralegal Consultant

enclosures



#### 10/29/21

## SUGGESTED SUBSTITUTE

## JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 7:130. Prisoner programs; services.

RELATES TO: KRS 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS 196.035, KRS 441.055, 532.100(5)[(4)](d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes [requires] the secretary to promulgate administrative regulations he or she deems necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet, KRS 532.100(5)[(4)](d) requires the Department of Corrections to promulgate administrative regulations establishing required programs for a jail that houses state inmates under KRS 532.100(5) [this subsection]. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for prisoner programs and services.

- Section 1. Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities, and library services.
- (2) Prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.
- (3) Written policy and procedures shall establish <u>rules[guidelines]</u> for prisoners as to acceptable means of transportation to and from work, school, and programs.
- (4) There shall be written procedures for the verification and monitoring of the prisoner's employment status. A written schedule shall be maintained for program release to include time of departure, destination, telephone number and address of program location, and time of return. Periodic monitoring of a prisoner's adherence to the approved schedule shall occur.
- (5) Written procedures shall specify the monetary amount of reimbursement for room and board at the center by the prisoner and the process by which these fees shall be collected and used. Accurate records of receipts shall be maintained.
- Section 2. Religious Programs. Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the center.
- Section 3. Recreation Programs. Written policy and procedure shall provide all prisoners with the opportunity to participate in an average of one (1) hour of recreational activity per day. Recreation programs may include board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.
- Section 4. Volunteers. The policy and procedure manual shall establish <u>rules[guidelines]</u> for the selection and use of volunteers in the center.
- Section 5. Prisoner Programs and Services. (1) On-the-job training (OJT) work programs. State prisoners shall be provided the opportunity to participate in OJT work programs in

accordance with KRS 441.125. State inmates who have an approved custody level shall be allowed to work on community service projects outside the jail if authorized by the jailer.

- (2) Education programs. State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.
- (3) Substance abuse programs. State prisoners shall be provided the opportunity to participate in substance abuse programs including Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). State prisoners who have been determined to have substance abuse problems shall be referred to outpatient treatment available in the community. State prisoners, who are in need of extensive substance abuse treatment and have been referred by the Division of Addiction Services[Mental Health], shall be allowed to participate in the substance abuse program (SAP), if space is available.
- (4) Evidenced based programs. Eligible state prisoners may be provided the opportunity to participate in evidence based programming offered within the jail with the approval of department staff. State prisoners who complete evidence based programming may be eligible to receive program completion credit, in accordance with CPP 15.4 *incorporated by reference in 501 KAR* 6:020.

<u>Section 6. Required Documents. The jail may provide required documents to prisoners in an</u> electronic format.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

Andy Beshear GOVERNOR

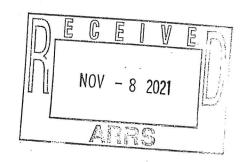


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 7:130. Prisoner programs; services.

501 KAR 7:140. Prisoner rights. 501 KAR 7:150. Training.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 7:130, 501 KAR 7:140 and 501 KAR 7:150, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 7:130 501 KAR 7:140 and 501 KAR 7:150.

Sincerely,

Deanna Smith

Paralegal Consultant

enclosures



#### 10/29/21

#### SUGGESTED SUBSTITUTE

# JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

## 501 KAR 7:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS 196.035</u> authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to ensure the rights of prisoners in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall have a written statement of prisoner rights which shall address:

- (a) Access to court;
- (b) Access to attorney;
- (c) Mail;
- (d) Telephone:
- (e) Grievance procedure;
- (f) Search and seizure;
- (g) Disciplinary procedure;(h) Racial segregation;
- (i) Medical care:
- (j) Counseling, if available; and
- (k) Religion.
- (2) The statement of prisoner rights shall be made available to all inmates being assigned to general housing units. The statement of prisoner rights may be posted in a conspicuous place, provided in hard-copy format, or provided through close-circuit cable television <u>or another electronic format</u>.
  - (3) The jailer shall not prohibit a prisoner's right of access to the judicial process.
- (4) The jailer shall ensure the right of each prisoner to have confidential access to his attorney and his authorized representative. Confidential prisoner access to the prisoner's attorney through unmonitored phone lines in non-contact visitation areas shall be permitted.
- (5) The jailer shall have a written policy and procedure that defines the center's visitation rules, which shall include:
- (a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend;
- (b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner has been assessed a disciplinary penalty for an infraction of rules governing visitation;
  - (c) A visit shall not be less than fifteen (15) minutes;
- (d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; and
  - (e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.
- (6) Attorneys, clergy, and health care staff shall be permitted to visit a prisoner at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

- (7) Each visitor shall register and show proper photo identification before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) of this section or established in subsection (6) of this section.
- (8) A prisoner shall not be restricted in regard to whom he may have as a visitor, unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:
  - (a) The visitor:
  - 1. Represents a clear and present danger to security;
  - 2. Has a past history of disruptive conduct at the center;
  - 3. Is under the influence of alcohol or drugs;
  - 4. Refuses to submit to a search; or
  - 5. Refuses to show proper identification; or
  - (b) The prisoner refuses the visit.
- (9) Except for visitors pursuant to subsection (6) of this section, jail personnel may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail. (1) The jailer shall have a written policy and procedure for receiving and sending mail that:

- (a) Protects prisoners' personal rights; and
- (b) Provides for security practices consistent with the operation of the center.
- (2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate any state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. The jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.
- (3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner. After being opened and inspected in the presence of the prisoner, mail received from the court, an attorney of record, or a public official may be provided to the prisoner via an electronic copy through a secure, personal account.
- (4) Measures to prevent receipt of prisoner mail containing intoxicants, including fabricated legal mail shall be permitted.

Section 3. Telephone. (1) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

- (2) If calls are monitored, the prisoner shall be notified.
- (3) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Each prisoner shall be:

- (a) Granted the right to practice his religion within limits necessary to maintain institutional order and security; and
- (b) Afforded an opportunity to participate in religious services and receive religious counseling within the center.
- (2) A prisoner shall not be required to attend or participate in any religious service or discussion.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, if the security and order of the center are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

- (1) A response to each written grievance within ten (10) days;
- (2) Equal access for each prisoner;
- (3) A guarantee against reprisal; and
- (4) Resolution[Resolving] of legitimate complaints.

Section 7. Disciplinary Rights. Each center shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.501 KAR 7:140. Prisoner rights.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 7:130. Prisoner programs; services.

501 KAR 7:140. Prisoner rights. 501 KAR 7:150. Training.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 7:130, 501 KAR 7:140 and 501 KAR 7:150, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 7:130 501 KAR 7:140 and 501 KAR 7:150.

Sincerely,

Deanna Smith

Paralegal Consultant

enclosures



#### 11/3/21

#### SUGGESTED SUBSTITUTE

## JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 7:150. Training.

RELATES TO: KRS 441.045, 441.055, 441.115 STATUTORY AUTHORITY: KRS 196.035, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners and KRS 441.115 sets requirements to obtain training allowances. This administrative regulation establishes minimum training requirements for jail personnel.

Section 1. Information System. A jail shall maintain cumulative records on the types and hours of training completed annually by jail personnel. The records shall be maintained in a manner so that all of the records for a specific jail employee may be readily retrieved and shall be entered into the department training records management system.

- (1) If the training is conducted by the department, the department shall enter and maintain records of the training for the jail personnel in the department's training records management system.
- (2) If the training is conducted by someone other than the department, jail personnel who have been trained to enter information into the department training records management system shall enter the training information. Training information shall be entered within ten (10) days of the training being completed. A jail employee shall have access to his individual record.

Section 2. Curriculum. (1) Jail personnel shall receive a minimum of sixteen (16) hours annual in-service training. The training shall be provided by the department or other instruction approved by the jailer.

- (2) The training shall include:
- (a) A minimum of four (4) hours of mental health training within the first year of service, and one (1) hour of additional mental health training each year thereafter. The initial four (4) hours of mental health training should be conducted by the service provider of mental health triage or mental health services to the jail, if possible:
- (b) <u>Communicable diseases, including</u> human immunodeficiency virus infection training and acquired immunodeficiency syndrome training <u>[approved by the Cabinet for Health and Family Services]</u>;
- (c) All jail personnel or health services staff who administer medications to prisoners shall be trained in the proper procedures as <u>established[outlined]</u> in the jail's policy and procedures manual; and
- (d) Jail personnel who are assigned to duties within a direct supervision area or facility shall receive forty (40) hours of pre-service training related to direct supervision. The training shall be approved by the department.

Section 3. First Aid and CPR. (1) Jail personnel shall have current training in standard first aid

equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) Jail personnel shall be certified to perform CPR (cardiopulmonary resuscitation), equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

Andy Beshear GOVERNOR

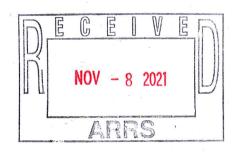


Kerry Harvey
CABINET SECRETARY

Robyn Bender
GENERAL COUNSEL

November 8, 2021

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



Re: 501 KAR 14:010. Psychiatric or Forensic Psychiatric Facility Victim Notification System.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 14:010, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendments to 501 KAR 14:010.

Sincerely,

Deanna Smith

Paralegal Consultant

enclosures



#### 10/29/21

#### SUGGESTED SUBSTITUTE

# JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 14:010. Psychiatric or Forensic Psychiatric Facility Victim Notification System.

RELATES TO: KRS 202A.410, <u>439.3401</u> [<u>349.3401</u>]

STATUTORY AUTHORITY: KRS 202A.410(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 202A.410 requires the Department of Corrections to promulgate <u>an</u> administrative <u>regulation for</u> [regulations governing] the notification of [a] crime <u>victims</u>, judges, and <u>witnesses</u> [victim] who <u>request</u> [requests] notice of when an involuntarily committed person, who is charged with or convicted of a violent crime, is discharged or escapes from a psychiatric or forensic psychiatric facility.

Section 1. Definitions. (1) "Notification" means the [telephonic] communication by telephone or email to the individual regarding the release or escape of an involuntarily committed person.

- (2) "Register" means the individual seeking notice providing a telephone number or email through the VINE system [the electronic communication by the individual recording a telephone number] to be contacted when the involuntarily committed person is released or escapes.
- Section 2. (1) If the [The chief administrator of a] psychiatric or forensic psychiatric facility enters the involuntarily committed person's information, the victim, judge, or witness may register for notification [shall make available the name, date of birth, date of commitment, the charge, date of release or escape of the involuntarily committed individual to the Department of Corrections].
  - (2) The Department of Corrections shall provide:
  - (a) The ability to register for notification purposes; and
  - (b) The notification for which the individual has registered.
- Section 3. (1) A victim, judge, or witness may register for notification by calling Victim Information and Notification Every Day (VINE) at (800) 511-1670 or visiting www.VINElink.com and register an email or telephone number for notification of the release of the involuntarily committed person[and providing his name, address, and telephone number].[
  - (2) The victim may provide the notification information by:
  - (a) Speaking to a VINE operator; or
  - (b) Accessing the VINE system through the keypad on his telephone.]

Section 4. If the Department of Corrections provides the <u>psychiatric or forensic psychiatric facility with a secure Web-based service to enter the involuntarily committed person's information for [administrator with any instrument or equipment to provide] victim notification, the <u>Web-based account access shall be limited and [instrument or equipment shall be]</u> secured. [The instrument or equipment shall be used only for the purposes set out in this administrative regulation, unless express written permission is obtained from the Department of Corrections.]</u>

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

Andy Beshear Governor



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

## Jason E. Glass, Ed.D. Commissioner of Education and Chief Learner

#### KENTUCKY DEPARTMENT OF EDUCATION

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

October 29, 2021

Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort, KY 40601



Re: 701 KAR 5:160. Selection and appointment of non-voting Kentucky board of education members

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the above-referenced regulation, the Kentucky Board of Education proposes the attached suggested substitute.

Sincerely,

Todd G. Allen General Counsel

Attachment



## **SUGGESTED SUBSTITUTE**

Final Version: 10/29/2021 9:22 AM

# EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education

701 KAR 5:160. Selection and appointment of non-voting Kentucky board of education members.

RELATES TO: KRS 118B.140, 118B.160, 156.029, 156.035

STATUTORY AUTHORITY: KRS 156.029(3),[;] 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(1) <u>authorizes[sets forth the membership of]</u> the Kentucky Board of Education, including an active public elementary or secondary school teacher and a public high school student serving as non-voting members <u>of the board</u>. KRS 156.029(3) requires the Kentucky Board of Education to promulgate an administrative regulation establishing the process for selecting the non-voting teacher and non-voting student member to serve on the board. This administrative regulation establishes the process for <u>the</u> selection and appointment of a non-voting active public elementary or secondary school teacher[,] and a non-voting public high school student to serve on the Kentucky Board of Education.

- Section 1. Definitions. (1) "Board" means the Kentucky Board of Education as **estab-lished[provided]** in KRS 156.029 and 156.035.
- (2) "Commissioner" means the Commissioner of Education appointed by the Kentucky Board of Education pursuant to KRS 156.148.
- (3) "Student" means a person enrolled in a Kentucky public high school and classified by the Kentucky public high school as a junior on July 1 of the calendar year for which appointment is sought.
- (4) "Teacher" means a person employed on a full-time basis by a Kentucky public school district in a position for which certification is required pursuant to KRS 161.020, and who is not employed in an administrative role.
- Section 2. Recommendation and Selection of Non-voting Teacher Member. (1) An application for consideration to become a non-voting teacher member of the board shall contain [the following]:
- (a) The applicant's name, home address, public school district of employment, and congressional district of residence:
  - (b) A resume or curriculum vitae for the applicant;
- (c) A narrative statement by the applicant explaining why **the applicant[he/she]** wants to serve as a non-voting teacher member of the board;
- (d) A statement of assurance from the applicant that <u>the applicant[he/she]</u> meets the definition of a <u>"teacher"</u> as <u>defined by Section 1(4)[set forth in section one (1)]</u> of this administrative regulation; and
- (e) A description of any pending or final disciplinary action against the applicant by the Education Professional Standards Board.

- (2) [The Commissioner may develop an application form for use that incorporates the requirements of subsection one (1) of this section.
- (3)] No later than March 1 of each calendar year, the commissioner or the commissioner's designee shall publicly advertise the application process <u>established in this administrative</u> <u>regulation</u> to become a non-voting teacher member of the board. The public advertisement may be in electronic format and shall be included in a publication designed to reach Kentucky public school teachers. The public advertisement shall contain [the following]:
  - (a) The composition, authority, and duties of the board;
  - (b) The time commitment expected of board members;
- (c) The eligibility requirements <u>established[set forth]</u> in KRS 156.029 and this administrative regulation to be selected as a non-voting teacher member of the board;
  - (d) The selection process for the non-voting teacher member of the board;
- (e) All required application materials as **<u>established[set forth]</u>** in subsection **[one]**(1) of this section;
- (f) The method of application material submission, including the name and address of the individual designated by the commissioner or commissioner's designee to receive applications; and
- (g) The deadline by which all application materials shall be received for consideration, which shall be no later than April 1 of the calendar year for which applications are sought.
- (3)[(4)] Within three (3) business days following the deadline established in subsection (2)[three(3)] of this section, the commissioner or commissioner's designee shall forward all eligible applications[applicants] to the commissioner's Teacher Advisory Council for review and recommendation. Applications for applicants who are ineligible for appointment because they do not meet the requirements of KRS 156.029 or[and] this administrative regulation shall not be forwarded to the commissioner's Teacher Advisory Council for review and recommendation.
- (4)[(5)] The commissioner's Teacher Advisory Council, or a subset of the council designated by a majority vote of the full council, shall review applications forwarded by the commissioner or commissioner's designee for the non-voting teacher member of the board. No later than May 1, the commissioner's Teacher Advisory Council shall recommend to the board three (3) candidates from the applications for selection as the non-voting teacher member of the board. If the commissioner's Teacher Advisory Council fails to take action to make [such] a recommendation to the board by May 1, within five (5) business days after May 1, the Commissioner shall recommend to the board three (3) candidates from the applications for selection as the non-voting teacher member of the board.
- (5)[(6)] No later than its last regular meeting of the fiscal year, the board shall consider the recommendation pursuant to subsection (4)[five(5)] of this section and, by majority vote, select one (1) candidate to serve as the non-voting teacher member of the board for a one (1) year term, which shall begin on July 1 immediately following the board's selection, and expire on the following June 30.
- (6)[(7)] The non-voting teacher member of the board serving a term to begin on July 1, 2022 and to expire on June 30, 2023, shall reside in Kentucky's Sixth (6th) congressional district as <u>established[defined]</u> by KRS <u>118B.160</u>. Successive non-voting teacher members shall rotate among the state's congressional districts in numerical order.

Section 3. Recommendation and Selection of Non-voting Student Member. (1) An application for consideration to become a non-voting student member of the board shall contain [the following]:

- (a) The applicant's name, home address, public school district of enrollment, and congressional district of residence;
  - (b) A resume or curriculum vitae for the applicant;
- (c) A narrative statement by the applicant explaining why **the applicant[he/she]** wants to serve as a non-voting student member of the board;
- (d) Two (2) letters of recommendation from a teacher, school administrator, employer, coach, or volunteer supervisor explaining why the applicant should be appointed to the board; and
- (e) If the student is a minor, a parental consent form signed by a parent or guardian acknowledging the time commitment and periodic travel requirements of board members, and providing consent for the applicant to participate as a non-voting student member of the board if selected.
- (2) [The Commissioner may develop an application form for use that incorporates the requirements of subsection one (1) of this section.
- (3)] No later than March 1 of each calendar year, the commissioner or the commissioner's designee shall publicly advertise the application process <u>established in this administrative</u> <u>regulation</u> to become a non-voting student member of the board. The public advertisement may be in electronic format and shall be included in a publication designed to reach Kentucky public school teachers and superintendents for further dissemination to students. The public advertisement shall contain [the following]:
  - (a) The composition, authority, and duties of the board;
  - (b) The time commitment expected of board members;
- (c) The eligibility requirements <u>established[set forth]</u> in KRS 156.029 and this administrative regulation to be selected as a non-voting student member of the board;
- (d) The selection process <u>established in this administrative regulation</u> for the non-voting student member of the board;
- (e) All required application materials as <u>established[set forth]</u> in subsection [one](1) of this section;
- (f) The method of application material submission, including the name and address of the individual designated by the commissioner or commissioner's designee to receive applications; and
- (g) The deadline by which all application materials shall be received for consideration, which shall be no later than April 1 of the calendar year for which applications are sought.
- (3)[(4)] Within three (3) business days following the deadline established in subsection (2)[three (3)] of this section, the commissioner or commissioner's designee shall forward all eligible applications[applicants] to the commissioner's Student Advisory Council for review and recommendation. Applications for applicants who are ineligible for appointment because they do not meet the requirements of KRS 156.029 or[and] this administrative regulation shall not be forwarded to the commissioner's Student Advisory Council for review and recommendation.
- (4)[(5)] The commissioner's Student Advisory Council, or a subset of the council designated by a majority vote of the full council, shall review applications forwarded by the commissioner or commissioner's designee for the non-voting student member of the board. No later than May 1, the commissioner's Student Advisory Council shall recommend to the board three (3) candidates from the applications for selection as the non-voting student member of the board. If the com-

missioner's Student Advisory Council fails to take action to make [such] a recommendation to the board by May 1, within five (5) business days after May 1, the commissioner shall recommend to the board three (3) candidates from the applications for selection as the non-voting student member of the board.

(5)[(6)] No later than its last regular meeting of the fiscal year, the board shall consider the recommendation pursuant to subsection (4)[five (5)] of this section and, by majority vote, select one (1) candidate to serve as the non-voting student member of the board for a one (1) year term, which shall begin on July 1 immediately following the board's selection, and expire on the following June 30.

(6)[(7)] The non-voting student member of the board serving a term to begin on July 1, 2022 and to expire on June 30, 2023, shall reside in Kentucky's Fourth (4th) congressional district as **established**[defined] by KRS **118B.140**[118B.160]. Successive non-voting student members shall rotate among the state's congressional districts in numerical order.

Section 4. Selection to Fill an Unexpired Term as a Result of Resignation or Death. In the event of resignation or death of a non-voting board member selected and appointed pursuant to this administrative regulation, the board shall re-consider the recommendation utilized when it selected the resigned or deceased non-voting member and, by majority vote, select one (1) candidate to serve the unexpired term resulting from the resignation or death of the non-voting member.

Section 5. Appointment. (1) Following action by the board to select a non-voting member pursuant to this administrative regulation, the board's action shall be memorialized in a written resolution signed by the board chair.

(2) No later than five (5) business days following board action to select a non-voting member pursuant to this administrative regulation, the commissioner shall forward the board's written resolution to the Governor and Secretary of State so both may take notice of the action pursuant to KRS 156.029 and this administrative regulation.

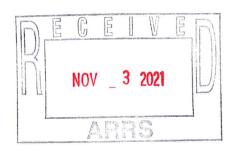
CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

## 110 Cleveland Drive Paris, KY 40361



(800) 782-6823 kyfirecommission.kctcs.edu

November 3, 2021



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

RE: 739 KAR 2:060. Certification and qualifications of fire and emergency services instructors.

Dear Co-Chairs West and Hale:

After discussions with the Administrative Regulation Review Subcommittee staff of the issues raised by 739 KAR 2:060, the Kentucky Fire Commission proposes the attached amendment to 739 KAR 2:060.

Sincerely,

Ricky King, Chair

Kentucky Fire Commission

110 Cleveland Drive

Paris, KY 40361

## Final, 11-3-2021

#### SUGGESTED SUBSTITUTE

# KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Fire Commission

739 KAR 2:060. Certification and qualifications of fire <u>and emergency services</u> [protection] instructors.

RELATES TO: KRS 75.400(2), <u>(4), (5),</u> 95.010(1)(c), 95A.040<u>(1)(c),</u> (3)(b)[<del>(1)</del>], 95A.210(1), (6)

STATUTORY AUTHORITY: KRS **95A.040(3)(b),** 95A.050(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission [en Fire Protection Personnel Standards and Education] to certify fire and emergency services[protection] instructors. KRS 95A.050(3) requires the commission to promulgate reasonable administrative regulations relating to fire protection personnel. This administrative regulation establishes[sets forth the] criteria for instructor certification, including the training and educational requirements of applicants for certification.

Section 1. Definitions. (1) ["Bridge course" means an educational program provided by the commission to update out-of-state fire protection instructors seeking Kentucky instructor certification through reciprocity on paperwork and legal requirements specific to fire protection instructors certified in the Commonwealth of Kentucky.

(2) "Certified] ["Professional firefighter" means a firefighter who meets the requirement of KRS 95A.210 [and 95A.230].

<u>(2)1</u> [(3) "Certified] <u>f"Volunteer firefighter" means an individual who meets the requirements of 739 KAR 2:100.1 [has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually to maintain certification.]</u>

[(4)] "Commission" means the Kentucky Fire Commission [Commission on Fire Protection Personnel Standards and Education] as defined by KRS 95A.210(1).

(2)[(4)] [(5)] "Fire and Emergency Services [protection] instructor" means an individual trained and certified pursuant to KRS 95A.040(1)(c)[(2)(b)], this administrative regulation, and the National Fire Protection [International Fire Service Training] Association, as a person qualified to instruct fire protection personnel or supervise the training of fire protection personnel. This term is synonymous with the term "fire and emergency services instructor" as referenced in [the International Fire Service Training Association curricula and] the National Fire Protection Association 1041 standard.

(3)[(5)] [(6)] "Fire department" means a fire department, fire protection district, or fire taxing district recognized by the commission as defined in [by] KRS 75.400(2), (4) and (5) and 95.010(1)(c).

(4)[(6)] [(7)] "Firefighter I" means an individual who has demonstrated the knowledge and skills to function as an integral member of a firefighting team under direct supervision in hazardous conditions and is certified by the commission as accredited by [through] the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.

(5)[(7)] [(8)] "Firefighter II" means an individual who has demonstrated the skills and depth of knowledge to function under general supervision and is certified by the commission as accredited by [through] the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.

(6)[(8)] [(9)] "IFSAC" means the International Fire Service Accreditation Congress.

(7)[(9)] ((10)] "KCTCS" means the Kentucky Community and Technical College System.
(8)[(10)] ((11)) "MOI" means an educational methodology course meeting the job performance requirements within [the objectives of] NFPA 1041 and conducted by:

(a) The Kentucky Fire Commission // State Fire Rescue Training;

(b) KCTCS;

(c) [(b)] A regionally accredited [Kentucky] college or university; or[

(c) The National Fire Academy;

(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the commission; or]

(d) [(e)] An agency approved by the commission to train within its jurisdiction.

(9) "Professional firefighter" is defined by KRS 95A.210(6).

(10)[(11)] [(12)] "Reciprocity" means the recognition of an <u>accredited</u> [IFSAC] certification from another state, territory, province, or nation following verification that the certification is current, valid, and without restriction.

(11) "Volunteer Firefighter" means an individual who meets the requirements of 739 KAR 2:100.

[(12)[(13)] "Train the Trainer course" means a pedagogy program intended to educate certified fire and emergency services [protection] instructors on the specialized curricula, training aides, [primary highlights] and uses of courses taught to fire protection personnel.]

Section 2. Levels of Certification and Scope. (1) The commission shall certify fire <u>and emergency services</u> [protection] instructors at the following levels:

(a) Fire and Emergency Services Instructor Level I;

- (b) Fire and Emergency Services Instructor Level II; [and]
- (c) Live Fire Instructor; and [Instructor Level III.]

(d) Live Fire Instructor-In-Charge.

- (2) A[n] fire and emergency services instructor shall only teach a fire service related curricula [protection subject] upon meeting all requirements for certification mandated by this administrative regulation. An [certified fire protection] instructor shall [may] only teach curricula [subjects] within the scope of the instructor's respective fire and emergency services [protection] instructor level, subject to the conditions established[set forth] in this section [of this administrative regulation].
- (3) An instructor certified as a Level I fire <u>and emergency services</u> [protection] instructor <u>may[shall be authorized to]</u> conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) and (b) of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

- (b) Upon invitation, a person certified as a Level I fire <u>and emergency services</u> [protection] instructor shall conduct training using curricula approved by the commission.
- (4) A person certified as a Level II fire <u>and emergency services</u> [protection] instructor <u>may[shall be authorized to]</u> conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) through <u>(c)[(d)]</u> [(e)] of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

- (b) <u>Upon invitation</u>, a person certified as a <u>Level II</u> fire and emergency services instructor may conduct training using curricula approved by the commission or curricula developed by a <u>Level II</u> fire and emergency services instructor.
- 1. At a fire department of which the Level II fire protection instructor is not a member, the Level II fire protection instructor may personally conduct training using lesson plans that he or she has developed; or]
- (c) [2-] At a fire department of which the Level II fire and emergency services [protection]-instructor is a member, the Level II fire and emergency services [protection] instructor may allow a

Level I fire <u>and emergency services</u> [protection] instructor to conduct training under the Level II fire <u>and emergency services</u> [protection] instructor's direction, using lesson plans developed by the Level II fire <u>and emergency services</u> [protection] instructor.

- (5) The commission shall not certify new Level III fire and emergency services instructors after January 1, 2022. An instructor certified as a Level III fire and emergency services instructor on or before January 1, 2022, shall be eligible for certification renewal pursuant to Section 5 of this administrative regulation and shall retain his or her Level III fire and emergency services instructor certification until:
  - (a) The certification expires pursuant to Section 5 of this administrative regulation;
  - (b) The certification is revoked pursuant to Section 6 of this administrative regulation;
  - (c) The instructor is no longer an active member of a Kentucky fire department.
- (6) A Level III fire <u>and emergency services</u> [protection] instructor shall <u>meet the intent of NFPA 1041 and have the ability to develop fire service related curricula.</u> [be authorized to:
- (a) Develop comprehensive training curricula and programs for use by single or multiple or ganizations;
  - (b) Conduct organization needs analysis;
  - (c) Design record keeping and scheduling systems;
  - (d) Develop training goals and implementation strategies; and
- (e) Conduct firefighter training and Level I and II fire protection instructor training at any fire department or agency located in the Commonwealth. Training shall only be conducted at the request of a fire department or agency.
- (6) An instructor shall successfully complete the commission's Train the Trainer course and shall thereafter teach only from lesson plans developed by the commission or State Fire Rescue Training, or curricula approved by the commission prior to instruction.]
- Section 3. Instructor Certification Requirements. (1) An instructor shall not **[be authorized to]** teach without first meeting all requirements for certification established in this administrative regulation.
- (2) An applicant for initial certification as a Level I fire [protection] and emergency services instructor shall complete and submit:
- (a) A [completed] Kentucky Fire and Emergency Services Instructor Level I webform [Level Fire Service Instructor Application signed by the applicant's fire chief or designee];
- (b) <u>Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;</u>
- (c) Verification of <u>at least</u> one (1) <u>year of</u> [two (2) <u>years' continuous</u>] experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire <u>and emergency services</u> [<del>protection</del>] instructor certification:
- (d) [(e)] <u>Verification</u> [Copies] of IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Firefighter I and II certificates on which the applicant's <u>seal numbers shall be denoted and provides proof of completion of both written and skill performance tests; **[and]** [÷]</u>
- (e) A copy of the applicant's high school diploma or transcript, general equivalency diploma (GED), college degree, or transcript from a regionally accredited institution of higher learning; and
- (f) 1. [First] Verification of MOI, [ef] IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Fire Instructor I certification on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests;
- **2.**[(f) Second] Verification of MOI, [of] a Bachelor's degree in education issued by a regionally accredited institution of higher education; or

- 3.[(g) Third] Verification of MOI, individual who[ef] holds a position as an instructor or instructional faculty member of a regionally accredited institution of higher education in the subject of fire service or a related field[; er
- (h) A copy of the applicant's high school diploma or transcript, general equivalency diploma (GED), college degree, or transcript from a regionally accredited institution of higher learning.
- 1. Certification seal numbers shall be denoted in the designated portion of the instructor Level Lapplication; and
- 2. IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, certification shall provide documentation of successful completion of both written and skills performance tests; or
- (d) A copy of the applicant's high school diploma or general equivalency diploma (GED), and one (1) of the following MOI:
- 1. First MOI: Certification as an IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity, Instructor I;
- 2. Second MOI: A Bachelor's degree in education issued by an accredited institution of higher education; or
- 3. Third MOI: Holds a position as an instructor or instructional faculty member of an institution of higher education in the subject of fire service, or a related field.]
- (3) An applicant for initial certification as a Level II fire [protection] and emergency services instructor shall complete and submit:
- (a) A [completed] Kentucky Fire and Emergency Services Instructor Level II webform [Level II Fire Service Instructor Application signed by the applicant's fire chief or designee, with the applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity certification seal number or numbers denoted as indicated];
- (b) Verification of active member status of a Kentucky fire department, degree program at a regionally accredited institution of higher education, or a recognized federal fire department within the Commonwealth; and
- (c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Level I Fire and Emergency Services Instructor for *at least* one (1) year.
- (4) [Fire and Emergency Services Instructor Level III will no longer be necessary for issuance within the Commonwealth. A previously approved, recognized, and currently active Fire and Emergency Services Level III instructor shall retain Level III status for as long as he or she is recognized as active status.
  - (5)] An applicant for certification as a Live Fire Instructor shall complete and submit:
  - (a) A Kentucky Live Fire Instructor webform;
- (b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;
- (c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level I instructor for at least two (2) years; and
- (d) Proof of successful completion of the commission approved NFPA 1403 class and written examination.
- (5) [(6)] An applicant for certification as a Live Fire Instructor-In-Charge shall complete and
  - (a) A Kentucky Live Fire Instructor-In-Charge webform;
- (b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or recognized federal fire department within the Commonwealth;
- (c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level I instructor for *at least* two (2) years[]; and

- (d) Proof of successful completion of the commission approved NFPA 1403 class and written examination.
- (b) Verification of four (4) years' continuous experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire protection instructor certification;
  - (c) Proof of two (2) years' experience as a Level I fire protection instructor; and
- (d) Verification of completion of all Level I fire protection instructor renewal requirements as set forth in this administrative regulation.
- (4) An individual desiring initial certification as a Level III fire protection instructor shall submit:
- (a) A Level III Fire Service Instructor Application completed on the applicant's behalf by the fire department for which the applicant has served as an active member for at least six (6) consecutive years and signed by the applicant's fire chief or designee, with the applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity certification seal number(s) denoted as indicated:
- (b) Service as a fire protection Level II instructor for a minimum of two (2) years prior to the application date for fire protection Level III instructor certification;
- (c) Positive recommendations following interviews with the commission, the Fire Commission Division Director of Operations, and the State Fire Rescue Training Division Director, or the director's designee;
- (d) Verification of completion of all Level II fire protection instructor renewal requirements as set forth in this administrative regulation; and
- (e) Evidence of previous assistance with the delivery of at least two (2) MOI approved by the commission.]
- Section 4. Reciprocity. (1) Individuals seeking certification as a Level I or Level II [, II, or III] fire and emergency services [protection] instructor through reciprocity from any state, territory, or country [or territory in the United States] shall be granted approval by the commission if the applicant meets all certification requirements for Level I or Level II fire and emergency services [, II, or III] instructor certification pursuant to Section 3 of this administrative regulation.
- (2) The applicant shall complete and provide proof of completion of at least eight (8) hours of [methodology] continuing education in methodology taught by Kentucky State Fire Rescue Training.[-if:
- (1) The two (2), four (4), or six (6) year continuous work periods mandated by Section 3(2)(b), (3)(b), and (4)(a) of this administrative regulation shall have been completed while certified by and in good standing with the certifying agency of the state in which the firefighter served for the period of time necessary to qualify for reciprocity in the Commonwealth of Kentucky;
- (2) The applicant's continuous work periods mandated by Section 2(2)(b), (3)(b), and (4)(a) of this administrative regulation shall immediately precede the date on which the applicant applies for Level I, II, or III fire protection instructor certification in the Commonwealth of Kentucky; or
- (3) The individual shall complete the commission's bridge course prior to certification as a fire protection instructor by the commission.]
- Section 5. Instructor Certification Terms and Renewal. (1) Unless renewed, certification for Levels I, II, and III fire <u>and emergency services</u> [protection] instructors shall expire after <u>four (4)</u> years from the date of certification and approval, and every four (4) years thereafter. [a period of two (2) years in a cyclical pattern based upon the last number of the instructor's Kentucky fire instructor number. All instructors with a Kentucky fire instructor number ending in zero (0) or an even number shall recertify by January 1, 2017, and all instructors with a Kentucky fire protec-

tion instructor number ending in an odd number shall recertify by January 1 of the subsequent vear.

(2) The commission shall grant certification renewal for Level I. [-and] II, and III fire and

emergency services instructors who submit:

(a) Documentation of <u>at least</u> twenty (20) hours of <u>training per year during the renewal cycle;</u> and [instructional time using curricula developed or approved by the commission and completed prior to the expiration of the instructor's current certification period;]

(b) Verification of attendance of at least eight (8) hours of methodology training during the renewal cycle. [twenty (20) student training hours, at least four (4) hours of which shall consist

of an MOI approved by the commission; and

(c) A Fire Service Renewal Application provided by the commission and signed by both the applicant and the applicant's fire chief or designee.

(3) The forty (40) instructional and student training hours mandated by subsection (2)(a) and (b) of this section may also be used to complete the instructor's firefighter recertification hours.

(4) The commission shall grant certification renewal for Level III instructors who submit:

(a) A Fire Service Renewal Application provided by the commission and signed by both the applicant and the applicant's fire chief or designee;

(b) Documentation that the applicant has instructed a minimum of one (1) MOI or instructional technique class during the two (2) year certification period; and

(c) Verification of completion of a minimum of one (1) instructor training workshop lasting at

least eight (8) hours and approved by the commission.

- (5) A fire protection instructor who obtained instructor certification prior to the effective date of this administrative regulation shall be required to meet the renewal requirements as set forth in this administrative regulation subsequent to the completion of one (1) full recertification period.]
- Section 6. Suspension or Revocation of Certification and Appeal. (1) The commission's **[Education and]** Eligibility [/State-Aid]-Committee shall revoke <u>or suspend</u> an instructor's certification if, after reasonable notice and a hearing, it is determined that the instructor committed misconduct with regard to fire <u>and emergency services</u> [protection] instructor certification or job duties. <u>Misconduct shall include</u> <u>conduct such as the following[, but not be limited to]:</u> [. Examples include, for example:]
- (a) A material misstatement or misrepresentation in any document furnished to the commission to obtain the issuance or renewal of certification;
  - (b) Falsification of training records; or
  - (c) An act of negligence or malfeasance.

(2) An [fire protection] instructor whose certification is subject to <u>suspension or</u> revocation shall be entitled to thirty (30) days' notice and a hearing before the commission's [Education and] Eligibility [/State-Aid] Committee.

(3) If the commission's [Education and] Eligibility [/State-Aid] Committee hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal before the commission no later than ten (10) days following the hearing.

(4) An instructor shall request an appeal in writing within fifteen (15) days of receipt of the no-

tification of the commission's intent to revoke or suspend the instructor's certification.

(5) If the individual appeals the commission's intent to revoke <u>or suspend</u> his or her instructor certification, a hearing shall be conducted at the next regular meeting of the commission, or within thirty (30) days of the appeal request, whichever is first.

(6) If the commission's hearing results in a decision to revoke <u>or suspend</u> an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal pursuant to KRS Chapter 13B no later than ten (10) days following the hearing of the appeal.

(7) The certification of an instructor who fails to maintain active status with a <u>commission recognized</u> Kentucky fire department, <u>degree program</u>, <u>federal fire department</u>, or Kentucky State Fire Rescue Training shall be automatically suspended until active status with a <u>commission recognized</u> Kentucky fire department, <u>degree program</u>, <u>federal fire department</u>, or Kentucky State Fire Rescue Training is reinstated and all requirements for recertification are met.

Section 7. Reinstatement of Certification. (1) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period not exceeding one (1) year, unless the applicant has been subjected to discipline that would prevent reinstatement, upon <u>submission</u> of:

(a) A completed Kentucky Fire and Emergency Services Instructor Reinstatement webform;

(b) Proof of completion of *at least* eight (8) hours of methodology training provided by State Fire Rescue Training; and

(c) Verification of attendance of at least twenty (20) hours of recognized fire service training following the date of reactivation by a commission recognized Kentucky fire department of which

the applicant is a member.[application.

(2) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period of more than one (1) year but not exceeding three (3) years, provided the instructor meets all recertification requirements and has attend a commission recognized bridge course.]

(2) [3) The commission shall not reinstate the certification of an instructor whose certifica-

tion has lapsed for a period exceeding one (1) [three (3)] year[s].

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:[

(a) "Fire and Emergency Services Instructor, Eighth Edition" 2012;]

(a) [(b)] "Kentucky Fire and Emergency Services Instructor Level I webform", 2021 [1 Certification Application" 2014];

(b) [(c)] "Kentucky Fire and Emergency Services Instructor Level II webform", 2021 [2 Certifi-

cation Application" 2014];

(c) [(d)] "Kentucky Live Fire Instructor webform", 2021;

(d) "Kentucky Live Fire Instructor-In-Charge webform", 2021; and ["Kentucky Fire Service Instructor Level 3 Certification Application" 2014; and]

(e) [(e)] "Kentucky Fire and Emergency Services Instructor Reinstatement webform", 2021

[Certification Renewal Application" 2014].

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission office, 110 Cleveland Drive, Paris, Kentucky 40361 [Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601], Monday through Friday, 8 a.m. to 4:30 p.m.
  - (3) This material may also be obtained at: http://kyfires.acadisonline.com/.

CONTACT PERSON: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, fax (859) 225-1493,email administrative regulations@wgmfirm.com



#### 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

November 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 803 KAR 25:190, the Department of Workers' Claims proposes the attached agency amendment to 803 KAR 25:190.

Sincerely,

B. Dale Hamblin, Jr.

Assistant General Counsel

Department of Workers' Claims

Mayo-Underwood Building, 3rd Floor

500 Mero Street

Frankfort, KY 40601



### Note to Compiler: Please engross this agency amendment <u>after</u> engrossing the suggested substitute.

#### **Agency Amendment**

## Version: Amended After Comments LABOR CABINET Department of Workers' Claims

803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions. (Amended After Comments version)

Page 18
Section 13(1)(c)
Line 8

After "cumulatively exceed" delete "\$1,000", insert "\$3,000".

Page 18 Section 13(1)(d) Line 9

After "cumulatively exceed" delete "fifteen (15)", insert "thirty (30)".

Page 22 Section 16(1) Line 9

Before "(1)" insert the following:

- (1) Within the Department there shall be a medical director. The medical director shall be a licensed physician in good standing with the Kentucky Board of Medical Licensure.
- (2) The Secretary shall appoint the medical director, upon consultation with the Commissioner to a term of four (4) years. A medical director may serve more than one term of four (4) years.
- (3) If a vacancy occurs during a four (4) year term, the Secretary shall appoint a licensed physician in good standing with the Kentucky Board of Medical Licensure as medical director for the unexpired term. Nothing in this regulation shall prevent the Secretary from appointing a licensed physician in good standing with the Kentucky Board of Medical Licensure to fill an unexpired term and to serve a subsequent term.

- (4) After consultation with the Commissioner, the Secretary may remove the medical director for good cause, the grounds for which shall be expressed in writing.
- (5) The medical director shall:
- (a) process appeals of utilization review decisions pursuant to this regulation, and
- (b) at least annually, review and advise the commissioner and the Secretary on the effectiveness of the Medical Fee Schedule for Physicians, the Treatment Guidelines and the Pharmaceutical Formulary in reducing costs and speeding the delivery of medical services to employees receiving medical benefits under KRS Chapter 342.

Delete subsections (1) and (2) in their entirety.

#### Page 23 Section 16(3) Line 1

Delete the following:

"(3) The medical director may, if [when] appropriate, seek the assistance of other physicians to assist or perform ant tasks outlined within this administrative regulation.",

Insert the following:

"(6) If the treatment is outside of the medical director's certification or specialty, the medical director may seek the assistance of other physicians with the appropriate certification or specialty to assist or perform any tasks outlined within this administrative regulation; the other physicians shall not be the physician whose treatment or recommended treatment is under review or the physicians who issued or upheld the utilization review denial."

#### Page 23 Section 16(4) Line 5

Before "(4)", insert "<u>(7)</u>". Delete "(4)".

#### Page 24 Section 17(2)

#### Line 8

After "medication is being denied shall have", insert "thirty (30)". Delete "forty-five (45)".

#### Page 24

Section 17(2)

Line 10

After "The medical director may extend the time to appeal", insert "upon request and for cause.".

Delete "for good cause".

#### Page 24

Section 17(5)

Line 17

After "charge a fee of", insert "\$200.00" Delete ""\$400.00".

#### Page 24

Section 17(5)

Line 18

After "The fee shall be paid by the medical payment obligor no later than", insert "twentyone (21)"

Delete "fifteen (15)".

#### Page 25

**Section 17(7)(a)** 

Line 14

After "The medical director shall conduct the utilization review appeal", insert the following:

"in keeping with the treatment guidelines and pharmaceutical formulary created or adopted by the commissioner"

#### Page 25

**Section 17(7)(b)** 

Line 15

After "(b)", insert the following:

"The medical director shall consider the opinion of the medical provider whose treatment, recommended treatment, or prescribed medication is being denied.

<u>(c)</u>"

Page 27 Section 17(7)(h) Line 8

After "the medical director shall request the commissioner or administrative law judge to impose", insert "the appropriate penalties, fines, or".

Page 28 Section 17(12) Line 5

After "Form 112, Medical Dispute, within", insert "thirty (30)". Delete "fourteen (14)".



#### KENTUCKY LABOR CABINET

**Department of Workers' Claims** 

Andy Beshear Governor

Jacqueline Coleman Lieutenant Governor

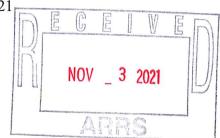
#### **Robert Walker**

Interim Commissioner 500 Mero Street, 3rd Floor Frankfort, KY 40601 Telephone: (502) 564-5550 Jamie Link Secretary

Vickie L. Wise Deputy Secretary

November 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 803 KAR 25:190, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:190.

Sincerely,

B. Dale Hamblin, Jr.

Assistant General Counsel

Department of Workers' Claims

Mayo-Underwood Building, 3rd Floor

500 Mero Street

Frankfort, KY 40601



# REVISED: 9/9/2021 9:57 AM SUGGESTED SUBSTITUTE Amended After Comments

# LABOR CABINET Department of Workers' Claims (Amended After Comments)

803 KAR 25:190. Utilization review -- Medical Bill Audit -- <u>Medical Director</u> -- Appeal of Utilization Review Decisions.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5) and (6), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner [Executive Director] of the Department [Office] of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department [Office] of Workers' Claims, and the commissioner [executive director] may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the commissioner [Executive Director] of the Department [Office] of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner [executive director] the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner [executive director] to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(6) allows the commissioner to promulgate regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery of payment of medical services to employees receiving medical and related benefits under KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program and establishes a medical director to speed the delivery of payment of medical services to employees receiving medical and related benefits under this chapter. This administrative regulation does not abrogate the right, as provided in KRS 342.020, of an injured employee to choose his treating physician, or an employer to participate in a managed health care system.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

- (2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.
  - (3) "Carrier" is defined by KRS 342.0011(6).
  - (4) [(2)] "Commissioner[Executive director]" is defined by KRS 342.0011(9).
- (5) [(3)] "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or medication [or service] under review is not medically necessary or appropriate and, therefore, payment is not recommended.
- (6) "Department" is defined by KRS 342.0011(8) [means the Kentucky Department of Workers' Claims].
- (7) [4)] "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.
- (8) "Medical Director" means the Medical Director of the Department of Workers' Claims appointed by the Secretary.
- (9) "Medically necessary" or "medical necessity" means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:
- 1. In accordance with generally accepted standards of medical practice;
- 2. Clinically appropriate, in terms of type, frequency, extent, site and duration; and 3. Considered effective for the patient's illness, injury, or disease. [is defined in 803 KAR 25:260(12)].
- (10) "Medical provider" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and advanced practice registered nurses, acting within the scope of their license [is defined in 803 KAR 25:260 Section 1(11)].
  - (11) "Physician" is defined by KRS 342.0011(32).
- (12) [(5)] "Preauthorization" [is defined in 803 KAR 25:260(14).] means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.
  - (13) "Secretary" means the Secretary of the Kentucky Labor Cabinet.
- (14) [(6)] "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.
- (15) [(7)] "Utilization review and medical bill audit plan" means the written plan submitted to the <u>commissioner</u> [executive director] by each carrier describing the procedures governing utilization review and medical bill audit activities.
- (16) [(8)] "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Implementation. (1) The requirements established in Sections 3 through 9 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted before **June [January]** 1, 2022.

(2) The requirements established in Sections 10 through 18 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted on or after **June [January]** 1, 2022.

<u>Section</u> <u>3</u> [2]. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

- (a) A utilization reviewer is appropriately qualified;
- (b) Treatment rendered to an injured worker is medically necessary and appropriate; and
  - (c) Necessary medical services are not withheld or unreasonably delayed.
  - (2) The medical bill audit program shall assure that:
- (a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and <u>803 KAR Chapter</u> <u>25[applicable administrative regulations]</u>;
  - (b) A medical bill auditor is appropriately qualified; and
  - (c) A statement for medical services is not disputed without reasonable grounds.

Section  $\underline{4}$  [3]. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

- (2) A carrier shall provide to the <u>commissioner</u> [executive director] a written plan describing the utilization re-view and medical bill audit program. The <u>commissioner</u> [executive director] shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.
- (3) A vendor shall submit to the <u>commissioner</u> [executive director] for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the <u>commissioner</u> [executive director].
- (4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the <u>commissioner</u> [executive director] of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.
- (5) A plan shall be approved for a period of four (4) years [, or until December 31, 2000, whichever is later].
- (a) At least ninety (90) <u>calendar</u> days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the <u>commissioner</u> [executive director] shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section <u>5</u> [4]. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the <u>commissioner</u> [executive director] shall include the following elements:

- (1) A description of the process, policies, and procedures *for making [whereby]* decisions *[shall be made]*;
- (2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;
- (3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;
- (4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;
- (5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;
- (6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;
- (7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;
- (8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;
  - (9) An assurance that a database shall be maintained, which shall:
  - (a) Record:
  - 1. Each instance of utilization review;
  - 2. Each instance of medical bill audit;
  - 3. The name of the reviewer;
  - 4. The extent of the review;
  - 5. The conclusions of the reviewer; and
  - 6. The action, if any, taken as the result of the review;
  - (b) Be maintained for a period of at least two (2) years; and
- (c) Be subject to audit by the <u>commissioner</u> [executive director], or his agent, pursuant to KRS 342.035(5)(b);
- (10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the

reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

- (11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and
- (12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035 (8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making. [An assurance that the acute low back pain practice parameter adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating an applicable low back claim. Additional medical guidelines which may be adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan.]

Section <u>6</u> [<del>5</del>]. Claim Selection Criteria. (1) Unless the carrier, in good faith, denies the claim as noncompensable, medical services reasonably related to the claim shall be subject to utilization review if:

- (a) A medical provider requests preauthorization of a medical treatment or procedure;
- (b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;
  - (c) The total medical costs cumulatively exceed \$3000;
  - (d) The total lost work days cumulatively exceed thirty (30) days; or
  - (e) An arbitrator or administrative law judge orders a review.
- (2) If applicable, utilization review shall commence when the carrier has notice that a claims selection criteria has been met.
  - (a) The following requirements shall apply if preauthorization has been requested:
- 1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) <u>business</u> [working] days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional <u>business</u> [working] days.
- 2. The requested information shall be <u>submitted[tendered]</u> by the medical provider within ten (10) <u>business</u> [working] days.
- 3. The initial utilization review decision shall be rendered within two (2) <u>business</u> [working] days following receipt of the requested information.
  - (b) The following requirements shall apply if retrospective utilization review occurs:
- 1. The initial utilization review decision shall be communicated to the medical provider and employee within ten (10) <u>calendar</u> days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional <u>business</u> [working] days.
- 2. The requested information shall be <u>submitted[tendered]</u> by the medical provider within ten (10) <u>business</u> [<del>working</del>] days.

- 3. The initial utilization review decision shall be rendered within two (2) <u>business</u> [working] days following receipt of the requested information.
- (3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.
- (4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1). The thirty (30) day period shall commence on the date of the final utilization review decision.
- (5) Each medical bill audit shall be initiated within seven (7) <u>calendar</u> days of receipt to assure:
- (a) Compliance with applicable fee schedules, in accordance with 803 KAR Chapter 25;
  - (b) Accuracy; and
  - (c) That a physician has been designated in accordance with 803 KAR 25:096.
- (6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 7 [6]. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. <u>The following professionals</u> shall issue an initial utilization review approval:

- (a) A physician; [7]
- (b) A registered nurse; [,]
- (c) A licensed practical nurse: [,]
- (d) A medical records technician; [7] or
- (e) Other personnel whose[, who through] training and experience qualify them[is qualified] to issue decisions on medical necessity or appropriateness [, shall issue the initial utilization review approval].
- (2) <u>Only</u> a physician <u>may[shall]</u> issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.
- (3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section <u>8</u> [7]. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

(a) Be issued to both the medical provider and the employee in a timely manner but no more than ten (10) <u>calendar</u> days from the initiation of the utilization review process;

- (b) Be clearly entitled "UTILIZATION REVIEW NOTICE OF DENIAL"; and
- (c) Contain:
- 1. A statement of the medical reasons for denial;
- 2. The name, state of licensure and medical license number of the reviewer; and
- 3. An explanation of utilization review reconsideration rights.
- (2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.
- Section 9 [8]. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.
- (a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within fourteen (14) <u>calendar</u> days of receipt of a written notice of denial.
- (b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.
- (c) A written reconsideration decision shall be rendered within ten (10) <u>calendar</u> days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".
- (d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.
- (2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095, has not previously reviewed the matter, an aggrieved party may request further review by:
  - 1. A board eligible or certified physician in the appropriate specialty or subspecialty; or
  - 2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.
- (b) A written decision shall be rendered within ten (10) <u>calendar</u> days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".
- (3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.
- (a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) <u>calendar</u> days of receipt of that decision.
- (b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

- (c) A written decision shall be rendered within ten (10) <u>calendar</u> days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION".
- (d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

<u>Section 10. Utilization Review and Medical Bill Audit Program. (1) The utilization review</u> <u>program shall assure that:</u>

- (a) A utilization reviewer is appropriately qualified;
- (b) Treatment rendered to an injured worker is medically necessary and appropriate; and
  - (c) Necessary medical services are not withheld or unreasonably delayed.
  - (2) The medical bill audit program shall assure that:
- (a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy *comply [complies]* with KRS Chapter 342 and *803 KAR Chapter 25[applicable administrative regulations]*;
  - (b) A medical bill auditor is appropriately qualified; and
  - (c) A statement for medical services is not disputed without reasonable grounds.

Section 11. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

- (2) A carrier shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.
- (3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.
- (4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.
  - (5) A plan shall be approved for a period of four (4) years.
- (a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.
- (b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

- (6) A carrier, who contracts with an approved vendor for utilization review services, shall provide annually to the commissioner summaries of the number of **utilization** [utilizations] reviews, waivers per KRS 342.035(5)(c), utilization review approvals for treatment, utilization review denials for treatment and appeals to the medical director. These[Such] annual reports of the approved vendor shall be filed with the Department by August 1 for the preceding fiscal year ending June 30.
- Section 12. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:
- (1) A description of the process, policies and procedures for making [whereby] decisions [shall be made];
- (2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;
- (3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;
  - (4) A description of the:
- (a) Qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit; and
  - (b) The manner in which the personnel shall be involved in the review process;
- (5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;
- (6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;
- (7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;
- (8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;
  - (9) An assurance that a database shall be maintained, which shall:
  - (a) Record:
  - 1. Each instance of utilization review;
  - 2. Each instance of medical bill audit;
  - 3. The name of the reviewer;
  - 4. The extent of the review;
  - 5. The conclusions of the reviewer; and
  - 6. The action, if any, taken as the result of the review;
  - (b) Be maintained for a period of at least two (2) years; and
  - (c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b);

- (10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;
- (11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and
- (12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035 (8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making.

#### Section 13. Claim Selection Criteria and Process.

- (1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035 (5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:
  - (a) A medical provider requests preauthorization of a medical treatment or procedure;
- (b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;
  - (c) The total medical costs cumulatively exceed \$1000; or
  - (d) The total lost work days cumulatively exceed fifteen (15) days.
- (2) Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of *the [such]* notice. Failure by the medical payment obligor to waive and communicate its waiver to the employee and medical provider or initiate its utilization review process within two (2) business days shall result in the medical payment obligor paying for the subject medical services pursuant to the appropriate fee schedules, *in accordance with 803 KAR Chapter* 25.
- (a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived:
- 1. The utilization review decision shall be rendered and communicated to the medical provider and employee, and the employee's attorney if represented, within two (2) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, [tender of] a single request shall be made within two (2) additional business days.
- 2. The requested information shall be **submitted** [tendered] by the medical provider within five (5) business days.
- 3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.
  - (b) The following requirements shall apply if retrospective utilization review occurs:

- 1. The utilization review decision shall be rendered and communicated to the medical provider and employee, and the employee's attorney if represented, within five (5) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, [tender of] a single request shall be made within two (2) additional business days.
- <u>2. The requested information shall be **submitted** [tendered] by the medical provider within five (5) business days.</u>
- 3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.
- (3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.
- (4) Initiation of utilization review shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the utilization review decision.
- (5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:
- (a) Compliance with applicable fee schedules, in accordance with 803 KAR Chapter 25;
  - (b) Accuracy; and
  - (c) That a physician has been designated in accordance with 803 KAR 25:096.
- (6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

#### Section 14. Utilization Review and Medical Bill Audit Personnel Qualifications.

- (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.
- (2) **Only** a physician **may** [shall] issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.
- (3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

#### Section 15. Written Notice of Denial.

(1) Following utilization review, a written notice of denial shall:

- (a) Be clearly entitled "UTILIZATION REVIEW NOTICE OF DENIAL"; and
- (b) Contain:
- 1. A statement of the medical reasons for denial;
- 2. The name, state of licensure, and medical license number of the reviewer; and
- 3. An explanation of utilization appeal rights with instructions on how to proceed with an appeal.
- (2) The Department shall develop and provide a form on its website that a medical payment obligor may use to comply with Section 15 (1) above.
- (3) A copy of the written notice of denial along with the mailing address, telephone number, and, if known, the email address of the employee, the employee's attorney if represented, and medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall be sent by electronic mail to the medical director on the same day that the notice of denial is rendered and communicated to that medical provider and employee. The medical director shall then immediately notify the employee, the employee's attorney if represented, and that medical provider of the actions required to appeal the utilization review denial at no cost to the employee.
- (4) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

#### Section 16. Medical Director.

- (1) After consultation with the Commissioner, the [The] Secretary shall appoint a medical director to:
- (a) process appeals of utilization review decisions and medical bill audit decisions rendered pursuant to this *administrative* regulation; [-] and
- (b) at least annually, review and advise the commissioner and the Secretary on the effectiveness of the Medical Fee Schedule for Physicians, the Treatment Guidelines and the Pharmaceutical Formulary in reducing costs and speeding the delivery of medical services to employees receiving medical benefits under KRS Chapter 342.
- (2) The medical director shall be a Kentucky licensed physician in good standing with the Kentucky Board of Medical Licensure.
- (3) The medical director may, if [when] appropriate, seek the assistance of other physicians to assist or perform any tasks outlined within this administrative regulation. If [When] the treatment under appeal is chiropractic treatment, the medical director shall seek the assistance of a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.
- (4) The medical director shall chair a Workers' Compensation Medical Advisory Committee to provide advice on issues related to the medical treatment of injured workers. The medical director may request the committee to advise on the medical aspects of the Department's various programs in advancing the goal of ensuring that all

injured employees receive superior quality and cost efficient treatment to facilitate recovery from injury and a swift, safe return to the workforce.

- (a) In addition to the medical director serving as chair, the commissioner shall serve on the Workers' Compensation Medical Advisory Committee and may appoint the following to the Workers' Compensation Medical Advisory Committee:
  - 1. Deputy commissioner; [-] and
- 2. A representative for:
  - a. Employers;[-]
  - b. Employees;[7]
  - c. Labor unions;[-]
  - d. Insurance;[7]
  - e. Self-insured employers;[-]
  - f. Occupational medicine; [-]
  - **q.** Chiropractic; [7]
  - h. Orthopedics;[7]
  - i. Neurosurgery;[7],
  - j. Psychiatry [psychiatric] ;[-]
  - k. Pain management rehabilitation; [7]
  - <u>l. Pain management; [7]</u>
  - m. Emergency medicine; [-]
  - n. Hospitals, [a hospital representative] ;[-] and
  - o. Pharmacies [a pharmacy representative].
- (b) No less than annually, the Workers' Compensation Medical Advisory Committee shall provide the commissioner and Secretary with a report concerning the activity, effectiveness and impact of the medical director and the utilization review programs on the delivery of payment of medical services to injured employees.

#### Section 17. Appeals of Utilization Review Decisions.

- (1) Upon receipt of a written notice of denial of treatment subject to utilization review, the employee or medical provider whose treatment, recommended treatment, or prescribed medication, is being denied may appeal the utilization review decision to the medical director.
- (2) The employee or medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall have **forty-five (45)** [thirty (30)] calendar days from receipt of the written notice of denial to appeal the utilization review decision to the medical director. The medical director may extend the time to appeal for good cause.
- (3) Failure to appeal to the medical director shall result in the utilization review decision having preclusive effect as to the reasonableness and necessity of the treatment.

- (4) An appeal to the medical director shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period to pay the approved medical expenses shall commence on the date of the medical director's written determination or the date on which the parties reach agreement regarding disputed treatment.
- (5) The Department shall charge a fee of \$400.00 for each appeal submitted to the medical director. The fee shall be paid by the medical payment obligor no later than fifteen (15) calendar days following the date of the appeal to the medical director. Failure to pay the fee shall constitute a failure to complete a necessary step in the administrative review process. *This failure shall[and]* be construed as an admission by the employer that the denial was in error, and the medical director *shall [should]* find accordingly. Failure to pay the fee may also result in assessment of a civil penalty pursuant to KRS 342.990(7)(e).
- (6) (a) The appeal shall be dismissed if, within five (5) calendar days of the appeal to the medical director, the medical payment obligor provides [may cause the appeal to be dismissed by providing] notice of dismissal to the:
- 1. Medical director; [7]
- <u>2. Medical provider whose treatment, recommended treatment, or prescribed medication is being denied; [,] and</u>
- 3. Employee.
- (b) With this [such a] dismissal, the medical payment obligor shall authorize the payment of the questioned services pursuant to the appropriate fee schedule, in accordance with 803 KAR Chapter 25. If the [such] dismissal occurs, a [no] fee as required by this administrative regulation shall not be due, or if paid, the fee shall be refunded to the medical payment obligor.
- (7) Upon receipt of an appeal request by an employee or medical provider whose treatment or recommended treatment is being denied:
  - (a) The medical director shall conduct the utilization review appeal.
- (b) The medical director may contact the medical provider whose treatment, recommended treatment, or prescribed medication is being denied for the purpose of obtaining any necessary missing information. Necessary information shall be considered missing until the medical director has obtained:
- 1. All of the records reviewed by the physician that issued the utilization review denial; and
- 2. All medical treatment records from the date of the injury or for the two year period preceding the date of the utilization review, whichever is shorter, for the injury or occupational disease giving rise to the treatment, recommended treatment, or prescribed medication for which the utilization review denial was issued.

- (c) Within seven (7) calendar days from receipt of the appeal, the [The] medical director shall set a date on which all relevant information shall be due to the medical director.
- (d) The medical director shall determine the medical necessity of the treatment, recommended treatment, or prescribed medication within fourteen (14) calendar days after receipt of all necessary information by the medical director.
- (e) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is reasonable and necessary, the medical director shall plainly state the reasons for each approval in a written determination.
- (f) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is not reasonable and necessary, the medical director shall plainly state the reasons for each denial in a written determination.
- (g) No later than two (2) days after the medical director has made a determination, the [The] medical director shall transmit the written determination to the medical provider whose treatment, recommended treatment, or prescribed medication, is being denied; [-] the employee; [-] the employee's attorney if represented; [-] the employer; and the medical payment obligor by facsimile, electronic mail, or the United States Postal Service [within fourteen (14) calendar days after receipt of all necessary information by the medical director].
- (h) If [Additionally, upon a determination by] the medical director determines that there was no reasonable basis upon which to deny the treatment, recommended treatment, or prescribed medication, or that the medical payment obligor failed to follow the required utilization review procedure, then the medical director shall request the commissioner or the administrative law judge to impose [that] sanctions [be imposed] on the medical payment obligor by directing that the employee's or physician's costs of the appeal, including reasonable attorney's fees, be paid by the medical payment obligor. [Whether or not to impose the these [aforementioned] sanctions is within the discretion of the commissioner or administrative law judge to whom the request for sanctions was addressed.]
- (i) If at any time during the appeal with the medical director, the medical payment obligor raises work relatedness, causation or non-compensability issues, the parties shall be advised by the medical director that resolution of these issues requires a filing of an application for adjustment of claim or Form 112, Medical Dispute, whichever is appropriate. The medical director, however, shall continue with the appeal and issue a written determination of the reasonableness and necessity of the proposed medical treatment consistent with this regulation.
- (8) A determination by the medical director of the reasonableness and necessity of the treatment, recommended treatment, or prescribed medication shall remain effective for six (6) months from the date of the written determination of the medical director, unless a change in condition is shown by objective medical findings.

- (9) If the medical director's determination is to approve the medical treatment, the medical payment obligor shall pay for the treatment, recommended treatment, or prescribed medication within the thirty (30) day time period set forth in KRS 342.020(4) unless a Form 112, Medical Dispute, is timely filed.
- (10) If a party disagrees with the medical director's written determination, the aggrieved party may file a Form 112, Medical Dispute, and proceed in accordance with 803 KAR 25:012.
- (11) The filing of a Form 112, Medical Dispute, shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4) until such time as the reasonableness and necessity of the proposed medical treatment is decided by an administrative law judge.
- (12) Failure to file a Form 112, Medical Dispute, within fourteen (14) calendar days shall result in the written determination of the medical director having preclusive effect as to the reasonableness and necessity of the treatment that is the subject of the medical director's determination.
- <u>Section 18. Reconsideration and Appeals of Medical Bill Audit Decisions. A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.</u>
- (a) A request for reconsideration of the medical bill audit decision shall be made by an ag-grieved party within fourteen (14) calendar days of receipt of that decision.
- (b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.
- (c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT-RECONSIDERATION DECISION".
- (d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).
- (e) Any party may appeal the "MEDICAL BILL AUDIT RECONSIDERATION DECISION" to the medical director pursuant to Section 17 of this regulation.

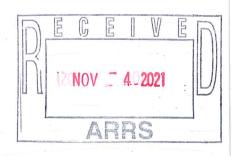


**Andy Beshear** Governor

### PUBLIC PROTECTION CABINET Department of Insurance

P.O. Box 517
Frankfort, Kentucky 40602-0517
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November 4, 2021



Ray A. Perry Secretary

Sharon P. Clark Commissioner

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 39:070. Proof of motor vehicle insurance.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 39:070, the Department of Insurance proposes the attached amendment to 806 KAR 39:070.

Sincerely,

Abigail Gall, Régulations Coordinator

Department of Insurance

500 Mero Street Frankfort, KY 40601



#### SUGGESTED SUBSTITUTE

Final Version: 10/22/2021 10:55 AM

### PUBLIC PROTECTION CABINET Department of Insurance Division of Property and Casualty

#### 806 KAR 39:070. Proof of motor vehicle insurance.

RELATES TO: KRS 186.021(3), 186A.040, 186A.042, 186A.095, 304.39-080, 304.39-083, 304.39-085, 304.39-087, 304.39-090, 304.39-117

STATUTORY AUTHORITY: KRS 186.021(3), 304.2-110(1), 304.39-117(1), 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.021(3) <u>authorizes [requires]</u> the commissioner of the Department of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.2-110(1) and 304.39-300 authorize the commissioner to promulgate administrative regulations necessary for or as an aid to enforce the insurance code. KRS 304.39-117(1) requires the Department of Insurance to promulgate an administrative regulation that establishes the requirements for the proof of insurance that an insurer shall give to an insured. This administrative regulation establishes the requirements for the proof of insurance. [3] the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy. [3] the methods for presenting proof of motor vehicle insurance to a county clerk or peace officer. [4] and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or commercial policy of motor vehicle insurance is cancelled or not renewed.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

- (2) "Department" is defined by KRS 304.1-050(2).
- (3) "Insurer" means an insurer defined by [under] KRS 304.1-040.
- (4) "Motor vehicle insurance policy" means an insurance contract that provides security covering a motor vehicle required to be registered pursuant to KRS 186.020 and insured pursuant to KRS 186.021 and 304.39-080.
  - (5) "Person" is defined by KRS 304.1-020.
- (6) "Personal lines motor vehicle policy" means an insurance policy, issued by an insurance carrier authorized to do business in the Commonwealth of Kentucky, which insures a personal motor vehicle.
  - (7) "VIN" means the vehicle identification number of a motor vehicle.

Section 2. Proof of Insurance to be Provided by Insurers. (1) The proof of insurance required by KRS 304.39-117 shall be provided to the insured when a policy is issued, renewed, or amended to include a vehicle. An insurer electing to provide proof of insurance in an electronic format shall provide a printed proof of insurance unless the insured requests to receive proof of insurance in electronic format.

(2) Printed proof of insurance card.

- (a) Two (2) copies of the printed proof of insurance card shall be provided for each motor vehicle insured under a motor vehicle insurance policy.
  - (b) Size and format of the printed proof of insurance card.
  - 1. The printed proof of insurance card shall be:
  - a. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;
- b. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;
- c. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or
- d. A substantially similar size to the dimensions established in clauses a through c. of this subparagraph.
  - 2. The printed insurance card shall be on white paper with black or blue ink.
  - (3) Proof of insurance in an electronic format.
- (a) Proof of insurance in an electronic format shall be downloaded from or transmitted by the insurer or agent to the insured.
- (b) Proof of insurance in an electronic format shall not include a photographic copy of a paper insurance card on a portable electronic device.
- (4) Mandatory contents of the proof of insurance. In either paper or electronic format, the proof of insurance shall prominently display the following information, in the order listed:
  - (a) Title: "COMMONWEALTH OF KENTUCKY PROOF OF INSURANCE";
- (b) The name of the insurance company and its five (5) digit code number assigned by the National Association of Insurance Commissioners (NAIC), or the name of the Self-Insured Group and the group ID number provided by the department;
  - (c) The name of the named insured;
- (d) The effective date and expiration date of coverage. If the policy is amended to add an identified vehicle midterm, the effective date on the card shall be the effective date of the amendment;
  - (e) The policy number;
  - (f) The type of policy:
- 1. If the policy is a personal lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.1 or 19.2, the insurer shall indicate the policy type as "Personal" or "PL"; or
- 2. If the policy is a commercial lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.3 or 19.4, the insurer shall indicate the policy type as "Commercial" or "CL"; and
  - (g) The vehicle or vehicles insured:
- 1. If the type of policy is personal lines (PL), the year, make, model, and VIN of each motor vehicle; or
  - 2. If the type of policy is commercial lines (CL), and:
- a. If the insurance contract covers four (4) or fewer vehicles, the year, make, model, and VIN of each motor vehicle; or
- b. If the insurance contract covers five (5) or more motor vehicles, it may state "Fleet" or the insurer may elect to include the year, make, model, and the VIN of each motor vehicle.
  - (5) Other information to be provided to the insured. The insurer shall:

- (a) Include the following information on the proof of insurance if the information required by subsection (4) of this section is not obscured:
  - 1. The insurer's logo;
- 2. A statement that establishes the procedure for contacting the insurer concerning a claim; and
  - 3. The insurer's address; or
- (b) Include the information listed in paragraph (a) of this subsection on a separate document or electronic image provided with the proof of insurance.
  - (6) An insurer shall provide[furnish] with the proof of insurance the following information:
- (a) Instructions that the insured shall keep a copy of the proof of insurance in each motor vehicle covered by the policy at all times;
- (b) Information as to whether or not the policy is a personal lines motor vehicle policy and whether or not the vehicle has been reported as an insured personal motor vehicle;
- 1. If the policy is a personal lines motor vehicle policy and has been reported as an insured personal motor vehicle[If so], the insured shall be informed that:
- a. The proof of coverage information has been reported electronically to the Department of Vehicle Regulation; and
- b. If the VIN does not appear in the database, the insured may be required to present proof of insurance to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as alternative evidence of proof of coverage; or
- 2. If the policy is not a personal lines motor vehicle policy and has not been reported as an insured personal motor vehicle[If not], the insured shall be instructed to present proof of insurance to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as evidence of proof of coverage; and
- (c) Instructions to compare the VIN appearing on the registration, insurance policy, and proof of insurance to the VIN affixed to the vehicle.
- 1. If the VIN on the motor vehicle title and registration and the VIN on the motor vehicle do not match, the policyholder shall contact the county clerk to have the title and registration corrected.
- 2. If the VIN on the proof of insurance and the motor vehicle do not match, the policyholder shall contact the insurer to have the insurance policy and card corrected. The insurer shall provide the name, address, and telephone number of an insurer representative to contact concerning a discrepancy. The telephone number shall be:
  - a. The phone number of a local agent of the insurer; or
  - b. A toll-free telephone number of the insurer.
- Section 3. Methods of Proving Motor Vehicle Insurance. One (1) of the following methods shall be used to prove that motor vehicle insurance is in effect when registering a motor vehicle:
- (1) The VIN <u>shall appear[appears]</u> as an insured motor vehicle in the Department of Vehicle Regulation's database;
  - (2) Proof of current insurance in paper or electronic format:
- (a) If the database does not list the VIN of a vehicle insured on a personal lines motor vehicle (PL) policy, the proof of coverage shall indicate the proof was effective no more than forty-five (45) days prior to submission to the county clerk; and

(b) The county clerk may require the proof of coverage to be sent directly to the clerk by the agent or company;

(3) A certificate of insurance issued by an insurance agent with a casualty line of authority li-

censed by Kentucky;

- (4) An insurance contract with a declaration page attached showing that the policy is in effect when the motor vehicle is being registered or transferred;
- (5) A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force;
- (6) If the owner of the motor vehicle is serving in the armed forces outside Kentucky, an affidavit by the provost marshal of the base where the person is stationed stating that the motor vehicle is covered by an automobile liability insurance policy; or
- (7) A letter from the Kentucky Department of Insurance serving as prima facie evidence of self-insurance pursuant to KRS 304.39-080(7).
- Section 4. <u>Each month[Beginning January 1, 2006, and each month thereafter]</u>, an insurer shall submit information on each vehicle covered by a personal lines motor vehicle policy according to the rules contained in Section 2.1 of the Kentucky Automobile Liability Insurance Reporting Guide.
- Section 5. For motor vehicles insured under a commercial lines or fleet policy, each insurer shall report cancellations pursuant to Part 2.2 of the Kentucky Automobile Liability Insurance Reporting Guide.[
- Section 6. An insurance agent shall submit to the Department of Vehicle Regulation a completed Form TC96-30 if the purchaser of a binder or temporary insurance contract cancels the binder or contract before the agent has submitted the application to the insurance company.]

Section <u>6 [7]</u>. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Automobile Liability Insurance Reporting Guide", Transportation Cabinet, Department of Vehicle Regulation, Version 1.6, 8/15/2005 [-(Version 1.6, 8/15/2005 edition); and
- (b) "Form No. TC 96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form (5/05 edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Regulation.]
- (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 [Vehicle Regulation, P. O. Box 2014, 200 Mero Street,] Frankfort, Kentucky 40601 [40622], Monday through Friday, 8 a.m. to 4:30 p.m. [The material may also be obtained at the Transportation Cabinet Web site: http://transportation.ky.gov/mvl/home.htm.] The material may also be obtained at the Department of Insurance Web site: http://insurance.ky.gov.

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

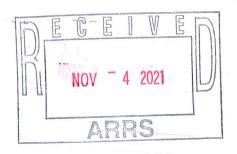


Andy Beshear Governor

### PUBLIC PROTECTION CABINET Department of Insurance

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

November 4, 2021



Ray A. Perry Secretary

Sharon P. Clark Commissioner

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 11:020. Multiple employer welfare arrangements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 11:020, the Department of Insurance proposes the attached amendment to 806 KAR 11:020.

Sincerely,

Abigail Gall, Regulations Coordinator

Department of Insurance

500 Mero Street

Frankfort, KY 40601



#### SUGGESTED SUBSTITUTE

Final Version: 10/22/2021 11:46 AM

### PUBLIC PROTECTION CABINET Department of Insurance Division of Financial Standards and Examinations

806 KAR 11:020. Multiple employer welfare arrangements.

RELATES TO: KRS <u>304.1-050</u>, 304.1-120, [<u>304.1-050</u>,]304, 304.2-160, 304.2-165 304.5-040, 304.9-020, 304.9-051, 304.11-030, 304.11-045, <u>304.17A-005(22)</u>, <u>304.17A-410(7)</u>, <u>304.17A-633</u>, <u>304.17A-633</u>, <u>304.17A-633</u>, <u>304.17A-633</u>, <u>304.17A-633</u>, <u>304.17A-802</u>, <u>304.17A-812</u>, <u>304.99-020</u>,[29 U.S.C. §1002(40).

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 <u>authorizes [provides]</u> [that] the <u>Commissioner</u> [Executive Director] of Insurance <u>to[may]</u> make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. <u>KRS 304.4-010</u> requires the commissioner to <u>established[prescribe]</u> the fees charged by the department and the services for which fees shall be charged by administrative regulation. This administrative regulation requires multiple employer welfare arrangements to provide information to the <u>Commissioner</u> [Executive Director] of Insurance so the <u>Commissioner</u> [Executive Director] of Insurance can enforce applicable laws. <u>This administrative regulation also identifies the provisions of the Insurance Code that will be applicable to multiple employer welfare arrangements.</u>

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

- (1) "Administrator" is [has the meaning as] defined by KRS 304.9-051(1).
- (2) "Agent" is[has the meaning as] defined by KRS 304.9-020(1).
- (3) "Commissioner" ["Executive director" means the Executive Director of the Kentucky Office] of Insurance] is defined by KRS 304.1-050(1).
  - (4) "Department" is defined by KRS 304.1-050(2).
  - (5) ["Doing business" [has the meaning] is defined by [set forth in] KRS 304.11-030(2).
  - (6)]"Health benefit plan" is defined by KRS 304.17A-005(22).
- (6)[(7)] "Health insurance policy" means[has the meaning of] "health benefit plan" as defined by KRS 304.5-040.
  - (7)[(8)] "Health insurance stop-loss policy" is[as] defined by KRS 304.17A-410(7).
  - (8)[(3)][(3)][(3)] "MEWA" [means a] or "multiple employer welfare arrangement":
- (a) [, which is any arrangement which is established or maintained for the purpose of offering or providing health care benefits (other than life insurance benefits) to the employees of two (2) or more employers, or to their beneficiaries] Is defined by 29 U.S.C. [§] 1002(40); and
- [-](b) [A]["MEWA"]Does not mean an arrangement under which health care benefits are fully insured by an insurer authorized to do business in Kentucky.
  - (9)[(10)] "Person" is defined by KRS 304.1-020.

#### (10)[(11)] "Private review agent" is defined by KRS 304.17A-600(11).

- Section 2. (1) [Information to be Provided to the Commissioner Executive Director. (1) Prior to doing business in Kentucky.] A MEWA seeking initial registration shall file with the commissioner an Application for a Certificate of Registration of a Multiple Employer Welfare Arrangement (MEWA) and obtain registration approval from the commissioner pursuant to Section 4 of this administrative regulation.
  - (2) A MEWA shall submit an application fee of \$500 with[at] the [time of] application.
- (3) The application shall include the information required in Section 3 of this administrative regulation. [A MEWA now doing business in Kentucky shall, within twenty (20) days after the effective date of this administrative regulation, file with the executive director in writing the information set forth in Section 3 of this administrative regulation. The executive director will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with applicable laws of Kentucky, the executive director shall take appropriate enforcement action.
- (2) A MEWA not now doing business in Kentucky shall, prior to doing business in Kentucky, file with the executive director the written information set forth in Section 3 of this administrative regulation. The executive director will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with the applicable laws of Kentucky, the executive director shall take appropriate enforcement action.]
- Section 3. Written Information to be Filed with the <u>Commissioner</u> [Executive Director]. The information required to be filed in writing with the <u>commissioner</u> [executive director] in support of <u>an application for a certificate of registration</u> pursuant to Section 2 of this administrative regulation shall **include[be]**[is][as follows]:
- (1) The employer identification number assigned by the Internal Revenue Service to the ME-WA;
  - (2) A copy of any trust document used by the MEWA;
  - (3) A copy [Copies] of any health benefits or life benefits plan documents;
- (4) A copy [Copies] of the most recent [all annual] Form 5500 and M-1 filing [reports] made by the MEWA to the United States Department of Labor [(Form 5500)];
  - (5) A copy [Copies] of any audits conducted with respect to the MEWA;
  - (6) A copy of any [Copies of] actuarial reports prepared for the MEWA;
  - (7) A copy [Copies] of any summary annual reports published for participants in the MEWA;
  - (8) A copy [Copies] of any contracts with agents or administrators;
  - (9) The names of insurers and policy numbers for bonds covering fiduciaries of the MEWA;
  - (10) A copy [Copies] of any stop\_loss, excess, or reinsurance policies held by the MEWA;
  - (11) The AM Best rating of the stop-loss insurer issuing a policy to the MEWA;
- (12) A list of all Kentucky employers participating in the MEWA, including full mailing addresses;
- (13[42]) A list of the names, addresses, official positions, and biographical information of all officers and trustees of the MEWA;
  - (14[13]) A copy [Copies] of any marketing materials and rate manuals; and

(15[44]) The total number of employees, dependents, and beneficiaries participating in the MEWA.

Section 4. Issuance of Certificate of Registration.

- (1) Upon receipt of an application for a certificate of registration submitted in accordance with Section 2 of this administrative regulation and the written information submitted in accordance with Section 3 of this administrative regulation, the commissioner shall issue or deny the application. A certificate of registration shall be issued only if the commissioner finds the following conditions are met:
- (a) The persons responsible for the conduct of the affairs of the MEWA **shall be[are]** competent, trustworthy, and possess good reputations; and
- (b) The MEWA **shall be[is]** financially responsible and **[may]** reasonably **[be]** expected to meet its obligations to participants and prospective participants. In making this determination the commissioner **shall[may]** consider:
  - 1. The adequacy of working capital;
- 2. Any agreement with an insurer, a government, or any other organization for insuring the payment of health claims or the provisions for automatic applicability of an alternative coverage in the event of discontinuance of the coverage offered through the MEWA; and
- 3. Compliance with KRS 304.17A-812[-] as a guarantee that the financial solvency obligations of the MEWA **shall**[will] be met.
- (2) A MEWA subject to the jurisdiction of the department shall comply with any applicable requirements of KRS Chapter 304, including KRS 304.17A-600 through 304.17A-633. A MEWA that is issued a certificate of registration shall comply with the requirements as established in[defined by] KRS 304.17A-600 through 304.17A-633. A MEWA may contract with a registered private review agent that is licensed in Kentucky to fulfill these requirements.
- (3) A MEWA that is issued a certificate of registration shall be subject to the commissioner's authority to investigate complaints pursuant to KRS 304.2-160 and [KRS] 304.2-165.

#### Section 5. Renewal of Certificate of Registration.

- (1) A MEWA shall annually renew a certificate of registration by submitting:
- (a) The application required by Section 2 of this administrative regulation;
- (b) The information required by Section 3 of this administrative regulation.
- (2) The information required by subsection (1) of this section shall be submitted to the department no later than March 1 of each year.

#### Section 6. [Responsibility to Exercise Due Diligence.

- (1) Requirements of an Agent. Prior to engaging in, or assisting any person to engage in, offering health care benefits to an employer or person located in this state, an insurance agent shall perform appropriate due diligence and apply professional judgment to establish that:
  - (a) The entity providing the policy is:
  - 1. A MEWA registered in accordance with Section 4 of this administrative regulation;
  - 2. An insurer holding a certificate of authority to offer health insurance in this state;
  - 3. An entity otherwise licensed to offer health insurance in this state; or

- 4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11 045; and
- (b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.
- (2) Requirements of an Administrator. Prior to entering into any administrative contract to assist any person with administration of health care benefits covering employees of an employer or a person located in this state, an administrator shall carry out appropriate due diligence and apply professional judgment to establish that:
  - (a) The entity providing the health care benefits is:
  - 1. A MEWA registered in accordance with Section 4 of this administrative regulation;
  - 2. An insurer holding a certificate of authority to offer health insurance in this state;
  - 3. An entity otherwise licensed to offer health insurance in this state; or
- 4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and
- (b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.
- (3) Requirements of an Insurer. Prior to issuing a stop-loss policy for a health insurance policy covering employees, employee dependents, or individuals located in this state, an insurer shall carry out appropriate due diligence and apply professional judgment to establish that:
  - (a) The entity providing the health care benefits is:
  - 1. A MEWA registered in accordance with Section 4 of this administrative regulation;
  - 2. An insurer holding a certificate of authority to offer health insurance in this state;
  - 3. An entity otherwise licensed to offer health insurance in this state; or
- 4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and
- (b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.

Section 7. Reporting Requirement.

- (1) An insurance agent, administrator, or insurer shall file a written complaint with the department pursuant to KRS 304.2-160 and KRS 304.2-165 if, as a result of the due diligence requirement in Section 6 of this administrative regulation, the insurance agent, administrator, or insurer knows or has reason to know that:
- (a) A health insurance policy is, or is about to be, offered to the public in this state by an entity that is not permitted to offer health insurance in this state;
- (b) The coverage is not as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage; or
- (c) The health insurance policy has not been filed with, and approved by, the department and is not otherwise exempt from filing requirements.
- (2) The written complaint required by subsection 1 of this section shall be filed within fourteen (14) days of discovering activity prohibited by this regulation, determination of improper registration, or otherwise unauthorized business.

<u>Section 8.</u>] Penalties and Liability.[{1}] A person who violates Section 2 of this administrative regulation shall incur[is subject to] a civil penalty of [one thousand dollars {]\$1000[}] for each violation.

[(2) An insurance agent, administrator, or insurer that fails to file a written complaint in accordance with Section 7 of this administrative regulation shall be subject to administrative penalties, up to and including revocation, suspension, or civil penalty for each violation pursuant to KRS 304.99-020.]

Section **7.[9.]** Exemptions. The provisions of this administrative regulation shall not apply to a self-insured employer organized association group as defined **by[in]** KRS 304.17A-802(10).[Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]

<u>Section 8.[10.]</u> <u>Incorporated by Reference. (1) The following *material[information]* is incorporated by reference:</u>

- (a) Application for a Certification of Registration of a MEWA (CoR MEWA Form), 7/2021;
- (b) United States Department of Labor Form 5500, 2020;
- (c) United States Department of Labor Form M-1, 2020; and
- (d) Kentucky Designation of Person to Receive Legal Process (Form 800), 1/2011.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 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's internet Web site at http://insurance.ky.gov/.

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



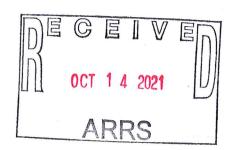
Andy Beshear Governor

Ray A. Perry Secretary Public Protection Cabinet
Department of Housing, Buildings and Construction
500 Mero Street, First Floor
Frankfort, KY 40601

Phone: 502-573-0365 Fax: 502-573-1057 http://dhbc.ky.gov

October 14, 2021

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



Rick Rand

Max Fuller

Commissioner

**Deputy Commissioner** 

RE: 815 KAR 4:025 Permit and inspection fees for new and altered elevators, chairlifts, fixed guideway systems, and platform lifts.

Dear Co-Chair West and Co-Chair Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 815 KAR 4:025, the Department of Housing, Buildings and Construction proposes the attached amendment to 815 KAR 4:025.

Sincerely,

/s/ Benjamin Siegel

Benjamin Siegel General Counsel Department of Housing, Buildings & Construction 500 Mero Street, 1<sup>st</sup> Floor Frankfort, KY 40601



#### **SUGGESTED SUBSTITUTE**

Final Version: 10/7/2021 3:16 PM

### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement

815 KAR 4:025. Permit and inspection fees for new and altered elevators, chairlifts, <u>fixed guideway systems</u>, and platform lifts.

RELATES TO: KRS 198B.050, 198B.400-198B.540

STATUTORY AUTHORITY: KRS 198B.060, 198B.4009, 198B.490, 198B.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.420 requires the Department of Housing, Buildings and Construction to administer all aspects of the State Elevator and Fixed Guideway System Inspection Program. KRS 198B.520 requires a permit to be obtained prior to the construction, installation, or alteration of an elevator or fixed guideway system. KRS 198B.490 requires the department to promulgate administrative regulations governing the safety and inspection of elevators and fixed guideway systems and authorizes the department to **establish[prescribe]** reasonable fees to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B.[KRS 198B.490 authorizes the Commissioner of the Department of Housing, Buildings and Construction to make inspections and prescribe the associated fees to be charged for each elevator, chairlifts, and platform lifts constructed, installed, or altered within the Commonwealth.] This administrative regulation establishes the permit [permitting] and inspection fees for passenger elevators, freight elevators, [and initial installation fees for] chairlifts, fixed guideway systems, and platform lifts.

Section 1. Definitions. (1) "Alteration":

- (a) Means a change that [: (a)] is made to an elevator, elevator equipment, elevator device, chairlift, fixed guideway system or platform lift; and
  - (b) Does not *mean[include*] maintenance, repair, or replacement of parts in kind.
  - (2) "Elevator" is defined by KRS 198B.400(1).
  - (3) "Fixed quideway system" is defined by KRS 198B.400(11).

Section 2. Issuance of Permits. (1) Permits to construct, install, or alter an elevator, chairlift, fixed guideway system, or platform lift shall only be issued to a Kentucky licensed elevator contractor.

(2) A Kentucky licensed elevator mechanic shall not construct, install, or alter an elevator, chairlift, fixed guideway system, or platform lift unless the work is performed under the supervision of a Kentucky licensed elevator contractor or exempt from supervision under the provisions of KRS 198B.4009(2).

Section 3. Permit Required. (1) An application shall be made for a permit prior to construction, installation, or alteration of an elevator, chairlift, fixed guideway system, or platform lift on

one (1) of the following:

- (a) Form EV-1, Elevator Construction and Installation Permit Application; or
- (b) Form EV-2, Elevator Alteration Permit Application.
- (2) An application shall be submitted to the <u>department[Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator section]</u> before commencing elevator, <u>chairlift</u>, <u>fixed guideway system</u>, <u>or platform lift</u> work <u>that[which]</u> requires[requiring] a permit.

Section 4. [Passenger Elevator] Construction, Installation, and Alteration Permit Fees. Permit and inspection fees for passenger elevators, <u>freight elevators</u>, <u>chairlifts</u>, <u>fixed guideway systems</u>, and platform lifts shall be as follows:

| Horsepower (per unit) | Permit Fee  |
|-----------------------|---|
| Zero (0) to five (5)  | \$85  |
| Six (6) to ten (10)   | \$100   |
| More than ten (10)    | \$100 plus \$10 for each additional horsepower exceeding ten (10) |

Section 5. [Freight Elevator Construction, Installation, and Alteration Permit Fees. Permit and inspection fees for freight elevators shall be as follows:

| Horsepower (per      | Permit Fee   |
|----------------------|--|
| Zero (0) to five (5) | \$85   |
| Six (6) to ten (10)  | <del>\$100</del>                                   |
| More than ten (10)   | \$100 plus \$10 for each additional horsepower ex- |
|                      | ceeding ten (10)                                   |

Section 6]. Inspection Fees. (1)(a) Each passenger elevator, freight elevator, chairlift, fixed guideway system, or platform lift permit shall include up to two (2) inspections [(one (1) final and one (1) supplemental, if necessary)] at no additional cost.

- (b) All passenger elevator, <u>freight elevator</u>, <u>chairlift</u>, <u>fixed guideway system</u>, <u>or platform lift</u> inspections in excess of the two (2) provided with the purchase of the permit shall be performed at the rate of the original permit fee per inspection.
- (2)[(a) Each freight elevator permit shall include two (2) inspections (one (1) final and one (1) supplemental) at no additional cost.
- (b) All freight elevator inspections in excess of the two (2) provided with the purchase of the permit shall be performed at the rate of the original permit fee per inspection.
- (3) The inspection fee for a newly installed or altered chairlift or platform lift shall be eighty-five (85) dollars for the first two (2) inspection and eighty-five (85) dollars per each additional inspection required prior to approval of the installation or alteration.
- (4)] Payment for all necessary permits and inspections shall be received by the department[the elevator section] prior to final approval of an elevator, chairlift, fixed guideway system,

or platform lift construction, installation, or alteration being granted.

<u>Section 6. Elevator Inspection Checklist. Prior to requesting a final inspection of the constructed, installed, or altered elevator, the elevator contractor shall submit a completed Elevator Inspection Violation Reference List for New and Existing Elevator Devices and Scheduling Checklist, Form EV-3, to the department.</u>

Section 7. Certificate of Approval. Upon the satisfactory completion of final inspection of the constructed, installed, or altered elevator, chairlift, <u>fixed guideway system</u>, or platform lift a certificate of approval shall be issued by the department.

Section 8. Expiration of Permits. An elevator permit issued pursuant to this administrative regulation shall be subject to revocation, expiration, or extension pursuant to the provisions of KRS 198B.520.

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

- (a) "Elevator Construction and Installation Permit Application", Form EV-1, May 2020; and
- (b) "Elevator Alteration Permit Application", Form EV-2, May 2020.
- (c) "Elevator Inspection Violation Reference List for New and Existing Elevator Devices and Scheduling Checklist", Form EV-3, May 2021.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings[-] and Construction; 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email <a href="mailto:benjamin.siegel@ky.gov">benjamin.siegel@ky.gov</a>.

\*Note to Compiler: The department will file one (1) replacement copy of the material incorporated in Section 9(1)(c). The form date is not changing. At the very end of the material, a small portion of language was inadvertently cut off. The department is also going to assure that this language is not cut off on the Web link to this material.



Andy Beshear Governor

Ray A. Perry Secretary

**Public Protection Cabinet** 

Department of Housing, Buildings and Construction 500 Mero Street, First Floor Frankfort, KY 40601 Phone: 502-573-0365 Fax: 502-573-1057

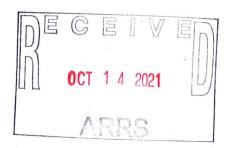
Rick Rand Commissioner

Max Fuller Deputy Commissioner

October 14, 2021

http://dhbc.ky.gov

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



RE: 815 KAR 7:080 Licensing of fire protection sprinkler contractors.

Dear Co-Chair West and Co-Chair Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 815 KAR 7:080, the Department of Housing, Buildings and Construction proposes the attached amendment to 815 KAR 7:080.

Sincerely,

/s/ Benjamin Siegel

Benjamin Siegel General Counsel Department of Housing, **Buildings & Construction** 500 Mero Street, 1st Floor Frankfort, KY 40601



#### SUGGESTED SUBSTITUTE

Final Version: 10/7/2021 3:28 PM

### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction

#### 815 KAR 7:080. Licensing of fire protection sprinkler contractors.

RELATES TO: KRS 198B.550 - 198B.630 STATUTORY AUTHORITY: KRS 198B.555

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.555 requires the <u>commission-er[Commissioner]</u> of the Department of Housing, Buildings and Construction to <u>promulgate[adopt]</u> reasonable administrative regulations <u>necessary</u> for the administration of <u>KRS 198B.550 through[to]</u> 198B.630[a Fire Protection Sprinkler Contractor's Law]. This administrative regulation establishes the qualifications, responsibilities, procedures, and fees for licensing <u>fire protection sprinkler contractors and for certifying certificate of competency holders[those contractors. This amendment is necessary to increase contractor licensing and certificate of competency fees to support the program. These fees have not been increased since the program was established in 1984].</u>

Section 1. Definitions. (1) "Department" ["Office"] is defined by [in] KRS 198B.550(1).

- (2) "Certificate of competency" means the certificate of registration issued by the <u>department[office]</u> to an individual who demonstrates competency to design fire suppression systems by successfully completing the minimum requirements of <u>this[the][this]</u> administrative regulation.
  - (3) "Certificate holder" is defined by[in] KRS 198B.550(5).
  - (4) Commissioner["Executive Director"] is defined by[in] KRS 198B.550(2).
  - (5) "Fire protection sprinkler contractor" is defined **by[in]** KRS 198B.550(3).
  - (6) "Fire protection sprinkler system" is defined by/in/ KRS 198B,550(6).
  - (7) "Inspection" means a physical and visual examination of a sprinkler system installation.
- (8) "Installation" means the initial placement of a system or its extension or alteration after initial placement.[
  - (9) "NICET" is defined in KRS 198B,570.1

Section 2. Responsibilities of the <u>Commissioner</u>[Executive Director]. The <u>commissioner</u> [executive director] shall review applications, accept fees, and issue certificates and licenses to qualified persons and firms pursuant to this administrative regulation. He <u>or she</u> shall conduct investigations upon <u>receipt of written</u> complaints <u>that[which]</u> allege that a certificate holder or licensed fire protection sprinkler contractor has acted in violation of KRS Chapter 198B or <u>of</u> this administrative regulation.

Section 3. Applicability. Except as exempted by KRS 198B.560, this administrative regulation shall apply to all firms and persons who engage in the business of design and preparation of technical drawings, installation, repair, alteration, extension, maintenance, or inspection of a fire

protection sprinkler system.

Section 4. Application for Certificate of Competency. (1) An applicant for certificate of competency shall comply with the examination requirements in KRS 198B.570 for the type of system for which the applicant seeks certification.

- (2) <u>An applicant[Application]</u> for a fire protection sprinkler system certificate of competency shall <u>submit to the department:[be submitted on Forms FPS-SC-2 and 2a.]</u>
  - (a) Completed forms FPS-SC-2 and 2a;
- (b) Proof of current National Institute for Certificate in Engineering Technologies (NICET) certification in fire protection engineering technology automatic sprinkler system design, level III, or higher; and
  - (c) A nonrefundable, prorated certificate fee of \$125.
- (3) <u>An applicant[Application]</u> for a range hood suppression system certificate of competency shall <u>submit to the department</u>:
  - (a) Completed[Be-submitted-on] Forms FPS-RC-2 and 2a;
  - (b) Proof of[Included] current manufacturer's training certification; and[-]
  - (c) A nonrefundable, prorated certificate fee of \$125.
- (4) Application for a chemical system certificate of competency shall be as <u>established in</u> <u>paragraphs (a) and (b) of this subsection.[follows:]</u>
- (a) <u>An applicant for a pre-engineered</u>[For preengineered] chemical systems (limited) <u>certificate of competency shall submit to the department</u>:
  - 1. Completed[Submit application on] Forms FPS-CC-2 and 2a;
  - 2. Proof of[Include] current manufacturer's training certification; and
  - 3. A nonrefundable, prorated certificate fee of \$125.
- (b) <u>An applicant for[For] an engineer chemical systems (unlimited) certificate of competency shall submit to the department:</u>
  - 1. Completed[Submit application on] Forms FPS-CC-2 and 2a;
- 2. <u>Proof of[Include]</u> current NICET certification in special hazard systems layout technician, level III; and
  - 3. A nonrefundable, prorated certificate fee of \$125.
- Section 5. Application for [<u>Licensed Fire Protection Sprinkler</u>] <u>Contractor's License</u>[<u>Contractors</u>]. (1) An applicant <u>for a contractor's license</u>[<u>for licensure</u>] shall <u>submit to the department</u>:
  - (a) 1. Proof of having [Have] a certificate holder in his or her employ; and
  - 2.[(b)] Proof[Show proof] of financial responsibility as required by KRS 198B.595.[
  - (2) Application shall be made as follows:]
- **(b)**[(a)] For fire protection sprinkler <u>contractors</u>, a <u>completed</u>[<del>contractor on</del>] Form FPS-SL-1;
- (c)[(d)][(b)] For rangehood suppression system contractors, a completed[contractor on] Form FPS-RL-1; and
  - (d)[(e)][(c)] For chemical suppression system contractors a completed[en] Form FPS-CL-1.
  - (3)(a) Each application shall be accompanied by a fee of \$250.[i]
  - (b) The initial license fee shall be prorated [on a quarterly basis upon the first renewal].

Section 6. Certificate Holder Seal. Each certificate holder shall obtain and use a seal for all work prepared by him <u>or her</u> or under his <u>or her</u> direct supervision. The design shall be as follows:



Section 7. Certification and Licensure.

- (1) Upon completion of the requirements of KRS 198B.595, the certificate of competency shall be issued by the <u>commissioner [executive director]</u> in the name of the <u>[certificate holder]</u> applicant.
- (2) All fire protection sprinkler contractor licenses shall be issued in the name of the firm listed on the application and shall state the name of the certificate holder on the face of the license.
- (3) Each license and certificate shall expire on the last day of the licensee or certificate holder's birth month[June 30 of each year].
- (4) <u>To renew[Renewal of]</u> a certificate of competency, a certificate holder shall <u>submit to the department[be submitted]</u>:
- (a) The completed applicable form[Using the appropriate application forms] listed in Section 4(1)(a)-(c) of this administrative regulation; and
  - (b) A renewal fee of **\$125[\$250]**[\$125] for each certificate.
- (5) <u>To renew[Renewal of]</u> a <u>contractor's license, a licensee</u> shall <u>submit to the department[be submitted]</u>:
- (a) The completed applicable form[Using the appropriate application forms] listed in Section 5(2)(a) **through[-]**(c) of this administrative regulation; and
  - (b) A renewal fee of \$250 for each license.

Section 8. Duties and Responsibilities of a Licensed Contractor and [a] Certificate Holder. (1) A person shall not represent himself as a fire protection sprinkler contractor without first being licensed by the <a href="mailto:department">department</a>[office] in accordance with this administrative regulation.

- (2) The design of a system shall be prepared [and submitted] by either a licensed professional engineer or <u>a</u> licensed fire protection sprinkler contractor as required by KRS 198B.565.
- (3) A person other than a certificate holder shall not engage in any activity listed in Section 3(1) of this administrative regulation unless he <u>or she</u> is supervised by or has in his <u>or her</u> employ, a lawfully authorized certificate holder.

Section 9. Procedures for Administrative Disciplinary Hearings. Disciplinary action authorized by KRS 198B.620 shall <u>be conducted as established in subsections (1) and (2) of this section.</u>[conform to the following procedures:]

(1) Upon receipt of a written complaint that a licensee or certificate holder has engaged in

any prohibited behavior or failed to satisfy **[his]** responsibilities as **established** [set forth] in this administrative regulation, the commissioner [executive director] shall cause an investigation to be made of the matter.

(2) If the <u>commissioner[executive director]</u> determines that there is <u>reason[probable cause]</u> to believe the <u>violations[charges]</u> alleged, the <u>commissioner[executive director]</u> shall conduct a hearing in accordance with KRS Chapter 13B.

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

- (a) Form FPS-SC-2 and 2a, Application for Certificate of Competency; Fire Protection Sprinkler Systems, May 2021[,2001];
- (b) Form FPS-SL-1, Application for Contractor License; Fire Protection Sprinkler Systems, May, 2001;
- (c) Form FPS-RC-2 and 2a, Application for Certificate of Competency; Fire Protection Rangehood, May <u>2021</u>[<del>2001</del>];
  - (d) Form FPS-RL-1, Application for Contractor License; Fire Protection Rangehood, May 2001;
- (e) Form FPS-CC-2 and 2a, Application for Certificate of Competency; Fire Protection Chemical, May, <u>2021</u>[<del>2001</del>]; and
  - (f) Form FPS-CL-1, Application for Contractor License; Fire Protection Chemical, May, 2001.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the <u>Department[Office]</u> of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604 fax (502) 573-1057, email benjamin.siegel@ky.gov.



Andy Beshear Governor

Ray A. Perry Secretary

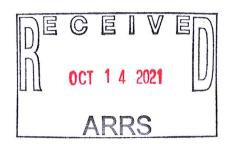
**Public Protection Cabinet** 

Department of Housing, Buildings and Construction 500 Mero Street, First Floor Frankfort, KY 40601 Phone: 502-573-0365

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October 14, 2021

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



Rick Rand

Max Fuller

Commissioner

**Deputy Commissioner** 

815 KAR 7:110 Criteria for expanded local jurisdiction. RE:

Dear Co-Chair West and Co-Chair Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 815 KAR 7:110, the Department of Housing, Buildings and Construction proposes the attached amendment to 815 KAR 7:110.

Sincerely,

/s/ Benjamin Siegel

Benjamin Siegel General Counsel Department of Housing, **Buildings & Construction** 500 Mero Street, 1st Floor Frankfort, KY 40601



#### **SUGGESTED SUBSTITUTE**

Final Version: 10/8/2021 8:40 AM

## PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement

#### 815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 67A, 67C, 82.105(1), 83, 83A, 198B.040(7), 198B.050, 198B.060, 198B.070, 212.626(5), 227.489

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorize a local government to petition the commissioner to request additional plan review and inspection functions. This administrative regulation establishes the requirements for local governments to request and be granted expanded jurisdiction for building code plan review and inspection.

Section 1. Definitions. (1) "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county having legislative powers.

- (2) "Local government" means:
- (a) A city, as established by KRS Chapters 67A, 67C, 83, and 83A;
- (b) A county, as defined by KRS 212.626(5);
- (c) A consolidated local government; or
- (d) An urban-county government.

Section 2. Uniform Criteria for Granting Expanded Jurisdiction. (1) Inspector requirements. A local government shall employ or execute a *legal[local]* [legal] contract with at least one (1):

- (a) Individual certified as a building inspector, level III, in accordance with 815 KAR 7:070. The building inspector, level III, shall be responsible for reviewing plans, reviewing specifications, and performing building inspections; and
- (b) Certified electrical inspector in accordance with KRS 227.489 and 815 KAR 35:015. The certified electrical inspector shall enforce the National <u>Electrical [Electrical [Electrical Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code, 815 KAR 7:120, and Kentucky Residential Code, 815 KAR 7:125.</u>
  - (2) Record retention.
- (a) The local government shall be responsible for maintaining all records in compliance with the department's record retention schedule in accordance with 725 KAR 1:061.
- (b) If the local government contracts with a person, firm, or company to perform plan <u>and[ad]</u>[and] specification inspections or building inspection functions pursuant to KRS 198B.060(15), the local government shall be responsible for the records produced by the person, firm, or company in compliance with paragraph (a) of this subsection.
- (3) Minimum jurisdiction responsibilities. The local government shall maintain the minimum responsibilities required by KRS 198B.060(2), unless additional responsibilities are specifically agreed upon in writing between the local government and the department pursuant to KRS

198B.060(5) and this administrative regulation.

- (4) State jurisdiction. The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings that are:
  - (a) Institutional buildings;
- (b) Educational buildings, unless specifically agreed **otherwise** in writing by the local government and the department;
- (c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes;
  - (d) State-owned and state-leased buildings and facilities;
- (e) High-hazard occupancies, unless specifically agreed <u>otherwise</u> in writing by the local government and the department; and
- (f) Industrialized building systems (including modular homes), except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally. Local placement and assembly shall not commence until the local government submits written notification to the department for each placement.

Section 3. Application for Expanded Jurisdiction. (1) Application. An authorized representative of a local government shall submit to the department:

- (a) A completed Application for Local Expanded Jurisdiction, Form BCE/EJ #1;
- (b) An affidavit certifying the local government employs or contracts with a certified building inspector, level III, and a certified electrical inspector [,] and the name and job title for each inspector;
- (c) A complete list of code enforcement personnel employed by or contracted with the local government, including the name, job title, and certification status of each individual;
- (d) Documentation of all permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority;
  - (e) A complete list of each:
- 1. Building occupancy, classification, and size for which expanded jurisdiction is requested; and
- 2. Building occupancy, classification, and size for which expanded jurisdiction is not requested;
- (f) A copy of the local ordinance requiring single-family dwelling plan review and inspection within the jurisdiction;
  - (g) A copy of the schedule of relevant fees adopted by the local governing body;
- (h) A copy of any agreement between the applicant and another local government pursuant to KRS 198B.060(14); and
- (i) A copy of any agreement between the applicant and any person, firm, or company to perform plan and specification inspections or building inspection functions pursuant to KRS 198B.060(15).
  - (2) Expanded jurisdiction agreement.
- (a) If the application is approved by the department, the department and the local government shall enter into an expanded jurisdiction agreement.
  - (b) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:

- 1. Canceled by one or both parties in writing; or
- 2. Preempted in whole or in part pursuant to subsection (1) of this section.
- (c) The local government shall notify the department within thirty (30) days of any changes in personnel or fees that differ from the terms of the agreement.
- Section 4. Procedures for Maintaining Expanded Jurisdiction. (1) Renewal. Before the expiration of the agreement, the local jurisdiction shall submit a Renewal Application for Expanded Jurisdiction on Form BCE/EJ #2. The renewal application shall include the submissions required by Section 3 of this administrative regulation.
- (2) Renewal application review. After receiving and reviewing the local government's application for renewal, the department shall:
  - (a) Reevaluate the building code enforcement program of the local government; and
- (b) Renew the local government's expanded jurisdiction agreement or deny the renewal request within forty-five (45) days of receiving the local program's renewal application and supporting documentation.
- (3) Expanded jurisdiction monitoring. The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government violates the requirements of this administrative regulation: [7] the Kentucky Building Code, 815 KAR 7:120; [7] the Kentucky Residential Code, 815 KAR 7:125; [7] the terms of the expanded jurisdiction agreement; [7] or KRS Chapters 198B, 236, or 318, the <u>department may preempt the</u> local government [shall be subject to preemption], in whole or in part [7, by the department].
- (4) The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings as <u>established[specified]</u> in the [original] agreement for expanded local jurisdiction with the local government.
- Section 5. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board. A local appeals board shall operate in accordance with KRS 198B.070.
- (2) If the local government establishes a local appeals board, the local government shall send a written notice to the department, which shall:
- (a) Identify each member by name and qualifications for being appointed to the appeals board; and
  - (b) Include contact information for the local appeals board.
- (3) If a local appeals board is not established, all costs incurred by the department to conduct hearings for appeals filed pursuant to KRS 198B.070(5) shall be charged to the local government.
- Section 6. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for one (1) and two (2) family dwellings that are:
  - (a) Manufactured homes;
  - (b) Modular homes; or
  - (c) Farm dwellings.
- (2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

Section 7. Incorporation by Reference. (1) The following material <u>is</u> incorporated by reference:

- (a) "Application for Local Expanded Jurisdiction", Form BCE/EJ #1, May 2018; and
- (b) "Renewal Application for Expanded Jurisdiction", Form BCE/EJ #2, May 2018.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, Monday Through Friday, 8 a.m. to 4:30 p.m. and is available online at dhbc.ky.gov.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604 fax (502) 573-1057, email benjamin.siegel@ky.gov.



Andy Beshear Governor

Ray A. Perry Secretary

**Public Protection Cabinet** Department of Housing, Buildings and Construction

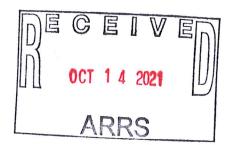
500 Mero Street, First Floor Frankfort, KY 40601 Phone: 502-573-0365 Fax: 502-573-1057 http://dhbc.ky.gov

Rick Rand Commissioner

Max Fuller **Deputy Commissioner** 

October 14, 2021

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



RE: 815 KAR 10:060 Kentucky Standards of Safety.

Dear Co-Chair West and Co-Chair Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 815 KAR 10:060, the Department of Housing, Buildings and Construction proposes the attached amendment to 815 KAR 10:060.

Sincerely,

/s/ Benjamin Siegel

Benjamin Siegel General Counsel Department of Housing, **Buildings & Construction** 500 Mero Street, 1st Floor Frankfort, KY 40601



#### SUGGESTED SUBSTITUTE

Final Version: 10/8/2021 9:08 AM

### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Fire Prevention

815 KAR 10:060. Kentucky standards of safety.

RELATES TO: KRS <u>198B.050, [198B.110,]</u> 227.300, 227.320, 227.330, <u>227.331,</u> 227.990, 234.140[<u>, 198B.050]</u>

STATUTORY AUTHORITY: KRS 227.300(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) <u>requires[authorizes]</u> the commissioner to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring <u>as far as practicable</u> against fire loss. This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, *[promulgated as]* 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions. (1) "Accepted" means that all deficiencies communicated, in writing, to the owner have been corrected to the satisfaction of the inspecting authority.

- (2) "Distinct fire hazard":
- (a) Means a condition that poses a threat to life or property, including a condition likely to inhibit escape from danger of fire or explosion; and
- (b) Does not mean a condition in which the methods of construction [that] met the uniform state building code requirements, as applicable, at the time of construction. [shall not be deemed a distinct fire hazard. A building shall be deemed a distinct fire hazard if the authority having jurisdiction determines:
  - (a) A fire, explosion, or asphyxiation is likely to occur;
- (b) Conditions may provide a ready fuel supply to augment the spread or intensity of a fire or explosion;
  - (c) A building is vacant, unguarded and open to unauthorized entry;
  - (d) An accumulation of combustible dust, debris, or materials is present;
  - (e) Required exits or fire protection are in non-working condition or not present;
  - (f) Objects [are] placed or installed so as to interfere with exits or exit routes;
- (g) Combustible materials or items are in dangerous proximity to an ignition source such as a stove, fireplace, or heater;
  - (h) Electrical or mechanical systems or installations create a hazardous condition; or
- (i) Operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public.] [Methods of construction that met the uniform state building code requirements, as applicable, at the time of construction shall not be deemed a distinct fire hazard.]
  - (3) "Fire protection system" is defined by KRS 198B.550(6).
  - (4) "NFPA" means the National Fire Protection Association.

- (5) "NICET" means the National Institute for Certification of Engineering Technologies.
- (6) "Unsafe Building" means a building characterized by:
- (a) Deficiency in means of egress;
- (b) Danger to human life or public welfare by reason of illegal or improper use, occupancy, or maintenance;
  - (c) Non-compliance with the construction codes in place at time of construction;
  - (d) Significant damage including as the result of:
  - 1. Fire;
  - 2. Explosion;
  - 3. Natural disaster;
  - 4. Neglect; or
  - 5. Vandalism;
- (e) Falling away, hanging loose, or loosening of siding, block, or other building material, appurtenance, or part thereof; or
  - (f) Existence of structurally unsafe conditions.

Section 2. Scope. (1) Applicability. This administrative regulation shall apply to all buildings except one (1) and two (2) family dwellings.

- (2) Enforcement.
- (a) State Fire Marshal. The State Fire Marshal shall:
- 1. Have primary jurisdiction over all property, unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320; and
- 2. Have exclusive jurisdiction over state-owned property. [and primary jurisdiction for code compliance for health care facilities and other facilities licensed by the Kentucky Cabinet for Health and Family Services.]
- (b) Local fire chief. Jurisdictions wherein a local fire chief is designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary except as <u>established[provided]</u> in subparagraph (a)2. of this subsection.

Section 3. Existing Buildings and Conditions. (1) The standards for the construction pursuant to 815 KAR 7:120, Kentucky Building Code, in effect at the time of construction, and for which there has been issued a lawful certificate of occupancy, shall supersede different construction standards regarding the requirements for egress facilities, fire protection, and built-in fire protection equipment established in this administrative regulation or conflicting local ordinances.

- (2) Change of use. It shall be unlawful to make a change in the use of a building or portion thereof without project plan review and approval in accordance with 815 KAR 7:120, Kentucky Building Code, except as <u>established[specified]</u> in Chapter 34 therein.
  - (3) Buildings and conditions approved under other codes.
- (a) Buildings constructed prior to promulgation of the uniform state building code. A building, or portion thereof, which was constructed and approved prior to the effective date of the uniform state building code shall be maintained as constructed and approved.
  - (b) Previous fire code. A building, or portion thereof, which was inspected, approved, or accepted

pursuant to a previously adopted fire code[the 1996 Kentucky Fire Prevention Code] shall:

- 1. Be maintained as previously approved or accepted; and
- 2. Not be required to make a modification or change for so long as the building is maintained and used as previously accepted or approved.
- (c) Buildings not occupied or used for one (1) year or more. Prior to occupancy, a building shall be <u>inspected[subject to safety inspection]</u> by the State Fire Marshal or <u>a[his]</u> designee to ensure that the structure is neither a distinct fire hazard <u>nor[or]</u> an unsafe structure.
  - (4) Distinct Fire Hazards.
- (a) <u>A building shall be deemed a distinct fire hazard if the authority having jurisdiction</u> determines:
  - 1. A fire, explosion, or asphyxiation is likely to occur;
- 2. Conditions might provide a ready fuel supply to augment the spread or intensity of a fire or explosion;
  - 3. A building is vacant, unquarded, and open to unauthorized entry;
  - 4. An accumulation of combustible dust, debris, or materials is present;
  - 5. Required exits or fire protection are in non-working condition or not present;
  - 6. Objects [are] placed or installed so as to interfere with exits or exit routes;
- 7. Combustible materials or items are in dangerous proximity to an ignition source such as a stove, fireplace, or heater;
  - 8. Electrical or mechanical systems or installations create a hazardous condition; or
- 9. Operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public.
- **(b)** If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall be remedied so as to render the property safe.
- (c)[(b)] The State Fire Marshal or a local fire chief shall use the standards established[specified] in this administrative regulation[paragraph] to identify and to order the correction of a distinct fire hazard acting in accordance with the procedures established in KRS Chapter 227 and [Section 5 of] this administrative regulation. In exercising authority granted, the following shall be applicable:
- 1. NFPA 1, Uniform Fire Code, <u>2018</u>[<u>2012</u>] edition, and the NFPA referenced standards included in Chapter 2 of NFPA 1 except:
  - a. NFPA 403[402], Guide for Aircraft Rescue and Fire Fighting Operation, 2018[2002] edition;
- b. [NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 2002 edition:
- e.] NFPA 1031, Standard for <u>Professional[Profession</u>] Qualifications for Fire Inspectors and Plan Examiner, 2014[2003] edition;
  - c. NFPA 1192, Standard on Recreational Vehicles, 2018 edition;
  - d. NFPA 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2018 edition;
  - e. NFPA 1901, Standard for Automotive Fire Apparatus, 2016 edition;
  - f. NFPA 1906, Standard for Wildland Fire Apparatus, 2016 edition;
  - g. NFPA 1925, Standard on Marine Fire-Fighting Vessels, 2013 edition;
  - h. NFPA 1963, Standard for Fire Hose Connections, 2014 edition;
- i. NFPA 2113, Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Short-Duration Thermal Exposures from

#### Fire, 2015 edition;

- i[d]. NFPA 5000, Building Construction and Safety Code, 2018[2012], edition;
- k. Code reference 1.7.2, Minimum Qualifications to Enforce this Code;
- I. Code reference 10.2.7, Minimum Fire Prevention Inspection Frequencies for Existing Occupancies;
  - m[e]. Code reference 13.3.2.26, High Rise Buildings;
  - n[f]. Code reference 13.3.2.8, Existing Assembly Occupancies; and
- o[g]. Code reference 13.6, Portable Extinguishers, which if required, shall be modified to exclude the provisions for installation of portable extinguishers in the occupancies listed in Table 13.6. Portable extinguishers shall be installed as required in the occupancy chapters of NFPA 101, Life Safety Code, 2018[2012] Edition;
- 2. NFPA 101, Life Safety Code, <u>2018[2012]</u> edition, and the NFPA referenced standards included in Chapter 2 of NFPA 101 except Code reference 13.3.5;
  - 3. NFPA 70, National Electrical Code[®], 2017[2011] Edition; and
  - 4. 815 KAR 7:120, Kentucky Building Code.
- (d)[(e)] Modifications, alternatives, and interpretations. If the State Fire Marshal accepts or approves an alternative to a code provision or issues an interpretation and the alternative or interpretation is of general applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting a copy.
- (5) Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require construction measures that would exceed the requirements of the current edition of 815 KAR 7:120, Kentucky Building Code, if the building were being newly constructed.
  - (6) Maintenance of equipment.
- (a) All fire suppression and fire protection equipment, systems, devices, and safeguards shall be maintained in accordance with the applicable NFPA referenced code and the manufacturer's recommendations.
- (b) This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device installed in a building without approval granted by the authority having jurisdiction.
- (7) Cooperation with building official. The State Fire Marshal and the local fire chief shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are applied.
- Section 4. Permits. (1) State permits required. A permit shall be required from the State Fire Marshal for flammable, combustible, <u>or[and]</u> hazardous material storage vessel installations.
  - (2) Local permits allowed.
  - (a) A permit from a local government shall not be required unless required by local ordinance.
- (b) An inspection or permit fee, if applicable, shall be established within the local **government** adopting legislation.
- Section 5. Enforcement of Violations. (1) Notice of deficiency. If the State Fire Marshal or local fire chief observes an apparent violation of a provision of this administrative regulation [and the standards incorporated herein] or other codes or ordinances under state or local jurisdiction, the

State Fire Marshal or local fire chief shall prepare a written notice of deficiency. The notice of deficiency shall state the applicable code provision violated and specify the date by which the required repairs or improvements shall be completed. Pursuant to KRS 227.336, corrective action shall be ordered remedied within a period of time not to exceed sixty (60) days. [The State Fire Marshal may grant extensions to the compliance date upon receipt of a written plan of a correction stating the dates of completion of each violation and a reason for the delay. The plan of correction must be received before the end of the first sixty (60) day period.]

- (2) <u>Services[Service]</u> of notice. The written notice of deficiency shall be served personally or via certified U.S. Mail upon the owner or the owner's duly authorized agent and upon each other person responsible for the deficiency. Proof of service shall be required to perfect service.
- (3) The State Fire Marshal shall commence enforcement action authorized in KRS 227.331 against any person who fails to correct a deficiency ordered to be remedied[Failure to correct deficiency. Any person who fails to correct a deficiency ordered to be remedied shall be subject to enforcement actions authorized in KRS 227.331].

Section 6. Means of Appeal. (1) Appeals of orders issued by the State Fire Marshal.

- (a) An appeal to the State Fire Marshal from a notice of deficiency issued by the Division of Fire Prevention shall be:
  - 1. In writing; and
- 2. Received by the Division of Fire Prevention, State Fire Marshal prior to the completion date specified in the notice of deficiency served.
- (b) If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, legal action shall be instituted pursuant to KRS Chapter 227.
- (2) Appeal of an order to remedy. Pursuant to KRS 227.380, the owner of the subject property may appeal to the State Fire Marshal within ten (10) days following receipt of the issued order.

Section 7. Special Provisions. (1) Fire incident reporting. The fire chief or highest ranking fire department officer <u>may request investigative assistance from the State Fire Marshal.[shall promptly notify the State Fire Marshal upon becoming aware of any of the following:</u>

- (a) A hazardous materials incident;
- (b) Fire-related fatality (including a vehicle or home);
- (c) Fire-related injury serious enough to become a fatality; or
- (d) A fire involving major structural damage in the following buildings:
- 1. An institutional, educational, state-owned or state-leased, or high-hazard occupancy;
- 2. A business, mercantile, or industrial occupancy having a capacity over 100 persons;
- 3. An assembly occupancy having a capacity over 100 persons;
- 4. A place of religious worship with a capacity over 400 persons and more than 6,000 square feet; or
- 5. Any other building more than three (3) stories in height or 20,000 square feet of floor area.]
- (2) Fire protection systems testing and inspection.
- (a) Reporting. Except as <u>established[provided]</u> in paragraph (c) of this subsection, an inspection <u>or[nor]</u>[or] test required by this administrative regulation, Chapter 11, 13, or 20 of the NFPA 1, Uniform Fire Code shall be conducted and reported to the owner by a person authorized or certified by the <u>department[State Fire Marshal</u>].
  - (b) Inspection and test reports.

- 1. A required inspection or test shall be recorded on the applicable form contained in NFPA 25 or NFPA 72[as determined by the State Fire Marshal].
- 2. [If any violations are noted, the] <u>The completed report shall be given to the owner and a copy shall be forwarded to the local fire chief or highest ranking fire department officer[State Fire Marshal] within ten (10) working days of the date of the inspection.</u>
  - (c) Reporting exceptions.
- 1. Portable fire extinguishers and single station smoke detectors may be inspected and tested by the property owner or <u>the</u> property owner's agent.
- 2. Allowable reports by owners and owner agents shall not be required to be filed with the State Fire Marshal, but shall be kept on file within the building and available for review upon request by the State Fire Marshal.
- a. Electric single station and electric multiple station smoke alarms shall be tested monthly. A log of the test shall be kept on site for review by the fire code official.
- b. Battery powered smoke alarms shall be tested weekly. A log of the test results shall be kept on site for review by the fire code official.
- c. Portable fire extinguishers shall be visually inspected monthly to ensure proper charge, accessibility, and that the extinguisher hose is free of obstruction.
- (d) Frequency. Periodic testing and inspection of each fire suppression and each alarm system shall be performed as <u>established in subparagraphs 1. through 3. of this paragraph.</u>[follows:]
- 1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested for proper operation annually.
- 2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested quarterly by a Kentucky certified inspector for sprinkler systems and fire alarms, respectively. [; and]
- 3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.
  - (e) Inspectors.
- 1. Fire alarm inspectors shall apply to be certified by the department on a Form FPS 33-01, Application for Fire Alarm Systems Certification, and shall:
  - a.(i) Be qualified as NICET level two (2), level three (3), or level four (4) in fire alarm systems; or
- (ii) Pass the examination for alarm inspector administered by an examination provider approved by the department;
- b. Have had at least eighteen (18) months of experience in installation, repair, testing, or a combination thereof during the five (5) year period immediately preceding application;
  - c. Pay an annual certification fee of fifty (50) dollars for each classification applied for; and
  - d. Submit a passport-sized color photograph with the application.
  - 2. For renewals of fire alarm inspector certification, an applicant shall:
- a. Submit <u>a</u> completed Form FPS 33-02, Renewal Application for Fire Alarm Systems Certification, May 2020;
  - b. Pay an annual certification renewal fee of fifty (50) dollars for each classification held;
  - c. Submit a passport-sized color photograph with the renewal application; and
  - d. (i) Provide proof of six (6) hours of continuing education from an approved provider ob-

tained in the twelve (12) months prior to renewal; or

- (ii) Provide proof of current NICET certification.
- 3. Penalties. An applicant shall be subject to penalties established in KRS 227.990 and may be denied certification **or[nor]** [or] renewal for:
- a. Failure of a certified fire alarm inspector to conduct an inspection in accordance with the NFPA 72 standard;
  - b. Submission of false inspection reports;
- c. Performing inspections without first having been certified by the department as a fire alarm inspector; or
  - d. Making a false or misleading statement on an application for certification or renewal.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) NFPA 1, "Uniform Fire Code", 2018[2012] edition;
- (b) NFPA 101, "Life Safety Code", 2018[2012] edition;
- (c) NFPA 70, "National Electrical Code®", 2018[2011] edition;
- (d) FPS 33-01, "Application for Fire Alarm Systems Certification", May 2020; and
- (e) FPS 33-02, "Renewal Application for Fire Alarm Systems Certification", May 2020.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. 815 KAR 10:060:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.



Andy Beshear Governor

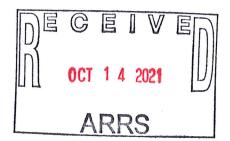
Ray A. Perry Secretary Public Protection Cabinet
Department of Housing, Buildings and Construction
500 Mero Street, First Floor

Frankfort, KY 40601 Phone: 502-573-0365 Fax: 502-573-1057 http://dhbc.ky.gov

October 14, 2021

Senator West, Co-Chair Representative Hale, Co-Chair c/o Regulations Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort, KY 40601 Rick Rand Commissioner

Max Fuller Deputy Commissioner



RE: 815 KAR 30:060 Certification of underground petroleum storage tank contractors.

Dear Co-Chair West and Co-Chair Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 815 KAR 30:060, the Department of Housing, Buildings and Construction proposes the attached amendment to 815 KAR 30:060.

Sincerely,

/s/ Benjamin Siegel

Benjamin Siegel General Counsel Department of Housing, Buildings & Construction 500 Mero Street, 1st Floor Frankfort, KY 40601





Andy Beshear Governor

Ray A. Perry Secretary Public Protection Cabinet
Department of Housing, Buildings and Construction
500 Mero Street, First Floor
Frankfort, KY 40601
Phone: 502-573-0365
Fax: 502-573-1057

Rick Rand Commissioner

Max Fuller Deputy Commissioner

October 11, 2021

http://dhbc.ky.gov

Emily Caudill
Administrative Regulations Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
Capitol Annex Room 029
702 Capitol Ave.
Frankfort, KY 40601

Ms. Caudill,

KRS 227.60-135 provides that "the state fire marshal shall promulgate administrative regulations which require any person or organization who installs, repairs, closes, or removes an underground storage tank for a petroleum storage tank owner or operator to demonstrate financial capability, including the maintenance of pollution liability insurance, and technical competency and proficiency."

The Department of Housing, Buildings & Constriction, which houses the State Fire Marshal's Office, has promulgated an amendment to 815 KAR 30:060, "Certification of underground petroleum storage tank contractors," which is attached for reference. This regulatory amendment is signed by the Commissioner of the Department, Rick Rand, following internal discussion with the State Fire Marshal's Office. I hereby acknowledge that it has been promulgated on behalf of the State Fire Marshal.

Sincerely,

Mike Haney

Director, Division of Fire

Prevention

State Fire Marshal

Department of Housing,

**Buildings & Construction** 



#### SUGGESTED SUBSTITUTE

Final Version: 10/13/2021 2:43 PM

### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Fire Prevention

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135, 227.300

STATUTORY AUTHORITY: KRS <u>189B.030, 189B.060,</u> 224.60-135(5)[<del>, 227.300</del>]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a person or organization who installs, repairs, [interior lines, installs corrosion protection,] closes, or removes an underground [petroleum] storage tank for a[an] petroleum storage tank owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance[1] and technical competency and proficiency. This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company [who is] responsible for the installation, repair, interior lining, installation of corrosion protection, or removal or closure of a system by a qualifying individual and for determining financial capability through proof of insurance.

Section 1. Definitions. (1) "Certified contractor" means an individual or organization certified by the State Fire Marshal as qualified to:

- (a) Engage in the business of installing, repairing, interior lining, installing corrosion protection, <u>or</u> removing or closing a UPST system; or
  - (b) Supervise an employee engaged in an activity listed in paragraph (a) of this subsection.
- (2) "Close" or "closure" means permanently taking an underground storage tank out of service without removing it from the ground.
- (3) "Remove" or "removal" means permanently taking an underground storage tank or a component out of service by removing it from the ground.
  - (4) "Repair":
  - (a) Means the restoration of a UPST system or component; and
- (b) Does not mean[does not include] routine maintenance or corrosion protection applied to an existing installation[z] or the application of interior lining.[that: (a) Has caused a release of a product from the system or the modification of the tank or a system component; and
- (b) Does not include routine maintenance or corrosion protection applied to an existing installation, or the application of interior lining.][(4) "Remove" or "removal" means permanently taking an underground storage tank or a component out of service by removing it from the ground.]
- (5) "Routine maintenance" means servicing the UPST system or a component without excavation [or making or the breaking of a connection below ground].
  - (6) "Underground storage tank" is defined by KRS 224.60-100(1).
  - (7) "Upgrade":
  - (a) Means a modification or addition to a UPST system; and

(b) Does not mean[except] routine maintenance.

- (8) "UPST system" means an underground storage tank that is used solely for the storage of petroleum or a petroleum product.
- Section 2. (1) A permit for the installation of a UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit:
  - (a) Is certified by the State Fire Marshal's office; and
- (b) Assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of <u>815 KAR 10:060 and [the Natural Resources and Environmental Protection Cabinet promulgated in]</u> 401 KAR Chapter 42.
- (2) An individual or company shall not install, remove, repair, interior line, install corrosion protection, or close a UPST system unless the installation, removal, interior lining, <u>or</u> installation of corrosion protection repair or closure:
  - (a) Is made by a certified contractor; and
- (b) Complies with <u>all[the]</u> applicable <u>requirements[administrative regulations]</u> of <u>815 KAR 10:060 and [the Natural Resources and Environmental Protection Cabinet, promulgated in]</u> 401 KAR Chapter 42.
- (3) A certificate authorizing a company to engage in an activity regulated by this administrative regulation shall be issued under the name of the company if the company:
  - (a) Applies for the certification; and
  - (b) Has in its employ at least one (1) certified contractor who:
- 1. Meets the supervision requirements established in Section 3 of this administrative regulation; and
  - 2. Shall:
  - a. Direct an employee engaged in an activity regulated by this administrative regulation; and
- b. Exercise independent judgment regarding the recommendation of an activity to an employee acting under his direction.
- Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for *[each of the following activities]*:
- (a) Preparation of the excavation immediately prior to receiving backfill or a component of the UPST system;
- (b) Setting of the UPST system, including placement of an anchoring device, backfilling to the level of the UPST system, and strapping;
- (c) Installing piping and its components, field coating, or corrosion protecting piping and its components;
- (d) Final inspection and pressure testing of a component of the tank or piping component of the UPST system; and
  - (e) Completion of the backfilling and filling of the excavation.
- (2) A repair to a UPST system shall require a certified contractor to be present on site for **the [each of the following activities]**:
  - (a) [The] Actual excavation of an existing UPST system;
  - (b) [The] Actual performance of a repair to the UPST system;
  - (c) [The] Connection of a component of the piping during the repair project;

- (d) [The] Pressure testing of the UPST or its associated piping during the repair project;
- (e) [The] Replacement of a piping valve, fill pipe, vent, leak detection device, or spill and over-fill protection device; and
  - (f) [The] Addition of a leak detection device or spill and overfill device.
- (3) Preparation for closing a UPST system shall require a certified contractor to be present on site for [each of the following activities]:
  - (a) The cleaning and purging of a UPST system;
  - (b) The filling of a UPST system with an inert solid material;
  - (c) All testing associated with the cleaning and purging processes; and
  - (d) The disconnection or capping of a component of the UPST system during the closing.
- (4) Removal of a UPST system shall require a certified contractor to be present on site during [each of the following activities]:
  - (a) The cleaning and purging of the UPST system;
  - (b) The actual excavation and removal of the UPST system or a component;
  - (c) All testing associated with the cleaning and purging process[processes]; and
  - (d) The disconnection or capping of a component of the UPST system during the removal.
- (5) The interior tank lining of a UPST system shall require a certified contractor to be present on site during [each of the following activities]:
  - (a) The cleaning and purging of the UPST system;
  - (b) The excavation of the tank top;
  - (c) The cutting of the top of the tank;
  - (d) The entry of the tank;
  - (e) The preparation of the interior of the tank;
  - (f) The application of the lining of the tank; and
  - (g) The closing and testing of the tank.
- (6) The installation of corrosion protection to a UPST system shall require a certified contractor to be present on site during *[each of the following activities]*:
  - (a) Excavation; and
  - (b) The installation of an approved corrosion protection system.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where <u>the work is being supervised[he is supervising work]</u>. Upon request of a fire official or agent of the <u>Energy and Environment[Natural Resources and Environmental Protection</u>] Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall:

- (1) Submit an application accompanied by a nonrefundable fee of \$300, to the State Fire Marshal, on application form ["]SFM/UPST #01, May, 2020[2001][" which is incorporated by reference in Section 11 of this administrative regulation];
  - (2) Be an individual at least eighteen (18) years of age;
- (3) Verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site to, interior lining of, installation of corrosion protection, <u>and</u> closure and removal of UPST systems, as required by Section 6 of this administrative regulation;

- (4) Complete the examination requirements of Section 7 of this administrative regulation;
- (5) Provide proof of financial capability for taking corrective action and for compensating a third party for bodily injury or property damage by submitting certificates of general liability insurance in the minimum amount of \$500,000 and pollution liability insurance or other proof of financial capability to respond to damages in the minimum amount of \$25,000 per occurrence; and
- (6) If the individual wishes the certificate to be issued with a company name, indicate the company name on the application form. The company shall provide the insurance certificates required by subsection (5) of this section and **comply with[be subject to]** this administrative regulation.
- Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, **the applicant[that he]** has participated in the installation of, performance of repairs on site to, closure of, interior lining of, installation of corrosion protection to, or removal of a minimum of six (6) underground storage tanks, except that:
- (a) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of this subsection by one-third (1/3); or
- (b) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).
  - (2)(a) An applicant requesting installer or remover certification shall:
  - 1. Have installed at least three (3) UPST systems; and
  - 2. Meet the experience requirements established in subsections (3), (4), and (5) of this section.
  - (b) A certified installer or remover shall be qualified to perform work on a UPST system.
- (3) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.
- (4) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of tank lining shall demonstrate experience in lining of <u>at least</u> six (6) underground storage tanks or provide proof of certification from the tank interior lining manufacturer or supplier of lining material.
- (5) An applicant requesting certification pursuant to this administrative regulation for the limited function of installing corrosion protection shall demonstrate experience in the installation of <u>at least</u> six (6) corrosion protection systems.
- Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6 of this administrative regulation, the applicant shall receive a probationary certificate under the following conditions:
- (1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination;
- (2) An applicant shall complete <u>at least</u> three (3) applicable UPST activities for which the applicant seeks certification within one (1) year of the issuance of the certificate;
  - (3) All UPST activities shall comply with applicable codes and statutes;
  - (4) An applicant shall not install, interior line, install corrosion protection, remove, close, back-

fill around, or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a \$100 add-on inspection fee for each site where a tank is removed, closed, installed, upgraded, or repaired by the applicant.

Section 8. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

- (1) The applicant shall submit payment of a fifty (50) dollar nonrefundable fee at least ten (10) days prior to the date of <u>the</u> examination.
- (2) The examination for certification as an installer or remover shall be a written multiple choice examination covering all aspects of the installation, repair, interior lining, installation of corrosion protection, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, *KRS Subchapter 224.60, 806 KAR Chapter 30, and 806 KAR 10:060,[laws and administrative regulations]* and of current technological and industry recommended practices with respect to the proper installation, repair, interior lining, installation of corrosion protection, closure, and removal of UPST systems.
- (3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing a UPST system shall be tested on knowledge of closure and removal.
- (4) An applicant who requests to be a certified contractor for the limited function of interior lining of UPST systems shall be tested on knowledge of cleaning [,] and lining the interior of an underground petroleum storage tank.
- (5) An applicant who requests to be a certified contractor for the limited purpose of installing corrosion protection shall be tested on the installation, monitoring, and general knowledge of a cathodic protection system.
  - (6) An applicant may request permission to take the examination orally, upon good cause shown.
- (7) An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.
- (8) An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.
- (9) An examination shall be given <u>at least</u> monthly in the State Fire Marshal's Office located at 500 Mero Street, Frankfort, Kentucky 40601.
- (10) An examination shall be graded and the applicant notified on the day of the examination. An examination paper:
  - (a) Shall not be returned to the applicant; and
  - (b) May be reviewed by the applicant on the day of the examination.
- (11) With the application, the State Fire Marshal shall <u>provide[furnish]</u> the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to <u>KRS Subchapter 224.60</u>, <u>806 KAR Chapter 30</u>, <u>806 KAR 10:060</u>, [appropriate laws, administrative regulations] and industry publications.

to each individual as required by Sections 5 through 7 of this administrative regulation. Each certificate shall be renewed annually for a fee of \$100 on Form SFM/UPST #02, May, 2020[2004].

- (2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if the applicant:
  - (a) Fails to provide the:
  - 1. Information required by the application form SFM/UPST #01;
  - 2. Insurance or financial responsibility certificates; or
  - 3. The [the] fee required for application and examination;
- (b) Fails to comply with the experience and education requirements of this administrative regulation;
  - (c) Fails to successfully pass the examination required by this administrative regulation; or
  - (d) Makes a misrepresentation or submits a false statement with the application.
- (3) A certified contractor who fails to renew **[his]** certification **within[with]** [within] a one (1) year period from the most recent expiration date of **the[his]** certification shall:
  - (a) Be treated as a new applicant;
  - (b) Retake the examination; and
  - (c) Comply with the new applicant requirements.

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation shall be suspended or revoked by the State Fire Marshal if:

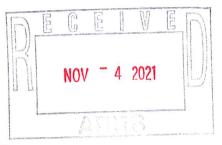
- (1) The certified contractor negligently, incompetently, recklessly, or intentionally violated a provision of this administrative regulation or a required code relating to installation, repair, lining, closure, or removal;
- (2) The certified contractor recklessly or intentionally caused or <u>allowed[permitted]</u> a person under the contractor's supervision to install, perform a repair on site to, interior line, install corrosion protection, close, or remove a UPST system in violation of 815 KAR 10:060;
  - (3) The certified contractor obtained the certification through fraud or misrepresentation;
- (4) The individual who took the examination, provided the experience requirements, and requested the certificate be issued with a company's name and proof of insurance is no longer employed by the company in whose name the certificate was issued; or
- (5) The certified contractor failed to renew the certification in accordance with Section 9 of this administrative regulation.

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

- (a) Form SFM/UPST #01, "Application for Certification as an Underground Tank Contractor", May 2020; and
  - (b) [Form] SFM/UPST #02, "Installer/Remover Certification Renewal Form", May[7] 2020.
- (2) This material may be inspected, copied or obtained, subject to applicable copyright law at the State Fire Marshal's Office, Division of Hazardous Materials, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.





#### CABINET FOR HEALTH AND FAMILY SERVICES

Andy Beshear Governor

275 East Main Street, 5W-A Frankfort, KY 40621 502-564-7042 502-564-7091 www.chfs.ky.gov Eric C. Friedlander Secretary

November 4, 2021

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

Re: 923 KAR 2:470 Disability Determinations Program

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 923 KAR 2:470, the Department for Income Support proposes the attached LRC suggested amendment and suggested substitute. If you have any questions, please feel free to contact Mary Sparrow at MarySparrow@ky.gov.

Sincerely,

Sarah A. Cooper

Staff Assistant, Cabinet for Health and Family Services

Office of Legislative and Regulatory Affairs



#### 11/4/21

#### SUGGESTED SUBSTITUTE

# CABINET FOR HEALTH AND FAMILY SERVICES Department for Income Support Division of Disability Determinations (Amendment)

#### 923 KAR 2:470. Disability Determinations Program.

RELATES TO: [KRS 194.030(6),] KRS 205.245, 20 C. F. R. 401.5-401.200 [20 C.F.R. 401.100-401.600], Subparts A, B, C, [E, F,] 404.900-404.999d, Subpart J, [404.1501-404.1599, Appendix 1 & 2, Subpart P, 404.1601 -404.1694, Subpart Q, 416.901 -416.998, Subpart I, 416.1001-416.1094, Subpart J,] 416.1400 - 416.1499, Subpart N, 416.1701 - 416.1725, Subpart Q, 422.401 - 422.445[422.449], Subpart E

STATUTORY AUTHORITY: KRS 194A.030(9), 194A.050(1), [KRS 194.050, EO 96-862, 20 C. F. R. 401.100-600, 20 C.F.R. 401.100-600, Subparts A, B, C, E, F, 404.900 -404.999d, Subpart J.] 20 C.F. R. 404.1501 - 404.1599, Appendix 1 & 2, Subpart P, 404.1601 - 404.1694, Subpart Q, 416.901 - 416.999d[416.999] [416.998], Subpart I, 416.1001 - 416.1094, Subpart J[, 416.1400 - 416.1499, Subpart N, 416.1701 - 416.1725, Subpart Q, 422.401 - 422.449, Subpart E]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(9) requires the Cabinet for Health and Family Services, Department for Income Support to serve as the state unit, as required by Title II and Title XVI of the Social Security Act, and shall have responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. KRS 194A.050(1) requires that the Secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law. 20 C.F.R. 404.1501[404-1501]-404.1599 provides that in order for a person to be entitled to any benefits based upon disability or blindness or to have a period of disability established, they must be disabled or blind as defined in Title II of the Social Security Act. 20 C.F.R. 404.1601-404.1694 provides the standards of performance and administrative requirements and procedures for states making determinations of disability under Title II of the Social Security Act. 20 C.F.R. 416.1001-416.1094 provides the standards of performance and administrative requirements and procedures for states making determinations of disability under title XVI of the Social Security Act. This administrative regulation establishes procedures and requirements for making disability determinations. [Executive Order 96-862 transfers to the Cabinet for Families and Children the authority to administer a program under 20 C.F.R. 404.1503 for determinations of disability. The Cabinet for Families and Children, Department for Disability Determination Services shall make disability determinations for Social Security Disability and Supplemental Security Income.]

Section 1. The following C.F.R. sections[, effective 4-1-96,] govern disability determinations made by the Cabinet for <u>Health and Family Services</u> [Families and Children], Department for <u>Income Support, Division of Disability Determination Services</u>:

- (1) 20 C.F.R. 401.5 -401.200 [<del>20 C.F.R. 401.100-401.600</del>], Subparts A, B, and C; [<del>, E, F;</del>]
- (2) 20 C.F.R. 404.900 404.999d, Subpart J;
- (3) 20 C.F.R. 404.1501 404.1599. Appendix 1 & 2, Subpart P:
- (4) 20 C.F.R. 404.1601 404.1694, Subpart Q:
- (5) 20 C.F.R. 416.901 416.999d[416.998], Subpart I;
- (6) 20 C.F.R. 416.1001 416.1094, Subpart J;
- (7) 20 C.F.R. 416.1400 416.1499, Subpart N;

- (8) 20 C.F.R. 416.1701 416.1725, Subpart Q; and
- (9) 20 C.F.R. 422.401 422.445 [422.449], Subpart E.

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