

# COMMONWEALTH OF KENTUCKY OFFICE OF THE SECRETARY OF STATE MICHAEL G. ADAMS



February 7, 2022

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 702 Capitol Avenue Frankfort, Kentucky 40601

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff regarding the issues raised by 30 KAR 5:011, 30 KAR 5:021, 30 KAR 5:031, 30 KAR 5:041, 30 KAR 5:051 and 30 KAR 5:060, the Office of the Secretary of State proposes the attached amendments to 30 KAR 5:011, 30 KAR 5:021, 30 KAR 5:031, 30 KAR 5:041, 30 KAR 5:051 and 30 KAR 5:060.

Sincerely,

Michael A. Nickles

Executive Staff Advisor, Office of Business

#### 2/2/22 SUGGESTED SUBSTITUTE

### GENERAL GOVERNMENT CABINET Department of State Office of Business Services

#### 30 KAR 5:011. Definitions for 30 KAR Chapter 5.

RELATES TO: KRS Chapter 355.9

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the definitions for those administrative regulations.

Section 1. Definitions. (1) "Active Record" means a UCC record stored in the UCC information management system and indexed in, but not yet removed from, the searchable index.

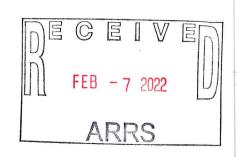
- (2) "Address" means either:
- (a) A street address, route number, or post office box number plus the city, state, and zip code; or
  - (b) An address that purports to be a mailing address outside of the United States of America.
- (3) "Amendment" means a UCC record that relates to an initial financing statement, including party or collateral changes, assignments, continuations, and terminations.
- (4) "Assignment" means an amendment that assigns all or part of a secured party's power to authorize an amendment to a financing statement.
  - (5) "Delivery" means communication of a tangible UCC record.
  - (6) "Filer" means a person who communicates a UCC record to the filing office for filing.
  - (7) "Filing office" means the Office of the Kentucky Secretary of State.
- (8) "Filing office statement" means a statement entered into the filing office's information management system to correct an error made by the filing office.
- (9) "Information statement" means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.
- (10) "Individual debtor name" means any name provided as a debtor name in a UCC record in a format that identifies the name as that of the debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.
- (11) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.
- (12) "Remitter" means a person who delivers a tangible UCC record to the filing office for filing and awaits an immediate determination as to whether the UCC record will be accepted or rejected.
- (13) "Searchable index" means the retrievable list of individual debtor names and organization debtor names together with associated file numbers the filing office maintains in the UCC information management system as active records.
- (14) "Secured party of record" means a secured party as defined in KRS 355.9-102(1)(bu) who meets the additional requirements established in KRS 355.9-511.
  - (15) "Tangible UCC record" means a UCC record that has been printed on paper.
- (16) "Time of filing" means the time of day on the date a UCC record is deemed filed under this <u>administrative</u> regulation.
- (17) "UCC" means the Uniform Commercial Code as adopted in the Commonwealth of Kentucky *in KRS Chapter 355*.

- (18) "UCC information management system" means the computer system used by the filing office to store, index, and retrieve information relating to financing statements as required by 30 KAR 5:041.
- (19) "UCC record" means an initial financing statement, an affidavit of wrongfully filed record, an amendment, a filing office statement, or an information statement and includes a record thereof maintained by the filing office, whether tangible or electronic. [The term shall not be deemed to refer exclusively to paper or paper-based writings.]
- (20) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system and that has not yet lapsed under KRS 355.9-515 with regard to all secured parties of record.

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.



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## GENERAL GOVERNMENT CABINET Department of State Office of Business Services

#### 30 KAR 5:021. Filing methods and forms.

RELATES TO: KRS 355.9, 355.9-516, 355.9-521, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the general provisions for 30 KAR Chapter 5 governing delivery, approved forms, payments and public services.

Section 1. UCC records may be communicated to the filing office as follows:

(1) Direct data entry using the online filing system of the filing office. The time of filing for a UCC record communicated by this method shall be when the entry of all required elements of the UCC record in the proper format is accepted by the online filing system.

(2) Email to the email address designated by the filing office website. The time of filing for a UCC record communicated by this method shall be when the email communicating the UCC

record is first received by the filing office.

(3) Personal delivery by remitter at the physical address of the filing office. The time of filing for a UCC record delivered by this method shall be when a UCC record is accepted for filing by the filing office.

(4) Delivery of a UCC record other than by remitter at the filing office physical address. The time of filing for a UCC record delivered by this method shall be 4:30 p.m. on the date the record was delivered to the filing office.

Section 2. (1) Information submitted to the filing office shall be provided using only characters that appear on the American standard keyboard. A financing statement or amendment form shall designate separate fields for:

(a) Organization names; and

- (b) Individual names. Individual name fields shall include surname, first personal name, additional names, initials, and suffixes for individual names.
  - (2) (a) The appropriate box on a financing statement shall be marked to indicate when:
  - 1. An initial financing statement is being filed in connection with a manufactured home;
- 2. An initial financing statement is being filed in connection with a public finance transaction; or
  - 3. An initial financing statement is being filed against a debtor that is a transmitting utility.
- (b) If the requirements of this <u>subsection[section]</u> are not met, the filing shall not affect the filing office's determination of the lapse date under 30 KAR 5:041, Section 7.

Section 3. Paper-based forms identified in Section 6 <u>of this administrative regulation</u>, or any form that is substantially the same, shall be utilized for the purpose for which the form is designated.

Section 4. Filing fees may be paid by the following methods:

(1) Debit and credit cards issued by approved issuers;

(2) Electronic checks processed under National Automated Clearing House Association ("NACHA") rules and arrangements;

(3) Prepaid account upon the submission and approval of an Application for Prepaid Account

and payment of an amount not less than \$250;

(4) Personal checks, cashier's checks, certified checks, and money orders made payable to the Kentucky State Treasurer;

(5) Cash; and

(6) Interaccount from Kentucky state agencies.

Section 5. (1) The filing fee for a UCC record shall be determined by KRS 355.9-525.

(2) The filing office shall refund the amount of an overpayment.

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

(a) "Application for Prepaid Account" (10/5/11);

(b) "UCC Financing Statement (Form UCC1), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);

(c) "UCC Financing Statement Addendum (Form UCC1Ad), International Association of

Commercial Administrators (IACA)" (Rev. 4/20/11);

(d) "UCC Financing Statement Additional Party (Form UCC1AP[Rev. 8/22/11]), International Association of Commercial Administrators (IACA)" (Rev. 8/22/11);

(e) "UCC Financing Statement Amendment (Form UCC3), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);

- (f) "UCC Financing Statement Amendment Addendum (Form UCC3Ad), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
- (g) "UCC Financing Statement Amendment Additional Party (Form UCC3AP), International Association of Commercial Administrators (IACA)" (Rev. 8/22/11);
- (h) "Information Statement (Form UCC5), International Association of Commercial Administrators (IACA)" (Rev. 7/19/12);
  - (i) "Information Request (Form UCC11)" (Rev. 7/19/12);
  - (j) "Affidavit of Wrongfully Filed Record" (9/16/21); and

(k) "Request for Secured Party Name Search Form" (6/21).

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Secretary of State, Office of Business Services, Records Section, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
- (3) This material is also available on the Secretary of State's Web site at <a href="https://www.sos.ky.gov/bus/UCC/Pages/UCC-Forms.aspx">https://www.sos.ky.gov/bus/UCC/Pages/UCC-Forms.aspx</a>.

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#### 2/2/22 SUGGESTED SUBSTITUTE

### GENERAL GOVERNMENT CABINET Department of State Office of Business Services

#### 30 KAR 5:031. Acceptance and refusal of records.

RELATES TO: KRS. KRS 355.9-513A, 355.9-515, 355.9-516, 355.9-516A, 355.9-520, 446.030

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

Section 1. The filing office shall refuse to accept a UCC record for any reason, or multiple reasons pursuant to KRS 355.9-516. The filing office may refuse to accept a UCC record pursuant to KRS 355.9-516A.

Section 2. Except for UCC records rejected under KRS 355.9-516A *[of this administrative regulation]*, the duties and responsibilities of the filing office with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record the filing office shall not:

- (1) Determine the legal effect of the UCC record;
- (2) Determine that information in the record is correct or incorrect, in whole or in part; or
- (3) Create a presumption that information in the record is correct or incorrect, in whole or in part.
- Section 3. (1) A continuation statement may be filed six (6) months preceding the month in which the financing statement would lapse and on the date that corresponds with the date the financing statement would lapse or if there is no corresponding date, on the last day of that month.
- (2) The last day on which a continuation statement may be filed shall be the date upon which the related financing statement lapses, or the next business day the filing office is open for business.
- Section 4. (1) If the filing office finds grounds to refuse a UCC record, the filing office shall refund the filing fee and return the record or a copy of the record in accordance with KRS 355.9-520(2).
- (2) The reason or reasons for the refusal and other related information shall be made to the filer as soon as practicable, but no later than two (2) business days after the refused UCC record was received by the filing office. This information shall be provided by the same method by which the UCC record was communicated to the filing office, by mail, or by a more expeditious means.
- (3) Records of refusal, including a copy of the refused UCC record and the grounds for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

Section 5. The filing office may communicate to a filer that the filing office noticed potential defects in a UCC record, whether or not it was filed or refused for filing.

Section 6. If a filer believes that a UCC record that was refused for filing should not have been refused, the filer may contact the filing office to request a review of the refusal decision. The filer shall provide a copy of the refused record and a statement of the basis for the belief that the filing office wrongfully refused to file the record. Upon receipt of a request for review, the filing office shall investigate the claim. If the filing office confirms that the record should have been refused, the filing office shall provide a written explanation of the grounds for refusal. If it is determined that the filing office refused to accept the record in error, the filing office shall file the UCC record with the filing date and time the UCC record was originally communicated for filing. A filing office statement relating to the relevant financing statement shall be placed in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the financing statement maintained in the UCC information management system.

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### GENERAL GOVERNMENT CABINET Department of State Office of Business Services

#### 30 KAR 5:041. UCC Information management system.

RELATES TO: KRS Chapter 355.9-515, 355.9-519, 355.9-526

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements for the UCC information management system.

Section 1. The filing office shall use an information management system to store, index, and retrieve information relating to financing statements.

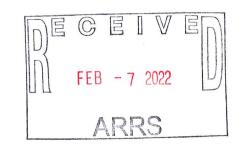
- Section 2. (1) Individual debtor names shall be stored in data files that include only the individual debtor names, and not organization debtor names. Separate data entry fields shall be established for surnames, first personal names, and additional names or initials and suffixes.
- (2) The filing office shall enter a name into the corresponding data entry field of the UCC information management system exactly as it appears on a UCC record.
- (3) Individual name fields in the UCC information management system shall be fixed to fifty (50) characters in length by the filing office. A name that exceeds the fixed length shall be truncated after it exceeds the maximum length of the data entry field.
- Section 3. (1) Upon the filing of an amendment, the names of the parties indexed in the UCC information management system <u>shall</u> remain unchanged, except that in the case of an amendment that adds a debtor or a secured party, the new debtor or new secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC information management system. An amendment that designates an assignee shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system. The filing of an amendment that deletes a debtor or a secured party from a financing statement shall not delete data from the UCC information management system.
- (2) Except in the case of a continuation statement, the filing of an amendment shall not affect the period of effectiveness of the financing statement.
- Section 4. The filing of a termination statement shall not cause an active record to be removed from the searchable index.
- Section 5. An information statement may be filed prior to the lapse of the financing statement to which it relates but shall <u>not</u> have <u>an</u> [ne] effect upon the information indexed in the UCC information management system.
- Section 6. A filing office statement shall affect the indexing of parties and of the relevant financing statement as provided in the corrective action described in the filing office statement.

Section 7. If no timely filing of a continuation statement is filed, a financing statement lapses on its lapse date but shall remain indexed as an active record for one (1) year, after which the filing office shall remove the financing statement and all related UCC records from the searchable index. Upon the removal from the searchable index, the removed UCC records shall cease to be active records.

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#### 1/31/22 SUGGESTED SUBSTITUTE

### GENERAL GOVERNMENT CABINET Department of State Office of Business Services

30 KAR 5:051. Filing, indexing, and data entry procedures.

RELATES TO: KRS 355.9-515, 355.9-519, 355.9-526

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes requirements relating to filing, indexing, and data entry procedures.

Section 1. Data shall be entered into the UCC information management system exactly as provided in a UCC record, without regard to apparent errors.

Section 2. The filing office shall compare data from tangible UCC records with data entered by the filing office to verify accurate data entry.

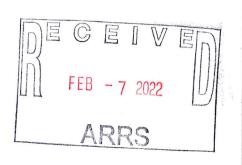
Section 3. The filing office shall <u>not</u> take <u>any</u> [not] action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

Section 4. The filing office shall, to the extent reasonably possible, redact certain personal information from the information it provides to searchers and bulk data purchasers in accordance with applicable privacy and identity theft protection laws.

Section 5. The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time. If a correction is made to a UCC record the filing office shall associate a filing office statement with the corrected UCC record in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date the filing office statement was filed and an explanation of the correction.

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### GENERAL GOVERNMENT CABINET Department of State Office of Business Services

30 KAR 5:060. Search requests, [and] reports, and copies.

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the <u>procedures for public access to UCC records [requirements governing search requests and reports]</u>.

Section 1. [General Requirements.] The filing office officer] shall maintain [for public inspection] a searchable index of active records in the UCC information management system. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement. [Regardless of the retrieval method, the following shall be retrieved:

(1) The initial financing statement; and

(2) Each active record related to the initial financing statement.]

- Section 2. [Search Requests Required Information.] (1) A request [Search requests] for certified search results shall be submitted on a completed UCC Information Request Form UCC-11, incorporated by reference in 30 KAR 5:021, together with the fee in accordance with KRS 355.9-525(3). [include the following:
- (1) Name searched. A search request shall set forth the name of the debtor to be searched using designated fields for organization or individual surname, first personal name, and additional names or initials.] A search request shall be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field[, without regard to the nature or character of the debtor that is subject of the search].[
- (2) Requesting party. The search request shall include the name and address of the person to whom the search report is to be sent.
- (3) Fee. The five (5) dollar fee shall be tendered, in accordance with KRS 355.9 -525(3), if the request is in writing.
- (4) Search Logic. The request shall specify if a search methodology other than that described in Section 4 of this administrative regulation is to be applied in conducting the search. If methodology is not specified, the methodology described in Section 4 of this administrative regulation shall be applied.

Section 3. Search Requests - Optional Information.]

- (a) A search request submitted under this subsection may include the following:
- 1. A request for
- (1)] copies; and[-] [The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:
  - (a) Include a particular debtor address;
  - (b) Include a particular city in the debtor address;
  - (c) Were filed on a particular date or within a particular range of dates; or
  - (d) Include a particular secured party name.]

<u>2.[(2) Scope of search.]</u> A <u>request[requesting party may ask]</u> for [a <u>search that reports]</u> all <u>unlapsed[active]</u> records retrieved by the search, rather than only <u>active[unlapsed]</u> records [retrieved by the search].

(b)[(3) Mode of delivery.] A search request <u>submitted under this subsection</u> may specify a <u>method[mode]</u> of delivery for search results. This request shall be honored if the requested <u>method[mode]</u> is <u>acceptable to [made available by]</u> the filing office, and <u>provided by the requesting party together with all prepaid [requisite]</u> fees[, under KRS 355.9 -525(3), are tendered].

(2) A request for uncertified search results may be submitted online through the filing office

website on the Web page designated by the filing office for that purpose.

(3) A request for search results by secured party name may be submitted on a Request for Secured Party Name Search Form, *incorporated by reference in 30 KAR 5:021*.

<u>Section 3.</u>[Section 4. Search Methodology.] (1) Search results shall be produced by the application of search logic to the name <u>provided</u> by the requesting party [presented to the filing officer. Human judgment shall not play a role in determining the results of the search].

- (2) [Standard search logic.] The requirements established in this subsection shall describe the filing office's standard search logic and shall apply to all searches [unless the search request specifies that a nonstandard search logic be used].
- (a) There shall not be a limit to the number of matches that may be returned in response to the search criteria.

(b) A distinction shall not be made between upper and lower case letters.

- (c) The character "&" (the ampersand) shall be deleted and replaced with the word "and" each place it appears in the name.
- (d) Punctuation marks and accents shall be disregarded. For the purposes of this administrative regulation, punctuation and accents include all characters other than the numerals zero through nine (9) and the letters A through Z, in any case, of the English alphabet.
  - (e) The word "the" at the beginning of an organization debtor name shall be disregarded.

(f) All spaces shall be disregarded.

- (g) For first personal name and additional names or initials of individual debtor names, initials shall be treated as the logical equivalent of all names that begin with those initials, and first personal name and no additional names or initials shall be equated with all additional names or initials. For example, a search request for "John A. Smith" shall cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with the initial "A" or any name beginning with "A" in the additional names or initials field. If the search request is for "John Smith" (first personal name and surnames with no designation in the additional names or initials field), the search shall retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with any name or initial or no name or initial in the additional names or initials field.
- (h) If the name being searched is the surname of an individual debtor name without any first personal name or additional names or initials provided, the search shall retrieve from the UCC information management system all financing statements with individual debtor names that consist of only the surname.
- (i) The following words, <u>phrases</u>, <u>or abbreviations</u> shall be disregarded <u>from the end of an organization name to the beginning of that organization name until an unlisted word, phrase, or abbreviation appears [as noise words]:</u>
  - 1. "agency";
  - 2. "association";
  - 3. "assn";
  - 4. "associates";
  - 5. "assoc";
  - 6. "assc";

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7. "attorney at law";
8. "attorneys at law";
9.[8.] "bank";
10.[9.] "national bank";
11.[<del>10.</del>] "na";
12.[11.] "business trust";
13.[12.] "charter";
14.[13.] "chartered";
15.[14.] "company";
<u>16.[15.]</u> "co";
17.[<del>16.</del>] "cooperative";
18. "coop";
19. "corporation";
20.[<del>17.</del>] "corp";
21.[18.] "credit union";
22.[<del>19.</del>] "cu";
23.[20.] "federal credit union";
24.[21.] "fcu";
25.[22.] "federal savings bank";
26.[23.] "fsb";
27.[24.] "general partnership";
28.[<del>25.</del>] "gen part";
29.[26.] "gp";
30.[27.] "incorporated";
31.[<del>28.</del>] "inc";
32.[29.] "limited";
33.[30.] "Itd";
34.[31.] "Itee";
35.[32.] "limited liability company";
36.[33.] "lc";
37.[34.] "Ilc";
38.[35.] "limited liability limited partnership";
39.[36.] "Illp";
40.[37.] "limited liability partnership";
41.[38.] "llp";
42. "limited partnership";
43.[<del>39.</del>] "lp";
44.[40.] "medical doctors professional association";
45.[41.] "mdpa";
46.[42.] "medical doctors professional corporation";
47.[43.] "mdpc";
48.[44.] "national association";
49.[45.] "partners";
50.[46.] "partnership";
51.[47.] "professional association";
52.[48.] "prof assn";
53.[49.] "pa";
54. "professional service corporation";
55. "professional service corp";
56. "prof service corporation";
57. "prof service corp";
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58.[50.] "professional corporation";
59.[51.] "prof corp";
60.[52.] "pc";
61.[53.] "professional limited liability company";
62.[54.] "pllc";
63. "public benefit corporation";
64. "public benefit corp";
65. "pbc";
66. "public benefit";
67.[55.] "real estate investment trust";
68.[56.] "registered limited liability partnership";
69.[<del>57.</del>] "rllp";
70.[58.] "savings association";
71.[<del>59.</del>] "sa";
72.[60.] "sole proprietorship";
73.[<del>61.</del>] "sp";
74.[<del>62.</del>] "spa";
75.[63.kkk.] "trust";
76.[64.] "trustee"; and
77.[65.] "as trustee".
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(j) After using the requirements outlined in paragraphs (a) through (i) of this subsection to modify the name being searched, the search shall retrieve from the UCC information management system all unlapsed records, or, if requested by the searcher, all active records, that pertain to financing statements with debtor names that, after being modified as provided in [Section 5 of] this administrative regulation, exactly match the modified name being searched.[

Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that will alter search results, the filing office shall provide public notice of the change.]

<u>Section 4.[Section 6.][Search Responses.] (1) A response</u>[responses] to a search request shall include the following:

(a)[(1)] [Copies.] A list [Copies] of all UCC records retrieved by the search[, unless only limited copies are requested by the searcher. Copies shall reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(b)[(a) Filing office identification.] Identification of the filing office responsible for the search response;

(c)[(b) Unique search report identification number. Unique number which identifies the search report;

(c) Report date and time. The date and time the report was generated;

(d) Through date and time.] The date and time at, or prior to, which a UCC record was filed with the filing office in order for it to be reflected on the search;

(d)[(e) Certification date. The certification date and time for which the search is effective;

- (f)] Scope of search;
- (g) Search logic used;

(h) Search logic disclaimer language;

(i) Name provided.] The name or names searched[as provided by searcher];[

(j) Search string. Normalized name as provided by Section 4 of this administrative regulation;

(k) Lien type searched. UCC or other type of documents searched;] and

(e)[(I) Copies.] <u>Digital images</u> [Copies] of all UCC records <u>retrieved[revealed]</u> by the search <u>in .pdf or .tiff format[and requested by the searcher]</u>. <u>Any images not available may be requested from the filing office[Copies of UCC records shall not be available for electronic search requests]</u>.

(2)[(3) Report.] In addition to the information provided under subsection (1) of this section, a response to a request for certified[The] search results[report] shall contain the following in a Standard Search Certificate and Report:

(a) [Identification. Identification of the filing office responsible for the search report;

(b) Search report identification number.] A certificate [Unique] number [assigned under subsection (2)(b) of this section]; [and]

(b) The date on which the search was certified by the filing office; and

(c) The scope of the search, indicating whether the requesting party has requested active records or only unlapsed records. [Identification of financing statement, Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria, including whether the searcher has requested active records or only unlapsed records. Financing statement information shall include the following:

1. The initial financing statement file number;

2. The date and time the initial financing statement was filed;

3. The lapse date;

- 4. The debtor name that appears of record;
- 5. The debtor address that appears of record;
- 6. The secured party name that appears of record;
- 7. The secured party address that appears of record;
- 8. An indication of type of each amendment, if any;
- 9. The date and time each amendment, if any, was filed;
- 10. The amendment file number of each amendment, if any;
- 11. The date and time a correction statement, if any, was filed; and
- 12. The date and time a filing officer statement, if any, was filed.]
- (3) A response to a request for a secured party name search shall include only active records and shall not be certified.

Section 5. UCC records and data shall be provided to the public by the following methods:

- (1) Copies of individually identified documents shall be provided in digital .pdf format at no charge unless paper copies are specifically requested. Paper copies shall be assessed at the rate of \$0.50 cents per page. A request for paper copies shall include a mailing address where the requested copies shall be mailed. Copies may be certified for an additional fee of five (5) dollars.
- (2) Bulk data related to UCC filings may be obtained through subscription as directed by the website of the Office of the Secretary of State and shall be made available under the terms and conditions of the subscriber agreement.

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.



#### KENTUCKY PUBLIC PENSIONS AUTHORITY

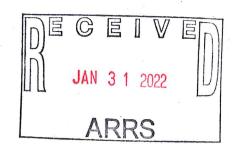
David L. Eager, Executive Director

1260 Louisville Road • Frankfort, Kentucky 40601 kyret.ky.gov • Phone: 502-696-8800 • Fax: 502-696-8822



January 31, 2022

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



Re: Amendment to 105 KAR 1:210, Disability procedures.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 105 KAR 1:210, the Kentucky Public Pensions Authority proposes the attached amendment to 105 KAR 1:210.

Sincerely,

Carrie Bass

Staff Attorney Supervisor Kentucky Public Pensions Authority

and Bass

1260 Louisville Road

Frankfort, Kentucky 40601

#### Final, 1-21-2022

#### SUGGESTED SUBSTITUTE

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505-16.652, 61.505[40]-61.705, 78.510-78.852, 344.030, 29 C.F.R. Part 1630, 42 U.S.C. 12111(9)

STATUTORY AUTHORITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f)[61.645(9)(g)] authorizes the Kentucky Public Pensions Authority[Board of Trustees of Kentucky Retirement Systems] to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with[necessary or proper in order to carry out the previsions of] KRS 61.510[61.515] to 61.705, 16.505[16.510] to 16.652, and 78.510[78.520] to 78.852. KRS 16.582, 78.5524, 61.600, 78.5522, [and-]61.665, and 78.545 establish[provide for] a process for applying for disability retirement benefits to members of the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employees Retirement System[retirement systems] and a process for administrative appeal of a denial of an application or reapplication for disability retirement benefits. This administrative regulation establishes the procedure for filing an application or reapplication for disability retirement benefits and the procedures for filing an administrative appeal of a denial of an application for disability retirement benefits.

Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation f, unless otherwise defined herein.

(2) Prior to April 1, 2021, "*[the]* agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "*[the]* agency" means the Kentucky Public Pension Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "Applicant" means a member or retired member of the State Police Retirement System, the Kentucky Employees Retirement System, or the County Employees Retirement System (or a member or retired member of multiple Systems) who has applied or is applying for disability retirement benefits in accordance with KRS 16.582, 78.5524, 61.600, 78.5522, 61.665, and 78.545.

(4) Prior to April 1, 2021, "DAC" means the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems. Effective April 1, 2021, "DAC" means the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545.

(5) "File" means [the following methods for] delivering or submitting a form or other documents to the retirement office, unless otherwise stated by[:] mail, fax, in-person delivery, secure email, or[and] upload via Self Service on the Web site maintained by the agency (if available).

A form or other document is shall not the deemed filed until it has been received at the retirement office.

(6) "Invalid" means that the form is deficient and not to be accepted or processed by

the agency.

(7)[(6)] "Participating employers" means employers participating in the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(8)[(7)] "Provide[-]" [when used in reference to a form-] means [the following methods for the agency makes to make a form available to a member, retired member, or beneficiary by: mail, fax, secure email, or [and] upload via Self Service on the Web site maintained by the

agency (if available).

(9)[(8) For the purposes of this regulation only,] "Recipient" means a retired member of the State Police Retirement System, the Kentucky Employees Retirement System, or the County Employees Retirement System (or a retired member of multiple Systems) who is receiving disability retirement benefits in accordance with KRS 16.582, 78.5524, 61.600, 78.5522, 61.665, and 78.545.

(10)[(9)] "[The] Systems" means the State Police Retirement System, the Kentucky Employ-

ees Retirement System, and the County Employees Retirement System.

(11)[(10)] "Valid]," [when used in reference to a form,] means that all required sections on

a form are completed and all required signatures on a form are executed.

[(11) "Invalid," when used in reference to a form, means that the form is deficient and shall not be accepted or processed by the Agency-[(1) An application or reapplication for disability benefits shall be made on "Form 6000, Notification of Retirement".

(2)(a) The application or reapplication shall be filed at the retirement systems within twentyfour (24) months, which is 730 calendar days, of the applicant's last day of paid employment in

a regular full time position.

(b) The time period for filing an application or reapplication for disability retirement benefits shall begin on the day after the applicant's last day of paid employment in the regular full-time position and shall end at close of business on the following 730th day. (c) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or

(d) The applicant's employer shall certify the applicant's last day of paid employment.

(e) An application or reapplication may be submitted prior to the applicant's last day of paid employment.]

Section 2. Use of Third-party Vendors.

(1) The agency may contract with third-party vendors to act on its behalf throughout the disability retirement application and review process. The agency may also contract with third-party vendors to act on its behalf throughout the periodic review, reinstatement review, and employment review processes.

(2) The agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may [also] provide additional persons to fulfill non-physician roles throughout the disability retirement application process.

(3) [For purposes of this regulation,] Third-party vendors may act on behalf of the agency

and the systems with all the rights and responsibilities therein.[

(1) If the applicant is eligible to begin drawing early retirement benefits, the applicant shall be notified of the right to receive a retirement allowance while the disability application is being processed.

(2) Election of early retirement by the applicant shall not affect the application for disability retirement.]

Section 3. Filing an Application or Reapplication for Disability Retirement Benefits.

(1) An application for disability retirement benefits or a reapplication for disability retirement benefits shall be made on the Form 6000, ["]Notification of Retirement.["]

(2) (a)1. A reapplication for disability retirement benefits based on the same claim of incapacity shall be accompanied by new objective medical evidence not previously considered with pri-

or applications.

2. An applicant shall have **[one hundred eighty (]**180**])**] days from the date the reapplication for disability retirement benefits based on the same claim of incapacity is on file at the retirement office in which to file new objective medical evidence not previously considered with prior applications.

3. If the last day of the period described in subparagraph 2. of this paragraph is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the dead-line shall be satisfied if the required forms, certification, information, or [and/or] request are on file at the retirement office by the close of the next business day.

4. A reapplication for disability retirement benefits based on the same claim of incapacity that is accompanied by new objective medical evidence shall be reviewed in conjunction with the ob-

jective medical evidence, forms, and information filed with all previous applications.

(b) A reapplication for disability retirement benefits based on the same claim of incapacity that is unaccompanied by new objective medical evidence that was not considered with previous applications within *[one hundred eighty ([180])]* days of filing of the reapplication shall be invalid and shall not be accepted or considered by the agency.

(3) A reapplication for disability retirement benefits that is filed subsequent to a prior application for disability retirement benefits and is based on an entirely different claim of incapacity shall[will] be treated in the same manner as a reapplication for disability retirement benefits

based on the same claim of incapacity under subsection (2) of this section.

(4)(a) Pursuant to KRS 16.582, 78.5524, 61.600, and 78.5522, the twenty-four (24) month period after the applicant's last day of paid employment during which the applicant shall[must] have a valid application on file at the retirement office shall consist of [seven hundred thirty f[730]] calendar days.

(b) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application shall be timely if filed at the retirement office by

the close of the next business day.

(c) If a valid application or reapplication for disability retirement benefits is not on file at the retirement office at the close of business on the 730th day, then the application or reapplication is not timely and the applicant is not qualified to retire on disability.

(d)1. The applicant's last day of paid employment shall either be certified by the applicant's employer or filed by the applicant and corroborated by the reporting information received by the agency from the applicant's employer.

2. In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the agency's records.

(5) An application or reapplication may be filed prior to the applicant's last day of paid employment but no earlier than six (6) months prior to the applicant's last day of paid employment.

Section 4. Forms Required with Disability Retirement Application or Reapplication.

(1) In addition to a valid application or reapplication for disability retirement benefits in accordance with Section 3 of this administrative regulation, the applicant shall [be required to]

file the following forms and information with the retirement office prior to review by the medical examiners under KRS 61.665 and 78.545:

(a) A valid Form 8035, ["] Employee Job Description; ["]

(b) A valid Form 8040, [4] Prescription and Nonprescription Medications;[2]

(c) Supporting medical information; and

(d) Once all supporting medical information has been submitted, a valid Form 8001, [4]Certification of Application for Disability Retirement and Supporting Medical Information.["]

(2) The applicant's employer shall complete and submit to the retirement office a Form 8030,

["]Employer Job Description.["] for all initial applications for disability retirement benefits.

(3) Both the applicant and the employer shall file information regarding the applicant's request for reasonable accommodations as required by KRS 61.665(2)(a), 61.665(2)(b), and 78.545.

(4) The applicant and the applicant's employer shall file or submit additional information regarding the applicant's job duties and reasonable accommodations upon request by the agency

or a third-party vendor on its behalf.

(5) For a reapplication for disability retirement benefits, the applicant's employer shall [be required to] complete and submit to the retirement office an updated Form 8030, ["IEmployer Job Description,["] and additional information on reasonable accommodations as described in subsection (3) of this section only if the applicant's job duties or the reasonable accommodation information have changed since the prior application.

(6) The agency or its contracted third-party vendor shall provide to the medical examiners the application or reapplication for disability retirement benefits and all forms and information listed in subsections (1) and (5) of this section upon submission of a valid Form 8001, ["]Certification

of Application for Disability Retirement and Supporting Medical Information.["]

(7)(a) The Jone hundred eighty (]180])] day period to file all necessary forms, certifications, and information under KRS 61.665(2)(a) and 78.545 and this section shall begin on the day the applicant's valid Form 6000, ["] Notification of Retirement, ["] that complies with Section 3 of this administrative regulation is on file at the retirement office and shall end at close of business on the last day of the prescribed time period.

(b) Pursuant to KRS 61.665(2)(f), 61.665(2)(h), 61.665(3)(a), and 78.545, the Jone hundred eighty ([180])] day period to appeal the recommended denial of disability retirement benefits by two (2) or more of the three (3) medical examiners reviewing the objective medical evidence shall begin on the day the notification of the recommendation of the medical examiners is mailed by the agency, or a third-party vendor on its behalf, and shall end at close of business on

the last day of the prescribed time period.

(c) If the last day of the period described in paragraphs (a) or (b) of this subsection is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the forms, certification, information, appeals, orfand/orl requests required by KRS 61.665 and 78.545 and this section are on file at the retirement office by the close of the next business day.

Section 5. Effect of Subsequent Disability Retirement Reapplication While a Prior Application

or Reapplication is Still Pending.

(1) If a subsequent valid reapplication for disability retirement benefits that complies with Section 3 of this administrative regulation is filed at the retirement office while a prior application or reapplication is pending review by the medical examiners under KRS 61.665 and 78.545, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545. The subsequent reapplication shall not be submitted for review by the medical examiners.

(2)(a) If a subsequent valid reapplication for disability retirement benefits that complies with Section 3 of this administrative regulation is filed at the retirement office after an applicant has requested an administrative hearing to appeal the denial of an earlier application or reapplication for disability retirement benefits, but prior to a Final Order of DAC regarding the earlier application or reapplication, then the subsequently filed reapplication shall be found as [deemed] a notice of intent to dismiss the request for administrative hearing unless the applicant simultaneously files a written statement that the subsequently filed reapplication has been filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

(b) A subsequently filed reapplication as described in paragraph (a) of this subsection shall not be processed by the agency until thirty-one (31) days after the entry of a Final Order of DAC dismissing the previously requested administrative appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall

be effective immediately.

(c) All evidentiary filings made during an administrative hearing process to appeal the denial of an earlier application or reapplication for disability retirement benefits shall be included in the information provided to the medical examiners for review of the subsequently filed reapplication.

(3)(a)1. If a subsequent valid reapplication for disability retirement benefits is filed at the retirement office after DAC has issued a Final Order denying a prior application or reapplication for disability retirement benefits and during the statutory time for appeal of the Final Order or after an appeal of the Final Order has been made, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

2. The subsequent reapplication as described in subparagraph 1. of this paragraph shall not be submitted for review by the medical examiners, unless the applicant simultaneously files a written statement that the applicant shall[will] not appeal the Final Order of DAC or has with-

drawn any pending appeal of a Final Order of DAC.

(b) If a subsequent valid reapplication for disability retirement benefits is filed at the retirement office after DAC has issued a Final Order denying an application or reapplication for disability retirement benefits, all applicable statutory time for appeals of the Final Order have lapsed, and the reapplication complies with KRS 16.582, 78.5524, 61.600, 78.5522, and Section 3 of this administrative regulation, then the subsequently filed reapplication for disability retirement benefits shall be valid.

Section 6. Eligibility for Early or Normal Retirement Benefits at the Time of Application for

Disability Retirement Benefits.

(1)(a) If the applicant is eligible to receive early or normal retirement benefits when at the time a valid Form 6000, ["]Notification of Retirement, ["] for disability retirement benefits that complies with Section 3 of this administrative regulation is filed at the retirement office, the agency shall treat a valid Form 6000, ["]Notification of Retirement, ["] as [also] being an application for early or normal retirement benefits.

(b) If the applicant becomes eligible to receive early or normal retirement benefits while the application for disability retirement benefits is pending or an appeal of the denial of disability retirement benefits is pending, the agency shall treat a valid Form 6000, ["]Notification of Retirement, ["] of the applicant that complies with Section 3 of this administrative regulation as [alsel] being an application for early or normal retirement benefits upon written request by the ap-

plicant filed at the retirement office.

(2) If the applicant has terminated employment from all participating employers and the applicant's Form 6000, ["]Notification of Retirement, ["] is [also] an effective application for early or normal retirement benefits pursuant to subsection (1) of this section, the agency shall provide

a Form 6010, ["] Estimated Retirement Allowance, ["] for early or normal retirement benefits to

the applicant.

(3)(a) An application for disability retirement benefits on the Form 6000, ["]Notification of Retirement,["] that is [also] an effective application for early retirement benefits pursuant to subsection (1) of this section shall not be affected if the applicant fails to have a valid Form 6010,["] Estimated Retirement Allowance, [7] for early retirement benefits on file at the retirement office within six (6) months following termination from all employment with participating employers in accordance with KRS 61.590(5)(b) and 78.545, if[so long as] the application for disability retirement benefits is still pending medical examiner review, administrative action, or judicial review.

(b) If the applicant has been provided with a Form 6010, [4] Estimated Retirement Allowance, ["] for early retirement benefits in accordance with subsection (2) of this section and the applicant does not have a valid Form 6010, ["] Estimated Retirement Allowance, ["] for early retirement benefits on file at the retirement office within six (6) months following termination from all employment with participating employers, then [in order] to receive early retirement benefits the applicant shall [be required to] file a new Form 6000, ["]Notification of Retirement, ["] solely for

early retirement benefits in accordance with KRS 61.590(5)(b) and 78.545.

(c) If the applicant is required to file a new valid Form 6000, ["]Notification of Retirement, ["] specifically for early retirement benefits as described in paragraph (b) of this subsection and designates a different beneficiary than designated on the original Form 6000, f"Notification of Retirement, ["] for disability retirement benefits, then the beneficiary designation on the later Form 6000, ["]Notification of Retirement,["] specifically for early retirement benefits shall supersede any prior beneficiary designation pursuant to KRS 61.542 and 78.545.

Section 7. Requests for Additional Objective Medical Evidence by the Medical Examiners.

(1) A medical examiner reviewing an application or reapplication for disability retirement benefits pursuant to KRS 61.665 and 78.545 may place their recommendation on hold and request

additional objective medical evidence.

(2) If two (2) or more of the three (3) medical examiners reviewing an application or reapplication for disability retirement benefits place their recommendation on hold and request additional objective medical evidence, then the agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence along with a valid Form 8001, ["Certification of Application for Disability Retirement and Supporting Medical Information, [4] to the retirement office.

(3) If there is no majority recommendation by the three (3) medical examiners reviewing an application or reapplication for disability retirement benefits because one (1) medical examiner recommends approval, one (1) medical examiner recommends denial, and one (1) medical examiner requests additional objective medical evidence, then the agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence along with a valid Form 8001, ["]Certification of Application for Disability Retirement and Supporting Medical Information, [2] to the retirement office.

(4)(a) Upon receipt of the requested additional objective medical evidence with a valid Form 8001, ["]Certification of Application for Disability Retirement and Supporting Medical Information, [7] the agency, or a third-party vendor, shall resubmit the matter, including any additional objective medical evidence submitted in response to the medical examiner's request, to all three (3) medical examiners and the medical examiners shall issue new recommendations.

(b) Upon the expiration of sixty (60) days from the date of the notification, if no additional objective medical evidence with a valid Form 8001, ["]Certification of Application for Disability Retirement and Supporting Medical Information, [2] is on file at the retirement office, the agency, or a third-party vendor, shall resubmit the matter to only the medical examiner or examiners[examiner(s)] that placed their recommendation on hold and the medical examiner or examiners[examiner(s)] shall issue a new recommendation.

Section 8. Medical or Psychological Examination Required at the Expense of the Agency.

(1) The applicant shall complete and submit to the retirement systems a "Form 8035, Employee's Job Description". The applicant's employer shall complete and submit to the retirement systems a "Form 8030, Employer's Job Description". Both the applicant and the employer shall provide information regarding applicant's request for reasonable accommodations and the reasonable accommodations available to applicant, whether or not the applicant actually accepted the reasonable accommodations.

(2) The retirement systems may require additional details from the applicant and the appli-

cant's employer regarding the applicant's job duties, if necessary.

Section 4.1

(1) If the agency[retirement systems] requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(j) and 78.545 or KRS 61.665(3)(c) and 78.545, the agency[retirement systems] shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems].

The applicant shall be reimbursed for the most direct[-and usually traveled] routes.

(2)(a)[Mileage shall be based on the MapQuest website, Google Maps website, the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas."] The applicant shall complete and file[submit] a Form 8846, Travel Voucher for["Independent Examination [Travel Voucher],["] indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems]. The applicant shall [also] indicate any actual parking costs and any actual bridge or highway toll charges on the most direct route on the Form 8846, Travel Voucher for ["Independent Examination [Travel Voucher] ["] The applicant shall use the most direct and usually traveled routes.]

(b) The applicant shall file the Form 8846, Travel Voucher forf-Independent Examination [Travel Voucher"] and all necessary receipts at the retirement office within fifteen (15) days of the examination or evaluation [in order] to be reimbursed for mileage, actual parking costs, and any actual bridge or highway toll charges as described in subsections (3) through (6) of this sec-

tion.

(3)(a) Mileage shall be based on the MapQuest Web site, Google Maps Web site, the I"Kentucky Official Highway Map, as incorporated by reference in 200 KAR 2:006["] or the most recent edition of the [ARand McNally Road Atlas, as incorporated by reference in 200

KAR 2:006.[\*]

(b) The mileage certified by the applicant on the Form 8846, Travel Voucher for["Independent Examination [Travel Voucher],["] shall not be greater than the mileage indicated by the MapQuest Web site, Google Maps Web site, the Highway Map, ["] [", mileage software,] or the most recent edition of the ["]Rand McNally Road Atlas ["] for the most direct[-and-usually traveled] route from applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems].

(c) If the mileage certified by the applicant on the Form 8846, Travel Voucher for["Independent Examination [Travel Voucher],["] is greater than the mileage indicated by the MapQuest Web site, Google Maps Web site, the ["Kentucky Official Highway Map,["] mileage software,] or the most recent edition of the [ARAnd McNally Road Atlas[ARAnd McNally Road Atlas[ARAND] for the most direct route, the <u>agency[retirement systems]</u> shall pay the applicant the mileage indicated by <u>the MapQuest Web site</u>, <u>Google Maps Web site</u>, the <u>["]</u>Kentucky Official Highway Map, <u>["]</u>[", <u>mileage software</u>,] or the most recent edition of the <u>["]</u>Rand McNally Road Atlas <u>["]</u>["] <u>for the most direct route</u>.

(4) Reimbursement for use of a privately owned vehicle shall be made at the <u>Internal Revenue Service[IRS]</u> established standard mileage rate <u>applicable at the time of travel[which</u>

changes periodically; and shall not exceed the cost of commercial coach fare].

(5) Actual costs for parking shall be reimbursed upon submission of receipts.[-The applicant shall submit the originals of the parking receipts along with a written request for reimbursement].

- (6) Actual[Actually] bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct[-and usually traveled] route.[-The applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.
- (7) The applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.

Section 5. The applicant shall provide to the retirement system information concerning his continuing status with regard to receipt of Workers' Compensation and Social Security disability benefits.

Section 6. (1) The applicant shall complete and submit a "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information." The applicant shall attach all medical information, forms, and other information for review by the medical examiners to the "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information."

(2) The retirement systems shall submit the completed "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information" and all the attached information.

mation to the medical examiners upon receipt by the retirement systems.

(3) The time periods prescribed in KRS 61.600 and 61.665 shall begin on the day the notification of the recommendation of the medical examiners is mailed by the retirement systems and shall end at close of business on the last day of the prescribed time period.

(4) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day

following the weekend or holiday.

(5) An applicant's request for a formal hearing shall be made in writing.

(6) Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results.

Section 7. The medical examiner may contact the applicant or the applicant's physicians to request additional medical evidence as necessary.]

Section 9. Social Security and Workers' Compensation Benefits.

(1) The applicant shall notify the agency of his or her intent to apply for Workers' Compensation or disability benefits from the Social Security Administration.

(2) The applicant shall file information concerning his or her status with regard to receipt of

Workers' Compensation and Social Security disability benefits at the retirement office.

(3) Upon receipt of approval for Workers' Compensation or disability benefits from the Social Security Administration, the applicant shall file at the retirement office a copy of the approval notice containing the amount of the award or payments. For Workers' Compensation settlements, the applicant shall file a copy of the settlement signed by the Administrative Law Judge.

(4) To determine the maximum benefit under KRS 61.607 and 78.5530, the following shall be

added together:

(a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 and 78.5522 or 16.582 and 78.5522, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 and 78.545 or 16.576, converted to an annual amount.

(b) The applicant's total gross monthly benefit from Workers' Compensation excluding spouse or dependent benefits and allowances. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit

shall be determined as follows:

1. The gross amount of any lump sum payment shall be divided by the applicant's life expec-

tancy, expressed in years, from the applicant's effective date of retirement.

2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's life expectancy, expressed in years, from the applicant's effective date of retirement.

3. The total determined in subparagraphs 1. and 2. of this paragraph shall be combined and

added to the total gross annual amount of the applicant's lifetime benefit, if any.

(c) The applicant's gross monthly disability benefit from the Social Security Administration,

excluding spouse or dependent benefits converted to an annual amount.

(5) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the systems operated by the agency shall be reduced as follows:

(a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 and 78.5522 or 16.582 and 78.5522, excluding payments to dependent children and before any actuarial reduction for pur-

poses of an optional retirement plan under KRS 61.635 and 78.545 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 and 78.545 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective dates of the individual benefits.

(6) The disability retirement allowance payable shall not be reduced below an amount that results[would result] from a computation of retirement allowance under early retirement or the disability retirement allowance from the systems operated by the agency using the applicant's

actual total service, whichever is greater.

(7)(a) Failure to respond to requests from the agency for information concerning a recipient's status with regard to receipt of Workers' Compensation and Social Security disability benefits

may result in the agency putting the recipient's monthly benefit on hold.

(b) Monthly benefits held for failure to respond to a request for information concerning a recipient's status with regard to receipt of Workers' Compensation and Social Security disability benefits shall[will] be paid to the recipient once the recipient files the requested information at the retirement office.

Section 10. Administrative Hearings Concerning the Denial of Disability Retirement Benefits. (1)(a) A request by the applicant for an administrative hearing to appeal the denial of disabil-

ity retirement benefits under KRS 61.665 and 78.545 shall be made in writing and contain a

short statement of the issues being appealed.

(b) An applicant's written request for an administrative hearing to appeal the denial of disability retirement benefits shall be filed at the retirement office. Email requests shall not be accepted.

Section 8. (1)] The hearing officer presiding over an administrative hearing may allow the applicant to introduce, among other evidence, the determination of other state and federal agencies, such as[including, but not limited to] the Kentucky Department of Workers' Claims and the[Workers' Compensation or] Social—Security Administration, approving the applicant for[awarding disability] benefits[to the applicant] if accompanied by underlying objective medical evidence.

(3)[(2)] The hearing officer presiding over an administrative hearing shall consider only objective medical evidence [records] contained within the determination and shall not consider or be bound by vocational factors or be bound by factual or legal findings of other state or federal

agencies.

(4) Statements by physicians within the administrative record of the application or reapplication for disability retirement benefits shall not be considered by themselves to be objective medical evidence unless accompanied by documented medical records or test results.

Section 11[9]. Provisions Applicable to Applicants with Hazardous and Nonhazardous Service.

(1) [The provisions of this section shall only apply to a member who began participating on or

before July 31; 2004.

(2) If an application for disability is approved, the applicant's disability benefit shall be paid retroactive to the month following the month of the applicant's last day of paid employment.

(3)] The service added for determining the disability retirement allowance shall be determined under KRS 16.582 and 78.5524 if the applicant's last day of paid employment was in a hazardous position, or under KRS 61.605 and 78.5522 if the applicant's last day of paid em-

ployment was in a nonhazardous position.

(2)[(4)] If the applicant has both hazardous and nonhazardous service in the same system, the added service shall be prorated between hazardous and nonhazardous service based on the proportion of service in each position to the whole, except that all of the added service shall be applied toward the nonhazardous retirement allowance if:

(a) The applicant is disabled from a hazardous position as a result of an act in line of duty;

(b) Twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous

disability retirement allowance determined using the prorated added service.

(3)[(5)] If the applicant has service in more than one (1) system administered by the Kentucky Retirement Systems or the County Employees Retirement System, the added service shall be prorated between the systems based on the proportion of service in each system to the whole, except if the applicant is disabled from a hazardous position in one (1) system as a result of an act in line of duty and twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added ser-

(a) All of the added service shall be applied toward the nonhazardous retirement system if the applicant is vested for disability retirement benefits from the nonhazardous system.

(b) All of the added service shall be applied toward the hazardous retirement system if the applicant is not vested for disability retirement benefits from the nonhazardous system.

Section 12[40]. Back Payment of Enhanced Disability Retirement Allowance.

(1) If the applicant [who] is awarded disability retirement benefits and did not receive early or normal retirement benefits, upon the applicant's selection of a payment option, the agency[retirement systems] shall pay the applicant the total monthly retirement allowances payable retroactive to the month following the month of the applicant's last day of paid employment[from the effective date of disability retirement].

(2)(a) If the applicant received early or normal retirement benefits, the agency[retirement systems] shall calculate and pay to the applicant the difference between the early or normal retire-

ment benefit which was paid to the applicant and the disability retirement benefit.

(b) The applicant shall not change the beneficiary named or his the payment option selected upon early or normal retirement, except as provided in KRS 61.542(5)(a), 61.542(5)(b), and 78.545.[(3) If benefits are payable to dependent children, as defined in KRS 16.505(17), the parent or guardian shall provide:

(a) A completed Form 6456, Designation of Dependent Child;

(b) A verification of full time student status of a child age eighteen (18) or over;

(c) A copy of the birth certificate of each dependent child;

(d) If a dependent child is a minor, a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the minor child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator; and

(e) Notice of the death or marriage of a dependent child, or if the dependent child ceases to

be a full time student.

(f) A copy of the dependent child's verification of full time student status shall be filed with the retirement system for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester.

(4) An increase provided to recipients under KRS 61.691 shall be applied to the applicant's disability benefit and payments to dependent children in determining the total retroactive pay-

ments ewed to the applicant and dependent children.

Section 11. (1) The applicant shall notify the retirement systems of his intent to apply for workers' compensation or benefits from the Social Security Administration. Upon receipt of approval for workers' compensation or benefits from the Social Security Administration, the applicant shall file at the retirement systems a copy of the approval notice containing the amount of the award.

(2) To determine the maximum benefit under KRS 61.607, the following shall be added to

gether:

- (a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576, converted to an annual amount.
- (b) The applicant's total gross annual benefit from workers' compensation. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit shall be determined as follows:

1. The gross amount of any lump sum payment shall be divided by the applicant's life expec-

tancy, expressed in years, from the effective date of the award.

2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award:

3. The total determined in subparagraphs 1 and 2 of this paragraph shall be combined and added to the total gross annual amount of the applicant's lifetime benefit, if any.

(c) The applicant's gross monthly disability benefit from the Social Security Administration, excluding spouse or dependent benefits converted to an annual amount.

(3) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the retirement system shall be reduced as follows:

(a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective

dates of the individual benefits.

(4) The disability retirement allowance payable shall not be reduced below an amount which would result from a computation of retirement allowance under early retirement or the disability retirement allowance from the retirement system using the disabled employee's actual total service, whichever is greater.]

Section 13[42]. Direct Deposit or Payment by Check.

(1) A recipient shall complete a Form 6130, [Authorization for Deposit of Retirement Payment,["] and file it at the retirement office, include direct deposit information on the Form 6000, ["Notification of Retirement, ["] or authorize direct deposit via Self-Service on the Web site maintained by the agency to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall file[provide] the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the desig-

nated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new valid Form 6130, [44]Authorization for Deposit of Retirement Payment, ["] and filing the form at the retirement office[systems], or by changing their di-

rect deposit information via Self-Service on the Web site maintained by the agency.

(b) The latter of the designation on a valid Form 6000, [4]Notification of Retirement,[4] the last valid Form 6130, [4] Authorization for Deposit of Retirement Payment, [2] after the Form 6000 is on file at the retirement office[systems], or the direct deposit information submitted via Self-Service on the Web site maintained by the Agency shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a Form 6135, [4] Request for Payment by Check, [4] and file it at the retirement office if the recipient does not currently have an account with a financial institution or the member's financial institution does not participate in the electronic funds transfer pro-

gram.

(5) The agency[retirement systems] shall not process the retirement allowance until the recipient has filed a valid Form 6000, ["Notification of Retirement, ["] that complies with Section 3 of this administrative regulation at the retirement office[a completed Form 6130, Authorization for Deposit of Retirement Payment or filed a completed Form 6135, Request for Payment by Check].

Section 14. Death During Disability Retirement Application Process.

(1)(a) If an applicant has a valid Form 6000, ["]Notification of Retirement,["] for disability retirement benefits that complies with Section 3 of this administrative regulation on file at the retirement office, is not receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in order] to continue with the applicant's application or reapplication for disability retirement benefits:

1. A Form 6008, [4] Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member:[."]

2. Any outstanding forms required by Section 4 of this administrative regulation that have

not yet been filed by the applicant;[-] and

3. Any additional relevant objective medical evidence and a valid Form 8002, ["Beneficiary] Certification of Application for Disability Retirement and Supporting Medical Information.["]

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, f-7Notification of Retirement, T-7 as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, [4] Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member, [27] within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, ["]Beneficiary Election to Continue Disability Application Process on Behalf of De-

ceased Member. ["]

(d) If the beneficiary named on the Form 6000, ["Notification of Retirement, ["] as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the Form 6000 shall be invalid and the disability application or reapplication shall not be pro-

cessed by the agency.

(2)(a) If an applicant has a valid Form 6000, ["]Notification of Retirement,["] for disability retirement benefits that complies with Section 3 of this administrative regulation on file at the retirement office, is receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, and no monthly or lump-sum benefits are payable to the beneficiary listed on the Form 6000, then the executor, administrator, or other representative of the applicant's estate shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in order] to continue with the applicant's application or reapplication for disability retirement benefits:

1. An order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified

by the Clerk of the Court;[7]

2. A written statement that the application or reapplication for disability retirement benefits

shall[should] continue;[-] 3. Any outstanding forms required by Section 4 of this administrative regulation that have not yet been filed by the applicant; [-] and

4. Any additional relevant objective medical evidence and a valid Form 8002, ["Beneficiary] Certification of Application for Disability Retirement and Supporting Medical Information. [2]

(b) If none of the deadlines in KRS 61.665 and 78.545 apply, within sixty (60) days of their appointment, the executor, administrator, or other representative of the applicant's estate as described in paragraph (a) of this subsection shall file the following at the retirement office fin order to continue with the applicant's application or reapplication for disability retirement benefits:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court

or certified by the Clerk of the Court; [-] and

2. A written statement that the application or reapplication for disability retirement benefits

shall[should] continue.

(c) An executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file the following at the retirement office:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court; [,] and

2. A written statement that the application or reapplication for disability retirement benefits is

withdrawn.

(d) If the executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the application or reapplication for disability retirement benefits shall be invalid and

shall not be processed by the agency.

(3)(a) If an applicant has a valid Form 6000, [4]Notification of Retirement,[4] for disability retirement benefits that complies with Section 3 of this administrative regulation on file at the retirement office, is receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, and lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in order to continue with the applicant's application or reapplication for disability retirement benefits:

1. A Form 6008, [4] Beneficiary Election to Continue Disability Application Process on Behalf

of Deceased Member;[, "]

2. Any outstanding forms required by Section 4 of this administrative regulation that have not yet been filed by the applicant; [,] and

3. Any additional relevant objective medical evidence and a valid Form 8002, ["Beneficiary] Certification of Application for Disability Retirement and Supporting Medical Information. ["]

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, [4]Notification of Retirement, [4] as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, [4] Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member, [27] within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, ["Beneficiary Election to Continue Disability Application Process on Behalf of De-

ceased Member. ["]

(d) If the beneficiary named on the Form 6000, [4]Notification of Retirement,[4] as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the disability retirement application or reapplication shall be invalid and shall not be processed by the agency.

Section 15[43]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement,"[-] April 2021[July 2004]; (b) Form 8030, "Employer['s] Job Description,"[-] April 2021[July 2004];

(c) Form 8035, "Employee['s] Job Description,"[,] April 2021[July 2004];

- (d) Form 8040, "Prescription and Nonprescription Medications," October 2005[Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", May 2003];
- (e) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," April 2021[Form 6456, "Designation of Dependent Child," July 2004];

(f) Form 6010, "Estimated Retirement Allowance," April 2021;

(g) Form 8846, "Travel Voucher for Independent Examination," May 2008;

(h) Form 6130, "Authorization for Deposit of Retirement Payment,"[-,] April 2021[May 2008]; (i)[(g)] Form 6135, "Request for Payment by Check,"[-] May 2015[February 2002];

(j) Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," September 2010[April 2021]; and

(k) Form 8002, "[Beneficiary] Certification of Application for Disability Retirement and Sup-

porting Medical Information," April 2021.[

(h) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information", May 2008; and

(i) Form 8846, "Independent Examination Travel Voucher", May 2008.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Retirement Systems], [Perimeter Park West, ]1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This authority's thè available on material is also https://kyret.ky.gov/Publications/Pages/default.aspx.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.



### KENTUCKY PUBLIC PENSIONS AUTHORITY

**David L. Eager, Executive Director** 

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January 31, 2022

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



Re: Amendment to 105 KAR 1:310, Fred Capps Memorial Act.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 105 KAR 1:310, the Kentucky Public Pensions Authority proposes the attached amendment to 105 KAR 1:310.

Sincerely,

Carrie Bass

Staff Attorney Supervisor Kentucky Public Pensions Authority 1260 Louisville Road

and Bass

1260 Louisville Road

Frankfort, Kentucky 40601

### Final, 1-21-2022

#### SUGGESTED SUBSTITUTE

### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems

105 KAR 1:310. Fred Capps Memorial Act.

RELATES TO: KRS 16.505-16.652, 61.<u>505[10]</u>-61.705, 78.510-78.852 STATUTORY AUTHORITY: KRS 61.505(1)(f), 61.621[-61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.621, The Fred Capps Memorial Act, establishes duty-related disability or death benefits for[enables an] nonhazardous employees[ of a state administered retirement system] who are[is] killed or totally and permanently disabled from a duty-related injury[ to receive death or disability benefits equal to those received by hazardous employees under KRS 16.582]. This administrative regulation establishes the procedure for filing an application or reapplication for duty-related death or disability benefits and the appeal procedure for duty-related death or disability[injury] benefits for nonhazardous employees.

Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation f, unless otherwise defined herein.

(2) Prior to April 1, 2021, "Ithe Agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "Ithe Agency" means the Kentucky Public Pension Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "Applicant" means a member or retired member of the Kentucky Employees Retirement System, the County Employees Retirement System, or both who has applied or is applying for duty-related disability benefits in accordance with KRS 61.621, 61.665, and 78.545.

(4) Prior to April 1, 2021, "DAC" means the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems. Effective April 1, 2021, "DAC" means the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545.

(5) "File" means [the following methods for] delivering or submitting a form or other documents to the retirement office, unless otherwise stated by: mail, fax, in-person delivery, secure email, or[and] upload via Self Service on the Web site maintained by the agency (if available). A form or other document is[shall] not [be deemed] filed until it has been received at the retirement office.

(6) "Invalid" means that the form is deficient and not to be accepted or processed by the agency.

(7)[(6)] "Participating employer" means an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System.

(8)[(7) For the purposes of this regulation only,] "Recipient" means a retired member of the Kentucky Employees Retirement System, the County Employees Retirement System, or both who is receiving duty-related disability benefits in accordance with KRS 61.621, 61.665, and 78.545.

(9)[(8)] "Valid[-]" [when used in reference to a form,] means that all required sections on a

form are completed and all required signatures on a form are executed.

[(9) "Invalid," when used in reference to a form, means that the form is deficient and shall not be accepted or processed by the Agency.]

Section 2. Use of Third-party Vendors.

(1) The agency may contract with third-party vendors to act on its behalf throughout the dutyrelated disability and duty-related death benefit application and review process. The agency may also contract with third-party vendors to act on its behalf throughout the periodic review, reinstatement review, and employment review processes.

(2) The agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may [also] provide additional persons to fulfill non-physician roles throughout the duty-related disa-

bility and duty-related death benefit application process.

(3) [For purposes of this administrative regulation,] Third-party vendors may act on behalf of the agency and the systems with all the rights and responsibilities therein.

Section 3. Application for Duty-R[r]elated[-Injury] Death Benefits.

(1)(a) A written request for duty-related[<u>injury</u>] death benefits pursuant to KRS 61.621 and . 78.545 shall[may] be filed[made] by the surviving spouse,[-or] dependent child, or parent or guardian of dependent child at the retirement[Frankfort] office[ of the Kentucky Retirement Systems].

(b) The agency may notify the surviving spouse, dependent child, or parent or guardian of the dependent child of their ability to file a written request for duty-related death benefits if the agency becomes aware of a nonhazardous employee potentially killed as a result of a duty-

(c) A claim for duty-related[-injury] death benefits shall be verified by the deceased employee's immediate supervisor and agency head on the ["]Form 6800, ["]Application for [Death Benefits] Duty Related/In Line of Duty Death Benefits ["] [-]

(2)(a) The participating employer, surviving spouse, [er-]dependent child, or parent or guardi-

an of dependent child shall submit the following documents:

1. A copy of the death certificate;

2. The employer death investigation report; and

3. An employee job description provided by the participating employer.

(b) The agency[retirement system] may request additional information;[-er] medical records, including hospital, emergency room, autopsy, or other related records;[-,] documentation relating to Workers' Compensation claims; and police or other crime reports, if necessary, from the participating employer, surviving spouse, [or-]dependent child, or parent or guardian of dependent child.

(3) The application for duty-related[-injury] death benefits and accompanying documentation as listed in subsection (2) of this section shall be reviewed by the agency's [board's] medical examiners, or the agency's third-party vendor, and administered in the same manner as provided

in KRS 16.582, 78.5524,[-and] 61.665, and 78.545.

Section 4[2]. Application for Duty-R[r]elated[-Injury] Disability Benefits.

(1)(a) A claim for duty-related[-injury] disability benefits pursuant to KRS 61.621 and 78.545 shall be filed by the applicant[employee] at the retirement[Frankfort] office[-of the Kentucky Retirement Systems].

(b) An application for duty-related[<u>injury</u>] disability benefits shall be made by the <u>appli-</u>

cant[employee] on the ["]Form 6000, ["]Notification of Retirement.["][-]

(2) The applicant shall [be required to] file the following forms and information to the retirement office along with a valid application for duty-related disability benefits in accordance with subsection (1) of this section:

(a) A Workers' Compensation incident report, if[where] one exists;

(b) A valid Form 8035, ["Employee Job Description; ["]

(c) A valid Form 8040, ["Prescription and Nonprescription Medications;["]

(d) Supporting medical information; and

(e) Once all supporting medical information has been submitted, a valid Form 8001, [4]Certification of Application for Disability Retirement and Supporting Medical Information.[2]

(3) The applicant's participating employer shall complete and submit to the retirement office a

Form 8030, ["Employer Job Description.["]

(4) The applicant and the applicant's employer shall file or submit additional information regarding the applicant's job duties and reasonable accommodations upon request by the agency

or a third-party vendor on its behalf.

(5) The application for duty-related injury disability benefits and accompanying documentation as listed in subsections (2), (3), and (4) of this section shall be reviewed by the agency's[beard's] medical examiners, or the agency's third-party vendor, and administered in the same manner as provided in KRS 16.582, 78.5524,[-and] 61.665, and 78.545.

Section 5. Joint Application for Duty-Related Disability Benefits and Disability Retirement Benefits.

(1) If qualified to retire on disability pursuant to KRS 61.600 and 78.5522, an applicant may apply for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same valid

Form 6000, ["Notification of Retirement.["]

(2)(a) If an applicant qualified to retire on disability applies for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same Form 6000, ["]Notification of Retirement, ["] and is approved only for disability retirement benefits by a majority or greater of the reviewing medical examiners pursuant to KRS 61.665 and 78.545, the applicant may solely appeal the denial of duty-related disability benefits in the same manner provided for disability retirement benefits in KRS 61.665(2)(f), 61.665(2)(h), and 78.545.

(b) A request for an administrative hearing to solely appeal the denial of duty-related disability benefits shall not affect the disability retirement benefits of an applicant who has been approved for disability retirement benefits under KRS 61.600 and 78.5522, except as provided in

KRS 61.685 and 78.545.

(3) If an applicant qualified to retire on disability applies for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same Form 6000, ["Notification of Retirement, ["] and is denied for both by a majority or greater of the reviewing medical examiners pursuant to KRS 61.665 and 78.545, the applicant may appeal both the denial of duty-related disability and disability retirement benefits as provided by KRS 61.665(2)(f), 61.665(2)(h), and 78.545.

(4) A request for an administrative hearing to solely appeal the denial of duty-related disability benefits or to appeal denials of both duty-related disability benefits and disability retirement

benefits shall[must] conform with Section 10 of this administrative regulation.

Section 6[3]. Time Period for Filing.

(1)(a) The application or reapplication for duty-related[-injury] death or duty-related [-injury] disability benefits shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

(b) The filing period shall begin on the day after the last day of paid employment in a regular

full-time position and shall end at close of business on the [following] 730th calendar day.

(c) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the public office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application shall be timely if filed at the retirement office by the

close of the next business day.

(d) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application or reapplication is not timely and the employee, surviving spouse, dependent child, or parent or guardian of dependent child is not qualified for duty-related death or duty-related disability benefits.

(e)1. The applicant's last day of paid employment shall either be certified by the applicant's employer or filed by the applicant and corroborated by the reporting information received by the

agency from the applicant's employer.

2. In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the agency's records.[If the last day of the filing period is a Saturday, Sunday, or a state or federal holiday, then the application shall be timely filed if received in the retirement office by the close of the next business

day following the weekend or holiday.]

(2) If rejected, an employee's reapplication for duty-related[-injury] disability benefits based on the same claim of incapacity shall be reconsidered for disability if accompanied by new objective medical evidence or new evidence concerning the duty-related injury that was not considered with previous applications. The reapplication shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

Section 7. Effect of Application or Reapplication for Duty-Related Disability Benefits While

Prior Application or Reapplication is Pending.

(1) If a subsequent valid reapplication for duty-related disability benefits that complies with Sections 4 and 6 of this administrative regulation is filed at the retirement office while a prior application or reapplication is pending review by the medical examiners under KRS 61.665 and 78.545, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545. The subsequent reapplica-

tion shall not be submitted for review by the medical examiners.

(2)(a) If a subsequent valid reapplication for duty-related disability benefits that complies with Sections 4 and 6 of this administrative regulation is filed at the retirement office after an applicant has requested an administrative hearing to appeal the denial of an earlier application or reapplication for duty-related disability benefits, but prior to a Final Order of DAC regarding the earlier application or reapplication, then the subsequently filed reapplication shall be found as[deemed] a notice of intent to dismiss the request for administrative hearing unless the applicant simultaneously files a written statement that the subsequently filed reapplication has been filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

(b) A subsequently filed reapplication as described in paragraph (a) of this subsection shall not be processed by the agency until thirty-one (31) days after the entry of a Final Order of DAC dismissing the previously requested administrative appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall be effective immediately.

(c) All evidentiary filings made during an administrative hearing process to appeal the denial of an earlier application or reapplication for duty-related disability benefits shall be included in the information provided to the medical examiners for review of the subsequently filed reapplication

(3)(a)1. If a subsequent valid reapplication for duty-related disability benefits is filed at the retirement office after DAC has issued a Final Order denying a prior application or reapplication for duty-related disability benefits and during the statutory time for appeal of the Final Order or after an appeal of the Final Order has been made, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

2. The subsequent reapplication shall not be submitted for review by the medical examiners, unless the applicant files a written statement that the applicant shall will not appeal the Final

Order of DAC or has withdrawn any pending appeal of a Final Order of DAC.

(b) If a subsequent valid reapplication for duty-related disability benefits is filed at the retirement office after DAC has issued a Final Order denying an application or reapplication for duty-related disability benefits, all applicable statutory time for appeals of the Final Order have lapsed, and the reapplication complies with KRS 61.621, 78.545 and Sections 4 and 6 of this administrative regulation, then the subsequently filed reapplication for duty-related disability benefits shall be valid.

Section 8. Medical or Psychological Examination Required at the Expense of the Agency.

(1) If the agency requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(i) and 78.545 or KRS 61.665(3)(c) and 78.545, the agency shall reimburse the applicant for expenses associated with the medical or psychological examination in the same manner as 105 KAR 1:210, Section 8.

(2) The applicant shall file the Form 8846, *Travel Voucher for* Independent Examination [*Travel Voucher* and all necessary receipts at the retirement office within fifteen (15) days of the examination or evaluation [*in order*] to be reimbursed for mileage, actual parking costs, and any actual bridge or highway toll charges as described in subsection (1) of this section and 105 KAR 1:210, Section 8.

Section 9. Requests for Additional Objective Medical Evidence by the Medical Examiners.

(1) A medical examiner reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits may place their recommendation on hold and request additional objective medical evidence.

(2) If two (2) or more of the three (3) medical examiners reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits place their recommendation on hold and request additional objective medical evidence, then the agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the

requested objective medical evidence to the retirement office.

(3) If there is no majority recommendation by the three (3) medical examiners reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits because one (1) medical examiner recommends approval, one (1) medical examiner recommends denial, and one (1) medical examiner requests additional objective medical evidence, then the agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence to the retirement office.

(4)(a) Upon receipt of the requested additional objective medical evidence with a valid Form 8001, ["]Certification of Application for Disability Retirement and Supporting Medical Information, ["] the agency, or a third-party vendor, shall resubmit the matter, including any additional objective medical evidence submitted in response to the medical examiner's request, to all three (3) medical examiners and the medical examiners shall issue new recommendations.

(b) Upon the expiration of sixty (60) days from the date of the notification, if no additional objective medical evidence with a valid Form 8001, [\*\*]Certification of Application for Disability Retirement and Supporting Medical Information, [\*\*] is on file at the retirement office, the agency, or a third-party vendor, shall resubmit the matter to only the medical examiner or examiners[examiner(s)] that placed their recommendation on hold and the medical examiner or examiners[examiner(s)] shall issue a new recommendation.

Section 10. Administrative hearings concerning the denial of duty-related disability or duty-related death benefits.

(1)(a) A request by an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child for an administrative hearing to appeal the denial of duty-related disability or duty-related death benefits under KRS 61.621, 61.665, and 78.545 shall be made in writing and contain a short statement of the issues being appealed.

(b) The written request for an administrative hearing to appeal the denial of duty-related disability or duty-related death benefits by an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child shall be filed at the retirement office. Email requests shall not be accepted.

(2) The hearing officer presiding over an administrative hearing may allow an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child to introduce, among other evidence, the determination of other state and federal agencies, such as[including, but not limited to] the Kentucky Department of Workers' Claims and the Social–Security Administration, approving the applicant for benefits if accompanied by underlying objective medical evidence or vocational evidence.

(3) The hearing officer presiding over an administrative hearing shall consider only objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.

(4) The hearing officer presiding over an administrative hearing shall not consider or be bound by factual or legal findings of other state or federal agencies.

(5) Statements by physicians within the administrative record of the application or reapplication for duty-related disability or duty-related death benefits shall not be considered by themselves to be objective medical evidence unless accompanied by documented medical records or test results.

Section 11. Employment and Medical Reviews. If, upon review in accordance with KRS 61.610, 61.615, 78.5528, or other applicable statute, the medical examiner, or third-party vendor, determines that a retired member receiving duty-related disability benefits no longer meets eligibility requirements, then the medical examiner, or third-party vendor, shall determine if the retired member is qualified and remains eligible for disability retirement benefits in accordance with KRS 61.600 and 78.5522.

Section 4. (1) If the retirement systems requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(j) or (3)(c), the retirement systems shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas." The applicant shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the applicant traveled from the applicant's home address as it is on file at the refirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall use the most direct and usually traveled routes.

(3) The mileage certified by the applicant shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. If the mileage certified by the applicant is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the applicant the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas."

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial

coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. The applicant shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actual bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. The applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) The applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.]

Section 12[5]. Benefit Payment Procedures for Duty-Related Disability.

(1) If the employee's application for duty-related[-injury] disability benefits is approved, the employee's duty-related disability benefit shall be paid retroactive to the month following the month of the employee's last day of paid employment in a regular full-time position.

(2) If the employee did not receive early or normal retirement benefits or disability retirement benefits under KRS 61.600 and 78.5522, upon the employee's selection of a payment option, the agency[retirement office] shall pay the employee the total monthly retirement allowances

(3)(a) If the employee did receive early or normal retirement benefits or disability retirement benefits under KRS 61.600 and 78.5522, the agency[retirement office] shall calculate and pay to the employee the difference between the early or normal retirement benefit or disability retirement benefit which was paid to the employee and the duty-related disability benefit.

(b) The employee shall not change the beneficiary named or the [his] payment option selected upon early, normal, or disability retirement, except as provided in KRS 61.542(5)(a),

61.542(5)(b), and 78.545.

(4) If benefits are payable to a dependent child as defined in KRS 16.505, the dependent child or the child's parent or guardian shall file[submit] the following documents at the retirement

(a) A ["]Form 6448[56], ["Designation of Dependent Child for Qualifying Total and Perma-

nent Disability["];

(b) If the child is age eighteen (18) or over and a full-time student, verification of full-time stu-

dent status, if applicable;

(c) If the child is eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability, file a copy of the most recent statement issued by the Social Security Administration for the such dependent children (b) If the child is age eighteen (18) or over, verification of full time student status;

(d)[(e)] A copy of the birth certificate of each dependent child; and

(e)[(d)] If a dependent child is a minor, a ["]Form 6110, ["]Affidavit of Authorization to Receive Funds on Behalf of Minor. ["][-] If the minor has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, ["]Affidavit of Authorization to Receive Funds on Behalf of Minor, ["] the guardian or conservator shall file[submit] a copy of the court order appointing the guardian or conservator.[-]

(5)(a)[(e)] The dependent child or the parent or guardian of the dependent child shall false]:

1. Notify the <a href="mailto:sgency[retirement system">sgency[retirement system</a>] of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student, if applicable, and

2. File[Submit] a copy of the dependent child's verification of full-time student status with the agency[retirement system] for each semester of study within thirty (30) days following the start

and within thirty (30) days following the end of each semester, if applicable.

(b) The dependent child or the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the information required by paragraph (a) of this subsection.

(6)[(5)] Any increases provided[to recipients] under KRS 61.691 and 78.5518 shall be applied to the employee's duty-related disability benefit and payments to a dependent child in de-

termining the total retroactive payments owed to the employee and dependent child.

(7)(a)[(6) If upon review in accordance with KRS 61.610 or other applicable statute, the board determines that an employee receiving duty related injury disability benefits no longer meets eligibility requirements, then the board shall determine if the employee is eligible for disability benefits under KRS 61.600.

Section 6. (1)] A recipient shall complete a Form 6130, [4]Authorization for Deposit of Retirement Payment, [4] and file it at the retirement office, include direct deposit information on the Form 6000, [4]Notification of Retirement, [4] or authorize direct deposit via Self-Service on the Web site maintained by the agency to have the monthly retirement allowance deposited to an account in a financial institution.

(b) A dependent child or parent or guardian of a dependent child shall file a valid Form 6130, ["]Authorization for Deposit of Retirement Payment, ["] at the retirement office [in order] to

have the monthly benefit deposited to an account in a financial institution.

(c)[(2)] The recipient, dependent child, or parent or guardian of a dependent child and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

[8][(3)](a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new valid ["]Form 6130, ["Authorization for Deposit of Retirement Payment ["][-] and filing the form at the retirement office, or by changing their direct deposit information via Self-Service on the Web site maintained by the agency [in Frankfort].

(b) The latter of the designation on a valid Form 6000, ["]Notification of Retirement, ["] the last valid Form 6130, ["]Authorization for Deposit of Retirement Payment, ["] after the Form 6000 is on file at the retirement office, or the direct deposit information submitted via Self-Service on the Web site maintained by the agency shall control the electronic transfer of the recipient's retirement allowance.

(c) At any time while receiving a monthly benefit, the dependent child or parent or guardian of a dependent child may change the designated institution by filing a new valid Form 6130, [4] Authorization for Deposit of Retirement Payment, [4] at the retirement office or by submitting new direct deposit information via Self-Service on the Web site maintained by the agency.

(d) The last valid Form 6130, [4] Authorization for Deposit of Retirement Payment, [2] or the last direct deposit information submitted via Self-Service on the Web site maintained by the

agency shall control the electronic transfer of the dependent child's monthly benefit.

(9)[(4)] A[The] recipient, dependent child, or parent or guardian of a dependent child may complete a valid ["]Form 6135, ["Request for Payment by Check, ["][-] and file it at the retirement office if the recipient, dependent child, or parent or guardian of a dependent child does not currently have an account with a financial institution or the financial institution does not partici-

pate in the electronic funds transfer program.

(10)[(5)] The agency[retirement office] shall not process the retirement allowance or monthly benefit until the recipient, dependent child, or parent or guardian of a dependent child has filed a valid[completed "]Form 6130, ["]Authorization for Deposit of Retirement Payment, ["] included direct deposit information on a valid ["Form 6000, Notification of Retirement, ["] [, or] filed a valid [completed "]Form 6135, ["Request for Payment by Check,["] or authorized direct deposit via Self-Service on the Web site maintained by the agency.

Section 13. Benefit Payment Procedures for Duty-Related Deaths.

(1) If the application for duty-related death benefits is approved, the duty-related death benefit shall be paid retroactive to the month following the month of the employee's date of death.

(2) If the surviving spouse did not receive survivor benefits under KRS 61.640 and 78.5532, upon the surviving spouse's selection of a payment option, the agency shall pay the surviving

spouse the total monthly retirement allowances owed.

(3)(a) If the beneficiary was a surviving spouse who began receiving survivor benefits KRS 61.640 and 78.5532, the agency shall calculate the difference between the survivor benefit paid to the surviving spouse beneficiary and the duty-related death benefit. The agency shall pay the surviving spouse any additional funds due.

(b) If the surviving spouse was paid more than the amount due under KRS 61.621 or KRS 78.545, the agency shall deduct the difference from the \$10,000 lump sum payment and from the monthly retirement allowance payments until the amount owed to the agency has been re-

covered.

- (4) If benefits are payable to a dependent child as defined in KRS 16.505, the dependent child or the child's parent or guardian shall file the following documents at the retirement office:
  - (a) A Form 6458, ["Designation of Dependent Child for In Line of Duty/Duty-Related]".
  - (b) If the child is age eighteen (18) or over and a full-time student, verification of full-time stu-

dent status, if applicable;

(c) If the child is eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability, file a copy of the most recent statement issued by the Social Security Administration for the [such] dependent children;

(d) A copy of the birth certificate of each dependent child; and

(e) If a dependent child is a minor, a Form 6110, [4] Affidavit of Authorization to Receive Funds on Behalf of Minor [27] If the minor has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, [4] Affidavit of Authorization to Receive Funds on Behalf of Minor, I" the guardian or conservator shall file a copy of the court order appointing the guardian or conservator.

(5)(a) The dependent child or the parent or guardian of the dependent child shall [also]:

1. Notify the agency of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student, if applicable; and

2. File a copy of the dependent child's verification of full-time student status with the agency for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester, if applicable.

(b) The dependent child or the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the information required by paragraph (a) of this subsection.

(6) Any increases provided under KRS 61.691 and 78.5518 shall be applied to the surviving spouse's duty-related death benefit and payments to a dependent child in determining the total

retroactive payments owed to the surviving spouse and dependent child.

(7)(a) A surviving spouse, dependent child, or parent or guardian of a dependent child shall complete a Form 6130, ["]Authorization for Deposit of Retirement Payment, ["] and file it at the retirement office [in order] to have the monthly benefit deposited to an account in a financial in-

(b) The surviving spouse, dependent child, or parent or guardian of a dependent child and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(8)(a) At any time while receiving a monthly benefit, the surviving spouse, dependent child, or parent or guardian of a dependent child may change the designated institution by filing a new valid Form 6130, ["]Authorization for Deposit of Retirement Payment, ["] at the retirement office or by submitting new direct deposit information via Self-Service on the Web site maintained by the agency, if available.

(b) The last valid Form 6130, ["]Authorization for Deposit of Retirement Payment, ["] or the last direct deposit information submitted via Self-Service on the Web Site maintained by the agency shall control the electronic transfer of the surviving spouse's or dependent child's

monthly benefit.

(9) A surviving spouse, dependent child, or parent or guardian of a dependent child may file a valid Form 6135, ["Request for Payment by Check, ["] at the retirement office if the surviving spouse, dependent child, or parent or guardian of a dependent child does not currently have an account with a financial institution or the financial institution does not participate in the electronic funds transfer program.

(10) The agency shall not process the retirement allowance or monthly benefit until the surviving spouse, dependent child, or parent or guardian of a dependent child has filed a valid Form 6130, ["]Authorization for Deposit of Retirement Payment, ["] filed a valid Form 6135, ["] Request for Payment by Check, ["] or authorized direct deposit via Self-Service on the Web

site[website] maintained by the agency.

Section 14. One-Time Window for Surviving Spouse to Apply for Duty-Related Death Benefits. A surviving spouse of an employee who died prior to retirement and prior to April 13, 2018 who is currently receiving monthly benefits from the agency and who did not seek benefits for an employee's death resulting from a duty-related injury pursuant to KRS 61.621 and 78.545 may apply for duty-related death benefits if[so long as] the application for duty-related death benefits as provided in Section 3 of this administrative regulation is on file at the retirement office on or before January 1, 2021.

Section 15. Death During Duty-Related Disability Benefits Application Process.

(1)(a) If an applicant has a valid Form 6000, ["Notification of Retirement, ["] for duty-related disability benefits on file at the retirement office that complies with Sections 4 and 6 of this administrative regulation, is not receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in order] to continue with the applicant's application or reapplication for duty-related disability benefits:

1. A Form 6008, ["Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member;[,"]

2. Any outstanding forms required by Section 4 of this administrative regulation that have

not yet been filed by the applicant; [,] and

3. Any additional relevant objective medical evidence and a valid Form 8002, f"Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information. ["]

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, ["Notification of Retirement, ["] as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, ["Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member, [2] within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, ["]Beneficiary Election to Continue Disability Application Process on Behalf of De-

ceased Member.["]

(d) If the beneficiary named on the Form 6000, [4]Notification of Retirement, [4] as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the Form 6000 shall be invalid and the duty-related disability application or reapplication shall

not be processed by the agency.

(2)(a) If an applicant has a valid Form 6000, [4]Notification of Retirement, [2] for duty-related disability benefits that complies with Sections 4 and 6 of this administrative regulation on file at the retirement office, is receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, and no monthly or lump-sum benefits are payable to the beneficiary listed on the Form 6000, then the executor, administrator, or other representative of the applicant's estate shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in order] to continue with the applicant's application or reapplication for duty-related disability benefits:

1. An order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified

by the Clerk of the Court; [-,]

2. A written statement that the application or reapplication for duty-related disability benefits shall[should] continue;[-,]

3. Any outstanding forms required by Section 4 of this administrative regulation that have

not yet been filed by the applicant; [-] and

4. Any additional relevant objective medical evidence and a valid Form 8002, [4] Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information.["]

(b) If none of the deadlines in KRS 61.665 and 78.545 apply, within sixty (60) days of their appointment, the executor, administrator, or other representative of the applicant's estate as described in paragraph (a) of this subsection shall file the following at the retirement office fin order to continue with the applicant's application or reapplication for duty-related disability bene-

A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court

or certified by the Clerk of the Court;[-] and

2. A written statement that the application or reapplication for duty-related disability benefits

shall[should] continue.

(c) An executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file the following at the retirement office:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court;[-] and

2. A written statement that the application or reapplication for duty-related disability benefits

is withdrawn.

(d) If the executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the application or reapplication for duty-related disability benefits shall be invalid and

shall not be processed by the agency.

(3)(a) If an applicant has a valid Form 6000, ["]Notification of Retirement, ["] for duty-related disability benefits that complies with Sections 4 and 6 of this administrative regulation on file at the retirement office, is receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, and lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in order] to continue with the applicant's application or reapplication for dutyrelated disability benefits:

1. A Form 6008, ["Beneficiary Election to Continue Disability Application Process on Behalf

of Deceased Member;[,"]

2. Any outstanding forms required by Section 4 of this administrative regulation that have not yet been filed by the applicant;[-] and

3. Any additional relevant objective medical evidence and a valid Form 8002, [4]Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information. [7]

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, ["Notification of Retirement, ["] as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, ["Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member, [27] within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, [4] Beneficiary Election to Continue Disability Application Process on Behalf of De-

ceased Member.["]

(d) If the beneficiary named on the Form 6000, [4]Notification of Retirement, [4] as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the duty-related disability application or reapplication shall be invalid and shall not be processed by the agency.

Section 16[7]. Incorporation by Reference. (1) The following material is incorporated by ref-

(a) Form 6800, "Application for [Death Benefits] Duty Related/In Line of Duty Death Benefits,"[-] April 2021[April-2003];

(b) Form 6000, "Notification of Retirement,"[,] April 2021[July 2004];

(c) Form 8035, "Employee Job Description," April 2021;

(d) Form 8040, "Prescription and Nonprescription Medications," October 2005[April 2021];

(e) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," April 2021;

(f) Form 8030, "Employer Job Description," April 2021;

(g) Form 8846, "Travel Voucher for Independent Examination," May 2008;

(h) Form 6448, "Designation of a Dependent Child for Qualifying Total and Permanent Disability," June 2021;

(i)[(e)] Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor,"[-] April 2021[May 2003];

(i)[(d) Form 6456, "Designation of Dependent Child", July 2004;

(e)] Form 6130, "Authorization for Deposit of Retirement Payment," April 2021[May 2008];[ and]

(k)[(f)] Form 6135, "Request for Payment by Check,"[-] May 2015;[February 2002.]

(I) Form 6458, "Designation of Dependent Child for In Line of Duty/Duty-Related," April 2021; (m) Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," September 2010[April 2021]; and

(n) Form 8002, "Certification of Application for Disability Retirement and Supporting Medical

Information," April 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Retirement Systems], [Perimeter Park West, ]1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This authority's the · on available also material https://kyret.ky.gov/Publications/Pages/default.aspx.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

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### KENTUCKY PUBLIC PENSIONS AUTHORITY

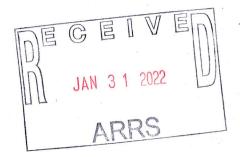
David L. Eager, Executive Director

1260 Louisville Road • Frankfort, Kentucky 40601 kyret.ky.gov • Phone: 502-696-8800 • Fax: 502-696-8822



January 31, 2022

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



Re: Amendment to 105 KAR 1:330, Purchase of service credit.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 105 KAR 1:330, the Kentucky Public Pensions Authority proposes the attached amendment to 105 KAR 1:330.

Sincerely,

Carrie Bass

Staff Attorney Supervisor Kentucky Public Pensions Authority

and Bass

1260 Louisville Road

Frankfort, Kentucky 40601

### **Subcommittee Substitute**

# FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS)

### 105 KAR 1:330. Purchase of service credit.

RELATES TO: KRS<u>16.545</u>,16.645[<del>(20), (26), (29), (31)</del>], <u>61.505</u>, 61.543, 61.552,[<del>-61.5525, 61.555,</del>] 61.592, <u>78.5520</u>, 61.685, 78.545[<del>(6), (31), (35), (43)</del>], <u>78.610</u>, 26 U.S.C. 415

STATUTORY AUTHORITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)] authorizes the Kentucky Public Pensions Authority[requires the Board of Trustees of Kentucky Retirement Systems] to promulgate [all-]administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with[necessary or proper to carry out the provisions of] KRS 16.505[10] to 16.652, 61.510[15] to 61.705, and 78.510[20] to 78.852. KRS 16.545,16.645[(20), (26), (29), (31)], 61.543, 61.552,[61.555,] 61.592, 78.5520, 61.685, [and] 78.545[(6), (31), (35), and (43)], and 78.610 provide for purchasing service credit. 26 U.S.C. 415 establishes federal requirements regarding purchases of service credit. This administrative regulation establishes the documentation required from the employee or person as proof of eligibility for purchasing service credit, the filing deadlines on which the cost calculation will be made, and the procedures for purchase of service credit.

Section 1. <u>Definitions</u>. (1) *Unless otherwise defined in this section, the* definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this *administrative* regulation *J. unless otherwise defined herein J.* 

- (2) Prior to April 1, 2021, "*Ithe1* agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "*Ithe1* agency" means the Kentucky Public Pension Authority, which is authorized *to* carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.
- (3) "File" means *[the following methods for]* delivering or submitting a form to the retirement office *by[:]* mail, fax, secure email, in-person delivery, *or [and]* upload via Self Service on the Web site maintained by the agency (if available). A form shall not be deemed filed until it has been received at the retirement office.
- (4) "Provide[-]" [when used in reference to a form or other document,] means [the following methods for] the agency makes [to make] a form or document available to a member, retired member, or person by[-] mail, fax, secure email, or [and] upload via Self Service on the Web site maintained by the agency (if available).
- (5) "*[The]* Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.
- (6) "Valid [-]" [when used in reference to a form,] means that all required sections on a form are completed and all required signatures on a form are executed.

<u>Section 2. Cost Calculation Date for Determining the Cost of the Service Purchase.</u> (1) The cost calculation date for determining the cost of the service to be purchased shall be the later of:

(a) The last day of the month in which the request for the cost of the service is <u>filed[received]</u> at the retirement office;

(b) The last day of the month the employee or person designates as the intended purchase date:

(c) The last day of the month in which documentation of the service is filed at the retirement office;

(d) The last day of the month in which the employee[member] attains sufficient service credit

to be eligible to make the purchase; or

- (e) The last day of the month in which the <a href="mailto:employee">employee</a>[member] files a completed Form 4172, Notice of Intent to Transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan, at the retirement office indicating that the <a href="mailto:employee">employee</a>[member] intends to defer the <a href="mailto:employee">employee</a>(s[member's]) lump sum payment for accrued compensatory and annual leave to be paid to the <a href="mailto:employee">employee</a>[member] at termination to the Kentucky Public Employees Deferred Compensation Authority or other qualified employer sponsored plan. The <a href="mailto:employee">employee</a>[member] shall then rollover the funds from the Kentucky Public Employees Deferred Compensation Authority or other qualified employer sponsored plan to <a href="mailto:the">the</a> agency[Kentucky Retirement Systems] as payment, in whole or in part, for the <a href="employee's[member's]">employee's[member's]</a> service purchase.
- (2)(a) The purchase deadline date shall be the later of the cost calculation date or thirty (30) days from the date the purchase cost is <a href="mailed">provided[mailed</a>] to the employee, unless day thirty (30) is a <a href="mailed">Saturday</a>, Sunday, a public holiday listed in KRS 2.110, a day on which the public office is actually and legally closed, [weekend] or <a href="mailed-number] any other federal or state holiday that disrupts mailed-number] service, then the purchase deadline date shall be the next business day.

(b) Upon discovery of a delay in providing the purchase cost to the employee or person, the agency may extend the purchase deadline date in paragraph (a).

(3) An employee or person **shall** [**may**] not make a new request for cost calculation for purchase of service previously requested until the purchase deadline date has passed.

(4) <u>Payment[Except as provided in KRS 61.552(16)</u>, payment] for purchase of service credit shall be filed at the retirement office while the employee is participating in an eligible retirement system and prior to the employee's termination date, except <u>[in the following circumstances]</u>:

(a) If the purchase of service credit is made under KRS 61.552(2);

(b) If the employee files a Form 4170, ["]Direct Transfer/Rollover Authorization Form, ["] at the retirement office while the employee is participating in an eligible retirement system and prior to the employee's termination date, so long as the financial institution completes the transfer or rollover within sixty (60) days of the payment due date, the payment for purchase of service credit by transfer or rollover may occur when the employee is no longer participating in an eligible retirement system and after the employee's termination date; or

(c) If the agency discovers an error or omission in the service purchase cost, then the agency may provide corrected costs to the employee, person, member, or retired member and, [in order] to have the service purchase credited to his or her account, the employee, person, member, or retired member shall pay any additional amount due for the corrected costs.

(5) If the <a href="mailto:employee[member">employee[member</a>] elects to purchase only a portion of the service for which he <a href="mailto:or she has requested a cost calculation">or calculation</a>, the employee[member] shall be required to obtain a new cost calculation for the remaining service unless the remaining service is service under KRS 61.552(2)[(1)] or (3)[(23)].

Section 3[2]. General Requirements to Purchase Service. (1) The employee or person shall file at the retirement office[provide] all documentation necessary for the agency[retirement system] to determine that the service meets the eligibility requirements for purchase of service.[The documentation may be in the form of:

- (a) A statement or letter signed by the reporting official, personnel director or agency head, or if the service is with the university, federal government or military a statement or letter signed by an authorized employee of the university, federal government or military, except that no employee shall certify his own service. The retirement system may require that the statement be made under oath; or
  - (b) Copies of personnel and wage records supplied by the agency.]
- (2) The agency may require that any statement, letter, form, or other document required in this administrative regulation be notarized, made under oath as defined in KRS 523.010, or both.
- (3) An [No] employee or person shall not certify his or her own service on any of the statements, letters, forms, or other documents required by this administrative regulation.
- (4)(a) The agency shall determine how much service is eligible for purchase by statute and shall notify the employee or person in writing of the cost of the service that qualifies for purchase.
- (b) If the agency determines that the service is not eligible for purchase, it [the agency] shall notify the employee or person in writing of the reasons.

Section 4. Purchase of Omitted Service. (1)(a) To purchase omitted service pursuant to KRS 61.552(2) and 78.545, the employee or person shall file at the retirement office a valid Form 4225, ["Verification of Past Employment.["]

- (b) If the employee or person is seeking to purchase omitted service based on employment with the Executive Branch, copies of personnel and wage records provided by the employer shall be filed at the retirement office instead of [the] Form 4225, ["] Verification of Past Employment. ["]
- (2) If the <u>agency[retirement system]</u> determines that the employer[agency] records <u>submitted</u> on **[the]** Form 4225, **["]** Verification of Past Employment, **["]** or the personnel and wage records from the Executive Branch employer are not sufficient, the <u>agency[retirement system]</u> may require the employee <u>or person</u> to supplement the <u>employer[agency]</u> records with copies of check stubs, W-2 forms, personnel action forms, or payroll records in the employee's <u>or person's</u> possession.
- (3) If the employee or person does not have additional documentation of the service, the employee or person may file at the retirement office[submit] a report of detailed earnings from the Social Security Administration for the period of service, along with two (2) Form 4160s, ["]Affidavit and Certification for Documentation of Service["] [affidavits] completed by persons[individuals] who earned, or were eligible for, service for the same period in a state administered retirement system with the same employer. Each affiant shall detail the employee's or person's employment status and length of service.

- (4) The retirement office shall determine if all or part of the service is eligible for purchase and shall notify the employee in writing of its determination.
- Section 3. (1) For service with a public agency, other than a school board, participating in one (1) of the systems administered by the Kentucky Retirement Systems or with a nonparticipating agency whose service is authorized by statute, the employee shall submit the following documentation and may be required by the system to provide additional information, if necessary for determination:
- (a) The beginning and ending dates of the service and any breaks which may have occurred during the service, listed by fiscal year;
  - (b) The number of calendar months worked;
- (c) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary or interim; and
- (d) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.
- (2)] For service with a school board, the employee shall file at the retirement office a valid Form 4225, ["] Verification of Past Employment.["] [provide the following documentation and may be required by the system to provide additional information, if necessary for determination:
- (a) The beginning and ending dates of the service and any breaks which may have occurred during the service, listed by fiscal year;
  - (b) The number of calendar months worked;
- (c) The number of days in the employee's employment contract and the actual number of days worked:
  - (d) The hours worked per day;
- (e) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary or interim; and
- (f) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.]
- Section 6. Vested Service Purchases. (1)(a) [In order] To purchase service credit for[(3) For] active duty service in the Armed Forces of the United States pursuant to KRS 61.552(5)(d) and 78.545, the employee shall file at the retirement office[provide] a copy of the federal form DD-214 or other official military documents clearly indicating:
  - 1.[(a)] The date of entry into active duty service;
  - 2.[(b)] The date of discharge from active duty service; and
  - 3.[(c)] The type of discharge.
- (b) [In order] To purchase service credit for[(4) For] service in the National Guard or the military reserve forces pursuant to KRS 61.552(5)(e) and 78.545, including periods of active duty training, or for service in the National Guard, the employee shall file at the retirement office[provide] copies of official military documents clearly indicating the date of entry and current participation or date of discharge.

(c) The documents required in paragraphs (a) or (b) of this subsection shall be verified by a statement or letter signed by an authorized employee of the military.

(d) The agency shall verify with the employer the beginning and ending dates of the period of leave associated with active duty service in the Armed Forces of the United States, service in the National Guard, or service in the military reserve forces.

(5) For service with the federal government, the employee shall provide the following documentation:

(a) The name of the federal agency where the employee worked;

(b) The beginning and ending dates of the service and any breaks which may have occurred during the service;

(c) The job title;

(d) If the individual worked an average of 100 or more hours per month and if the position was temporary, seasonal or regular full time; and

(e) If the employee participated in a retirement plan and if the employee has taken a refund of contributions to the plan.]

(2)(a) To purchase service for [(6) For] a period when the employee [member] was on [leave, including] educational, maternity, or [and] sick leave without pay pursuant to KRS 61.552(5)(i) and 78.545, the employee [member] shall file at the retirement office a statement or letter from the reporting official, personnel director, or agency head certifying [submit documentation of] the beginning and ending dates of the period of leave and the type of leave designated by the employer.

(b) The agency shall verify with the employer the beginning and ending dates of the period of

educational, maternity, or sick leave without pay.

(3) To purchase state university service pursuant to KRS 61.552(5)(b) and 78.545, the employee shall file at the retirement office a valid Form 4120, ["]Verification of Employment with a State University.["]

(4) To purchase federal service pursuant to KRS 61.552(5)(f) and 78.545, the employee shall file

at the retirement office a valid Form 4115, ["] Federal Verification.["]

(5)(a) To purchase past seasonal, emergency, interim, probationary, temporary, or part-time employment that averages the required hours of work per month pursuant to KRS 61.552(5)(g) and 78.545, the employee shall file at the retirement office a valid Form 4225, ["] Verification of Past Employment ["]

(b) If the employee is seeking to purchase service based on past seasonal, emergency, interim, probationary, temporary, or part-time employment with the Executive Branch, copies of personnel and wage records provided by the employer shall be filed at the retirement office instead of [the]

Form 4225, ["|Verification of Past Employment.["]

(6) To purchase service with a non-participating agency whose service is authorized pursuant to KRS 61.552(5)(j) and 78.545, the employee shall file at the retirement office the following documentation and may be required to file additional information, if necessary for determination:

(a) The beginning and ending dates of the service and any breaks that may have occurred during the service, listed by fiscal year;

(b) The number of calendar months worked;

(c) The position title and status, including full-time, part-time, probationary, emergency, seasonal, temporary, or interim; and

(d) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.

(7) To purchase urban-county government service pursuant to KRS 61.552(5)(k) and 78.545, the employee shall file at the retirement office a valid Form 4131, ["]Verification of Urban-County

Government Service.["]

(8)(a) To purchase service credit for out-of-state public service pursuant to KRS 61.552(5)(c) and 78.545, the employee shall file at the retirement office a valid Form 4140, ["]Verification of Out-of-State Service.["]

(b) To purchase out-of-state service credit for a hazardous duty position, the employee shall also file at the retirement office a copy of the description of the duties of the out-of-state position

from his or her former out-of-state employer.[

(7) For service with one (1) of the state universities in Kentucky, the employee shall provide the following documentation:

(a) The name of the university where the employee worked;

(b) The beginning and ending dates of the service and any breaks which may have occurred during the service;

(c) The job title;

(d) If the individual worked an average of 100 or more hours per month and if the position was temporary, seasonal or regular full time; and

(e) If the employee participated in a benefit plan during the period of employment.

(8) An employee wishing to purchase service credit for out-of-state public service under KRS 61.552(17) and (18) shall request a copy of the "Form 4140, Certification of Out-of-State Service".

(a) The employee shall mail] the "Form 4140, Certification of Out-of-State Service", to his former employer and retirement plan for completion, and if the employee wishes to purchase hazardous service in KERS, CERS, or SPRS, he shall also obtain a copy of the description of his duties in the out-of-state position from his former employer.]

(c) Out-of-state service[Service] credit shall be eligible for purchase as hazardous duty if the position is the same as or substantially similar to positions for which hazardous duty credit has

been approved under KRS 61.592 or 78.5522.[;

(b) The employee shall be responsible for obtaining the information requested regarding the period of out-of-state service, and the completed "Form 4140, Certification of Out-of-State Service", and job description shall be submitted to the retirement office;]

(c) The retirement system shall determine how much service is eligible for purchase under the statute and shall notify the employee of the full actuarial cost of the service which qualifies for purchase; and

' (d) If the retirement system determines that the service is not eligible for purchase, the retirement system shall notify the employee of the reasons.]

Section 7[4]. Service Purchase Calculations Based on Actuarial Cost. (1) Except for employees of a school board paid under an employment contract, for [For] a purchase based on the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545[61.5525], the higher of the current rate of pay, final rate of pay, or final compensation times the actuarial age factor shall be determined as follows [, except that for an employee of a local school board paid under an

employment contract, the current rate of pay shall be equal to the final compensation as of the cost calculation date]:

(a)[(1) Except for a classified employee of a local school board,] Current rate of pay shall be determined as follows:

**1.**[(a)] For an hourly employee paid on a seven and one-half (7 1/2) hour day, the hourly rate times 1,950;

2.[(b)] For an hourly employee paid on an eight (8) hour day, the hourly rate times 2,080;

3.[(c)] For an employee paid by the day, the daily rate times 260;

4.[(d)] For an employee paid by the week, the weekly rate times fifty-two (52);

5.[(e)] For an employee paid by the month, the monthly rate times twelve (12);

**6.**[(f)] For a part-time employee who averages 100 or more hours per month, the hourly rate times hours per day times 260. If the number of hours worked per day is not fixed by the employer, seven and one-half (7 1/2) hours shall be used;

**7.**[(g)] For an employee who receives a fixed amount in addition to an hourly, daily, weekly, monthly, or annual rate, the current rate shall include all fixed amounts, averaged into the same period;

**8.**[(h)] For an employee simultaneously employed in more than one (1) of the systems[retirement system administered by the Kentucky Retirement Systems], the higher of the combined current rate of pay, combined final rate of pay, or combined final compensation shall be used as of the cost calculation date.

(b)[(2)] Final compensation shall be determined as of the cost calculation date, except that the final compensation of nonhazardous members of the County Employees Retirement System or Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be based on the three (3) fiscal years with the highest average monthly earnings if the sum of the employee's service when added to his age would equal at least seventy-five (75), assuming the employee's service includes:

1.[(a)] All service remaining on an active installment purchase agreement;

**2.**[(b)] All service which the employee is eligible to purchase under KRS 61.552(2), 61.552(3), and 78.545[(1) and (23)(a) and (b)]; and

<u>3.[(e)]</u> All service the employee would accrue if employment continued through December 31, 2008.

(c)[(3)] The employee's age rounded to the nearest year as of the cost calculation date shall be used.

(d)[4] The benefit factor used to determine the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545[61.5525], shall be the benefit factor to which the employee is entitled on the first day of the month following the cost calculation date, except that the benefit factor for nonhazardous employees of the County Employees Retirement System and the Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be the highest benefit factor to which the employee would be entitled, assuming total[:

(a) An effective retirement date no later than January 1, 2009; and

(b) Total] service as determined in <u>paragraph (b)[subsection (2)]</u> of this <u>subsection [section]</u>.

(2) For employees of a school board paid under an employment contract, for a purchase based on the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545, the higher of

the current rate of pay, final rate of pay, or final compensation times the actuarial age factor shall be determined as follows:

(a) The current rate of pay shall be equal to the final compensation as of the cost

calculation date.

(b) Final compensation shall be determined as of the cost calculation date, except that the final compensation of nonhazardous members of the County Employees Retirement System or Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be based on the three (3) fiscal years with the highest average monthly earnings if the sum of the employee's service when added to his age would equal at least seventy-five (75), assuming the employee's service includes:

1. All service remaining on an active installment purchase agreement;

- 2. All service which the employee is eligible to purchase under KRS 61.552(2), 61.552(3), and 78.545; and
- 3. All service the employee would accrue if employment continued through December 31, 2008.
- (c) The employee's age rounded to the nearest year as of the cost calculation date shall be used.
- (d) The benefit factor used to determine the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545, shall be the benefit factor to which the employee is entitled on the first day of the month following the cost calculation date, except that the benefit factor for nonhazardous employees of the County Employees Retirement System and the Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be the highest benefit factor to which the employee would be entitled, assuming total service as determined in paragraph (b) of this subsection.

Section 8[5]. Correction Upon Discovery of Error or Omission in Service Purchase Costs.

- (1) After the employee, member, or retired member has purchased service, the <u>agency[retirement system]</u> may recalculate the cost of the service if, upon audit, the <u>agency[retirement system]</u> determines that any of the information utilized to calculate the cost of the service was incorrect.
- (2) If the recalculation results in an increase in the cost of \$100 or more, the employee <u>or person, member, or retired member</u> shall have thirty (30) days to pay the additional amount.
- (3) If the employee, member, retired member, or the employer, fails to pay the additional amount, the employee's, member's, or retired member's service shall be reduced to the next lower increment or number of months for which the employee, member, or retired member is eligible based on the original payment, and the difference shall be refunded to the employee, member, or retired member.

Section 9[6]. Special Considerations for Purchase of Refunded or Past Service. (1) The verified wages associated with service purchased under the provisions of KRS 61.552 and 78.545 that (1)

to (5)(a) and (24), which] would have qualified as creditable compensation[7] shall be added to the employee's account and shall be used in determining the employee's final compensation.

(2) An employee purchasing service under the preceding <u>subsection[paragraph]</u> by increments or by installment purchase agreement shall have the service credited in chronological order beginning with the earliest service.

Section <u>10</u>[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

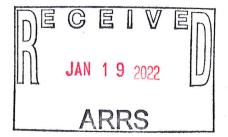
- (a) Form 4140, "Verification of Out-of-State Service", July 2000];
- (a)[(b)] Form 4172, "Notice of Intent to Transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan,"[-] April 2021[May 2008],[-and]
  - (b)[(c)] Form 4170, "Direct Transfer/Rollover Authorization Form"[7] April 2021;[2002.]
  - (c) Form 4225, "Verification of Past Employment," April 2021;
  - (d) Form 4160, "Affidavit and Certification for Documentation of Service," September 2010;
  - (e) Form 4120, "Verification of Employment with a State University," April 2021;
  - (f) Form 4115, "Federal Verification," April 2021;
  - (g) Form 4131, "Verification of Urban-County Government Service," April 2021; and
  - (h) Form 4140, "Verification of Out-of-State Service," April 2021.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the <u>Kentucky Public Pensions Authority</u>[Kentucky Retirement Systems, Perimeter Park West], 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

502-429-3300 800-305-2042 Fax: 502-429-1245

### KENTUCKY BOARD OF NURSING

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



January 18, 2022

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

Re: 201 KAR 20:472. Initial approval for dialysis technicans training programs.

Dear Co-Chairs West and Hale:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:472, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:472.

Sincerely,

Jeffrey R. Prather, General Counsel Kentucky Board of Nursing

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Louisville, KY 40222 Phone: (502) 338-2851

Email: Jeffrey.prather@ky.gov

### Final, 1-12-2022

#### SUGGESTED SUBSTITUTE

# BOARDS AND COMMISSIONS Board of Nursing

201 KAR 20:472. Initial approval for dialysis technician training programs.

RELATES TO: KRS 314.035, 314.131(1), 314.137 STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians <u>and includes establishing required standards for training programs</u>. This administrative regulation establishes the requirements for dialysis technician training programs.

Section 1. (1) A training program that prepares an individual to become a credentialed dialysis technician shall be approved by the board of nursing.

- (2)(a) A dialysis technician training program that seeks to be approved by the board shall file an Application for Dialysis Technician Training Program [Approval] and pay a fee of \$2,000; and
  - (b) The dialysis technician training program shall include with its application:
- 1. A copy of the approval of certification for the dialysis technician training program's governing organization to operate a renal dialysis center from the Centers for Medicare and Medicaid Services (CMS); and
- 2. The most recent site visit or survey report, and if applicable, a statement of deficiencies, and a plan of correction[, if applicable].
- Section 2. (1) A training program that prepares an individual to become a dialysis technician which is located in this state shall meet the standards established by this administrative regulation.
- (2) A training program that is located out of state shall not be subject to the approval process specified in this administrative regulation. However, an applicant who has completed an out of state training program may apply for a dialysis technician credential pursuant to 201 KAR 20:476, Section 1(1)(b).
- Section 3. Renal Dialysis Organization. (1)(a) An organization which is licensed to operate a renal dialysis center pursuant to 902 KAR 20:018 shall assume full legal responsibility for the overall conduct of the dialysis technician training program.
- (b) The organization shall appoint a program administrator who shall be administratively responsible for the oversight of the dialysis technician training program on a twelve (12) month basis.
- (c) The organization shall submit to the board in writing the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.
- (d) The board shall be notified in writing of a change, vacancy, or pending vacancy, in the position of the program administrator within thirty (30) days of the dialysis technician training program's awareness of the change, vacancy, or pending vacancy.
- (2) The organization shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each dialysis technician training program location.

- (3) A system of official records and reports essential to the operation of the dialysis technician training program shall be maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system of records shall include:
  - (a) A policy that all records shall be maintained for at least five (5) years;
  - (b) Provider name, dates of program offerings, and sites of the training program;
  - (c) Admission materials, grades received, and clinical performance records;
- (d) Trainee roster that includes name, date of birth, social security number, and program completion date;
  - (e) Faculty records including:
  - 1. Validation of current licensures or credentials; and
  - 2. Performance evaluation for faculty employed more than one (1) year.
  - (f) Systematic plan of evaluation;
  - (g) Graduates of the dialysis technician training program; and
  - (h) Administrative records and reports from accrediting agencies.

Section 4. Program Administrator and Assistant Program Administrator. (1) The program administrator shall have the following qualifications:

- (a) 1. A minimum of a master's degree from an accredited college or university;
- 2. A program administrator who currently does not hold a master's degree from an accredited college or university shall **[be required to]** obtain the degree within five (5) years of the effective date of this administrative regulation. The program administrator shall provide documentation that shows active and steady progression towards the degree; **and**
- 3. The board may waive <u>the master's degree requirements in</u> this <u>paragraph[requirement]</u> upon a showing that the proposed program administrator is otherwise qualified, <u>such as possessing a minimum of eight (8) years of experience in dialysis patient care and administration;[-]</u>
  - (b) A minimum of the equivalent of one (1) year of full time teaching experience;
- (c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;
- (d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;
- (e) An active and unencumbered Kentucky registered nurse license, temporary work permit, or multistate privilege; and
- (f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.
- (2) A dialysis technician training program may have an assistant program administrator at each location. An assistant program administrator shall have the following qualifications:
  - (a)1. A minimum of a baccalaureate degree in nursing;
- 2. An assistant program administrator who currently does not hold a baccalaureate degree in nursing from an accredited college or university shall [be required to] obtain the degree within five (5) years of the effective date of this administrative regulation. The assistant program administrator shall provide documentation that shows active and steady progression towards the degree; and
- 3. The board may waive the baccalaureate degree requirements in this paragraph[requirement] upon a showing that the proposed assistant program administrator is otherwise qualified, such as possessing a minimum of five (5) years of experience in dialysis patient care and administration;[-]

- (b) A minimum of the equivalent of one (1) year of full time teaching experience:
- (c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;
- (d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;
- (e) An active and unencumbered Kentucky registered nurse license, temporary work permit, or multistate privilege; and
- (f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.
- Section 5. Faculty. (1) The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the student, and the educational technology utilized.
- (2) The faculty shall be approved by the program administrator and shall include didactic and clinical faculty.
- (3) The name, title, and credential identifying the education and professional qualifications of each didactic and clinical faculty shall be provided to the board within thirty (30) days of hire. With each change in faculty, whether a new hire or a termination or retirement, an updated list of current faculty shall be provided to the board.
  - (4) Didactic faculty.
- (a) <u>Didactic faculty shall consist of multidisciplinary members with expertise in the subject matter.</u>
  - (b) Didactic faculty shall possess:
  - 1.[have] A minimum of a baccalaureate degree from an accredited college or university; or
  - 2. An associate degree from an accredited school of nursing.
  - (c) Nursing didactic faculty shall possess:
  - 1. a. A current state license as a registered nurse; or
  - b. A privilege to practice in the state; and
  - 2. A minimum of one (1) year of experience with dialysis patient care.
- (d)[1. A faculty member who currently does not hold a baccalaureate degree from an accredited college or university shall [be required to] obtain the degree within five (5) years of the effective date of this administrative regulation. The program administrator shall provide documentation that shows active and steady progression towards the degree.
- 2. The board may waive this requirement upon a showing that the faculty member is otherwise qualified.
- (b) Didactic faculty shall consist of multidisciplinary members with expertise in the subject matter.
- (c)] Didactic faculty [who hold a credential other than as a registered nurse] shall document a minimum of two (2) years full time or equivalent experience in their profession or discipline.
- (e)[(d)] Didactic faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.
- (f)[(e)] Didactic faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.
  - (5) Clinical faculty and preceptors.

- (a) Clinical faculty or a preceptor shall hold a current, unencumbered Kentucky nursing license, temporary work permit, or multistate privilege or a current, unencumbered Kentucky dialysis technician credential.
- (b) Clinical faculty or a preceptor shall have evidence of clinical competencies in end stage renal disease and dialysis care.
- (c) A preceptor who is a dialysis technician shall hold certification by one  $\underline{(1)}$  of the following dialysis technician certification organizations:
  - 1. The Board of Nephrology Examiners Nursing Technology (BONENT);
  - 2. [-] The Nephrology Nursing Certification Commission (NNCC):[-] or
  - 3. The National Association of Nephrology Technicians/Technologists (NANT).
- (6) There shall be documentation that the clinical faculty have been oriented to the course, program outcomes, student learning objectives, evaluation methods used by the faculty, and documented role expectations.

Section 6. Standards for Training. (1) Philosophy, mission, and outcomes.

- (a) The philosophy, mission, and outcomes of the training program shall be clearly defined in writing by the faculty and shall be consistent with those of the renal dialysis center.
- (b) The program outcomes shall be consistent with those required by the Centers for Medicare and Medicaid Services and the dialysis technician certification organizations listed in <u>subsection (3)[paragraph (2)]</u>(b) of this section.
- (c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.
- (d) The training program shall include a minimum of 200 hours of didactic course work and 200 hours of direct patient contact. The didactic course work and direct patient contact shall be at least ten (10) weeks. The training program shall maintain a log of clinical hours for each student. It <a href="may[shall">may[shall</a>] also include an internship of at least 160 hours. The internship shall be completed prior to a third final examination. <a href="mayerizeta">The internship shall be completed prior to a third final examination attempt</a>. The internship shall be under the supervision of a registered nurse and shall include a preceptor.
  - (2) The curricula of the program shall minimally include the following topics:
  - (a) The legal and ethical aspects of practice including:
  - 1. The history of dialysis:
- 2. The state and federal regulations governing dialysis including 201 KAR 20:478, 902 KAR 20:018, 907 KAR 1:400, and 42 C.F.R. 494.140;
  - 3. The resources available for pursuing personal and career development;
  - 4. The principles and legal aspects of documentation, communication, and patient rights;
  - 5. The roles of the dialysis technician and other multidisciplinary team members;
  - 6. The principles related to patient safety; and
  - 7. The role of the board of nursing.
  - (b) Anatomy and physiology applicable to renal function including:
  - 1. Renal anatomy;
  - 2. Organs of the urinary system and components of the nephron; and
  - 3. Functions of the normal kidney.
  - (c) Diseases of the kidney including:
  - 1. Causes and complications of acute renal failure; and
  - 2. Causes and complications of chronic renal failure.
- (d) The psychosocial and physical needs of the end stage renal disease (ESRD) patient and family including:
  - 1. The impact on family and social systems;
  - 2. Coping mechanisms utilized;

- 3. Rehabilitative needs:
- 4. Community resources available;
- 5. All aspects of renal diet and fluid restrictions; and
- 6. Educational needs of patients receiving dialysis including the role of the technician and resources available.
  - (e) The principles of pharmacology as related to ESRD including:
  - 1. Commonly used medications and their side effects;
  - 2. The principles of medication administration;
- 3. The indications, dosage, action, and adverse effects of heparin, local anesthetics, and normal saline; and
  - 4. The accurate administration of heparin, local anesthetics, and normal saline.
  - (f) Aseptic techniques and established infection control practices including:
  - 1. Dialysis precautions as issued by the United States Centers for Disease Control; and
  - 2. Proper hand washing technique.
  - (g) Principles of dialysis and dialysis treatment including:
  - 1. Definitions and terminology;
  - 2. Principles of osmosis, diffusion, ultrafiltration, and fluid dynamic;
  - 3. The structure and function of various types of circulatory access sites and devices;
- 4. The indications, advantages, disadvantages, and complications of internal arteriovenous (A/V) fistulas and A/V grafts, and central venous access devices;
  - 5. The various types of dialyzers;
  - 6. The benefits, risks, and precautions associated with dialyzer reuse;
  - 7. The purpose and concept of water treatment;
  - 8. Knowledge and ability to manage and operate dialysis equipment;
- 9. Knowledge and ability to appropriately monitor and collect data throughout the course of treatment:
- 10. The etiology, signs and symptoms, prevention, intervention and treatment, and options for the most common complications;
  - 11. The knowledge and ability to safely initiate and discontinue treatment; and
  - 12. Routine laboratory tests, values, and collection techniques.
  - (h) Other treatment modalities for ESRD including:
  - 1. Renal transplantation; and
  - 2. Home dialysis options.
  - (3) Implementation of the curriculum.
- (a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.
- (b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program and shall prepare the student to meet the qualifications for certification as established by the Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT).
- (c) The dialysis technician training program shall have written measurable program outcomes that reflect the role of the dialysis technician graduate upon completion of the program.
- (d) The dialysis technician training program shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.
- (e) A course syllabus shall be developed to include outcomes, planned instruction, learning activities, and method of evaluation.
- (f) The teaching methods and activities of both instructor and learner shall be specified. The activities shall be congruent with stated objectives, and content shall reflect adult learning principles.

- (g) A copy of the course syllabus shall be on file in the dialysis technician training program office and shall be available to the board upon request.
- (h) Any proposed substantive changes to the dialysis technician training program syllabus shall be submitted to the board in writing at least two (2) months prior to implementation and shall not be implemented without approval from the board. A substantive change is any change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum.
- (i) Training may be offered through distance learning technologies. Training offered through the use of distance learning technologies shall be comparable to the training offered in a campus based program.
- (4) The curriculum shall require that the student hold a current Basic Life Support (BLS) certificate.
- Section 7. Students in Dialysis Technician Training Programs. (1) Preadmission requirements shall be stated **[and published]** in all publications utilized by the dialysis technician training program including recruitment materials.
- (a) Program information communicated by the program shall be accurate, complete, consistent, and publicly available.
- (b) Participation shall be made available for students in the development, implementation, and evaluation of the program.
- (2) Written dialysis technician training program student policies shall be accurate, clear, and consistently applied.
- (3) Upon admission to the training program, each student shall be advised in electronic or written format of policies pertaining to:
  - (a) Prerequisites for admission, readmission, or dismissal;
  - (b) Evaluation methods that include the grading system;
  - (c) Any fees or expenses associated with the training program and refund policies;
  - (d) Health requirements and other standards as required by the renal dialysis center;
  - (e) Student responsibilities;
  - (f) A plan for emergency care while in the clinical setting; and
  - (g) Program completion requirements.
- (4) A student enrolled in a training program is exempt from the credentialing requirement while enrolled. The student shall use the title dialysis technician (DT) trainee.
- Section 8. Program Completion Requirements. (1) Requirements for successful completion of the dialysis technician training program shall be clearly specified.
- (2) The requirements shall provide evidence of clinical competency through the use of evaluation methods and tools that measure the progression of the student's cognitive, affective, and psychomotor achievement of clinical outcomes based on published rubrics and sound rationale\_[;]
- (3) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.
- (4) A final examination shall be administered only during the final forty (40) hours of the first 400 hours of the training program.
- (a) The final examination shall be mapped to program outcomes and blueprinted to the examination content of one (1) of the certification organizations as listed in Section 6(3)[(2)](2)(b) of this administrative regulation.
- (b) Following successful completion of the final examination, the student may begin the internship.
- (5) The individual who successfully completes the training program, including the internship, shall receive a certificate of completion that documents the following:

- (a) Name of individual;
- (b) Title of training program, date of completion, and location;
- (c) Provider's name;
- (d) The program code number issued by the board:[:] and
- (e) Name and signature of the program administrator or the assistant program administrator.
- (6) The program shall submit the List of Dialysis Technician Training Program Graduates within three (3) working days of the program completion date.

Section 9. Incorporation by Reference. (1) The following *material is[materials are]* incorporated by reference:

- (a) "Application for Dialysis Technician Training Program [Approval]", 4/2021; and
- (b) "List of Dialysis Technician Training Program Graduates", 4/2021.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at https://kbn.ky.gov/legalopinions/Pages/laws.aspx.

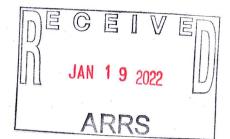
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### KENTUCKY BOARD OF NURSING

Andy Beshear Governor

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



January 18, 2022

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

Re: 201 KAR 20:474. Continuing approval and periodic evaluation of dialysis technician training programs.

Dear Co-Chairs West and Hale:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:474, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:474.

Sincerely,

Jeffrey R. Prather, General Counsel

Kentucky Board of Nursing

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Louisville, KY 40222

Phone: (502) 338-2851

Email: Jeffrey.prather@ky.gov

### Final, 1-7-2022

### SUGGESTED SUBSTITUTE

# BOARDS AND COMMISSIONS Board of Nursing

201 KAR 20:474. Continuing approval and periodic evaluation of dialysis technician training programs.

RELATES TO: KRS 314.035, 314.131(1), 314.137 STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians <u>and includes establishing required standards for training programs</u>. This administrative regulation establishes the requirements for continued approval of dialysis technician training programs.

Section 1. Renal Dialysis Center Survey and Certification. (1) The board shall retain jurisdiction over dialysis technician training programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:472 or <a href="this administrative regulation[201 KAR 20:474]">this administrative regulation[201 KAR 20:474]</a>. The board may conduct a site visit at any time <a href="during normal business hours">during normal business hours</a>, and may also conduct site visits when the Centers for Medicaid and Medicare Services (CMS) conducts a survey or site visit of the renal dialysis center utilized by the dialysis technician training program.

- (2) A dialysis technician training program shall notify the board regarding CMS site visits:
- (a) Within thirty (30) days following the site visit that it has occurred; and
- (b) Within ninety (90) days following the close of the site visit, the program shall forward all correspondence and reports from CMS concerning the site visit, any statement of deficiencies, subsequent plan of correction, and the continued approval certification.

Section 2. Dialysis Technician Training Program Evaluation. (1) To verify continued compliance with 201 KAR 20:472, the program shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other related documents as requested by the board.

- (2) A dialysis technician training program shall perform a systematic review of the training program that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board on an annual basis.
- (3) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.
- (4) The evaluation report shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the dialysis technician training program:
  - (a) Organization and administration of the dialysis technician training program;
  - (b) Curriculum:
  - (c) Teaching and learning methods including distance education;
  - (d) Faculty evaluation;
  - (e) Student achievement of program outcomes;
  - (f) Student completion rates;
  - (g) Student certification achievement rates; and
  - (h) Clinical resources.

- (5) If a dialysis technician training program utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education is substantially comparable to face to face education.
- (6) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the dialysis technician training program.

Section 3. Voluntary Closure of a Dialysis Technician Training Program.

- (1) A dialysis technician training program that intends to close shall submit written notification to the board at least six (6) months prior to the planned closing date.
- (2) The dialysis technician training program may choose one (1) of the following procedures for closing:
- (a) The dialysis technician training program shall continue to operate until the last class enrolled has completed training:[-]
- 1. The program shall continue to meet the standards until all students enrolled have completed the program:[-]
- 2. The official closing of the program shall be the date on the certificate of the last graduate; and[-]
- 3. The dialysis technician training program shall notify the board in writing of the official closing date; or[-]
- (b) The dialysis technician training program shall close the program following the transfer of students to other approved dialysis technician training programs:[-]
  - 1. The program shall continue to meet the standards until all students have transferred:[-]
- 2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the renal dialysis center; and[-]
  - 3. The date of the last student transfer shall be the official closing date of the program.
  - (3) Custody of records.
- (a) The dialysis technician training program that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.
- (b) The dialysis technician training program that ceases to exist shall transfer training logs and certificates of completion of each student and graduate to a third party vendor approved by the Council for Postsecondary Education for safekeeping.

Section 4. Continued Approval of a Dialysis Technician Training Program.

- (1) To receive continued approval, a dialysis technician training program shall:
- (a) File a completed Application for Dialysis Technician Training Program [Approval], as incorporated by reference in 201 KAR 20:472;
- (b) Submit an annual program evaluation summary report as required by Section 2(2) of this administrative regulation;
- (c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor; and
  - (d) Pay a fee of \$1,000.
- (2)(a) The material required to be submitted by <u>subsection[paragraph]</u> (1) of this section shall be submitted at least ninety (90) days prior to the end of the current approval period.
- (b) If any of the material required to be submitted pursuant to <u>subsection[paragraph]</u> (1) of this section is submitted less than ninety (90) days, but more than thirty (30) days prior to the end of the current approval period, an additional fee of \$300 shall be charged. Nonpayment of this fee shall result in denial of the application for continued approval.
- (c) If material required to be submitted pursuant to <u>subsection[paragraph]</u> (1) of this section is submitted less than thirty (30) days prior to the end of the current approval period, the materi-

al shall not be accepted. The program shall lapse at the end of the current approval period and the renewal fee shall be forfeited.

- (3) Continued approval shall be based on compliance with the standards established in 201 KAR 20:472 and this administrative regulation.
  - (4) Continued approval shall be granted for a two (2) year period.
- (5) If a program fails to seek renewal of its approval status thirty (30) days prior to the end of the current approval period, the approval shall lapse at the end of the current approval period.

Section 5. Reinstatement of Dialysis Technician Training Programs.

- (1) A program with lapsed approval shall cease all training activity until provided with written notice of the reinstatement of approval.
- (2) A dialysis training program that has closed or that has a lapsed or withdrawn approval status may seek to reinstate approval as follows:
- (a) File a completed Application for Dialysis Technician Training Program [Approval], as incorporated by reference in 201 KAR 20:472;
- (b) If applicable, file evidence of compliance with the requirements of any order issued by the board in accordance with Section 8 of this administrative regulation; and
  - (c) Pay a fee of \$1,000.

Section 6. Site Visits. (1) A representative of the board may conduct a site visit at any time *during normal business hours*.

- (2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:472 and *this administrative regulation*[201 KAR 20:474] are being met:
  - (a) Change of status by CMS or an accrediting body recognized by CMS;
- (b) Providing false or misleading information to students or the public concerning the dialysis technician training program;
- (c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:472 or *this administrative regulation*[201 KAR 20:474];
  - (d) A change in physical facilities;
- (e) Information received by the board that may indicate a violation of 201 KAR 20:472 or **this administrative regulation[201 KAR 20:474]**; and
- (f) Failure to submit reports as required by 201 KAR 20:472 or **this administrative regulation**[201 KAR 20:474].

Section 7. Action Following Site Visit. (1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

- (b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.
- (c) If the site visit results in a finding of non-compliance with 201 KAR 20:472 or **this administrative regulation** [201 KAR 20:474] by the dialysis technician training program, a letter shall be sent to the program administrator regarding any requirements to be met.
- (d) The board shall notify <u>in writing</u> the dialysis technician training program of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.
- (2)(a) If the dialysis technician training program is unable to meet the requirements in the time set by the board, it may request additional time. The board *[, in its discretion,]* may grant or deny this request based on the rationale for the request.
- (b) If the board denies the request for additional time, it shall begin the process established in Section 8 of this administrative regulation.

Section 8. Withdrawal of Approval. (1) <u>If[In the event that]</u> the standards are not being met, the board shall send <u>written</u> notice to the program administrator of the affected dialysis technician training program of its intent to withdraw approval. The <u>written</u> notice shall be sent return receipt requested.

- (2) When making this determination, the board shall consider the following factors:
- (a) The number and severity of the deficiencies;
- (b) The length of time in which the deficiencies have existed; and
- (c) Any exigent circumstances.
- (3) Within thirty (30) days of receipt of the <u>written</u> notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the dialysis technician training program shall be closed. A closed program shall comply with Section 3 of this administrative regulation.
- (4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.
- (b) The hearing shall be held before a hearing officer designated by the board pursuant to KRS Chapter 13B.
- (c) If the order of the board is adverse to the dialysis technician training program, the board may impose the following costs:
  - 1. The cost of the stenographic services;
  - 2. The cost of any expert witness, including travel;
  - 3. Travel for other witnesses:
  - 4. Document reproduction costs; and
  - 5. The cost of the hearing officer which shall be \$400 per day.
- (5)(a) The dialysis technician training program that has been closed shall assist a currently enrolled student to transfer to an approved dialysis technician training program.
- (b) A dialysis technician training program that fails to assist students as required in this subsection shall be ineligible for reinstatement for at least one (1) year.

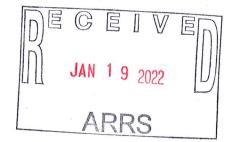
CONTACT PERSON: Jeffrey R. Prather, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email jeffrey.prather@ky.gov.

502-429-3300 800-305-2042 Fax: 502-429-1245

### KENTUCKY BOARD OF NURSING

Andy Beshear Governor

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



January 18, 2022

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

Re: 201 KAR 20:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

Dear Co-Chairs West and Hale:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:476, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:476.

Sincerely,

Jeffrey R. Prather, General Counsel
Kentucky Board of Nursing

312 Whittington Parkway, Suite 300

Louisville, KY 40222 Phone: (502) 338-2851

Email: Jeffrey.prather@ky.gov

#### Final, 1-12-2022

#### SUGGESTED SUBSTITUTE

### BOARDS AND COMMISSIONS Board of Nursing

201 KAR 20:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

RELATES TO: KRS 314.035, 314.103, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians, and includes establishing credentialing requirements. This administrative regulation establishes the requirements for credentialing dialysis technicians, initially, by renewal, and by reinstatement.

Section 1. Requirements for Initial Dialysis Technician Credential. (1) An individual who wants to be credentialed as a dialysis technician (DT) in order to engage in dialysis care shall:

- (a) File with the board the Application for Dialysis Technician Credential;
- (b) Pay the fee established in Section 4 of this administrative regulation;

(c) Have completed a board approved DT training program;

(d) Submit the Checklist for Dialysis Technician Competency Validation; and

(e) Submit a criminal record check pursuant to subsection (3) of this section and meet the

requirements of that subsection.

(2)(a) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who does not hold certification from one (1) of the certification organizations listed in subsection (4)(b) of this section shall submit to the board the training program's curriculum and evidence of completion of the training program.

1. The board or its designee shall evaluate the applicant's training program to determine its

comparability with the standards as established in 201 KAR 20:472.

- 2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of 201 KAR 20:472, Section 6.
- (b) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who holds certification from one (1) of the certification organizations listed in subsection (4)[, paragraph-](b) of this section shall complete an educational module that covers the information contained in 201 KAR 20:472, Section 6(2)(a)2.

(3)(a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee re-

quired by the KSP and the FBI.

(b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.

(c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is **found as[deemed]** necessary, the application shall not be processed unless the applicant has entered into an agreed

order with the board. If the parties are unable to agree on terms and conditions for an agreed

order, an administrative hearing shall be held.

(4)(a) After the applicant has met the requirements of subsection (1)(a), (b), (c), (d), and (e) of this section, the board shall issue a provisional credential to the applicant. The applicant shall be referred to as a DT Applicant. The DT Applicant shall practice dialysis care under the supervision of a registered nurse.

(b) The provisional credential shall expire eighteen (18) months from the date the application is received by the board. During that time, the applicant shall obtain certification from one (1) of

the following certification organizations:

1. The Board of Nephrology Examiners Nursing Technology (BONENT);

2. The Nephrology Nursing Certification Commission (NNCC); or

3. The National Association of Nephrology Technicians/Technologists (NANT).

(c) If the applicant fails to obtain certification as <u>established in paragraph (b) of this subsection[set forth above]</u>, the application shall lapse. The applicant may reapply by completing the training program again and meeting the requirements of subsection (1)(a), (b), (c), (d), and (e) of this section. However, a provisional credential shall not be issued.

(5) The DT Applicant shall only practice dialysis care as a DT Applicant until:

(a) The credential is issued;

(b) The application is denied by the board; or

(c) The application lapses.

(6)(a) Upon approval of the Application for Dialysis Technician Credential pursuant to subsection (1) of this section and the applicant's successful certification pursuant to subsection (4) of this section, the board shall issue the DT credential.

(b) If the credential is issued prior to May 1, it shall expire on October 31 of the current cre-

dentialing period as defined in 201 KAR 20:085, Section 2.

(c) If the credential is issued on or after May 1, it shall expire on October 31 of the succeed-

ing credentialing period as defined in 201 KAR 20:085, Section 2.

(d) After the issuance of the initial DT credential, the credentialing period shall be as defined in 201 KAR 20:085, Section 2.

Section 2. Renewal. (1) To be eligible for renewal of the credential, the DT shall submit prior to the expiration date of the credential:

(a) The Application for **Dialysis Technician Credential** Renewal **[of the Dialysis Techni-**

cian Credential];

(b) The fee established in Section 4 of this administrative regulation; and

(c) Evidence of current certification by one (1) of the organizations listed in Section 1(4)(b) of this administrative regulation.

(2) If the application form is submitted online at www.kbn.ky.gov[on line], it shall be re-

ceived by the board prior to midnight on the last day of the credentialing period.

(3) If a paper application is submitted, it shall be received no later than the last day of the credentialing period. If the application is not received by the board until after the last day of the credentialing period, the application shall have been postmarked at least seven (7) days prior to the last day of the credentialing period.

(4) All information needed to determine that an applicant meets the requirements for renewal of credential shall be received by the board no later than the last day of the credentialing period. If the information is not received by the board until after the last day of the credentialing period, in order to be considered by the board for the current renewal, the information shall have been postmarked at least seven (7) days prior to the last day of the credentialing period.

(5) Failure to comply with these requirements shall result in the credential lapsing. A person whose credential has lapsed shall comply with Section 3 of this administrative regulation to rein-

state the credential.

Section 3. Reinstatement. (1) If the DT credential has lapsed for less than twelve (12) months, an individual may reinstate the credential as follows:

(a) Submit the Application for Dialysis Technician Credential;

(b) Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation;

(c) Pay the fee established in Section 4 of this administrative regulation; and

(d) Provide a criminal record check by the Department of the Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and comply with the requirements of subsection (2) of this section.

(2)(a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee re-

guired by the KSP and the FBI.

- (b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.
- (c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is <u>found as[deemed]</u> necessary, the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(3) If the DT credential has lapsed for more than twelve (12) months, an individual may rein-

state the credential by one (1) of the following methods.

(a) If the DT has not worked as a DT in another state, the individual shall:

1. Complete a DT training program approved by the board;

- 2. After completion of the training program, submit an Application for Dialysis Technician Credential;
- 3. The supervising registered nurse shall complete and submit the Checklist for Dialysis Technician Competency Validation to the board;

4. Pay the fee established by Section 4 of this administrative regulation;

- 5. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and
- 6. Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation.

(b) If the DT has worked as a DT in another state, the individual shall:

1. Submit an Application for Dialysis Technician Credential;

2. Submit verification of working as a DT in another state;

3. Pay the fee established by Section 4 of this administrative regulation;

- 4. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and
- 5. Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation.
- (4) An Application for Dialysis Technician Credential submitted for reinstatement shall be valid for one (1) year from the date of receipt by the board.

(5) Upon approval of the application, the credential shall be reinstated.

Section 4. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be thirty-five (35) dollars.

(3) The credential reinstatement fee shall be \$100.

(4) A fee of ten (10) dollars shall be charged for issuing a duplicate of the credential.

(5) A check submitted to the board for payment of a fee that is returned by the bank for non-

payment shall be assessed a return check fee of thirty-five (35) dollars.

(6) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(7) A fee of twenty-five (25) dollars shall be charged for a name change and the issuance of

a new credential.

(8) All fees shall be nonrefundable.

Section 5. Material Incorporated by Reference. (1) The following <u>material is[materials are]</u> incorporated by reference:

(a) "Application for Dialysis Technician Credential", 4/2021;

(b) "Application for <u>Dialysis Technician Credential</u> Renewal[<u>of Dialysis Technician Credential</u>]", 4/2021; and

(c) "Checklist for Dialysis Technician Competency Validation", 4/2021.

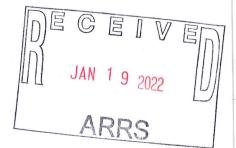
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### KENTUCKY BOARD OF NURSING

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



January 18, 2022

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

Re: 201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

Dear Co-Chairs West and Hale:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:478, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:478.

Sincerely,

Jeffrey R. Prather, General Counsel Kentucky Board of Nursing

LAR

312 Whittington Parkway, Suite 300

Louisville, KY 40222 Phone: (502) 338-2851

Email: Jeffrey.prather@ky.gov

#### Final, 1-7-2022

#### SUGGESTED SUBSTITUTE

## BOARDS AND COMMISSIONS Board of Nursing

201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

RELATES TO: KRS 314.021, 314.035, 314.089, 314.091, 314.103, 314.137, 314.991 STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians <u>and includes establishing provisions for discipline and further regulating as necessary</u>. This administrative regulation establishes the scope of practice and disciplinary procedures for dialysis technicians.

Section 1. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse, an advanced practice registered nurse, a physician, or a physician's assistant:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arte-

rial-venous grafts);

(b) Initiating, delivering, or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol

shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

- (a) Dialysis care for a patient whose condition is **found[determined]** by the registered nurse to be critical, fluctuating, unstable, or unpredictable;
- (b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 2. Discipline of a Dialysis Technician. (1) The board <u>may[shall have the authority</u> te] discipline a dialysis technician (DT) or a dialysis technician applicant (DTA) for:

(a) Failure to safely and competently perform the duties of a DT or DTA as established in this

administrative regulation;

(b) Practicing beyond the scope of practice as established in this administrative regulation;

- (c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;
  - (d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Use, or impairment as a consequence of use, of alcohol or drugs while on duty as a dialysis technician, dialysis technician trainee, or dialysis technician applicant;

(g) Possession or use of a Schedule I controlled substance;

- (h) Personal misuse or misappropriation for use of others of any drug placed in the custody of the DT or DTA for administration;
- (i) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;
- (j) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;
- (k) Practicing without filing an Application for Dialysis Technician Credential, as incorporated by reference in 201 KAR 20:476, or without holding a dialysis technician credential;

(I) Abuse of a patient;

(m) Theft of facility or patient property;

(n) Having disciplinary action on a professional or business license;

(o) Violating any lawful order or directive previously entered by the board;

(p) Violating any applicable requirement of KRS Chapter 314 or 201 KAR Chapter 20;

(q) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(r) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(2) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

- (c) Probation of the credential for a specified period of time, with or without limitations and conditions:
  - (d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the Application for Dialysis Technician Credential, as incorporated by reference in 201 KAR 20:476.

(3) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(4) In addition to the provisions of subsection (3) of this section, the board may impose a civil

penalty of up to \$10,000.

- Section 3. Miscellaneous Requirements. (1) **A[Any]** person credentialed by the board as a dialysis technician shall maintain a current mailing address and email address with the board and immediately notify the board in writing of a change of mailing address or email address.
- (2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.
- (b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) <u>A[Any]</u> dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this

or any other jurisdiction.

(4) <u>A[Any]</u> dialysis technician credentialed by the board shall, within ninety (90) days of entry of a sanction specified in this subsection, notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal is denied.

(5) If the board has reasonable cause to believe that any DT or DTA is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a substance use disorder evaluation or a mental or physical examination by a board approved practitioner.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a substance use disorder evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or exam-

ination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of substance use disorder evaluation, mental

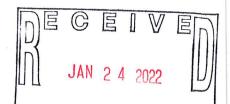
examination, or physical examination ordered by the board.

- (c) Upon failure of the dialysis technician to submit to a substance use disorder evaluation, mental examination, or physical examination ordered by the board *[, unless due to circum-stances beyond the person's control,]* the board *may[shall]* initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.
- (d) If a substance use disorder evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the dialysis technician shall be subject to disciplinary procedures as established in this administrative regulation.

(6) Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

CONTACT PERSON: Jeffrey R. Prather, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email jeffrey.prather@ky.gov.





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

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

Rich Storm Commissioner

January 24, 2022

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

Re:

301 KAR 4:091, Buying and selling mounted wildlife specimens.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 4:091, Buying and selling mounted wildlife specimens, proposes the attached amendment to 301 KAR 4:091.

Sincerely,

Beth Frazee

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



#### SUGGESTED SUBSTITUTE

Final Version: 1/19/2022 11:45 AM

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

#### 301 KAR 4:091. Buying and selling mounted wildlife specimens.

RELATES TO: KRS 150.010, 150.180, 150.411, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.4111(1), 150.4112, 150.4113

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting wildlife. KRS 150.4111 authorizes licensed taxidermists to buy and sell legally taken inedible wildlife parts for the purpose of mounting. KRS 150.4112 authorizes the department to promulgate administrative regulations **that[which]** allow resident nonprofit 26 U.S.C. 501(c)(3) institutions to sell donated mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. KRS 150.4113 authorizes the department to promulgate administrative regulations to allow the sale and purchase of mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. This administrative regulation establishes the requirements for the buying and selling of mounted wildlife specimens.

Section 1. Definitions. (1) "Deer" means Odocoileus virginianus.

- (2) "Elk" means Cervus elaphus nelsoni.
- (3) "Wild turkey" means Meleagris gallopavo sylvestris.
- (4) "Black bear" means Ursus americanus.
- (5) "Bobcat" means Lynx rufus.
- Section 2. (1) A mounted wildlife specimen purchased from or sold to a licensed taxidermist pursuant to KRS 150.4111 shall be exempt from the requirements of this administrative regulation.
- (2) A mounted wildlife specimen may be bought or sold by any person or entity, except as prohibited by federal law.
- (3) A nonprofit charitable, religious, or educational institution, which has qualified for exemption pursuant to 26 U.S.C. 501(c)(3), may sell mounted wildlife specimens if the mounts have been donated, except as prohibited by federal law.
- (4) Prior to selling a mounted wildlife specimen of a species established in paragraphs (a) through (e) of this subsection, the seller shall first obtain a registration number from the department by completing the online registration process on the department's Web site at fw.ky.gov for each mounted specimen of:
  - (a) Black bear;
  - (b) Bobcat;
  - (c) Deer;
  - (d) Elk; or
  - (e) Wild turkey.

- (5) Prior to selling a mounted wildlife specimen of a species established in subsection (4) of this section, the seller shall affix the registration number to the mount in a clear and legible manner.
- (6) A department registration number shall be required for each sale of a mounted wildlife specimen established in subsection (4) of this section.

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

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022

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



Re: 502 KAR 15:020

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 15:020, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 15:020.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee

enclosures



#### **REVISED:**

#### 1/25/2022 1:34 PM

# Suggested Amendment Justice and Public Safety Cabinet Department of Kentucky State Police

502 KAR 15:020. Abandoned vehicles.

Page 1 RELATES TO Line 5

After "189.753", insert ", 376.275".

Page 1 NECESSITY, FUNCTION, & CONFORMITY Line 8

After "requires the", insert the following:

<u>Department of Kentucky State Police to promulgate administrative</u> regulations to carry out the provisions of KRS 189.753, relating to abandoned vehicles

Delete the following:

department to locate abandoned vehicles, order their removal from the rights-of-way of state highways, and notify the owners of vehicles

Line 10

After "This administrative regulation", insert "establishes". Delete "is adopted to establish".

Page 1

Section 1(1)

Line 16

After "defined", insert "<u>by</u>". Delete "in".

Page 2

Section 1(3)

Line 1

After "means", insert comma.

Line 3

After "landmarks", insert comma.

After "cornerstones", insert comma.

Page 2

```
Section 2
Line 6
       After "of vehicles", insert "that".
       Delete "which".
Line 7
       After "regulation", insert "shall".
       Delete "will".
Page 2
Section 3
Line 12
       After "county road", insert comma.
       After "affix a", insert "notice".
       Delete "stalled vehicle check form".
Line 13
       After "to the vehicle", insert "documenting".
       Delete "noting".
Page 2
Section 4(1)
Line 19
       After "chosen by the person", insert "removing the vehicle".
 Page 2
 Section 4(2)
 Line 21
        After "mail", insert ": (a)".
        Capitalize "that".
 Line 22
        After "public property;", insert "(b)".
        Capitalize "the".
        After "location of the vehicle;", insert "(c)".
        Delete "that".
        Capitalize "retrieval".
 Line 23
        After "charges; and", insert "(d)".
        Delete "that".
```

#### Capitalize "the".

```
Page 3
Section 4(3)
Line 1
       After "(3)", insert "<u>A</u>".
       Delete "No".
       After "shall", insert "not".
Page 3
Section 5(2)
Line 7
       After "facility shall", insert ": (a)".
       Capitalize "contact".
Line 9
       After "preclude sale", insert semicolon.
       Delete comma.
       After "and", insert "(b)".
       Delete "to".
       Capitalize "inform".
Page 3
Section 5(5)
Line 14
        After "(5)", insert the following:
               If there is a
        Delete the following:
```

In the event of such

**Andy Beshear** GOVERNOR



**Kerry Harvey** CABINET SECRETARY

**Robyn Bender GENERAL COUNSEL** 

February 2, 2022

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



Re: 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, 502 KAR 35:050

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, and 502 KAR 35:050, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, and 502 KAR 35:050.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee

enclosures



#### **Subcommittee Substitute**

## JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police[-] (As Amended at ARRS)

#### 502 KAR 35:010. Definitions.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.160, [17.080,] 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 <u>authorizes</u> [and 17.080, provide that] the Secretary of the Justice and Public Safety Cabinet to promulgate [may adopt] [such] administrative regulations that are necessary to properly administer the <u>laws and functions vested in the cabinet</u>. KRS 17.450 establishes the Kentucky Missing Child Information Center. This administrative regulation establishes the definitions to be used in the administration of the Kentucky Missing Child Information Center.

Section 1. <u>Definitions.</u> [As employed in 502 KAR 35:010 through 502 KAR 35:050, unless the context requires otherwise:]

- (1) "Child" means any person under eighteen (18) years of age or any persons certified or known to be mentally incompetent or disabled. "Kentucky Missing Child Information Center" means a system including equipment, facilities, procedures, agreements and organizations thereof, for the collection, processing, and subsequent dissemination of information related to missing children.
- (2) "Kentucky Missing Child Information Center" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, and subsequent dissemination of information related to missing children.["Missing child information," hereafter referred to as MCI, is reported to and preserved in the Kentucky Missing Child Information Center. MCI shall include] [be inclusive of][, but not be limited to, all information as listed on the KSP Form 261, Kentucky Missing Person's Report][Form].[
- (3) "Kentucky Missing Persons Report Form" means the form furnished to all requesters by the Kentucky State Police for the purpose of obtaining personal identifiers, characteristics, habits and actions for use in the entry of information in the Kentucky Missing Child Information Center.]
- (3)[(4)] "Law enforcement agency" means a full-time governmental agency, or any subunit thereof, which is charged with the responsibility of the detection and prevention of crime, apprehension of criminals, the maintaining of law and order throughout the respective jurisdiction, to collect, classify, and maintain information useful for the detection of crime and the identification, apprehension, and conviction of criminals, and to enforce laws within that respective governmental jurisdiction.
- (4)[(5)] "Missing child information" or "MCI" means information that is reported to and preserved in the Kentucky Missing Child Information Center. MCI shall include all information as listed on KSP Form 21, Kentucky Missing Person's Report. "Child" means any person under eighteen (18) years of age or any persons certified or known to be mentally incompetent or disabled.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email *Justice.RegsContact@ky.gov* [amy.barker@ky.gov].

Andy Beshear GOVERNOR

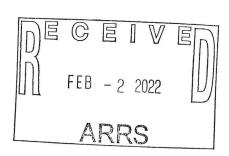


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022

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



Re: 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, 502 KAR 35:050

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, and 502 KAR 35:050, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, and 502 KAR 35:050.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee

enclosures

#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET <u>Department of Kentucky State Police</u> [Kentucky Law Enforcement Council] (As Amended at ARRS)

### 502 KAR 35:020. Capabilities of the Missing Child Information Center computer system.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS <u>15A.160</u> [<del>15A.060 17.080</del>], 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS <u>15A.160</u> [17.080] authorizes the Secretary of <u>the</u> Justice <u>and Public Safety Cabinet</u> to <u>promulgate</u> [institute rules and] administrative regulations and direct proceedings and actions for administration of laws and functions that are vested in the <u>cabinet</u>[Justice Cabinet]. KRS 17.450 establishes <u>the</u>[, in the Justice Cabinet, a] Kentucky Missing Child Information Center. [As defined in 502 KAR 35:010(1), the Kentucky Missing Child Information Center shall act as a central repository of and a clearing house for information with regard to those Kentucky related children believed to be missing.] This administrative regulation sets specific computer program standards and information submission guidelines for the Kentucky Missing Child Information Center.

Section 1. The Kentucky Missing Child Information Center shall maintain a system capable of accepting and initiating the capture, retention, and [subsequent]dissemination of information relating to missing children from Kentucky and missing children believed to be located in Kentucky. The system shall:

(1) Be capable of retrieving missing child information by name, description, date of birth, Social Security number, fingerprint class, body marks, known associates, and the associates' locations;

- (2) Communicate with the National Crime Information Center; and
- (3) Ensure the ability to provide statistical data associated with the Kentucky Missing Child Information Center.

Section 2. The Kentucky Missing Child Information Center shall be located within the Kentucky State Police for administrative purposes.[

Section 3. The system shall be developed that will at a minimum be capable of the retrieval of missing child information by name, description, date of birth, Social Security number, fingerprint class, body marks, known associates and the associate's locations. The system shall also be developed to ensure the ability to provide statistical data associated with the Kentucky Missing Child Information Center.]

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email *Justice.RegsContact@ky.gov* [amy.barker@ky.gov].

Andy Beshear GOVERNOR

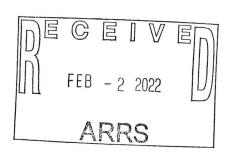


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022

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



Re: 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, 502 KAR 35:050

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, and 502 KAR 35:050, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, and 502 KAR 35:050.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee

enclosures

#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police. (As Amended at ARRS)

502 KAR 35:030. Quality of information reported to the Kentucky Missing Child Information Center.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.060, [17.080,] 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.450(8) <u>authorizes</u> [provides that] the Secretary of the Justice and Public Safety Cabinet to promulgate [may issue] administrative regulations [in order] to provide for the orderly receipt and retrieval [and/or retrieval] of missing child information. This administrative regulation establishes the procedures for the entry and retrieval of missing child information [procedures].

Section 1. Only law enforcement agencies as defined in this Chapter [502 KAR 35:010(4)] shall be allowed to enter **information**, change existing information, or retrieve information from the files of the Missing Child Information Center. Initial entry or modification of existing missing child information shall [only] be accomplished by the submission of KSP Form 261, the Kentucky Missing Persons Report Form, to the Missing Child Information Center. Each submitted form [Kentucky Missing Persons Report Form] shall be as complete as possible and list the submitting law enforcement officer's name and [as well as] the authorizing law enforcement agency.

[Section 2. A parent or guardian may enter or retrieve missing child information directly to or from the Missing Child Information Center on his child when the law enforcement agency of jurisdiction has refused to enter or retrieve such missing child information. The parent or guardian of the missing child that has been denied service by a law enforcement agency may directly contact the Kentucky Missing Child Information Center for assistance in the initial entry, modification thereof, or retrieval of information relating to his or her missing child. The Missing Child Information Center shall immediately notify the State Police Post, which serves the area, to initiate an investigation on the missing child.]

Section 2. [Section 3.] Affidavit Certifying Noncompliance with KRS 17.450 by a Law Enforcement Agency. The parent or guardian attesting that a law enforcement agency has not rendered the appropriate service, as outlined in KRS 17.450 or 17.460, shall be required to file a formal affidavit outlining the circumstances surrounding the failure of the law enforcement agency to provide service. Copies of <a href="mailto:the">the</a> [said] affidavit shall be forwarded to the chief administrative officer of the agency denying service in addition to the State Police Post which <a href="mailto:shall">shall</a> [will] conduct the investigation on the missing child.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email *Justice.RegsContact@ky.gov* [amy.barker@ky.gov].

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022

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



Re: 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, 502 KAR 35:050

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, and 502 KAR 35:050, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 35:010, 502 KAR 35:020, 502 KAR 35:030, and 502 KAR 35:050.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee

enclosures

#### Subcommittee Substitute

# JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police (As Amended at ARRS)

502 KAR 35:050. Statistical analysis of information related to missing children.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.160, [17.080,] 17.450, 17.460

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes [17.080 provides that] the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet [may adopt such rules and administrative regulations as] [are] [necessary to properly administer the cabinet]. KRS 17.450 authorizes [provides that] the Secretary to promulgate [may] [of Justice] [further issue] administrative regulations which shall [will] provide for the functioning of the Kentucky Missing Child Information Center. KRS 17.450 requires that the Kentucky Missing Child Information Center annually report statistical information regarding [with regard to] the numbers of children missing from or believed missing in the Commonwealth of Kentucky. This administrative regulation establishes rules [and administrative regulations] regarding [with regard to] the furnishing of the [said] statistical data.

Section 1. Annual Report Required. On or before July 1 of each year, a written report shall be provided to the Secretary [of Justice] that **shall** [will] include statistical information regarding [with regard to-]missing children in the Commonwealth of Kentucky.

Section 2. Law Enforcement Agency Assistance Required. The Kentucky Missing Child Information Center may require additional assistance from all law enforcement agencies <u>regarding</u> [with regard to] the development of the statistical data report as outlined in Section 1 of this administrative regulation. <u>The [Said]</u> assistance shall <u>include [be inclusive of]</u> [but not be limited to] in-depth case analysis with regard to a specific missing child incident, overall trends within a given geographical or jurisdictional area, and an in-depth missing child recovery trend analysis as well as the agency's methodology for finding and returning missing children.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email *Justice.RegsContact@ky.gov* [amy.barker@ky.gov].

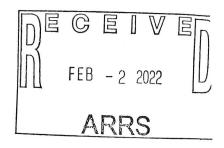
Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022



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

Re: 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:115

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115.

Sincerely,

Heather M. Lee

An Equal Opportunity Employer M/F/D

Paralegal Consultant

Heatherm. Lee

enclosures

125 Holmes Street, 2nd Floor • Frankfort, Kentucky 40601 • (502) 564-7554

#### Subcommittee Substitute

### JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police (As Amended at ARRS)

#### 502 KAR 45:005. Definitions.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires the Commissioner of <u>the</u> <u>Kentucky</u> State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 <u>requires</u> [authorizes] the commissioner to <u>promulgate</u> [adopt] administrative regulations for the enlistment of officers. KRS 16.050 requires the <u>Kentucky</u> State Police Personnel Board to <u>promulgate</u> [adopt] administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the definitions to be used in the <u>chapter</u> [administrative regulations] concerning the selection process for <u>cadet troopers [trooper cadets]</u>.

#### Section 1. Definitions.

- (1) "Applicant" means a fully-qualified person, pursuant to [as contemplated in] KRS 16.040, who submits an employment application for the position of cadet trooper and who participates in the selection process.
- (2) "Appointment" means selection by the <u>commissioner</u> [<del>Commissioner</del>] of a cadet trooper for employment as an officer, upon successful completion of basic training at the Kentucky State Police Academy.
- (3) "Aptitude examination" means an assessment of the cognitive abilities used to determine if applicants can successfully perform the essential job tasks of a Kentucky State Police Trooper.
- (4)[(3)] "Cadet trooper" means an applicant for employment as an officer who is selected by the commissioner to attend the Kentucky State Police Academy and  $\underline{is}$  conditionally employed as a trainee.
- (5)[(4)] "Candidate" means an applicant for employment who has successfully completed all phases of the selection process and whose name has been placed on the register.
- (6) "Immediate family" means the parents, step-parents, siblings, step-siblings, aunts, or uncles of an applicant for employment.
- (7) "Law Enforcement Accelerated Program" or "LEAP" means the accelerated training program reserved for applicants who are current officers who have at least two (2) years of Kentucky Police Officer Professional Standards (POPS) certified law enforcement experience.
- (8)[(5)] "Physical Fitness Test" or "PFT" means a series of physical fitness tests[Content Based Task Test (CBTT)" means the physical fitness test consisting of simulated essential job tasks,] used to determine if applicants can perform the essential job tasks required during basic training at the Kentucky State Police Academy.

(9)[(6)] "Register" means the list of persons eligible for selection as a cadet trooper.

(10) "Trooper Applicant Points System" or "TAPS" means a calculated point system that may be based upon the educational, military, and law enforcement experience of an applicant or **graduate** [**graduation**] from the Kentucky State Police Apprenticeship program.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email <u>Justice.RegsContact@ky.gov</u>[amy.barker@ky.gov].

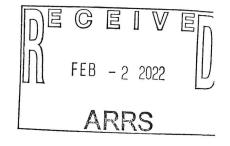
Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022



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

Re: 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:115

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115.

Sincerely,

Heather M. Lee

Heatherm. Lee

Paralegal Consultant

enclosures

#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police (As Amended at ARRS)

### 502 KAR 45:035. Application and selection process.

RELATES TO: KRS 16.040, 16.050(7), 16.080(1)

STATUTORY AUTHORITY: KRS 16.040, 16.050(7), 16.080(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires [, 16.050(7) and 16.080(1) grant] the Commissioner of the Kentucky State Police to prescribe minimum physical requirements for persons appointed as state police officers, to conduct tests to determine the fitness and qualifications of applicants, and to direct an investigation to be conducted to determine an applicant's suitability for employment as an officer[the authority to establish criteria for the appointment of department officers]. KRS 16.050(7) requires the Kentucky State Police Personnel Board to promulgate administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. KRS 16.080(1) requires the commissioner to promulgate administrative regulations for the enlistment, training, code of ethics, discipline, and conduct of officers of the department and individuals employed as a Trooper R Class or CVE R Class, and also authorizes the commissioner to promulgate administrative regulations for the governing and operation of the department as appear to him or her reasonably necessary to carry out the provisions of KRS 16.010 to 16.170. This administrative regulation establishes eligibility requirements for applicants and the application forms [form] to be submitted by applicants.

Section 1. Eligibility Requirements for Testing. An applicant shall be eligible to take the <u>aptitude[written]</u> examination established by 502 KAR 45:045, [and][, if otherwise eligible,] the <u>Physical Fitness[Content Based Task]</u> Test established by 502 KAR 45:150, and the [oral] interview established by 502 KAR 45:055 if the applicant:

- (1) Meets the requirements established by KRS 16.040(2)(a) through (d)[(b), (c) and (d)]; and
- (2) [Is at least twenty-one (21) years of age; and
- (3)] Possesses a valid driver's license against which not more than six (6) points are currently assessed.

Section 2. Application. (1) <u>To apply for employment, an [An]</u> applicant shall complete  $\underline{a}$  ["] Kentucky State Police - Cadet Trooper Application for Employment["] form.

- (2) An applicant <u>may submit</u> [shall type or print legibly in ink the information requested on] the ["] Kentucky State Police Cadet Trooper Application for Employment["] form in paper or electronic form.
- Section 3. Documents Submitted with Application. An applicant shall <u>submit [attach]</u> the following documents with his <u>or her</u> application, <u>in paper or electronic form</u>:

- (1) A certified copy of the applicant's birth certificate and operator's license; and
- (2) A certified copy of college or university transcripts, if applicable; or
- (3) A <u>certified copy of the applicant's high school diploma or GED certificate and any other additional materials, determined by the commissioner, and as described in this Chapter, as necessary to establish the educational or experience qualifications of KRS 16.040(2)(d).</u>

Section 4. Law Enforcement Accelerated Program (LEAP). (1) The commissioner may conduct an accelerated academy.

- (2) A LEAP applicant shall submit the following documents with his or her application, in paper or electronic form:
  - (a) A completed ["] Kentucky State Police Cadet Trooper Application["] form;[,]
  - (b) A copy of his or her Kentucky POPS certificate; [1] and
  - (c) A completed 3 ["Kentucky State Police Three] Years Work Experience Verification["] form.
- (3) The applicant shall undergo an interview with the Post Commander nearest the applicant's home address.
- (4) The applicant shall not be subject to an existing employment contract, including any employment contract authorized under Chapter 70 of the Kentucky Revised Statutes[If an applicant has had at least two (2) years experience in law enforcement:
  - (a) A certified copy of the applicant's high school diploma or GED certificate; and
  - (b) A notarized letter from his law enforcement employer, stating:
  - 1. Whether the applicant was a fulltime, sworn officer; and
  - 2. The period during which the applicant was employed.
- (4) If an applicant has had at least two (2) years' active duty experience in the military, a copy of the applicant's:
- (a) DD214, or a notarized letter from the applicant's commanding officer verifying the applicant's length of service; and
  - (b) A certified copy of the applicant's high school diploma or GED certificate].[

Section 4. Filing of Application. (1) An applicant may mail or submit his application to the Kentucky State Police Recruitment Office, 919 Versailles Road, Frankfort, Kentucky 40601.

- (2) An applicant may make an appointment to submit his application at the nearest state police post or driver testing station in Louisville or Lexington.
- (3) When an application is filed, an applicant shall choose a date and time to report for the written examination from the list of examinations furnished by the department pursuant to 502 KAR 45:045.
- (4) If an applicant is not selected to participate in a phase of the selection process established by 502 KAR Chapter 45, he shall not reapply for a twelve (12) month period following the date upon which he first took the written examination.]

Section 5. <u>Not Recommended</u>. If an applicant has not been recommended by two (2) previous background investigations, the applicant shall be required to appeal, in writing, to the *Kentucky* State Police Personnel Board for approval to reapply.

Section 6. Incorporation by Reference. (1) [KSP Form 4.] "Kentucky State Police - Cadet Trooper Application for Employment" KSP 4[02-97" form], 2019 edition is incorporated by reference.

(2) [KSP Form 004a,] "3 [Kentucky State Police Three (3)] Years Work Experience Verification

Form", KSP-004a, 2019 edition, is incorporated by reference.

(3) This material [It] may be inspected, copied, or obtained at the Department of State Police, Recruitment Branch [Office], 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and on the agency Web site at kentuckystatepolice.org.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email <u>Justice.RegsContact@ky.gov</u> [amv.barker@ky.gov].

## KENTUCKY STATE POLICE - CADET TROOPER APPLICATION FOR EMPLOYMENT

919 Versailles Road Frankfort, Kentucky 40601

Answer each item completely and accurately. Applications will not be accepted without a certified copy of your birth certificate, copy of your driver's license, official high school transcript along with other documents as specified with this application. False answers will lead to dismissal.

Applicant Na	me	Last			First		Mid	dle			Maiden	
Mailing												
Address _		Street /P.O.	Box		City	-	Count	y		State	Z	ip Code
Telephone						Cell		Da	te of Birt	h Month	n Day	Year
	Hon	ne	V	VOIK		Cell						
Social Secur	ity Number				Are you	at least 21	years of a	ge?	☐ Yes	S	□ No	
E-mail Addre	ess (Require	ed)										
HS Graduate		☐ No	☐ GED		zenship Ac			L	•		Naturaliza	
documentati	on with app	lication.	following re-									
	nce Verificat ( (36) months	tion Form i s of employ	th Official H.S. ndicating threo oment, volunte nth.)	^ /'71 UAGEC	CHMINISTING	a nini nine !	WUK EXUE	161166	. VVOIN O	ADDITION	minute ogue	
			rs (Attach an									
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## KENTUCKY STATE POLICE - CADET TROOPER APPLICATION FOR EMPLOYMENT

919 Versailles Road Frankfort, Kentucky 40601

Answer each item completely and accurately. Applications will not be accepted without a certified copy of your birth certificate, copy of your driver's license, official high school transcript along with other documents as specified with this application. False answers will lead to dismissal.

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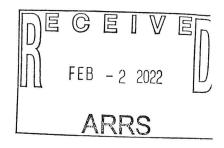
Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022



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

Re: 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, 502 KAR 45:115

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heatherm. Lee

enclosures



#### **Subcommittee Substitute**

## JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police (As Amended at ARRS)

### 502 KAR 45:045. Aptitude [Written] examination.

RELATES TO: KRS 16.050, 16.080(1)

STATUTORY AUTHORITY: KRS 16.050, 16.080(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 and 16.080(1) require the **Commissioner and the Department of Kentucky State Police Personnel Board to establish** [establishment of] open competitive examination of applicants for employment as troopers. This administrative regulation establishes the criteria for the aptitude[written] examination.

Section 1. The aptitude[written] examination shall be:

- (1) Practical in nature; and
- (2) Designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department.
- Section 2. The aptitude[(1) An] examination shall be administered at the times and places designated by the commander of the **Recruitment** [Recruit] Branch[commissioner].[
- (2) The commissioner may direct that an examination be conducted regionally if he finds a regional examination to be convenient and practicable.]
- Section 3. <u>The Recruitment Branch shall work in coordination with the *Kentucky* State Police Personnel Board to establish the aptitude test. [An applicant may take the examination:</u>
  - (1) Two times in a twelve (12) month period.
- (2)(a) If an applicant fails the written examination, he may notify the recruitment office of the department that he wishes to retake the examination.
  - (b) If he has notified the recruitment office as provided by this subsection, he:
  - 1. May retake the written examination once; and
- 2. Shall retake the next written examination that is scheduled at least thirty (30) days after the written examination the applicant failed.
- Section 4. An applicant shall have submitted a completed application prior to taking the <a href="mailto:aptitude">aptitude</a>[written] examination.
  - Section 5. The aptitude[An] examination shall be rated impartially.
  - Section 6. An applicant shall be informed of his or her score.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email <u>Justice.RegsContact@ky.gov</u> [amy.barker@ky.gov].

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022



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Sincerely,

Heather M. Lee

An Equal Opportunity Employer M/F/D

Paralegal Consultant

Heatherm. Lee

enclosures

125 Holmes Street, 2nd Floor • Frankfort, Kentucky 40601 • (502) 564-7554

### **Subcommittee Substitute**

## JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police (As Amended at ARRS)

### 502 KAR 45:075. Register.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires the *Kentucky* State Police Personnel Board to promulgate administrative regulations which include provisions for the establishment of eligibility lists as a result of competitive examinations, from which [lists] vacancies shall be filled. This administrative regulation establishes a register for the employment of cadet troopers.

Section 1. (1) The commissioner shall determine the number of cadet trooper positions required to be filled.

- (2) The commissioner shall base his determination upon:
- (a) The needs of the department;
- (b) Projected attrition; and
- (c) Available funding [Authorized strength levels].

Section 2. (1) The commissioner shall propose a register of applicants <u>eligible[eligibles]</u> for appointment as a cadet trooper to the <u>Kentucky</u> State Police Personnel Board.

(2) Upon approval by the board, the commissioner shall establish a register of applicants eligible for appointment as a cadet trooper.

Section 3. (1) A register shall be effective for a period of twelve (12) months.

- (2) If an applicant who has been placed on a register is not selected for employment within twelve (12) months of <u>the applicant's</u> [his] placement on the register, the applicant[he]:
  - (a) May [Shall] be removed from the register; and
  - (b) If removed from the register, may reapply for employment.

Section 4. An applicant may be placed on a register if the applicant has:

- (1) Successfully completed the:
- (a) Aptitude[Written] examination;
- (b) Physical Fitness[Content Based Task] Test; and
- (c) [Oral]Interview; and
- (2) Not been disqualified as a result of a background investigation.[
- (3) The applicants who shall undergo a background investigation shall be determined by:
- (a) An applicant's combined Content Based Task Test and the oral interview scores; and
- (b) The number of positions required to be filled.]

Section 5. (1) Except as provided by subsection (2) of this section, an applicant shall be placed on the register in rank order, determined by the combined score on <u>the [an]</u> applicant's <u>Physical Fitness</u>[Content Based Task] Test, [and] [eral ]interview score, and <u>Trooper Applicant Points</u> <u>System (TAPS)</u> points. A maximum of six (6) <u>TAPS [(6.0)]</u> [<u>Trooper Applicant Points System (TAPS)]</u> points may be earned and added to the combined score. Applicants shall receive TAPS points based upon the following:

- (a) Applicants shall receive two (2) [(2.0)] points for:
- 1. An associate degree in any discipline from an accredited college or university;
- 2. A copy of **the applicant's [their]** DD-214 reflecting four (4) years of active military service; or
- 3. A notarized letter from a law enforcement employer certifying three (3) years of full-time law enforcement employment as a sworn officer.
  - (b) Applicants shall receive four (4) [(4.0)] points for:
  - 1. A bachelor degree in any discipline from an accredited college or university;
- 2. A copy of **the applicant's [their]** DD-214 reflecting a minimum of five (5) and less than nine (9) years of active military service; or
- 3. A notarized letter from a law enforcement employer certifying a minimum of four (4) and less than seven (7) years of full-time law enforcement employment as a sworn officer.
  - (c) Applicants shall receive six (6) points for:
  - 1. A master degree or above in any discipline from an accredited college or university;
- 2. A copy of **the applicant's [their**] DD-214 reflecting nine (9) years or more of active military service; or
- 3. A notarized letter from a law enforcement employer certifying seven (7) years or more of full-time law enforcement employment as a sworn officer.
- (d) Graduates of the KSP Apprenticeship Program shall receive up to six (6) points for the following:
  - 1. Three (3) points upon graduation;
  - 2. Two (2) points upon completion of the physical preparedness program; and
- 3. One (1) point upon completion of five (5) core classes toward the Kentucky State Police Academy Associates in Applied Sciences degree in General Occupational and Technical Studies while enrolled in the Bluegrass Community and Technical College with a grade **of** C or higher in each class.
- (2) Applicants who receive the same score shall be ranked by random draw, with military veterans receiving preference as provided by KRS 16.040(3).
- Section 6. (1) Except as provided by this section, the commissioner shall select eligible applicants for appointment as cadet troopers from the register in rank order.
- (2) The commissioner may deviate from the rank order of the register if **the commissioner** [he] determines that it is necessary to correct a manifest imbalance of minorities or women in the department.
- Section 7. The commissioner may remove a candidate from the register for the following reasons:
  - (1) Upon receipt of reliable information indicating grounds for disqualification or deferral;

- (2) If the candidate cannot be located by postal authorities;
- (3) If the candidate:
- (a) Declines an offer of employment;
- (b) Fails to respond to an offer of employment;
- (c) Notifies the department that <u>the applicant</u> [he] no longer wishes to be considered for employment; or
- (d) Upon the expiration of a period of twelve (12) months from the date of **the applicant's** [his] placement on the register.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email <u>Justice.RegsContact@ky.gov</u> [amy.barker@ky.gov].

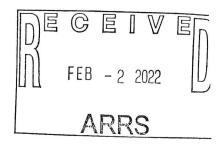
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Sincerely,

Heather M. Lee

Paralegal Consultant

Heatherm. Lee

enclosures

125 Holmes Street, 2nd Floor • Frankfort, Kentucky 40601 • (502) 564-7554

### **Staff-suggested Amendment**

### 1/25/2022 JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police

### 502 KAR 45:085. Medical Examination.

Page 1
Department paragraph
Line 2

After "Department of", insert "Kentucky".

Page 1 NECESSITY, FUNCTION, AND CONFORMITY paragraph Lines 7 and 8

After "KRS 16.040", insert "requires". Delete "provides".

After "that officers", delete "shall".

After "good health and", insert "also requires". Delete "directs".

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022



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

Re: 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:115

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115.

Sincerely,

Heather M. Lee Paralegal Consultant

Heatherm. Lee

enclosures



### **Staff-suggested Amendment**

### 1/25/2022 JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police

### 502 KAR 45:105. Appointment.

Page 1 Department paragraph Line 2

After "Department of", insert "Kentucky".

Page 1
NECESSITY, FUNCTION, AND CONFORMITY paragraph
Lines 7, 8, and 9

After "CONFORMITY: KRS 16.050", insert "requires". Delete "authorizes".

After "the Department of", insert " $\underline{\text{Kentucky}}$ ".

After "department. KRS 16.050", insert "requires that". Delete "directs".

After "to vacancies", delete "to".

Page 1 Section 1 Lines 12, 13, and 14

After "The commissioner", delete "in his discretion".

After "projected attrition,", insert "and".

After "available funding," delete "and".

After "as cadet troopers.", insert "The". Delete "This".

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

February 2, 2022



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

Re: 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:115

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 45:005, 502 KAR 45:035, 502 KAR 45:045, 502 KAR 45:075, 502 KAR 45:085, 502 KAR 45:105, and 502 KAR 45:115.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heatherm. Lee

enclosures

### Subcommittee Substitute

## JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police (As Amended at ARRS)

### 502 KAR 45:115. Appeals.

RFLATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 <u>requires</u> [directs that] the <u>Kentucky</u> State Police Personnel Board <u>to</u> [shall] hear appeals from applicants. This administrative regulation establishes the procedure for appeals.

Section 1. <u>An applicant</u> [Applicants] who <u>is</u> [are] disqualified or deferred <u>during the application process</u> and who <u>believes</u> [believe that] the disqualification or deferral was unlawful or that <u>the applicant has</u> [they have] been discriminated against because of the applicant's [their] race, religion, sex, age, disability, ethnic origin, or political affiliation may initiate an appeal to the board by filing a statement of appeal in the office of the commissioner.

Section 2. The statement of appeal shall be in writing and shall be dated, signed, and sworn. It shall set forth with particularity the specific acts or omissions that are alleged to be discriminatory or otherwise unlawful. The statement of appeal shall be filed within thirty (30) days of the date of the act or omission which forms the basis for the appeal, or, if more than thirty (30) days have elapsed, within ten (10) days of the date that the applicant received notice or first became aware of the act or omission, if no notice was given.

Section 3. Within thirty (30) days of the receipt of the statement of appeal by the commissioner. [:] the appellant applicant shall receive confirmation the [their] appeal was received and that [:] legal counsel for the department shall file a response which shall be served upon the appellant applicant [appellant]. No later than sixty (60) days thereafter, the board shall consider the statement of appeal and the response. The board may rule upon the appeal based upon the statement of appeal and response, or it [in its discretion] may order a hearing [:] with at least ten (10) days prior notice to the appellant applicant. The appellant [. Appellant] applicant may elect to waive, in writing, the ten (10) day notice requirement.

Section 4. The board [in its discretion] may employ hearing officers who are attorneys to conduct the hearings and make advisory findings of fact, conclusions of law, and recommendations. At the hearing, the board shall not be bound by rules of order, evidence, or procedure except as it may itself establish.

Section 5. The board shall render a decision within six (6) months of the date of filing of the statement of appeal, and shall enter an order which sets forth the appropriate relief.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email <u>Justice.RegsContact@ky.gov</u> [amy.barker@ky.gov].

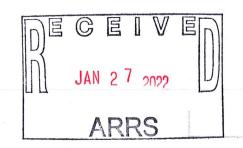


Andy Beshear Governor

## PUBLIC PROTECTION CABINET Department of Insurance

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

January 27, 2022



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 17:300. Provider agreement and risk-sharing agreement filing requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:300, the Department of Insurance proposes the attached amendment to 806 KAR 17:300.

Sincerely,

Abigail Gall, Regulations Coordinator

Department of Insurance

500 Mero Street

Frankfort, KY 40601



#### SUGGESTED SUBSTITUTE

Final Version: 1/21/2022 1:04 PM

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

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

RELATES TO: KRS <u>304.12-237</u>, 304.17A-150, 304.17A-235, 304.17A-500, 304.17A-527, 304.17A-530,304.17A-532, 304.17A-560, 304.17A-575, [304.17A-578,]304.17A-728, 304.17C-060, 304.17C-070, 304.99

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-527(1), 304.17C-060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the <u>commissioner</u> [executive director] to promulgate reasonable administrative regulations necessary to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-527(1) and [KRS]304.17C-060(1) <u>require[authorize]</u>[require] the <u>commissioner</u> [Department] to promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes the filing requirements of provider agreements, subcontract agreements, and risk sharing arrangements.

Section 1. Definitions.

- (1) "Provider agreement" means a contract between an insurer offering a managed care plan and a provider for the provision of health care services.
  - (2) "Subcontract agreement" means a contract for the provision of health care services to:

An enrollee, which <u>is[shall\_be][is]</u> negotiated between a participating health care provider with a managed care plan and a nonparticipating provider with a managed care plan; or

(b) A covered person, which <u>is[shall-be][is]</u> negotiated between a risk sharing entity <u>through</u> a "risk sharing arrangement", as **defined by[identified-in]** KRS 304.17A-500(13), and a provider.

Section 2. Filing Requirements. (1) An insurer, managed care plan, and limited health service benefit plan shall file a sample copy of the following with the commissioner at least sixty (60) days before its use:

- (a) Provider agreement;
- (b) Risk sharing arrangement; and
- (c) Subcontract agreement.
- (2) A filing pursuant to subsection (1) of this section shall:
- (a) Include:
- 1. A compensation arrangement, including a description of the:
- a. Payment methodology; and
- b. Payor as defined in the agreement;
- 2. Any attachment, exhibit, or addendum to the items listed in subsection (1) of this section;
- 3. A completed and signed Face Sheet and Verification Form HIPMC-F1, incorporated by reference in 806 KAR <u>14:007[17:005]</u>; and

- 4. A filing fee, including:
- a. Twenty-five (25) dollars for a provider agreement or subcontract agreement filing; or
- b. Fifty (50) dollars for a risk sharing arrangement filing; and
- (b)1. Not be considered complete until the information required by paragraph (a) of this subsection is received by the department; and
- 2. Be disapproved if a complete filing is not received within sixty (60) days of the date of filing.
- (3) If a managed care plan, insurer, or limited health service benefit plan amends an existing provider agreement, subcontract agreement, or risk sharing agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the managed care plan shall submit:
  - (a) An amended filing at least sixty (60) days before its use; and
  - (b) A letter that identifies and explains each amendment.
- (4) The failure of a managed care plan, insurer, or limited health service benefit plan to file a sample copy of a provider agreement, subcontract agreement, or risk sharing agreement <u>shall</u> <u>constitute a basis for[may result in imposition of]</u> a civil penalty in accordance with KRS 304.99.
- (5) An insurer issuing, delivering, or renewing a limited health service benefit plan shall complete and attach Form <u>HL-F11</u>, <u>Health Summary Sheet Form Filings, incorporated by reference in 806 KAR 14:007 [HIPMC-F37, Limited Health Service Benefit Plan Summary Sheet Form Filings (07/02)]</u>, to each limited health service benefit plan filed with the commissioner.
- Section 3. Provider Agreement Requirements. (1) The sample copy of a provider agreement for an insurer or managed care plan filed with the commissioner shall:
  - (a) Comply with the requirements of KRS 304.17A-527(1);
  - (b) Comply with the requirements of KRS 304.17A-728; [and]
  - (c) Comply with the requirements of KRS 304.12-237, as applicable; and
  - (d) Not include a:
  - 1. Most-favored nation provision in accordance with KRS 304.17A-560;
  - 2. Limitation on disclosure provision in accordance with KRS 304.17A-530;
  - 3. Condition of participation provision in accordance with KRS 304.17A-150(4); or[and]
  - 4. Mandatory use of hospitalist provision in accordance with KRS 304.17A-532(2).
- (2) The sample copy of a provider agreement for a limited health service benefit plan filed with the commissioner shall:
  - (a) Comply with the requirements of KRS 304.17C-060(1);
  - (b) Be governed under the jurisdiction of [by] Kentucky [law]; and
  - (c) Not include a limitation on disclosure provision in accordance with KRS 304.17C-070.
- Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement that is part of a provider agreement or risk sharing arrangement shall:
- (1) Be filed with the commissioner by the managed care plan, limited health service benefit plan, or insurer in conjunction with the provider agreement or risk sharing arrangement;
  - (2) Meet applicable requirements of Section 3 of this administrative regulation; and
  - (3) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

Section 5. Risk Sharing Arrangement Requirements. (1) The sample copy of a risk sharing arrangement filed with the commissioner shall:

- (a) Meet the requirements of Section 3 of this administrative regulation;
- (b) Include a Risk Sharing Arrangement Information Sheet, HIPMC-R1[<u>, incorporated by reference</u> in Section 6 of this administrative regulation] [incorporated by reference in 806 KAR 17:005]; and
  - (c) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.
- (2) On or before September 1 of each calendar year, an insurer, managed care plan, or limited health services benefit plan shall file with the commissioner the HIPMC-R1, *[incorporated by reference in Section 6 of this administrative regulation]* [806 KAR 17:005], for each risk sharing arrangement currently effective.

Section 6. Incorporation by Reference. (1) <u>HIPMC-R1, Risk Sharing Arrangement Information Sheet, 10/2021</u> ["Limited Health Service Benefit Plan Summary Sheet - Form Filings HIPMC-F37", 07/18]-], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, <u>The Mayo-Underwood Building, 500 Mero Street [215 West Main Street</u>], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Web site at <a href="https://insurance.ky.gov/ppc/CHAPTER.aspx">https://insurance.ky.gov/ppc/CHAPTER.aspx</a> [http://insurance.ky.gov].

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

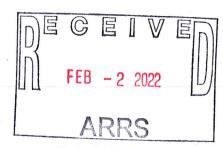


**Andy Beshear**Governor

## PUBLIC PROTECTION CABINET Department of Insurance

P.O. Box 517
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http://insurance.ky.gov

February 2, 2022



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 17:575. Pharmacy benefit managers.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:575, the Department of Insurance proposes the attached amendment to 806 KAR 17:575.

Sincerely,

Abigail Gall, Regulations Coordinator

Department of Insurance

500 Mero Street

Frankfort, KY 40601



#### SUGGESTED SUBSTITUTE

# PUBLIC PROTECTION CABINET Department of Insurance Division of Health and Life Insurance and Managed Care (Amendment)

806 KAR 17:575. Pharmacy benefit managers.

RELATES TO: KRS 304.1-050, 304.2-160, 304.2-165, 304.9-020, 304.17A-161, 304.17A-162 STATUTORY AUTHORITY: KRS 304.2-110, <u>304.9-054,[304.2-160, 304.2-165, 304.9-020, 304.17A-161,]</u> 304.17A-162

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes [provides that] the commissioner of the Department of Insurance to promulgate [may make] reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-162 requires the department to promulgate [an] administrative regulations [regulation] [regulations] to establish [establishing] the manner in which a pharmacy benefit manager shall respond to an appeal regarding maximum allowable cost pricing, the manner in which a pharmacy benefit manager shall make available the sources for drug pricing data to contracted pharmacies [makes available to contracted pharmacies information regarding sources for drug price data], a comprehensive list of drugs subject to maximum allowable cost and the actual maximum allowable cost for each drug, and weekly drug list updates [updates to the list]. KRS 304.9-054 authorizes[304.2-160, 304.2-165, 304.9-020, 304.17A-161, and 304.17A-162 together authorize] the department to promulgate [an] administrative [provide authority for the department's] regulations[regulation] to implement and enforce the provisions of KRS 304.17A-162 and specify the contents of any required forms or reports [establish the specific listing requirements and appeal processes related to maximum allowable cost pricing for pharmacy benefit managers] [of pharmacy benefit managers and the specific maximum allowable cost pricing and appeal process set forth in this administrative regulation]. This administrative regulation establishes requirements for a pharmacy benefit manager's maximum allowable cost appeals process, [the process for a pharmacy benefit manager's maximum allowable cost appeals process,] the process for the department's review of a complaint associated with a maximum allowable cost appeal, [and] the requirements for the cost listings made available by a pharmacy benefit manager, and reporting requirements.

Section 1. Definitions. (1) "Contracted pharmacy" or "pharmacy" is defined by KRS 304.17A-161(1).

- (2) "Department" is defined by KRS 304.1-050(2).
- (3) "Maximum Allowable Cost" is defined by KRS 304.17A-161(3).

(4) "Pharmacy Benefit Manager" is defined by KRS 304.17A-161(4).

Section 2. Maximum Allowable Cost Pricing Appeal Process.

- (1) A pharmacy benefit manager shall establish a maximum allowable cost pricing appeal process **that allows[where]** a contracted pharmacy or the pharmacy's designee **to[may]** appeal if:
- (a) The maximum allowable cost established for a drug reimbursement is below the cost at which the drug is available for purchase by pharmacists and pharmacies in Kentucky from national or regional wholesalers licensed in Kentucky by the Kentucky Board of Pharmacy; or
- (b) The pharmacy benefit manager has placed a drug on the maximum allowable cost list in violation of KRS 304.17A-162(8).
- (2) The pharmacy benefit manager shall accept an appeal submitted by a contracted pharmacy on or before sixty (60) days of the initial claim; and
- (3) The pharmacy benefit manager's appeal process shall include the following:[
- (a) The pharmacy benefit manager shall accept an appeal by a contracted pharmacy on or before sixty (60) days of the initial claim][;]
- (a)[(b)] Notification to the appealing party that the appeal has been received, and the names, addresses, email addresses, and telephone numbers of the pharmacy benefit manager's contact persons for questions regarding the maximum allowable cost appeal process; and
- (b)[(c)] A provision allowing a contracted pharmacy, pharmacy service administration organization, or group purchasing organization [,] to initiate the appeal process, regardless of whether[if] an appeal has previously been submitted by a pharmacy or the pharmacy's designee outside of Kentucky, by contacting the pharmacy benefit manager's designated contact person electronically, by mail, or telephone. If the appeal process is initiated by telephone, the appealing party shall follow up with a written request within three (3) days.
- (4)[(3)] The pharmacy benefit manager's maximum allowable cost pricing appeal process shall be readily accessible to contracted pharmacies:
  - (a) Electronically:[7]
  - (b) Through publication on the pharmacy benefit manager's website:[1] and
- (c)1. In[either] the contracted pharmacy's contract with the pharmacy benefit manager; or
- <u>2.</u> Through a pharmacy provider manual distributed to contracted pharmacies, pharmacy service administration organizations, and group purchasing organizations.
- (5)[(4)] For an appeal received from a pharmacy services administration organization or a group purchasing organization related to a dispute regarding maximum allowable cost pricing, a pharmacy benefit manager may request documentation that the pharmacy services administration organization or group purchasing organization is acting on behalf of a contracted pharmacy before responding to the appeal.

- (6)[(5)] The pharmacy benefit manager shall investigate, resolve, and respond to the appeal within ten (10) calendar days of receipt of the appeal. Upon resolution, the pharmacy benefit manager shall issue a written response to the appealing party that shall include the following:
  - (a) The date of the decision;
- (b) The name, phone number, mailing address, email address, and title of the person making the decision; and
  - (c) A statement setting forth the specific reason for the decision, including:
  - 1. If the appeal is granted:
- a. The amount of the adjustment to be paid retroactive to the initial date of service to the appealing pharmacy;
- b. The drug name, national drug code, and prescription number of the appealed drug; and
  - c. The appeal number assigned by the pharmacy benefit manager, if applicable; or
  - 2. If the appeal is denied:
- a. The national drug code of the appealed drug, or the national drug code of a therapeutically equivalent drug as referenced [defined] in KRS 304.17A-162(9), of the same dosage, dosage form, and strength of the appealed drug; and
- b. The Kentucky licensed wholesaler offering the drug at or below maximum allowable cost on the date of fill.
- (7) If [(6) When] a pharmacy benefit manager grants an appeal for which a price update is warranted in accordance with KRS 304.17A-162(2), the pharmacy benefit manager shall individually notify contracted pharmacies of the date of the granted appeal, the appealed drug, initial date of service, national drug code, generic code number, applicable information to identify the health benefit plan, and retroactive price update by the time of release of the next scheduled maximum allowable cost update following the appeal decision by:
  - (a) Mail Courier;
  - (b) Electronic mail;
  - (c) Facsimile; or
- (d) Web portal posting for sixty (60) days and corresponding electronic communication to a contracted pharmacy with hyperlink to the portal for the granted appeal. A pharmacy benefit manager shall include in the beginning and upon renewal of the contract with a pharmacy or the pharmacy's representative, notice[7] and instructions for how to access and use the web portal.
- (8)[(7)] All contracted pharmacies permitted to reverse and resubmit claims following a granted appeal pursuant to KRS 304.17A-162(2) shall submit claims to the pharmacy benefit manager within sixty (60) days of notification that the appeal was granted.
- (9)[(8)] A pharmacy benefit manager shall submit the maximum allowable cost pricing appeal process and a template response satisfying the requirements of subsection (6)[(5)] of this section to the department for review and approval.

- Section 3. Department Review of Maximum Allowable Cost Pricing Appeal. (1) A contracted pharmacy or the pharmacy's designee may file a complaint <u>with the department</u> following a final decision of the pharmacy benefit manager, [to the department] in accordance with KRS 304.2-160, [and] 304.2-165, and 304.17A-162(5).
- (2) A complaint shall be submitted to the department no later than thirty (30) calendar days from the date of the pharmacy benefit manager's final decision.
- (3) The department shall be entitled to request additional information necessary to resolve a complaint from any party in accordance with KRS 304.2-165 and 304.17A-162(5).
- Section 4. Maximum allowable cost list availability and format. (1) [The pharmacy benefit manager shall make available to the contracted pharmacy a comprehensive list of drugs subject to maximum allowable cost pricing.
- (2)] The comprehensive maximum allowable cost pricing list <u>required under KRS</u> <u>304.17A-162(4)</u> shall:
- (a) Be a complete listing by drug in an electronically accessible format; [, unless, upon a pharmacy's written request the list be provided in a paper or other agreed format within two (2) business days upon receiving the necessary information required for each list requested;]
  - (b) Identify the applicable health plan for which the pricing is applicable;
- (c) [Be electronically searchable and sortable] Contain the ability to search and sort drugs electronically by individual drug name, national drug code, and generic code number;
- (d) Contain data elements, including the drug name, national drug code, per unit price, and strength of drug;
- (e) List a specific maximum allowable cost for each drug that will be reimbursed by the pharmacy benefit manager;
  - (f) Provide the effective date for that maximum allowable cost price; and
  - (g) Provide the date the maximum allowable cost list was updated.
- (2)[(3)] The pharmacy benefit manager shall retain, in accordance with subsection (1)[(2)](a) of this section, historical pricing data for a minimum of 120 days.
  - Section 5. Weekly Updates to Maximum Allowable Cost Price List.
- (1) Pharmacy benefit managers shall send to all contracted pharmacies one (1) weekly update to the maximum allowable cost price list, *in accordance with the requirements of this section*.
  - (2) The weekly update <u>required under 34.17A-162(7)</u>, shall:
- (a) Be in an electronically accessible format on the pharmacy benefit manager's Web site; and
- **(b)** Include the information below for all drugs added, removed, or changed in price since the last weekly update:
- [(a) Be in an electronically accessible format on the pharmacy benefit manager's Web site][, unless, upon written request by the pharmacy the update be provided in paper

or other agreed format within two (2) business days of receipt of the request from the contracted pharmacy][;]

- 1.[(b) Identify] The basis for each drug's inclusion on the update;
- <u>2.[(c)]</u> If a drug is added to the maximum allowable cost list, the maximum allowable cost price[shall be indicated];
  - 3.[(d) Identify] All drugs removed from the maximum allowable cost list;
- 4.[(e)] If a change in the maximum allowable cost price is made, [include] the old price[,] and new price;
- <u>5.[(f) Identify]</u> The drug name, national drug code, generic code number, and the applicable health benefit plan information; and
  - **<u>6.[(g) Identify]</u>** The effective date of the change.
- Section 6. Data Source Availability. Each pharmacy benefit manager shall identify electronically or within contracts to all contracted pharmacies the national drug pricing compendia, or sources used to obtain drug price data for those drugs, subject to maximum allowable cost provisions. If any changes are made to the data sources following the execution of a contract, the pharmacy benefit manager shall individually notify the contracted pharmacies of the changes [either] through correspondence submitted electronically, by facsimile, or by mail courier.
- Section 7. Annual report. All pharmacy benefit managers licensed to do business in Kentucky shall transmit [at least annually by March 31 to the department] a Pharmacy Benefit Manager Annual Report to the department at least annually, by March 31 of each year.
- Section 8. Incorporation by Reference. (1) "Pharmacy Benefit Manager Annual Report," 06/[-]2017 [June 2017], is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, <u>The Mayo-Underwood Building, 500 Mero Street [215 West Main Street</u>], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

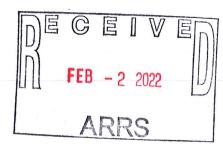


Andy Beshear Governor

## PUBLIC PROTECTION CABINET Department of Insurance

P.O. Box 517
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http://insurance.ky.gov

February 2, 2022



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 17:590. Annual report on providers prescribing medication for addiction treatment.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:590, the Department of Insurance proposes the attached amendment to 806 KAR 17:590.

Sincerely,

Abigail Gall, Regulations Coordinator

Department of Insurance

500 Mero Street

Frankfort, KY 40601



#### **REVISED:**

### 2/1/2022 1:13 PM

### Suggested Amendment Public Protection Cabinet Department of Insurance

### Division of Health and Life Insurance and Managed Care

806 KAR 17:590. Annual report on providers prescribing medication for addiction treatment.

Page 1 RELATES TO

Line 6

After "304.17A-005(29),", delete "304.17A-700,".

Page 2

Section 1(4)(a)

Line 3

After "(a)", insert "1.".

Line 4

After "; and", insert "2.".

Line 5

After "; or", insert "(b)".

Page 3

Section 3(1)(a)

Line 15

After "10/2021", insert "; and".

Page 3

Section 3(1)(b)

Line 16

After "10/2021", insert period.



Andy Beshear Governor

## PUBLIC PROTECTION CABINET Department of Insurance

P.O. Box 517
Frankfort, Kentucky 40602-0517
1-800-595-6053
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February 2, 2022



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 18:030. Group health insurance coordination of benefits.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 18:030, the Department of Insurance proposes the attached amendment to 806 KAR 18:030.

Sincerely,

Abigail Gall, Regulations Coordinator

Department of Insurance

500 Mero Street

Frankfort, KY 40601



# Suggested Amendment Public Protection Cabinet Department of Insurance Division of Health and Life Insurance and Managed Care

806 KAR 18:030. Group health insurance coordination of benefits.

### Page 1 RELATES TO

Line 6

After "304.17A-250", insert "(7)". Delete "(9)".

## Page 1 STATUTORY AUTHORITY

Line 8

After "304.2-110(1),", insert "304.17A-250,". After "304.18-085,", insert "304.32-145, 304.32-185,".

### Page 5 Section 2(2)(b)4.

Line 19

After "spouses", insert comma. Delete parenthesis. After "any", insert comma. Delete parenthesis.

### Page 9 Section 5(2)(b) Lines 1-2

After "paragraph", insert "(c)". Delete "(3)1. Through 4.".



Andy Beshear Governor

Public Protection Cabinet Kentucky Horse Racing Commission 4063 Iron Works Parkway, Building B Lexington, KY 40511 Telephone: (859) 246-2040 Fax: (859) 246-2039 JAN 3 1 2022

ARRS

Ray A. Perry Secretary

Marc Guilfoil Executive Director

Jonathan Rabinowitz Chairman

January 31, 2022

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:

810 KAR 6:001

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the administrative regulation 810 KAR 6:001, the Kentucky Horse Racing Commission proposes the attached suggested substitute to this administrative regulation.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Jennifer Wolsing General Counsel



#### SUGGESTED SUBSTITUTE

Final Version: 1/26/2022 1:26 PM

# **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission**

#### 810 KAR 6:001. Definitions for 810 KAR Chapter 6.

RELATES TO: KRS Chapter 23013

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 6.

Section 1. Definitions.

- (1) "Added money" means:
- (a) Cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race; or
- (b) In the context of pari-mutuel wagering, any amounts provided by an association in addition to the amounts wagered by patrons and any carryover amounts.
- (2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.
- (3) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.
  - (4) "Appaloosa racing" is defined by KRS 230.210(3).
  - (5) "Arabian horse" means "arabian" as defined by KRS 230.210.
- (6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to 810 KAR Chapter 6.
  - (7) "Association" is defined by KRS 230.210(5).
- (8) "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey by virtue of notarized appointment of agency filed with the commission.
- (9) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager can be placed.
- (10) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.
  - (11) "Breakage" means the net pool minus payout.
- (12) "Breeder" means the owner of the dam of a horse when the horse was foaled. A horse is "bred" at the place of its foaling.
  - (13) "Calendar days" means consecutive days counted irrespective of number of racing days.

(14) "Carryover" means nondistributed pool monies <u>that[which]</u> are retained and added to a corresponding pool in accordance with 810 KAR 6:020.

(15) "Claiming race" means any race in which every horse running in the race can be transferred

in conformity with 810 KAR 4:050.

- (16) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.
  - (17) "Commission" means:

(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

- (b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, KRS 230.750, and KAR Title 810. This meaning can also refer to "takeout" as defined by subsection (83) of this section.
- (18) "Communications Technology" means the methods used and the components employed to facilitate the transmission of information, such as electronic communications, and transmission and reception systems based on wire, cable, radio, microwave, light, optics, or computer data networks or any similar electronic agent.
- (19) "Control Program" means any software, source language, or executable code that controls the entertaining award display, such as software, source language, or executable code associated with:
  - (a) Race selection or related events;
  - (b) Accounting and reporting meter and log information;
  - (c) Operation of totalizators; and
- (d) Any other processes **established**[outlined] in the internal controls or as approved by the commission.

(20)[(18)] "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(21)[(19)] "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(22)[(20)] "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 6.

(23)[(21)] "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on historical horse races.

(24)[(22)] "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money;
- (g) Forfeiture of purse money; or
- (h) Any combination of paragraphs (a) through (g) of this subsection.
- (25)[(23)] "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(26)[(24)] "Driver" means a person who is licensed to drive a horse in a harness race.

(27) "Entertaining Award Display" or "Interactive Award Display" means an entertaining system utilizing mechanical or digital components to display the outcome of a pari-mutuel wager through the use of spinning reels, wheels, games, or other types of interactive components that are represented by animations or audio cues. An Entertaining or Interactive Award Display is[must be] connected to a totalizator approved by the commission. Entertaining or interactive displays are[shall] only [be] used in conjunction with pari-mutuel wagering on a historical horse race or races.

(28)[(25)] "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(29)[(26)] "Equipment" means:

(a) Accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes; or[-]

(b) Racing, system components or other equipment found suitable by the commission or its designee that is required to operate entertaining or interactive award displays and interactive

terminals.

(30)[(27)] "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which pari-mutuel wagering is not permitted.

(31)[(28)] "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race or races other than a win, place, or show wager placed on a live horse race.

(32)[(29)] "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that is not a mutuel entry.

(33)[(30)] "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(34)[(31)] "Free handicap" means a handicap for which a nominating fee is not required to be weighted, but an entrance or starting fee can be required for starting in the race.

(35)[(32)] "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(36)[(33)] "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(37)[(34)] "Historical horse race" means any horse race that:

(a) Was previously run at a licensed pari-mutuel facility located in the United States;

(b) Concluded with official results; and

(c) Concluded without scratches, disqualifications, or dead-heat finishes.

(38)[(35)] "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding).

(39)[(36)] "Ineligible" means a horse or person not qualified under 810 KAR Chapter 6 or conditions of a race to participate in a specified racing activity.

(40)[(37)] "Initial seed pool" means a nonrefundable pool of money that can be funded by an association in order to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race in the event of a minus pool.

(41) "Interactive terminal" or "HHR terminal" means "terminal" as defined by subsection (89)(b)

of this section.

(42) "Internal controls," "minimum internal control standards," or "control standards" means[refers to] the system of internal procedures, as well as administrative and accounting controls related to the integrity of pari-mutuel wagering. This type of system can[Any such system may] be required by the commission as a condition to conduct live horse racing, simulcasting, and pari-mutuel wagering.

(43)[(38)] "Jockey" means a rider currently licensed to ride in races other than harness races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to

ride in three (3) races prior to applying for a license.

(44)[(39)] "Judge" means a duly appointed racing official with powers and duties established in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(45)[(40)] "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(46)[(41)] "Licensed premises" is defined by KRS 230.210.

(47)[(42)] "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(48)[(43)] "Maiden" means a horse that has never won a race on the flat at a recognized meeting in any country. A maiden that was disqualified after finishing first remains a maiden. Race conditions referring to maidens <u>are[shall-be]</u> interpreted as meaning maidens at the time of starting.

(49)[(44)] "Match race" means a race that is between two (2) horses and for which other horses

are not eligible.

(50)[(45)] "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins at 10 a.m. of the first racing day; and

(b) Extends through a period ending one (1) hour after the last scheduled race of the last day. (51)[(46)] "Minus pool" means a pari-mutuel pool in which the amount of money to be distrib-

uted on winning wagers exceeds the amount of money contained in that pari-mutuel pool.

(52)[(47)] "Month" means calendar month.

(53)[(48)] "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(54)[(49)] "Net pool" means the total amount wagered less refundable wagers and takeout.

(55)[(50)] "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(56)[(51)] "Nominator" means the person in whose name a horse is entered for a race.

(57)[(52)] "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(58)[(53)] "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" is

defined by KRS 230.210.

(59)[(54)] "Pari-mutuel pool" means any pool into which pari-mutuel wagers made by patrons are placed. For every wager placed into a pari-mutuel pool by a patron, that patron is eligible to receive at least a minimum payout on a winning wager.

(60)[(55)] "Patron" means an individual present at a track, licensed premises, or a simulcast facility who observes or wagers on live or historical horse races.

(61)[(56)] "Payout" means the amount of the net pool payable to an individual patron on his or

her winning wager.

(62)[(57)] "Place," if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest that finished first or second in a race; or if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first or second.

(63)[(58)] "Player-funded pool" means a pool of money funded by patrons wagering on a live or historical horse race or races that is only used to ensure that a patron will receive a payout on a winning wager in the event of a "minus pool" as defined in this administrative regulation.

(64)[(59)] "Post" means the starting point of a race.

(65)[(60)] "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(66)[(61)] "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(67)[(62)] "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(68)[(63)] "Purse" means the gross cash portion of the prize for which a race is run.

(69)[(64)] "Quarter horse" is defined by KRS 230.210.

(70)[(65)] "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(71)[(66)] "Race" means a running contest between horses, ridden by jockeys or driven by drivers, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(72)[(67)] "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(73)[(68)] "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(74)[(69)] "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries that are regulated by a racing authority that has reciprocal relations with The Jockey Club and whose race records can be provided to an association by The Jockey Club.

(75)[(70)] "Registration certificate" means, with respect to thoroughbreds:

(a) The document issued by The Jockey Club certifying the name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club; or

(b) The document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate if a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(76)[(71)] "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(77)[(72)] "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(78)[(73)] "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(79)[(74)] "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(80)[(75)] "Secretary" means the duly appointed and currently serving secretary of the commission.

(81)[(76)] "Simulcasting" is defined by KRS 230.210.

(82)[(77)] "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(83)[(78)] "Stakes" means all fees:

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race; and

(b) Included in the purse.

(84)[(79)] "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" excludes races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).

(85)[(80)] "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(86)[(81)] "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(87)[(82)] "Subscription" means nomination or entry of a horse in a stakes race.

(88)[(83)] "Takeout" means "commission" as defined by subsection (17)(b) of this section (89)[(84)] "Terminal" means:

(a) Any <u>commission approved</u> self-service <u>device or other totalizator-based peripheral equipment[totalizator machine or other mechanical equipment]</u> used by a patron to place a pari-mutuel wager on a live or historical horse race or races; <u>or</u>

(b) Any commission approved mechanical, electrical, or other device, contrivance, or machine that, upon funding of any pari-mutuel wager on a historical horse race or races, is capable of placing a pari-mutuel wager on that historical horse race or races. These devices can[All-such devices may] provide handicapping methods approved by the commission, in addition to manual handicapping. In the event of a winning wager, a terminal displays and either delivers or entitles the patron to receive a payout pursuant to 810 KAR 6:030. Payouts are[Any such payouts may be] issued by the terminal itself or by the licensed association approved to operate the interactive terminal and related pari-mutuel pool.

# [(c) The commission must approve any such terminal and the commission may revoke that approval at any time.]

(90)[<del>(85)</del>] "Thoroughbred racing" is defined by KRS 230.210.

(91)[(86)] "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates

the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(92)[(87)] "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(93)[(88)] "Wagering pool" means "pari-mutuel pool" as defined by <u>this administrative regulation[subsection (54) of this subsection</u>].

(94)[(89)] "Walkover" means a race in which the only starter or all starters represent single ownership.

(95)[(90)] "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(96)[(91)] "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(97)[(92)] "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as established in 810 KAR 4:020.

(98)[(93)] "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(99)[(94)] "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. If any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax:+1 (859) 246-2039, email jennifer.wolsing@ky.gov.



# CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

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

February 2, 2022

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

Re: 902 KAR 10:120. Kentucky public swimming and bathing facilities.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 10:120, the Department for Public Health proposes the enclosed suggested amendment to 902 KAR 10:120.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Lucie Estill

**Executive Staff Advisor** 

Office of Legislative and Regulatory Affairs



#### Revised: 2/2/22

# Suggested Amendment Cabinet for Health and Family Services Department of Public Health Division of Public Health Protection and Safety

902 KAR 10:120. Kentucky public swimming and bathing facilities.

## (AMENDED AFTER COMMENTS)

Page 1

**NECESSITY, FUNCTION, & CONFORMITY** 

Line 17

After "public facilities", delete comma.

Page 2

Section 1(1)

Line 6

After "means", insert "having access".

Delete ", if applied".

Line 7

After "equipment,", insert the following: even if it is necessary to remove

Delete the following:

having access to it, but may require the removal of

Line 8

After "door", insert comma.

Page 2

Section 1(3)

Line 13

After "receptor" insert comma.

Page 3

Section 1(12)

Line 4

After "filter media that", insert "will need to".

Delete "must".

```
After "which", insert ": (a)".
      Capitalize "is".
Line 9
      After "prime" insert semicolon.
      After "and", insert "(b)".
      Capitalize "contains".
Page 4
Section 1(25)
Line 5
       After "water", insert comma.
Page 4
Section 1(27)
Line 10
       After "tank", insert ", and".
       Delete ". It".
Page 5
Section 1(36)
Line 8
       After "of swimming or bathing", insert ", except for".
       Delete the following:
              . It does not include
Page 5
Section 1(38)
Line 12
       After "cloth,", delete "or".
Line 13
       After "fabric", insert comma.
Page 5
Section 1(40)
Line 16
```

After "an area", insert the following:

Page 3

Line 8

Section 1(14)

that:

(a) Has

Delete "with".

#### Line 17

After "wetting people", insert "; (b) Is".

Delete ", and are".

#### Line 18

After "ground", insert semicolon.

Delete comma.

After "and", insert "(c)".

Capitalize "includes".

#### Page 5

Section 1(41)

Line 20

After "(41)", insert the following:

"State Building Code" means the requirements established in 815

KAR Chapter 7.

(42) "State Plumbing Code" means the requirements established in

815 KAR Chapter 20.

(43)

# NOTE TO REGULATIONS COMPILER: Please renumber remaining subsections accordingly.

#### Page 6

Section 1(47) [now re-numbered to (49)]

Line 14

After "combined chlorine,", insert "which".

Delete "and".

#### Page 6

**Section 1(49)** [now re-numbered to (51)]

Line 22

After "time", insert "requirements,".

After "minutes,", delete "required".

# Page 7

#### Section 2(1)

#### Line 6

After "(1)", insert "<u>A</u>".

Delete "No".

After "shall", insert "not".

#### Page 7

Section 2(5)

Line 22

After "1600 square feet", insert comma.

#### Page 8

Section 2(6)(b)

Line 3

After "plans", insert comma.

# Page 8

Section 2(8)

Line 16

After "prior to", insert "the".

Delete "such".

#### Line 17

After "being", insert "tested for".

After "pressure", delete "tested".

# Page 9

Section 3(2)

Line 10

After "providing", insert ": (a)".

Capitalize "sufficient".

#### Lines 11-12

After "facility", insert semicolon.

Delete comma.

After "and", insert "(b)".

Delete the following:

be capable of providing

Capitalize "enough".

```
Line 12
```

After "water level", insert the following:

by at least one (1) inch in three (3) hours

After "in", insert ": 1.".

Capitalize "swimming".

After "wave pools", insert semicolon.

Delete comma.

After "and", insert "2.".

Capitalize "water".

#### Line 13

After "plunge pools", delete the following: , at least one (1) inch in three (3) hours

#### Page 9

Section 4(2)(a)

Line 20

After "scum;", insert "or".

Delete "and".

# Page 10

Section 4(3)(b)

Line 3

After "shall", insert "not".

After "be", insert "any".

Delete "no".

#### Page 10

Section 4(4)

Line 5

After "shall", insert "not".

After "be", insert "any".

Delete "no".

#### Page 10

Section 5(3)

Line 14

After "treatment.", insert "This".

Delete "Such".

# Page 10 Section 6(2)

Line 22

After "containers", delete comma.

# Page 11

Section 7(1)

Line 10

After "structures", insert comma.

# Page 11

Section 7(2)

Line 17

After "Within", insert "these".

Delete "such".

After "shall", insert "not".

After "be", insert "any".

Delete "no".

# Page 12

Section 7(4)(a)

Line 5

After "facility", insert comma.

After "possible", insert comma.

# Page 12

Section 7(4)(a)2.

Line 8

After "portions", insert "or".

Delete parenthesis.

After "point", delete parenthesis.

# Page 13

Section 8(1)(a)

Line 4

After "facilities", insert comma.

# Page 15

Section 8(3)(d)

Line 11

After "provided", delete comma. After "and", insert "shall".

# Page 16

Section 8(5)(a)2.

Line 12

After "bottom", insert period. Delete semicolon.

# Page 16

Section 8(5)(b)

Line 14

After "provided", insert period. Delete semicolon.

# Page 17

Section 8(5)(c)3.

Line 3

After "cleaning", insert period. Delete semicolon.

# Page 17

Section 8(5)(d)

Line 5

After "bottom", insert period. Delete "; and".

Page 17

Section 8(6)

Line 7

After "skimmer", insert comma.

# Page 18

#### Section 8(7)(b)

#### Line 4

After "except", insert "that".

Delete "in".

After "skimmers", delete "it".

After "shall", insert the following:

have a velocity of flow

Delete "be".

#### Page 18

Section 8(7)(g)

Line 17

After "(15)", insert period.

Delete comma.

Capitalize "any".

# Page 18

Section 8(7)(h)

Line 21

After "The grid", insert "shall".

Delete "must".

# Page 19

Section 8(7)(i)

Line 2

After "facilities", insert comma.

# Page 19

Section 8(8)(b)5.

Line 17

After "5.", insert "Have a".

Delete "The".

After "maximum", insert "grate opening".

After "width of", delete the following:

grate openings shall be

After "inch", insert period.

Delete semicolon.

#### Page 19

Section 8(8)(c)

Line 21

After "series", insert period.

Delete semicolon.

# Page 19

Section 8(8)(d)

Line 23

After "sewer", insert period.

Delete "; and".

# Page 20

Section 8(8)(e)

Line 1

After "sized for", insert "water".

After "removal", delete the following:

of the water through it

Line 2

After "flow rate", insert "and".

#### Page 21

**Section 8(11)(b)** 

Line 19

After "each other", insert period.

Delete semicolon.

#### Page 21

**Section 8(11)(c)** 

Line 22

After "rate", insert period.

Delete semicolon.

# Page 22

Section 8(11)(d)

#### Line 2

After "flow", insert period.

Delete semicolon.

#### Page 22

**Section 8(11)(e)** 

Line 6

After "8003", insert period. Delete semicolon.

# Page 22

**Section 8(11)(f)** 

Line 7

After "(f)", insert the following:

All overflow water shall pass through a basket that can be removed without the use of tools.

Delete the following:

A basket that can be removed without the use of tools and through which all overflow water must pass; and

#### Page 23

Section 8(13)(c)

Line 12

After "per day", insert comma.

#### Page 24

Section 8(13)(h)

Line 3

After "filters", insert the following:
shall comply with the following requirements:

#### Page 24

Section 8(13)(h)5.

Lines 16-17

After "methods:", insert "a.".

Capitalize "backwashing".

After "backwashing;", insert "b.".

Capitalize "air-pump".

After "assist backwashing;", insert "c.".

Capitalize "spray".

After "spray wash;", insert "d.".

Capitalize "water."

#### Line 18

After "filter; or", insert "e.".

Capitalize "agitation".

# Page 24

**Section 8(13)(i)** 

Line 21

After "filters", insert the following:

shall comply with the following requirements:

#### Page 25

**Section 8(13)(j)** 

Line 5

After "filters", insert the following:

shall comply with the following requirements:

#### Page 25

Section 8(14)(b)1.

Line 18

After "rate of", insert ": a.".

Capitalize "eight".

Line 20

After "facilities; or", insert "b.".

Capitalize "three".

#### Page 25

Section 8(14)(b)1.

Line 22

After "section", insert period.

Delete semicolon.

#### Page 25

Section 8(14)(b)2.

Line 23

After "clock", insert period.

Delete semicolon.

# Page 26

Section 8(14)(b)3.

Line 1

After "tank", insert period.

Delete semicolon.

# Page 26

Section 8(14)(b)4.

Line 6

After "adjustment", insert period.

Delete semicolon.

# Page 26

Section 8(14)(b)5.

Line 7

After "disinfection systems", delete "shall".

# Page 26

Section 8(14)(b)5.a.

Line 8

After "a.", insert "Shall".

Lowercase "Be".

#### Page 26

Section 8(14)(b)5.b.

Line 9

After "b.", insert "Shall".

Lowercase "Be".

#### Page 26

Section 8(14)(b)5.c.

#### Line 10

After "c.", insert "Shall be". Lowercase "Equipped".

#### Page 26

Section 8(14)(b)6.

Line 13

After "basis", insert period. Delete "; and".

#### Page 26

Section 8(14)(c)

Line 17

After "pumps", insert ", or".

Delete the parenthesis.

After "hypochlorinators", insert comma.

Delete parenthesis.

#### Page 27

**Section 8(15)(a)** 

Line 11

After "reagents", insert "shall".

Delete "are".

After "not", insert "be".

#### Page 28

Section 9(2)(c)

Line 18

After "until", insert "the".

Delete "such".

After "time", insert "that".

Delete "as".

# Page 29

Section 9(4)(b)

Line 3

After "deck", insert period.

#### Delete semicolon.

## Page 29

Section 9(6)(a)

Line 12

After "stated", delete comma.

#### Page 30

Section 9(7)(c)

Line 4

After "(c)", insert "The following".

Delete the following:

Alkalinity, cyanuric acid (if used)

After "as needed", insert the following:

: 1. Alkalinity; and

2. Cyanuric acid, if used

#### Page 31

Section 10(10)(a)

Line 22

After "facility", insert period.

Delete semicolon.

#### Page 33

**Section 10(10)(b)** 

Line 3

After "day", insert period.

Delete "; and".

#### Page 33

**Section 10(10)(c)** 

Lines 4-5

After "suction side", delete the following:

(except the bottom drain line valve)

#### Line 5

After "normal operation,", insert the following: except for the bottom drain line valve,

# Page 32

Section 10(11)(a)1.

Line 10

After "opened", insert comma.

#### Line 11

After "filter", delete comma.

After "backwash", insert period.

Delete "; and".

# Page 33

**Section 10(16)** 

Line 22

After "cyanurates", insert "shall be".

Delete "is".

# Page 34

Section 10(17)(a)

Line 1

After "water pH", insert period.

Delete semicolon.

# Page 34

**Section 10(17)(b)** 

Line 5

After "chemical", insert period.

Delete semicolon.

# Page 34

**Section 10(17)(c)** 

Line 6

After "water pH", insert period.

Delete semicolon.

#### Page 34

**Section 10(17)(d)** 

#### Line 9

After "chemical", insert period. Delete "; and".

# Page 34

Section 10(17)(e)

Line 10

After "consulted", insert the following:

if there are

Delete the following:

in the event of

# Page 34

Section 10(19)(a)

Line 20

After "the cabinet", insert period.

Delete semicolon.

# Page 34

**Section 10(19)(b)** 

Line 23

After "chemicals", insert period.

Delete semicolon.

# Page 35

**Section 10(19)(c)** 

Line 2

After "instructions", insert period.

Delete "; and".

# Page 35

Section 10(20)

Line 5

After "rooms", insert the following:

shall comply with the following requirements:

Delete the period.

# Page 35

**Section 10(21)(b)** 

Line 22

After "beach areas", delete comma.

Line 23

After "swimming areas", insert period. Delete "; and".

#### Page 36

Section 11(1)(b)

Line 11

After "acid level", insert comma.

Delete parenthesis.

After "applicable", delete parenthesis.

# Page 37

Section 12(2)(c)

Line 3

After "lifeguards", insert "shall".

Delete "must".

# Page 37

**Section 12(2)(e)** 

Line 9

After "This", insert "shall be".

Delete "is".

Line 10

After "Additional lifeguards", insert the following: shall be provided if necessary

Delete "may be required".

#### Page 37

Section 12(2)(f)3.

Line 20

After "that would", insert ": a.".

Capitalize "distract".

After "facility area", insert semicolon.

Delete comma.

After "or", insert "<u>b.</u>".

Delete "that would".

Capitalize "prevent".

Page 38

Section 13(5)

Line 22

After "subsection", delete "three".

Page 39

**Section 13(5)(b)** 

Line 2

After "lifeboat", delete comma.

Page 39

Section 13(7)

Line 10

After ", or remove ", insert "this". Delete "such".

Page 40

Section 14(2)(a)1.

Line 15

After "disease", insert "or".

Delete comma.

After "conditions", insert comma.

Page 40

**Section 14(2)(b)** 

Line 21

After "(b)", delete "No".

Capitalize "food".

After "vapor producing", insert "products shall not".

Delete "product, will".

After "allowed", insert comma.

```
Page 41
Section 14(2)(d)
Line 3
       After "(d)", delete "No".
       Capitalize "running".
       After "and", delete "no".
       After "play", insert the following:
              shall not be permitted,
       Delete parenthesis.
       After "except", insert "for".
       After "sports", delete the following:
              ) are permitted
Page 41
Section 14(2)(e)
Line 6
       After "facility water", insert "shall".
       Delete "is".
       After "not", insert "be".
Page 41
Section 14(2)(h)
Line 10
       After "shallow water", insert "shall".
       Delete "is".
       After "not", insert "be".
Page 41
Section 14(3)
Lines 15-17
       After "shall not apply.", delete the remainder of this subsection in its entirety.
```

After "regulation", insert comma.

Page 42

Line 21

**Section 16(1)(a)** 

#### Page 43

**Section 16(1)(a)** 

#### Line 2

After "opening", insert period. Delete "; and".

# Page 43

**Section 16(4)(a)** 

Line 14

After "residual testing", delete "(free available residual)".

# Page 43

**Section 16(4)(d)** 

Line 18

After "testing", insert comma.

Delete parenthesis.

After "used", delete parenthesis.

# Page 43

Section 16(4)(f)

Line 20

After "testing", insert comma.

Delete parenthesis.

After "facility", delete parenthesis.

# Page 44

Section 17(1)

Line 17

After "outbreak", insert ". These samples".

Delete ", and".

# Page 45

Section 17(4)

Line 4

After "sample", insert "tests".

Delete "is".

After "positive", delete "test".

# Page 46

Section 18(2)

Line 1

After "standards", insert "<u>established</u>". Delete "set forth".

#### Page 46

**Section 19(1)(d)** 

Line 10

After "sewage,", delete "or".

Line 11

After "pollutants", insert comma.

#### Page 46

Section 19(1)(k)

Line 20

After "(k)", delete the following: In any instance where Capitalize "The".

#### Line 21

After "cabinet", insert "who bear". Delete ", bearing".

# Page 47

**Section 19(1)(l)** 

Line 2

After "maintenance", delete comma.

#### Page 47

Section 19(2)

Line 5

After "facility", insert comma.

# Page 47

Section 19(6)

#### Line 16

After "correct", insert "the violation".

Delete "same".

#### Line 19

After "service of", insert "the".

Delete "such".

## Line 20

After "cabinet", delete comma.

After "operator", delete comma.

#### Page 48

Section 20(1)

#### Line 14

After "(1)", delete the following:

Notwithstanding the other provisions of this administrative regulation,

Capitalize "existing".

#### Line 17

After "used if", insert "the facilities and equipment: (a) Are".

After "repair", insert "; (b) Are".

Delete comma.

#### Line 18

After "sanitary condition", insert "; (c)".

Capitalize "meet".

After "standards", insert semicolon.

Delete comma.

After "and", insert "(d)".

Capitalize "create".

#### Page 49

#### Section 21

#### Line 4

After "regulation", insert "shall".

Delete "does".

## Page 49

Section 22(1)

#### Line 8

After "provisions of", insert "this". Delete "these".

#### Lines 8-9

After "administrative", insert "regulation". Delete "regulations".

#### Line 9

After "request a variance", insert the following: if the cabinet determines

Delete the following:

in those cases where it is determined

# Page 49

Section 22(2)

#### Line 12

After "shall require", delete "adequate".

#### Line 13

After "applicant", insert "documenting".



# CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

FEB - 2 2022

ARRS

Eric C. Friedlander Secretary

Andy Beshear Governor 275 East Main Street, 5W-A Frankfort, KY 40621 502-564-7042 502-564-7091 www.chfs.ky.gov

February 2, 2022

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

Re: 902 KAR 10:190. Splash pads operated by local governments.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 10:190, the Department for Public Health proposes the enclosed suggested amendment to 902 KAR 10:190.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Lucie Estill

**Executive Staff Advisor** 

Office of Legislative and Regulatory Affairs



#### Revised: 2/2/22

# Suggested Amendment Cabinet for Health and Family Services Department for Public Health Division of Public Health Protection and Safety

902 KAR 10:190. Splash pads operated by local governments.

# (AMENDED AFTER COMMENTS version)

Page 1 RELATES TO Line 6

After "KRS", delete "13A.010,".

Page 1 Section 1(1)

Line 16

After "means", delete the following: , if applied to a fixture, connection, appliance or equipment,

Line 17

After "access to", insert the following:

a fixture, connection, appliance, or equipment, possibly with

Delete the following:

it, but may require the

Line 18

After "door", insert comma.

Page 2

Section 1(3)

Line 2

After "receptor", insert comma.

Page 2

Section 1(5)

Line 5

After "cabinet", insert the following:

in accordance with the requirements established in this administrative regulation

# Page 4 Section 1(34)

Line 14

After "(34)", insert the following:

"State Building Code" means the requirements established in 815 KAR

Chapter 7.

(35) "State Plumbing Code" means the requirements established in 815 KAR

Chapter 20.

(36)

#### **NOTE TO REGULATIONS COMPILER:**

Please renumber remaining subsections accordingly.

# Page 7

Section 2(8)

Lines 7-8

After "prior to", insert "the".

Delete "such".

#### Page 7

Section 2(12)

Line 19

After "(12)", delete "No change in".

Capitalize "location".

After "equipment", insert "changes".

After "shall", insert "not".

#### Page 8

Section 4(3)

Line 10

After "treatment.", insert "The".

Delete "Such".

#### Page 8

Section 4(4)

Line 13

After "unavailable", insert comma.

```
Page 9
Section 7(2)(a)
Line 8
```

After "five", insert "(5)".

Page 9 Section 7(2)(b) Lines 12-13

After "inspection hatch", insert the following:

designed to allow for inspection without endangering the inspector

Delete the following:

meeting Occupational Safety and Health Administration requirements

Page 10 Section 7(4) Line 17 After "pads", delete comma.

Page 11
Section 7(4)(e)
Line 13
After "provided", delete comma.
After "and", insert "shall".

Page 12
Section 7(5)(b)
Line 3
After "downstream", delete comma.

Page 12
Section 7(7)(c)
Line 16
After "piping", delete comma.

Page 13
Section 7(9)(b)
Line 22
After "less", insert ", which shall require".
Delete "where".

After "skimmer", delete "shall be required".

#### Page 14

Section 7(9)(g)

Line 9

After "(g)", insert the following:

All overflow water shall pass through a basket that can be removed without the use of tools.

Delete the following:

A basket that can be removed without the use of tools and through which all overflow water must pass.

#### Page 16

Section 7(11)(g)6.

Line 15

After "but it", insert "shall". Delete "may".

#### Page 18

**Section 7(13)(a)** 

Line 18

After "reagents", insert "shall". Delete "are". After "not", insert "be".

Page 20

Section 8(6)(b)

Line 6

After "daily", delete comma. After "often", insert comma.

Page 20

Section 8(6)(c)

Line 7

After "weekly", delete comma. After "often", insert comma.

Page 20

Section 9(2)(a)

#### Line 12

After "debris", delete comma. After "and", delete "be maintained".

#### Page 21

Section 9(7)

Line 16

After "accordance with", insert "815 KAR 35:020". Delete "the National Electrical Code".

#### Page 22

Section 9(9)(a)1.

Line 10

After "opened", insert comma.

Line 11

After "filter", delete comma.

#### Page 24

**Section 9(15)(e)** 

Line 10

After "consulted", insert "if there are".

Delete "in the event of".

After "problems", insert comma.

#### Line 11

After "corrosion", insert comma. Delete "or". After "scaling", insert comma.

#### Page 24

**Section 9(16)(b)** 

Line 17

After "loose", delete comma.

#### Page 24

Section 9(17)(a)

Line 19

After "Chemicals", insert comma. After "disinfectants", insert comma.

#### Page 25

#### **Section 9(18)(d)**

#### Line 12

After "(d)", insert the following:

If not provided in the equipment room, storage space shall be:

- 1. Provided where the following items can be acquired by the facility operator without leaving the premises:
  - a. Chemicals;
  - b. Tools;
  - c. Equipment;
  - d. Supplies; and
  - e. Records; and
- 2. Dry and protected from unauthorized access; and

Delete the remainder of paragraph (d) in its entirety.

#### Page 26

Section 10(1)

Line 1

After "results", insert comma.

#### Page 26

**Section 11(2)(a)** 

#### Line 14

After "disease", insert semicolon.

Delete comma.

After "conditions", insert comma.

#### Line 15

After "eyes,", insert "or".

After "ear discharges", insert semicolon.

Delete comma.

#### Page 26

Section 11(3)

#### Line 20

After "(3)", delete "No".

Capitalize "food".

After "producing", insert "products shall not".

Delete "product, will".

### Page 26 Section 11(5) Line 22 After "(5)", delete "No". Capitalize "running". After "and", delete "no". After "play", insert "shall not be". Delete "is". Page 27 Section 11(6) Line 2 After "pad water", insert "shall". Delete "is". After "not", insert "be". Page 27 **Section 12(1)(a)** Line 10 After "regulation", insert ", unless". Delete the following: except in instances where Page 27 Section 12(1)(a)2. Line 14 After "cabinet", delete ", at its discretion,". Page 28 **Section 12(4)(a)** Line 3 After "residual testing", delete "(free available residual)". Page 31 Section 15(5) Line 16 After "service", insert "the". Delete "such".

#### **Section 16**

#### Line 12

After "regulation", insert "shall". Delete "does".

#### Line 13

After "local laws", delete comma.

After "dealing with", insert ": (1)".

Capitalize "splash".

After "matters", insert semicolon.

Delete comma.

After "or", insert "(2) Applicable".

#### Line 14

After "requirements", delete the following: that may also be applicable





### CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

Andy Beshear Governor 275 East Main Street, 4W-C Frankfort, KY 40621 www.chfs.ky.gov Eric C. Friedlander Secretary

February 2, 2022

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

Re: 907 KAR 17:005. Definitions for 907 KAR Chapter 17.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 17:005, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 17:005.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill

Executive Staff Advisor

Office of Legislative and Regulatory Affairs



KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES

#### SUGGESTED SUBSTITUTE

Final Version: 2/1/2022 2:07 PM

# CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Program Quality and Outcomes

#### 907 KAR 17:005. Definitions for 907 KAR Chapter 17.

RELATES TO: KRS Chapter 13B, 194A.025(3), 199.555(2), Chapter 202A, 205.8451-205.8483, 311.550(12), 314.011(7), 387.510(15), 620.020(5), 42 U.S.C. 1382c, 1395tt, 1396-1396w-5, 20 C.F.R. 416.2101, 42 C.F.R. 400.203, 405.2401(b), 412.62, Part 438, 440.40(b), 447.280, 482.58

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 <u>require specific standards[establish requirements]</u> relating to managed care. This administrative regulation establishes the definitions for 907 KAR Chapter 17.

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

- (2) "Advanced practice registered nurse" is defined by KRS 314.011(7).
- (3) "Adverse action" means the:
- (a) [The] Denial or limited authorization of a requested service, including the type or level of service;
  - (b) [The] Reduction, suspension, or termination of a previously authorized service;
  - (c) [The]Denial, in whole or in part, of payment for a service;
  - (d) [The]Failure to provide services in a timely manner; or
- (e) [The] Failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).
- (4) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.
  - (5) "Authorized representative" means:
- (a) For an enrollee who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the enrollee; or
  - (b) A legal guardian.
- (6) "Behavioral health service" means a clinical, rehabilitative, or support service in an inpatient or outpatient setting to treat a mental illness, emotional disability, or substance use disorder.
  - (7) "Blind" is defined by 42 U.S.C. 1382c(a)(2).
- (8) "Capitation payment" means the total per enrollee, per month payment amount the department pays an MCO.

- (9) "Care coordination" means the integration of all processes in response to an enrollee's needs and strengths to ensure the:
  - (a) Achievement of desired outcomes; and
  - (b) Effectiveness of services.
  - (10) "Case management" means a collaborative process that:
- (a) Assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an enrollee's health and human service needs;
  - (b) Is characterized by advocacy, communication, and resource management;
  - (c) Promotes quality and cost-effective interventions and outcomes; and
- (d) Is in addition to and not in lieu of targeted case management for individuals pursuant to 907 KAR Chapter 15.
  - (11) "CHFS OIG" means the Cabinet for Health and Family Services, Office of Inspector General.
- (12) "Child" means a person who:
  - (a)1. Is under the age of eighteen (18) years;
- 2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and
  - b. Is expected to complete the program before the age of nineteen (19) years;
  - 3. Is not self supporting;
  - 4. Is not a participant in any of the United States Armed Forces; and
- 5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;
- (b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(I)(1)(D);
  - (c) Is under the age of nineteen (19) years if the person is a KCHIP recipient; or
  - (d) Is under the age of twenty-one (21) years for EPSDT.
- (13) "Complex or chronic condition" means a physical, behavioral, or developmental condition that:
  - (a) Seems to [May] have no known cure;
  - (b) Is progressive, or
  - (c) Can be debilitating or fatal if left untreated or under-treated.
- (14) "Court-ordered commitment" means an involuntary commitment by an order of a court to a psychiatric facility for treatment pursuant to KRS Chapter 202A.
  - (15) "DAIL" means the Department for Aging and Independent Living.
  - (16) "DCBS" means the Department for Community Based Services.
  - (17) "Department" means the Department for Medicaid Services or its designee.
  - (18) "Disabled" is defined by 42 U.S.C. 1382c(a)(3).
- (19) "DSM-IV" means <u>the Diagnostic and Statistical Manual of Mental Disorders, Fourth</u> <u>Editions, [a manual]</u> published by the American Psychiatric Association that covers all mental health disorders for both children and adults.
  - (20) "Dual eligible" means an individual eligible for Medicare and Medicaid benefits.
- (21) "Early and periodic screening, diagnosis, and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).
- (22) "Emergency service" means "emergency services" as defined by 42 U.S.C. 1396u-2(b)(2)(B).

(23) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(24) "Family planning service" means a counseling service, a medical service, or a pharmaceu-

tical supply or device to prevent or delay pregnancy.

(25) "Federally qualified health center" or "FQHC" is defined by 42 C.F.R. 405.2401(b).

(26) "Federally qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services to be a federally qualified health center look-alike.

(27) "Fee-for-service" means a reimbursement model in which a health insurer reimburses a provider for each service provided to a recipient.

(28) "Foster care" is defined by KRS 620.020(5).

- (29) "Fraud" means any act that constitutes fraud under applicable federal law or KRS 205.8451 *through[te]* KRS 205.8483.
  - (30) "Grievance" is defined by 42 C.F.R. 438.400(b).
  - (31) "Homeless individual" means an individual who:

(a) Lacks a fixed, regular, or nighttime residence;

(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;

(c) Has a primary nighttime residence at a:

1. Publicly or privately operated shelter designed to provide temporary living accommodations; or

2. Public or private place not designed as regular sleeping accommodations; or

- (d) Lacks access to <u>routine[normal]</u> accommodations due to violence or the threat of violence from a cohabitant.
  - (32) "Individual with a special health care need" or "ISHCN" means an individual who:
- (a) Has, or is at a high risk of having, a chronic physical, developmental, behavioral, neurological, or emotional condition; and
- (b) <u>Might[May]</u> require a broad range of primary, specialized, medical, behavioral health, or related services.

(33) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

- (34) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.
- (35) "Maternity care" means prenatal, delivery, and postpartum care and includes care related to complications from delivery.

(36)["Medicaid works individual" means an individual who:

- (a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving SSI benefits;
  - (b) Is at least sixteen (16), but less than sixty-five (65), years of age;
  - (c) Is engaged in active employment verifiable with:
  - 1. Paycheck stubs;
  - 2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

- (d) Meets the income standards established in 907 KAR 20:020; and
- (e) Meets the resource standards established in 907 KAR 20:025.

(37)] "Medical record" means a single, complete record that documents all of the treatment plans developed for, and medical services received by, an individual.

(37)[(38)] "Medicare qualified individual group 1 (QI-1)" means an eligibility category that includes, pursuant to 42 U.S.C. 1396a(a)(10)(E)(iv), an individual who would be a Qualified Medical beneficiary but for the fact that the individual's income:

(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and

(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who is not otherwise eligible for Medicaid under the state plan.

(38)[(39)] "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(39)[(40)] "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 and 482.58.

(40)[(41)] "Olmstead decision" means the court decision of Olmstead v. L.C. and E.W., U.S. Supreme Court, No. 98–536, June 26, 1999, in which the U.S. Supreme Court ruled, "For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

(41)[(42)] "Open enrollment" means an annual period during which an enrollee can choose a different MCO.

(42)[(43)] "Out-of-network provider" means a person or entity that has not entered into a participating provider agreement with an MCO or any of the MCO's subcontractors.

(43)[(44)] "Physician" is defined by KRS 311.550(12).

(44)[(45)] "Post-stabilization services" means covered services related to an emergency medical condition that are provided to an enrollee:

(a) After an enrollee is stabilized in order to maintain the stabilized condition; or

(b) Under the circumstances described in 42 C.F.R. 438.114(e) to improve or resolve the enrol-lee's condition.

[(46) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.]

(45)[(47)] "Primary care provider" or "PCP" means a licensed or certified health care practitioner who meets the description as established in 907 KAR 17:010, Section 6(6).

(46)[(48)] "Prior authorization" means the advance approval by an MCO of a service or item provided to an enrollee.

(47)[(49)] "Provider" means any person or entity under contract with an MCO or its contractual agent that provides covered services to enrollees.

(48)[(50)] "Provider network" means the group of physicians, hospitals, and other medical care professionals that a managed care organization has contracted with to deliver medical services to its enrollees.

(49)[(51)] "QAPI" means the Quality Assessment and Performance Improvement Program established in accordance with 42 C.F.R. 438 Subpart D, 438.206 to 438.242.

(50)[(52)] "Qualified alien" means an alien who, at the time of applying for or receiving Medicaid benefits, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(51)[(53)] "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(52)[(54)] "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(53)[(55)] "Recipient" is defined by KRS 205.8451(9).

(54)[(56)] "Rural area" means an area not in an urban area.

(55)[(57)] "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(56)[(58)] "Specialist" means a provider who provides specialty care.

(57)[(59)] "Specialty care" means care or a service that is provided by a provider who is not:

(a) A primary care provider; or

(b) Acting in the capacity of a primary care provider while providing the service.

(58)[(60)] "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(59)[(61)] "State fair hearing" means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B.

(60)[(62)] "State plan" is defined by 42 C.F.R. 400.203.

(61)[(63)] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services.

(62)[(64)] "State-funded adoption assistance" is defined by KRS 199.555(2).

(63)[(65)] "Supplemental security income benefits" or "SSI benefits" is defined by 20 C.F.R. 416.2101(c).

(64)[(66)]"Third party liability resource" means a resource available to an enrollee for the payment of expenses:

- (a) Associated with the provision of covered services; and
- (b) That does not include amounts exempt under Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396w-5.

(65)[(67)] "Transport time" means travel time:

- (a) Under normal driving conditions; and
- (b) With no extenuating circumstances.

(66)[(68)]"Urban area" is defined by 42 C.F.R. 412.62(f)(1)(ii).

(67)[(69)] "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

(68)[<del>(70)</del>] "Ward" is defined by KRS 387.510(15).

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.



#### CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

**Andy Beshear** Governor

275 East Main Street, 4W-C Frankfort, KY 40621 www.chfs.ky.gov

Eric C. Friedlander Secretary

February 2, 2022

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

Re: 907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 17:010, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 17:010.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

**Executive Staff Advisor** 

Office of Legislative and Regulatory Affairs



KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES

#### **SUGGESTED SUBSTITUTE**

Final Version: 2/1/2022 2:19 PM

## CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Program Quality and Outcomes

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

RELATES TO: KRS Chapter 13B, 194A.025(3), 205.624, 311.621-311.643, 387.500-387.800, 42 U.S.C. 1396a, 1396n, 1396u-2, 42 C.F.R. 422.112, 422.113, 431.51, 431.200-431.250, 433.138, Part 438, 45 C.F.R. 233.100

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 <u>require specific standards[establish requirements]</u> relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

- Section 1. Enrollment of Medicaid or KCHIP Recipients into Managed Care. (1) Except as <u>es-tablished[provided]</u> in subsection (3) of this section, enrollment into a managed care organization shall be mandatory for a Medicaid or KCHIP recipient.
  - (2) The provisions in this administrative regulation shall be applicable to a:
  - (a) Medicaid recipient; or
  - (b) KCHIP recipient.
- (3) The following recipients shall not be required to enroll, and shall not enroll, into a managed care organization:
  - (a) A recipient who resides in:
  - 1. A nursing facility for more than thirty (30) calendar days; or
  - 2. An intermediate care facility for individuals with an intellectual disability; or
  - (b) A recipient who is:
  - 1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;
  - 2. Receiving:
  - a. Services through the breast and cervical cancer program pursuant to 907 KAR 20:055;
- b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 20:020;
  - c. Services through a 1915(c) home and community based services waiver program; or
- d. Hospice services in a nursing facility or intermediate care facility for individuals with an intellectual disability; [or

- e. Medicaid benefits as a Medicaid Works individual;]
- 3. A Qualified Medicare beneficiary who is not otherwise eligible for Medicaid benefits;
- 4. A specified low-income Medicare beneficiary who is not otherwise eligible for Medicaid benefits;
  - 5. A Medicare qualified individual group 1 (QI-1) individual;
  - 6. A qualified disabled and working individual;
  - 7. A qualified alien eligible for Medicaid benefits for a limited period of time; or
  - 8. A nonqualified alien eligible for Medicaid benefits for a limited period of time.
- (4)(a) The department shall assign a recipient to an MCO based upon an algorithm that considers:
  - 1. Continuity of care; and
  - 2. Enrollee preference of an MCO provider.
- (b) An assignment shall focus on a need of a child or an individual with a special health care need.
- (5)(a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two (2) months shall have an opportunity to choose an MCO during the eligibility application process.
- (b) If a recipient does not choose an MCO during the eligibility application process, the department shall assign the recipient to an MCO in accordance with subsections (4) and (6) of this section.
  - (6) Each member of a household shall be assigned to the same MCO.
- (7) The effective date of enrollment for a recipient <u>established[described]</u> in subsection (5) of this section shall be the date of Medicaid eligibility.
  - (8) A recipient shall be given a choice of MCOs.
- (9) A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility.
- (10) A newborn who has been deemed eligible for Medicaid shall be automatically enrolled with the newborn's mother's MCO as an individual enrollee for up to sixty (60) calendar days.
- (11)(a) An enrollee may change an MCO for any reason, regardless of whether the MCO was selected by the enrollee or assigned by the department:
  - 1. Within ninety (90) calendar days of the effective date of enrollment;
  - 2. Annually during an open enrollment period;
- 3. Upon automatic enrollment under subsection (9) of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in subparagraph 2. of this paragraph; or
- 4. **If[When]** the Commonwealth of Kentucky imposes an intermediate sanction **estab-lished[specified]** in 42 C.F.R. 438.702(a)(3).
  - (b) An MCO shall accept an enrollee who changes MCOs under this section.
- (12) Only the department may enroll a Medicaid recipient with an MCO in accordance with this section.
- (13) Upon enrollment with an MCO, an enrollee shall receive an identification card issued by the MCO.

- (14)(a) Within five (5) business days after receipt of notification of a new enrollee, an MCO shall send, by a method that shall not take more than three (3) calendar days to reach the enrollee, a confirmation letter to an enrollee.
  - (b) The confirmation letter shall include at least [the following information]:
  - 1. The effective date of enrollment;
  - 2. The name, location, and contact information of the PCP;
  - 3. How to obtain a referral;
  - 4. Care coordination;
  - 5. The benefits of preventive health care;
  - 6. The enrollee identification card;
  - 7. A member handbook; and
  - 8. A list of covered services.
  - (15) Enrollment with an MCO shall be without restriction.
  - (16) An MCO shall:
  - (a) Have continuous open enrollment for new enrollees; and
  - (b) Accept enrollees regardless of overall enrollment.
- (17)(a) Except as <u>established[provided]</u> in paragraphs (b) through (e) of this subsection, a recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid.
  - (b) A newborn shall be enrolled beginning with the newborn's date of birth.
- (c) An unemployed parent shall be enrolled beginning with the date the unemployed parent met the definition of unemployment in accordance with 45 C.F.R. 233.100.
- (d)1. Except as <u>established[provided]</u> in paragraph (e) of this subsection, if an enrollee is retroactively determined eligible for Medicaid, the retroactive eligibility shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.
- 2. An MCO shall be responsible for reimbursing for covered services provided to a retroactively determined eligible individual <u>established[referenced]</u> in subparagraph 1. of this paragraph during the individual's retroactive eligibility period.
- (e) If an enrollee is retroactively determined eligible for Medicaid as a result of being determined retroactively eligible for SSI benefits:
- 1. The individual's enrollment date with an MCO shall be the first of the month following the month in which the department is notified of the individual's retroactive eligibility for SSI benefits; and
- 2. The department shall be responsible for reimbursing for any services provided during the retroactive eligibility period for an individual determined to be retroactively eligible for SSI benefits.
- (18) For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin <u>on the first day of the month of</u>:
  - (a) [On the first day of the month of] The original application for eligibility; or
- (b) [On the first day of the month of] Retroactive eligibility as referenced in subsection (17)(d) or (e) of this section, if applicable.
- (19) A provider shall be responsible for verifying an individual's eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 2. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.

- (2) Only the department may disenroll a recipient from an MCO.
- (3) A disenrollment of a recipient from an MCO shall occur:
- (a) If the enrollee:
- 1. Becomes incarcerated or deceased; or
- 2. Is exempt from managed care enrollment in accordance with Section 1(3) of this administrative regulation; or
  - (b) In accordance with 42 C.F.R. 438.56.
- (4) An MCO may recommend to the department that an enrollee be disenrolled if the enrollee:
- (a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid Program;
- (b) Is abusive or threatening but not for uncooperative or disruptive behavior resulting from his or her special needs (except if his or her continued enrollment in the MCO seriously impairs the entity's ability to *provide[furnish]* services to either this particular enrollee or other enrollees) pursuant to 42 C.F.R. 438.56(b)(2); or
  - (c) Becomes deceased.
- (5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in the enrollee's health.
- (6)(a) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R. 438.56(e)(1).
- (b) If the department fails to make a determination within the timeframe <u>established[specified]</u> in paragraph (a) of this subsection, the disenrollment shall be considered approved in accordance with 42 C.F.R. 438.56(e)(2).
  - (7) If an enrollee is disenrolled from an MCO, the:
  - (a) Enrollee shall be enrolled with a new MCO if the enrollee is:
  - 1. Eligible for Medicaid; and
  - 2. Not excluded from managed care participation; and
  - (b) MCO shall:
  - 1. Assist in the selection of a new primary care provider, if requested;
  - 2. Cooperate with the new primary care provider in transitioning the enrollee's care; and
- 3. Make the enrollee's medical record available to the new primary care provider in accordance with state and federal law.
- (8) An MCO shall notify the department or Social Security Administration in an enrollee's county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 3. Enrollee Rights and Responsibilities. An MCO shall have written policies and procedures to protect the rights of an enrollee that meets the information requirements established in 42 C.F.R. 438.10.

Section 4. MCO Internal Appeal Process. (1) An enrollee may file a grievance orally or in writing with the MCO at any time.

(a) Within five (5) working days of receipt of a grievance, an MCO shall provide the enrollee with written notice that the grievance has been received and the expected date of its resolution.

(b) An investigation and final resolution of a grievance shall:

- 1. Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and
  - 2. Include a resolution letter to the enrollee that shall include:
  - a. All information considered in investigating the grievance;
  - b. Findings and conclusions based on the investigation; and

c. The disposition of the grievance.

- (2) An MCO shall have an internal appeal process in place that allows an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 438.424 and 42 U.S.C. 1396u-2(b)(4).
- (3)(a) A provider shall not be an authorized representative of an enrollee without the enrollee's written consent for the specific action that is being appealed or that is the subject of a state fair hearing.

(b)1. For authorized representative purposes, written consent unique to an appeal or state fair hearing shall be required for the appeal or state fair hearing.

2. A single written consent shall not qualify as written consent for more than one (1):

a. Hospital admission;

b. Physician or other provider visit; or

c. Treatment plan.

- (4) A legal guardian of an enrollee who is a minor or an incapacitated adult or an authorized representative of an enrollee in accordance with subsection (3) of this section may file an appeal on behalf of the enrollee.
- (5) An enrollee shall have sixty (60) calendar days from the date of receiving a notice of adverse action from an MCO to file an appeal either orally or in writing with the MCO.
- (6) <u>Except as established in subsection 10 of this section</u>, an MCO shall resolve an appeal within thirty (30) calendar days from the date the initial oral or written appeal is received by the MCO.
- (7) An MCO shall have a process in place that ensures that an oral or written inquiry from an enrollee seeking to appeal an adverse action **shall be[is]** treated as an appeal to establish the earliest possible filing date for the appeal.

(8) An oral appeal shall be followed by a written appeal that is signed by the enrollee or an individual listed in subsection (4) of this section within ten (10) calendar days.

(9)(a) Within five (5) working days of receipt of an appeal, an MCO shall provide the enrollee with written notice that the appeal has been received and the expected date of its resolution. A copy of this information shall also be sent to an individual listed in subsection (4) of this section, if applicable.

(b) An MCO shall confirm in writing receipt of an oral appeal unless an expedited resolution

has been requested.

(10) An MCO shall extend the thirty (30) day timeframe for resolution of an appeal established in subsection (6) of this section by fourteen (14) calendar days if:

- (a) The enrollee requests the extension; or
- (b)1. The MCO demonstrates to the department that there is need for additional information; and
  - 2. The extension is in the enrollee's interest.
- (11) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the extension and the reason for the extension within two (2) working days of the decision to extend.
- (12)(a) For an appeal, an MCO shall provide written notice of its decision within thirty (30) calendar days to an enrollee or a provider, if the provider filed the appeal.
  - (b) The provider shall:
  - 1. Give a copy of the notice to the enrollee; or
  - 2. Inform the enrollee of the provisions of the notice.
  - (13) An MCO shall:
- (a) Continue to provide benefits to an enrollee, if the enrollee requested a continuation of benefits, until one (1) of the following occurs:
  - 1. The enrollee withdraws the appeal;
- 2. Fourteen (14) calendar days have passed since the date of the resolution letter, if the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or
  - 3. A state fair hearing decision adverse to the enrollee has been issued;
- (b) Have an expedited review process for appeals if the MCO determines that allowing the time for a standard resolution could seriously jeopardize an enrollee's life or health or ability to attain, maintain, or regain maximum function;
- (c) <u>Except as established in paragraph (d) of this subsection</u>, resolve an expedited appeal within three (3) working days of receipt of the request; and
- (d) Extend the timeframe for an expedited appeal established in paragraph (c) of this subsection by up to fourteen (14) calendar days if:
  - 1. The enrollee requests the extension; or
- 2.a. The MCO demonstrates to the department that there is need for additional information; and
  - b. The extension is in the enrollee's interest.
- (14) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the reason for the extension.
  - (15) If an MCO denies a request for an expedited resolution of an appeal, the MCO shall:
- (a) Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period shall begin on the date the MCO received the original request for appeal;
  - (b) Give prompt oral notice of the denial; and
  - (c) Follow up with a written notice within two (2) calendar days of the denial.
- (16) An MCO shall document in writing an oral request for an expedited resolution and shall maintain the documentation in the enrollee case file.
- (17) If an MCO takes adverse action at the conclusion of an internal appeal process, the MCO shall issue an adverse action letter to the enrollee that complies with KRS 13B.050(3)(d) and (e).
- (18)(a) The requirements and policies <u>established[stated]</u> in this section regarding an MCO appeal shall apply to an MCO.

(b) If a requirement or policy regarding an appeal or an MCO appeal stated in another Kentucky administrative regulation within Title 907 of the Kentucky Administrative Regulations contradicts a requirement or policy regarding an MCO appeal that is <u>established[stated]</u> in this section, the requirement [or policy] stated in the other administrative regulation shall not apply to an MCO.

Section 5. Department's State Fair Hearing for an Enrollee. (1) An enrollee may have a state fair hearing administered by the department in accordance with KRS Chapter 13B only after exhausting an MCO's internal appeal process.

(2) The department shall provide an enrollee with a hearing process that shall adhere to 907 KAR 1:563; 42 C.F.R. 438, Subpart F (438.400-438.424); and 42 C.F.R. 431, Subpart E (431.200-

431.250).

(3)(a) An enrollee or authorized representative may request a state fair hearing by filing a written request with the department.

(b) If an enrollee or authorized representative requests a hearing, the request shall:

1. Be in writing and specify the reason for the request;

2. Indicate the date of service or the type of service denied; and

3. Be postmarked or filed within 120 calendar days from the date of the MCO adverse action letter issued at the conclusion of the MCO internal appeal process.

(4) A document supporting an MCO's adverse action shall be:

(a) Received by the department no later than five (5) calendar days from the date the MCO receives a notice from the department that a request for a state fair hearing has been filed by an enrollee; and

(b) Made available to an enrollee upon request by either the enrollee or the enrollee's legal counsel.

- (5) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:
  - (a) Comply with the requirements of:
  - 1. Section 4 of this administrative regulation; or

2. Subsection (4) of this section; or

(b) Participate in and present evidence at the state fair hearing.

Section 6. Enrollee Selection of Primary Care Provider. (1) Except for an enrollee <u>established[described]</u> in subsection (2) of this section, an MCO shall have a process for enrollee selection and assignment of a primary care provider.

(2) The following shall not be required to have, but may request, a primary care provider:

(a) A dual eligible;

(b) A child in foster care;

(c) A child under the age of eighteen (18) years who is disabled;

(d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 20:050; or

(e) An adult for whom the state is appointed a guardian.

(3)(a) For an enrollee who is not receiving supplemental security income benefits:

1. An MCO shall notify the enrollee within ten (10) calendar days of notification of enrollment by the department of the procedure for choosing a primary care provider; and

- 2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:
  - a. Has historically provided services to the enrollee; and
  - b. Meets the requirements of subsection (6) of this section.
- (b) If <u>there is not a[no]</u> primary care provider <u>that</u> meets the requirements of paragraph (a)2. of this subsection, an MCO shall assign the enrollee to a primary care provider who is within:
- 1. Thirty (30) miles or thirty (30) minutes from the enrollee's residence if the enrollee is in an urban area; or
- 2. Forty-five (45) miles or forty-five (45) minutes from the enrollee's residence if the enrollee is in a rural area.
- (4)(a) For an enrollee who is receiving supplemental security income benefits and is not a dual eligible, an MCO shall notify the enrollee of the procedure for choosing a primary care provider.
- (b) If an enrollee has not chosen a primary care provider within thirty (30) calendar days, an MCO shall send a second notice to the enrollee.
- (c) If an enrollee has not chosen a primary care provider within thirty (30) calendar days of the second notice, the MCO shall send a third notice to the enrollee.
- (d) If an enrollee has not chosen a primary care provider within thirty (30) calendar days after the third notice, the MCO shall assign a primary care provider.
- (e) Except for an enrollee who was previously enrolled with the MCO, an MCO shall not automatically assign a primary care provider within ninety (90) calendar days of the enrollee's initial enrollment.
- (5)(a) An enrollee may select from at least two (2) primary care providers within an MCO's provider network.
- (b) At least one (1) of the two (2) primary care providers <u>established[referenced]</u> in paragraph (a) of this subsection shall be a physician.
  - (6) A primary care provider shall:
- (a) Be a licensed or certified health care practitioner who functions within the provider's scope of licensure or certification, including:
  - 1. A physician;
  - 2. An advanced practice registered nurse;
  - 3. A physician assistant; or
- 4. A clinic, including a primary care center, federally qualified health center, federally qualified health center look-alike, or rural health clinic;
- (b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;
- (c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and
- (d) For an enrollee who has a gynecological or obstetrical health care need, a disability, or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care.
  - (7) Upon enrollment in an MCO, an enrollee may change primary care providers:
  - (a) Within the first ninety (90) calendar days of assignment;
  - (b) Once a year regardless of reason;

(c) At any time for a reason approved by the MCO;

- (d) If, during a temporary loss of eligibility, an enrollee loses the opportunity provided by paragraph (b) of this subsection;
  - (e) If Medicare or Medicaid imposes a sanction on the PCP;
  - (f) If the PCP is no longer in the MCO provider network; or
  - (g) At any time with cause, which shall include the enrollee:
  - 1. Receiving poor quality of care;
  - 2. Lacking access to providers qualified to treat the enrollee's medical condition; or
  - 3. Being denied access to needed medical services.
- (8) A PCP shall not [be-able-to] request the reassignment of an enrollee to a different PCP for the following reasons:
  - (a) A change in the enrollee's health status or treatment needs;
  - (b) An enrollee's utilization of health services;
  - (c) An enrollee's diminished mental capacity, or
- (d) Disruptive behavior of an enrollee due to the enrollee's special health care needs unless the behavior impairs the PCP's ability to provide services to the enrollee or others.
- (9) A PCP change request shall not be based on race, color, national origin, disability, age, or gender.
  - (10) An MCO may approve or deny a primary care provider change.
- (11) An enrollee shall be able to obtain the following services outside of an MCO's provider network:
  - (a) A family planning service in accordance with 42 C.F.R. 431.51;
  - (b) An emergency service in accordance with 42 C.F.R. 438.114;
- (c) A post-stabilization service in accordance with 42 C.F.R. 438.114 and 42 C.F.R. 422.113(c); or
- (d) An out-of-network service that an MCO is unable to provide within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4) subject to any prior authorization requirements of the MCO.
  - (12) An MCO shall:
  - (a) Notify an enrollee within:
- 1. Thirty (30) calendar days of the effective date of a voluntary termination of the enrollee's primary care provider; or
- 2. Fifteen (15) calendar days of an involuntary termination of the enrollee's primary care provider; and
  - (b) Assist the enrollee in selecting a new primary care provider.
- Section 7. Member Handbook. An MCO shall send a member handbook to an enrollee as required by 42 C.F.R. 438.10.
- Section 8. Enrollee Non-Liability and Liability for Payment. (1)(a) Except as <u>established[specified]</u> in Section 9 of this administrative regulation, an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee's MCO.
- (b) An enrollee may be liable for the costs of services received during an appeal process in accordance with:

- 1, 42 C.F.R. 431.230; or
- 2, 42 C.F.R. 438.404.
- (2) An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR 1:604.

Section 9. Recoupment of Payment from an Enrollee for Fraud, Waste, or Abuse. (1) If an enrollee is determined to be ineligible for Medicaid through an administrative hearing or adjudication of fraud by the CHFS OIG, the department shall recoup a capitation payment it has made to an MCO on behalf of the enrollee.

- (2) An MCO shall request a refund from the enrollee <u>established[referenced]</u> in subsection (1) of this section of a payment the MCO has made to a provider for the service provided to the enrollee.
- (3) If an MCO has been unable to collect a refund <u>established[referenced]</u> in subsection (2) of this section within six (6) months, the commonwealth may recover the refund from the enrollee.

Section 10. Third Party Liability and Coordination of Benefits. (1) Medicaid shall be the payer of last resort for a service provided to an enrollee.

- (2) An MCO shall:
- (a) Exhaust a payment by a third party prior to payment for a service provided to an enrollee;
- (b) Be responsible for determining a legal liability of a third party to pay for a service provided to an enrollee;
- (c) Actively seek and identify a third party liability resource to pay for a service provided to an enrollee in accordance with 42 C.F.R. 433.138; and
  - (d) Assure that Medicaid shall be the payer of last resort for a service provided to an enrollee.
  - (3) In accordance with 907 KAR 20:005 and KRS 205.624, an enrollee shall:
- (a) Assign, in writing, to the MCO the enrollee's rights to a medical support or payment from a third party for a medical service paid for by the MCO; and
- (b) Cooperate with an MCO in identifying and providing information to assist the MCO in pursuing a third party that may be liable for care or services.
- (4) If an MCO becomes aware of a third party liability resource after payment for a service provided to an enrollee, the MCO shall seek recovery from the third party resource.

Section 11. Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order may act on behalf of an enrollee who is under the age of eighteen (18) years, a potential enrollee, or a former enrollee for the purpose of:

- (a) Selecting a primary care provider;
- (b) Filing a grievance or appeal; or
- (c) Taking an action on behalf of the child regarding an interaction with an MCO.
- (2)(a) A legal guardian who has been appointed pursuant to KRS 387.500 <u>through[to]</u> 387.800 may act on behalf of an enrollee who is a ward of the commonwealth.

- (b) A person authorized to make a health care decision pursuant to KRS 311.621 **through[te]** 311.643 may act on behalf of an enrollee, potential enrollee, or former enrollee in making the health care decisions.
  - (c) An enrollee may:
  - 1. Represent the enrollee; or
  - 2. Use legal counsel, a relative, a friend, or other spokesperson.

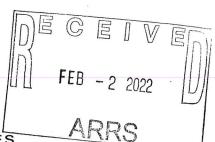
Section 12. Enrollees with Special Health Care Needs. (1)(a) In accordance with 42 C.F.R. 438.208, the following shall be considered an individual with a special health care need:

- 1. A child in or receiving foster care or state-funded adoption assistance;
- 2. A homeless individual;
- 3. An individual with a chronic physical or behavioral illness;
- 4. A blind or disabled child;
- 5. An individual who is eligible for SSI benefits; or
- 6. An adult who is a ward of the Commonwealth in accordance with 910 KAR Chapter 2.
- (b) In accordance with 42 C.F.R. 438.208, an MCO shall:
- 1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;
- 2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;
  - 3. Include the use of appropriate health care professionals to perform an assessment; and
- 4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.
- (c)1. An enrollee who is a child in foster care shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.
- 2.a. The service plan referenced in subparagraph 1. of this paragraph shall be used by DCBS and the MCO to determine the enrollee's medical needs and to identify if there is a need for case management.
- b. The MCO shall be available to meet with DCBS at least quarterly to discuss the health care needs of the child as identified in the service plan. The child's caretaker may attend each meeting held to discuss the health care needs of that child.
- c. If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with the MCO to develop a case management plan of care.
- d. The MCO shall consult with DCBS prior to developing or modifying a case management plan of care.
- e. If the service plan accomplishes a requirement <u>established[stated]</u> in paragraph (b) of this subsection, the requirement [<u>stated in paragraph (b)</u>] shall be considered to have been met.
- (2) A treatment plan <u>established[referenced]</u> in subsection (1)(b)4. of this section shall be developed:
- (a) With participation from the enrollee or the enrollee's legal guardian as referenced in Section 11 of this administrative regulation; and
  - (b) By the enrollee's primary care provider, if the enrollee has a primary care provider.
  - (3) An MCO shall:

- (a)1. Develop materials specific to the needs of an enrollee with a special health care need; and
- 2. Provide the materials <u>established[referenced]</u> in subparagraph 1. of this paragraph to the enrollee, caregiver, parent, or legal guardian;
- (b) Have a mechanism to allow an enrollee identified as having a special health care need to directly access a specialist, as appropriate, for the enrollee's condition and identified need; and
- (c) Be responsible for the ongoing care coordination for an enrollee with a special health care need.
- (4) The information <u>established[referenced]</u> in subsection (3)(a) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.
- (5)(a) An enrollee who is a ward of the commonwealth shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DAIL prior to being enrolled with the MCO.
- (b) If the service plan <u>established[referenced]</u> in paragraph (a) of this subsection identifies the need for case management, the MCO shall work with DAIL or the enrollee to develop a case management plan of care.
- Section 13. Second Opinion. An enrollee may get a second opinion within the MCO's provider network for a surgical procedure or diagnosis and treatment of a complex or chronic condition.
- Section 14. Managed Care Requirements. (1) All aspects of managed care shall be governed and controlled by the applicable federal and state laws, including 42 C.F.R. Part 438, 42 U.S.C. 1396n, and 42 U.S.C. 1396u-2, and the negotiated terms of the contract between a managed care organization and the department.
- (2) The current MCO contracts shall be posted on the department's Web site at <a href="https://chfs.ky.gov/agencies/dms/dpqo/Pages/mco-contracts.aspx">https://chfs.ky.gov/agencies/dms/dpqo/Pages/mco-contracts.aspx</a> [http://chfs.ky.gov/dms/contracts.htm].
- Section 15. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:
  - (1) Denies or does not provide federal financial participation for the policy; or
  - (2) Disapproves the policy.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.





### CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

Andy Beshear Governor 275 East Main Street, 4W-C Frankfort, KY 40621 www.chfs.ky.gov Eric C. Friedlander Secretary

February 2, 2022

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

Re: 907 KAR 20:001. Definitions for 907 KAR Chapter 20.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 20:001, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 20:001.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill

Executive Staff Advisor

Office of Legislative and Regulatory Affairs



KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES

#### SUGGESTED SUBSTITUTE

Final Version: 2/1/2022 2:34 PM

## CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations

#### 907 KAR 20:001. Definitions for 907 KAR Chapter 20.

RELATES TO: KRS 194A.005(1), 205.8451(7), (9), 304.14-640(4), 311.550(12), 314.011, 620.020(5), 20 C.F.R. 416.2101, 42 C.F.R. 400.203, 405.2401(b), 435.4, 438.2, 438.408, 447.280, 8 U.S.C. 1101(a)(15), (17), 1641(b), [and](c), 38 U.S.C. 101(2), 42 U.S.C. 405(c)(2), 670 –[te] 679c, 1395tt, 1396b(x)(3)(A), 1396d(a)(2)(A), (B), 1396d(a)(9), 1396d(p)(1), 1396d(s), 1396l, 1396n(c), 1396p(d)(4)(B), 1396r-5(g), 1396r(b), (c), [and](d), 1397aa to jj[194A.025(3)]

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 20.

- Section 1. Definitions. (1) "1915(c) home and community based service" means a service available or provided via a 1915(c) home and community based services waiver program.
- (2) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).
  - (3) "ABD" means a person who is aged, blind, or disabled.
- (4) "Adult scale" means the scale located in 907 KAR 20:020, Section 1(1), establishing Medicald income limits by family size.
  - (5) "Advanced practice registered nurse" is defined by KRS 314.011(7).
  - (6) "Adverse action" means:
- (a) The denial or limited authorization of a requested service, including the type or level of service:
  - (b) The reduction, suspension, or termination of a previously authorized service;
  - (c) The denial, in whole or in part, of payment for a service;
  - (d) The failure to provide services in a timely manner; or
- (e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).
- (7) "After the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of a Medicaid eligible family.
  - (8) "Aid to Families with Dependent Children" or "AFDC" means an assistance program:
  - (a) In effect from 1935 through[to] 1996;
  - (b) For children whose families had low or no income; and
  - (c) Administered by the United States Department of Health and Human Services.

(9) "Ambulatory prenatal care" means health-related care furnished to a presumed eligible pregnant woman provided in an outpatient setting.

(10) "Appeal" means a request for review of an adverse action or a decision by an MCO relat-

ed to a covered service.

(11) "Applicant" means an individual applying for Medicaid.

(12) "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the applicant or recipient; or

(b) A legal guardian.

(13) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid.

(14) "Basic maintenance" means the amount of income that may be retained by the applicant for living and personal expenses.

- (15) "Blind work expense" or "BWE" means an SSI program option in which expenses a blind individual incurs in order to earn income are deducted for an SSI eligibility purpose.
  - (16) "Cabinet" is defined by KRS 194A.005(1).
  - (17) "Caretaker relative" means:
  - (a) An individual:
  - 1. Who is the caregiver of a child; or
  - 2. On whose tax return the child is listed as a dependent; and
  - (b) Who has one (1) of the following relationships to the child:
  - 1. A grandfather;
  - 2. A grandmother;
  - 3. A brother;
  - 4. A sister;
  - 5. An uncle;
  - 6. An aunt;
  - 7. A nephew;
  - 8. A niece;
  - 9. A first cousin;
  - 10. A relative of the half-blood;
  - 11. A preceding generation denoted by a prefix of:
  - a. Grand;
  - b. Great; or
  - c. Great-great; or
  - 12. A stepfather, stepmother, stepbrother, or stepsister.
- (18) "Categorically needy" means an individual with income below 300 percent of the supplemental security income (SSI) standard who has been receiving hospice or 1915(c) home and community based services for at least thirty (30) consecutive days.
  - (19) "Child" means a person who:
  - (a)1. Is under the age of nineteen (19) years;
- 2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

- b. Is expected to complete the program before the age of nineteen (19) years;
- 3. Is not self supporting;
- 4. Is not a participant in any of the United States Armed Forces; and
- 5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;
- (b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(I)(1)(D); or
  - (c) Is under the age of nineteen (19) years if the person is a KCHIP recipient.
- (20) "Community spouse" means the individual who is married to an institutionalized spouse who:
  - (a) Remains at home in the community; and
  - (b) Is not:
  - 1. Living in a medical institution;
  - 2. Living in a nursing facility; or
  - 3. Participating in a 1915(c) home and community based services waiver program.
- (21) "Community spouse maintenance standard" means the income standard to which a community spouse's otherwise available income is compared for purposes of determining the amount of the allowance used in the post-eligibility calculation.
- (22) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30) consecutive days of receipt of a 1915(c) home and community based service or a combination of both.
- (23) "Countable resources" means resources not subject to exclusion in the Medicaid Program.
  - (24) "DCBS" means the Department for Community Based Services.
- (25) "Deemed eligible newborn" means an infant born to a mother who, at the time of the infant's birth, was a Medicaid recipient.
  - (26) "Department" means the Department for Medicaid Services or its designee.
- (27) "Dependent child" means a biological child, a step child, or a child gained through adoption, who:
  - (a) Lives with a parent in the community; and
  - (b) Is claimed as a dependent by either parent under the Internal Revenue Service Code.
  - (28) "Dependent parent" means a parent:
  - (a) Of either member of a couple;
  - (b) Who lives with the community spouse; and
  - (c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.
- (29) "Dependent sibling" means a brother or sister of either member of a couple, including a half-brother, half-sister, or sibling gained through adoption, who:
  - (a) Resides with the community spouse; and
  - (b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.
- (30) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.
- (31) "Excess shelter allowance" means an amount equal to the difference between the community spouse's verified shelter expenses and the minimum shelter allowance.

- (32) "Fair market value" means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred based on:
- (a) The <u>most recent</u> gross tax assessed value of the property as stated by the local property valuation administrator; [er]
  - (b) An independent, licensed appraiser; or
  - (c) The price brought on the property at a public auction conducted by a licensed auctioneer.
- (33) "Family alternatives diversion payment" means a lump sum payment made to a Kentucky Transitional Assistance Program applicant:
  - (a) To meet short-term emergency needs; and
  - (b) Pursuant to 921 KAR 2:500.
- (34) "First month of SSI payment" means the first month for which an SSI-related Medicaid recipient is determined to be eligible for SSI payments.
  - (35) "Foster care" is defined by KRS 620.020(5).
- (36) "Gross income" means non-excluded income <u>that[which]</u> would be used to determine eligibility prior to income disregards.
  - (37) "Homestead" means property:
  - (a) In which an individual has an ownership interest; and
  - (b) That[Which] an individual uses as the individual's principal place of residence.
  - (38) "ICF IID" means intermediate care facility for individuals with an intellectual disability.
- (39) "Impairment related work expense" or "IRWE" means an SSI program option in which the United States Social Security Administration deducts the cost of items or services an individual needs, due to an impairment, in order to work.
- (40) "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.
  - (41) "Income" means money received from:
- (a) Statutory benefits (for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits);
  - (b) A pension plan;
  - (c) Rental property;
  - (d) An investment; or
  - (e) Wages for labor or services.
- (42) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications <u>that meet[which meets]</u> the criteria established in 921 KAR 2:016.
  - (43) "Institutionalized" means:
  - (a) Residing in:
  - 1. A nursing facility;
  - 2. An intermediate care facility for an individual with an intellectual disability; or
  - 3. A medical institution;
  - (b) Receiving hospice services; or
  - (c) Receiving 1915(c) home and community based services.
- (44) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:

- (a) An inpatient in:
- 1. A nursing facility;
- 2. An intermediate care facility for individuals with an intellectual disability; or
- 3. A medical institution;
- (b) Receiving 1915(c) home and community based services; or
- (c) Receiving hospice services.
- (45) "Institutionalized spouse" means an institutionalized individual who:
- (a)1. Is in a medical institution, intermediate care facility for an individual with an intellectual disability, or nursing facility;
  - 2. Participates in a 1915(c) home and community based services waiver program; or
  - 3. Is receiving hospice services;
  - (b) Has a spouse who is not an institutionalized individual; and
- (c) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse:
  - 1. Is not receiving hospice services; and
- 2. Remains out of a medical institution, nursing facility, intermediate care facility for an individual with an intellectual disability, or 1915(c) home and community based services waiver program.
- (46) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa *through[to]* jj.
  - (47) "Kentucky Transitional Assistance Program" or "K[-]TAP" means:
  - (a) Kentucky's version of TANF; and
- (b) A money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.
- (48) "Keogh plan" means a full-fledged pension plan for self-employed individuals in the United States of America.
  - (49) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).
- (50) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).
- (51) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined **by[in]** 42 C.F.R. 438.2.
  - (52) "Mandatory state supplement" is defined by 42 C.F.R. 435.4.
  - (53) ["Medicaid Works individual" means an individual who:
- (a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplemental security income;
  - (b) Is a least sixteen (16), but less than sixty-five (65), years of age;
  - (c) Is engaged in active employment verifiable with:
  - 1. Paycheck stubs;
  - 2. Tax returns;
  - 3, 1099 forms; or
  - 4. Proof of quarterly estimated tax;
  - (d) Meets the income standards established in 907 KAR 20:020; and
  - (e) Meets the resource standards established in 907 KAR 20:025.

(54)] "Medical institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for individuals with an intellectual disability.

(54)[(55)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(55)[(56)] "Medically needy" is defined by 42 C.F.R. 435.4.

(56)[(57)] "Medically-needy income level" or "MNIL" means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.

(57)(<del>(58)</del>] "Medicare Part A" means federal health insurance that covers:

- (a) Inpatient hospital or skilled nursing facility services, including blood transfusions;
- (b) Hospice services; and
- (c) Home health services.

(58)[(59)] "Medicare qualified individual group 1 (QI-1)" means an eligibility category in which an individual would be a qualified Medicaid beneficiary but for the individual's income disqualifying the individual from being a qualified Medicare beneficiary due to the circumstances <u>established[described]</u> in 42 U.S.C. 1396a(a)(10)(E)(iv).

(59)[(60)] "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.

(60)[(61)] "Minor" means the couple's minor child or the couple's minor individual older than a child who:

- (a) Is under the age of twenty-one (21) years;
- (b) Lives with a community spouse; and
- (c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.
- (61)[(62)] "Modified adjusted gross income" or "MAGI" is defined by 42 U.S.C. 1396a(e)(14)(G).

(62)[(63)] "Month of separation" means the month in which an individual ceases living in the same household of a Medicaid eligible family.

(63)[(64)] "Monthly income allowance" means an amount:

- (a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and
- (b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards.

(64)[<del>(65)</del>] "NF" means nursing facility.

(65)[(66)] "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2.

(66)[(67)] "Non-recurring lump sum income" means money received at one (1) time **that[which]** is normally considered as income, including:

- (a) Accumulated back payments from Social Security, unemployment insurance, or workers' compensation;
  - (b) Back pay from employment;
  - (c) Money received from an insurance settlement, gift, inheritance, or lottery winning;
  - (d) Proceeds from a bankruptcy proceeding; or
- (e) Money withdrawn from an IRA by an individual prior to the individual reaching the age <u>at</u> <u>which a penalty is not[where no penalty is]</u> imposed for withdrawing the IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(67)[(68)] "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 [and 482.66].

(68)[(69)] "Old Age, Survivors, and Disability Insurance" or "OASDI" means the social insurance program:

(a) More commonly known as "Social Security"; and

(b) Into which participants make payroll contributions based on earnings.

(69)[(70)] "Optional state supplement" is defined by 42 C.F.R. 435.4.

(70)[(71)] "Other family member" means a relative of either member of a couple who is a:

(a) Minor or dependent child;

(b) Dependent parent; or

(c) Dependent sibling.

(71)[(72)] "Other family member's maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount.

(72)[(73)] "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state, and local taxes; child support payments; or other court ordered obligation.

(73)[(74)] "Patient status criteria" means the patient status criteria established in 907 KAR 1:022.

(74)[(75)] "Physician" is defined by KRS 311.550(12).

(75)[(76)] "Plan to Achieve Self Support" or "PASS" means an SSI program option **that[which]** enables a disabled individual receiving SSI benefits to:

(a) Identify a work goal;

(b) Identify training, items, or services needed to reach the work goal; and

(c) Set aside money for installment payments or a down payment for items needed to reach the work goal.

(76)[(77)] "Presumptive eligibility" means Medicaid eligibility determined:

- (a) By a provider authorized by 907 KAR 20:050 to make a presumptive eligibility determination; and
  - (b) In accordance with 907 KAR 20:050.[

(78) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.]

(77)[(79)] "Provider" is defined by KRS 205.8451(7).

(78)[(80)] "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(79)[(81)] "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(80)[(82)] "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(81)[(83)] "Qualified non-citizen" is defined by[in] 8 U.S.C. 1641(b) and (c).

(82)[(84)] "Qualified provider" means a provider who:

(a) Is currently enrolled with the department;

(b) Has been trained and certified by the department to grant presumptive eligibility to pregnant women; and

(c) Provides services of the type <u>established[described]</u> in 42 U.S.C. 1396d(a)(2)(A) or (B) or 42 U.S.C. 1396d(a)(9).

(83)[(85)] "Qualifying income trust" or "QIT" means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).

(84)[(86)] "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(85)[<del>(87)</del>] "Recipient" is defined **by[in]** KRS 205.8451(9).

(86)[(88)] "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization of the institutionalized spouse upon request by either spouse, of the joint resources of a couple if a member of the couple enters a medical institution or nursing facility, receives hospice services, or becomes a participant in a 1915(c) home and community based services waiver program.

(87)[(89)] "Resources" mean cash money and other personal property or real property that:

- (a) An individual:
- 1. Owns; and
- 2. Has the right, authority, or power to convert to cash; and
- (b) Is not legally restricted for support and maintenance.
- (88)[(90)] "Retirement, Survivors, and Disability Insurance" or "RSDI" means an insurance benefit program:
  - (a) Managed by the United States Social Security Administration;
  - (b) Also known as Social Security Disability or Social Security Disability Insurance; and
- (c) <u>That[Which]</u> aims to provide monthly financial support to individuals who have lost income due to retirement, disability, or death of a family provider.

(89)[(91)] "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(90)[(92)] "Satisfactory documentary evidence of citizenship or nationality" is defined by 42 U.S.C. 1396b(x)(3)(A).

(91)[(93)] "Significant financial duress" means a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to <u>allow[permit]</u> the community spouse to remain in the community.

(92)[(94)] "Social Security" means a social insurance program administered by the United States Social Security Administration.

(93)[(95)] "Social Security number" means a number issued by the United States Social Security Administration to United States citizens, permanent residents, or temporary working residents pursuant to 42 U.S.C. 405(c)(2).

(94)[(96)] "Special income level" means the amount **that[which]** is 300 percent of the SSI standard.

(95)[(97)] "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(96)[(98)] "Spend-down liability" means the amount of money in excess of the Medicaid income eligibility threshold to which incurred medical expenses are applied to result in an individual's income being below the income eligibility threshold.

(97)[(99)] "Spousal protected resource amount" means resources deducted from a couple's combined resources for the community spouse in an eligibility determination for the institutionalized spouse.

(98)[(100)] "Spousal share" means one-half (1/2) of the amount of a couple's combined countable resources, up to a maximum of \$60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

(99)[(101)] "Spouse" means a person legally married to another under state law.

(100)[(102)] "SSI benefit" is defined by 20 C.F.R. 416.2101.

(101)[(103)] "SSI essential person, spouse, or nonspouse" means an individual necessary to an SSI recipient to enable the SSI recipient to be self-supporting.

(102)[(104)] "SSI general exclusion" means the twenty (20) dollars disregard from income allowed by the Social Security Administration in an SSI determination.

(103)[(105)] "SSI program" means the United States supplemental security income program.

(104)[(106)] "SSI standard" means the amount designated by the Social Security Administration as the federal benefit rate.

(105)[(107)] "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, with revisions of the official income poverty guidelines applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.

(106)[(108)] "State plan" is defined by 42 C.F.R. 400.203.

(107)[(109)] "State spousal resource standard" means the amount of a couple's combined countable resources determined necessary by the department for a community spouse to maintain himself or herself in the community.

(108)[(110)] "Support right" means the right of an institutionalized spouse to receive support from a community spouse under state law.

(109)[(111)] "Targeted low-income child" is defined by 42 C.F.R. 457.310(a).

(110)[(112)] "Temporary Assistance for Needy Families" or "TANF" means a block grant program *that[which]*:

- (a) Succeeded AFDC; and
- (b) Is designed to:
- 1. Assist needy families so that children can be cared for in their own homes,
- 2. Reduce the dependency of needy parents by promoting job preparation, work, and marriage;
  - 3. Prevent out-of-wedlock pregnancies; and
  - 4. Encourage the formation and maintenance of two-parent families.

(111)[(113)] "Title IV-E benefits" means benefits received via Social Security Act Title IV, Part 3, which is codified as 42 U.S.C. 670 <u>through[to]</u> 679c.

(112)[(114)] "Tobacco Master Settlement Agreement" means an agreement:

- (a) Entered into in November 1998 between certain tobacco companies and states' attorneys general of forty-six (46) states; and
- (b)1. That[:(a) Which] settled states' lawsuits against the tobacco industry for recovery of tobacco-related health care costs;
- 2. That[(b) Which] exempted the tobacco companies from private tort liability regarding harm caused by tobacco; and
- **3.**[(+)] In which the tobacco companies agreed to make various annual payments to the states to compensate for some of the medical costs incurred in caring for individuals with smoking-related illnesses.

(113)[(115)] "Transferred resource factor" means an amount that is:

- (a) Equal to the average:
- 1. Monthly cost of nursing facility services in the state at the time of application, and
- 2. Of private pay rates for semi private rooms of all Medicaid participating facilities; and
- (b) Adjusted annually.
- (114)[(116)] "Trust" means a legal instrument or agreement valid under Kentucky state law in which:
- (a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and
- (b) A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.

(115)[(117)] "Trusted source" means a source recognized by the federal government or department as a reliable source for verifying an individual's information.

(116)[(118)] "Uncompensated value" means the difference between the:

- (a) Fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset; and
  - (b) Amount received for the asset.
  - (117)[(119)] "Undue hardship" means that:
- (a) Medicaid eligibility of an institutionalized spouse cannot be established on the basis of assigned support rights; and
- (b) The spouse is subject to discharge from the medical institution, nursing facility, or 1915(c) home and community based services waiver program due to inability to pay.

(118)[(120)] "Valid immigrant status" is defined by[in]:

- (a) 8 U.S.C. 1101(a)(15); or
- (b) 8 U.S.C. 1101(a)(17).

(119)[(121)] "Veteran" is defined by[in] 38 U.S.C. 101(2).

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### CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

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ARRS

Andy Beshear Governor 275 East Main Street, 4W-C Frankfort, KY 40621 www.chfs.ky.gov Eric C. Friedlander Secretary

February 2, 2022

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

Re: 907 KAR 20:020. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 20:020, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 20:020.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill

**Executive Staff Advisor** 

Office of Legislative and Regulatory Affairs



KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES

#### SUGGESTED SUBSTITUTE

Final Version: 2/1/2022 2:51 PM

## CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations

907 KAR 20:020. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, <u>42 C.F.R. Part 130, Section 4735 of Pub.L. 105-33, [38 U.S.C. 5503,]</u> 42 U.S.C. 1382a, <u>1383c(b)</u>, <u>1396-1396v</u>, <u>1396p(d)(4)</u>, <u>1397ii(b)[1396ji(b)</u>, <u>1397aa</u>, <u>9902(2)</u>]

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396d, 1397aa, 1382a(b)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Income Limitations. (1)(a) Income shall be determined by comparing adjusted income as required by Section 2 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Fam- ily	Annual	Monthly
1.	\$ <u>2,820</u> [ <del>2,600</del> ]	\$ <u>235[<del>217</del>]</u>
2	3,492[ <del>3,200</del> ]	<u>291[<del>267</del>]</u>
3	<u>4,056[3,700]</u>	<u>338[<del>3</del>08</u> ]
4	<u>5,028[4,600]</u>	<u>419[383]</u>
5	<u>5,904[<del>5,400</del>]</u>	<u>492[450]</u>
6 .	<u>6,672[<del>6,100</del>]</u>	<u>556[<del>508</del>]</u>
7 · ·	7,452[ <del>6,800</del> ]	<u>621[567]</u>

- (b) For each additional family member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.
- (2) For a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e) a change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period, which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.
- (3) The special income limits and provisions established in this subsection shall apply for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1).
- (a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.
  - (b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of

the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

- (c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.
- (d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.
  - (4) Income shall be limited to the allowable amounts for the SSI program for a:
- (a) [A]Child who lost eligibility for SSI benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or
- (b) [A] Person with hemophilia who received a class action settlement as established in 42 C.F.R. Part 130.
- (5) Income shall be limited to the allowable amounts for the mandatory or optional state supplement program for an individual *established[described]* in 42 C.F.R. 435.135.[
  - (6) The following special income factors shall apply for a Medicaid Works individual:
  - (a) Income for a Medicaid Works individual's spouse shall not exceed \$45,000 per year;
- (b) A Medicaid Works individual's unearned income shall be less than the SSI standard plus twenty (20) dollars monthly; and
- (c) The combination of earned and unearned income for a Medicaid Works individual shall be less than 250 percent of the official poverty income guidelines.]

Section 2. Income Disregards. In comparing income with the scale established in Section 1 of this administrative regulation, gross income shall be adjusted as established in this section.

- (1) In a TANF or family related Medicaid case:
- (a) The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings;
- (b) For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month; and
- (c) Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.
- (2) For an ABD Medicaid case [or a Medicaid Works individual], the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b) shall apply.
- (3) For an individual in a Medicaid eligibility group subject to 42 U.S.C. 1396a(a)(10)(E)(i), (ii), or (iv) or 42 U.S.C. 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment causes an individual to be ineligible for Medicaid benefits:
- (a) The individual's most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment shall be disregarded; and
- (b) The disregard <u>established[referenced]</u> in paragraph (a) of this subsection shall continue until the individual loses Medicaid eligibility for any other reason for three (3) consecutive months.
- (4) [(a)] An ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).
- [(b) A Medicaid Works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).]

Section 3. Lump Sum Income. Except as established in Section 8 of this administrative regulation, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill a plan approved by the United States Social Security Administration to achieve self support, IRWE de-

duction, or BWE deduction shall be excluded from consideration.

- (2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.
- (3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.
- (4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver program.
- (5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1) until after the month following the month in which the official poverty income guidelines promulgated by the United States Department of Health and Human Services are published.
- (6) Any amount received from a victim's compensation fund established by a state to aid victims of crime shall be excluded as income.
- (7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) pension benefit shall have ninety (90) dollars <u>excluded as income in the</u>:
  - (a) [Excluded as income in the] Medicaid eligibility determination; and
  - (b) [Excluded as income in the] Post eligibility determination process.
- (8) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.
- (a) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.
- (b) Veterans Administration payments for unmet medical expenses and aid and attendance shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.
- (9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.
- (10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.
  - (11) Disaster relief assistance shall be excluded as income.
- (12) Income <u>that[which]</u> is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC or SSI) shall be excluded.
- (13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.
- (14) In accordance with 42 C.F.R. Part 130, any payment received by a person with hemophilia from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.
  - (15) Family alternatives diversion payments shall be excluded as income.
- (16) All monies received by an individual from the Tobacco Master Settlement Agreement shall be excluded.
- (17) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall be excluded.

ing a mandatory or optional state supplement, that portion of the individual's income <u>that[which]</u> is in excess of the basic maintenance standard, established in Section 1(1) of this administrative regulation, shall be applied to the special need <u>that[which]</u> results in the supplement.

Section 6. Pass-through Cases. (1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement.

(b) An individual who would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 7 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount <u>established[specified]</u> in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 7. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

- (2)(a) An individual with income in excess of the basic maintenance scale established in Section 1(1) of this administrative regulation shall qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.
- (b) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined shall be used to offset excess income if the medical expenses:
  - 1. Remain unpaid at the beginning of the quarter; and
  - 2. Have not previously been used as spend-down expenses.
- Section 8. Individual Retirement Account. (1)(a) If an individual reaches the point <u>at</u> <u>which[where]</u> the individual is eligible to begin withdrawing from an IRA without suffering a penalty, the individual shall begin withdrawing from the IRA at least the minimum amount determined by the financial institution holding the IRA.
- (b) If an individual does not begin withdrawing from an IRA pursuant to paragraph (a) of this subsection, the individual shall be ineligible for Medicaid benefits.
- (2) If an individual withdraws funds from an IRA prior to reaching the point <u>at which[where]</u> the individual would suffer no penalty for withdrawing funds, the withdrawal shall be considered non-recurring lump sum income.
- (3) If an individual withdraws income pursuant to subsection (1)(a) of this section, the income shall be prorated over the period of time the income covers (for example monthly, quarterly, or annually).

Section 9. Applicability. The provisions and requirements of this administrative regulation shall:

- (1) Apply to:
- (a) A child in foster care;
- (b) An aged, blind, or disabled individual; and
- (c) An individual who receives supplemental security income benefits; and
- (2) Not apply to an individual whose Medicaid eligibility is determined:
- (a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or
- (b) Pursuant to 907 KAR 20:075.

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