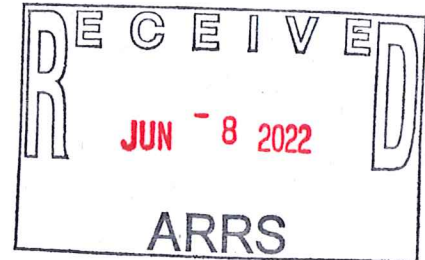


502-429-3300  
800-305-2042  
Fax: 502-429-1245

## KENTUCKY BOARD OF NURSING

312 Whittington Parkway, Suite 300  
Louisville, Kentucky 40222-5172  
[kbn.ky.gov](http://kbn.ky.gov)

Andy Beshear  
Governor



June 8, 2022

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

Re: 201 KAR 20:070E. Licensure by examination.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:070E, the Kentucky Board of Nursing proposes the attached agency amendment to 201 KAR 20:070E.

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](mailto:Jeffrey.prather@ky.gov)

**Final, 5-25-2022**

**AGENCY AMENDMENT**

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**201 KAR 20:070E. Licensure by examination.**

**Page 5**

**Section 6(2)**

**Line 22**

After "4:30 p.m.", insert the following:

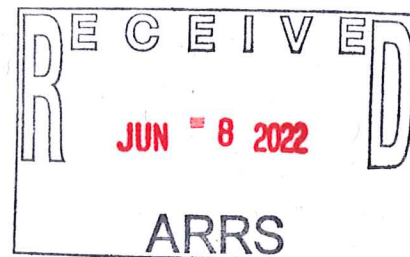
(3) This material is also available on the agency's Web site at <https://kbn.ky.gov>.

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## KENTUCKY BOARD OF NURSING

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Andy Beshear  
Governor



June 8, 2022

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

Re: 201 KAR 20:085. Licensure periods and miscellaneous requirements.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:085, the Kentucky Board of Nursing proposes the attached suggested substitute to 201 KAR 20:085.

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](mailto:Jeffrey.prather@ky.gov)

Final, 5-25-2022

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**201 KAR 20:085. Licensure periods and miscellaneous requirements.**

RELATES TO: KRS 61.878, 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.071, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.071 (1) requires the board to establish licensure periods by administrative regulation for licenses issued by the board. This administrative regulation establishes the licensure periods and. ~~It also establishes~~ miscellaneous requirements.

Section 1. (1) A nursing license or credential issued during the first six (6) months of a licensure period shall expire at the end (October 31) of the current licensure period.

(2) A nursing license or credential issued during the last six (6) months of a licensure period shall expire at the end (October 31) of the succeeding licensure period.

Section 2. Licensure Periods. ~~[(4)]~~ The licensure period for all licenses and credentials, except for provisional, inactive, and retired status licenses, shall be for one (1) year beginning on November 1.

Section 3. For the purposes of the practice of nursing, a nurse shall use the name under which he or she is licensed with the board of nursing.

Section 4. (1) A nurse shall provide the board with an electronic mail (email) address to receive communications from the board.

(2) This requirement shall also apply to dialysis technicians and certified professional midwives.

(3) The email address provided shall be exempt from disclosure pursuant to KRS 61.878(1)(a).

Section 5. (1) A nurse shall provide the board with Workforce Data as part of ~~the nurse's~~ ~~their~~ licensure renewal application under 201 KAR 20:370.

(2) The Workforce Data is collected for statistical purposes and shall be exempt from disclosure pursuant to KRS 61.878(1)(a).

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

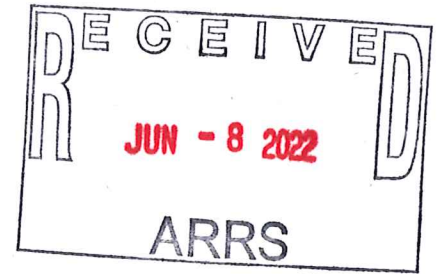


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## KENTUCKY BOARD OF NURSING

312 Whittington Parkway, Suite 300  
Louisville, Kentucky 40222-5172  
[kbn.ky.gov](http://kbn.ky.gov)

Andy Beshear  
Governor



June 8, 2022

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

Re: 201 KAR 20:110. Licensure by endorsement.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:110, the Kentucky Board of Nursing proposes the attached agency amendment to 201 KAR 20:110.

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](mailto:Jeffrey.prather@ky.gov)

Final, 5-25-2022

**AGENCY AMENDMENT**

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**201 KAR 20:110. Licensure by endorsement.**

**Page 2**

**Section 1(1)(a)2.**

**Line 5**

After "Have completed", insert "requirements found".

Delete the following:

that portion of a state approved program of nursing that is

**Line 6**

After "equivalent to a", insert "state".

Delete "Kentucky".

**Page 4**

**Section 1(3)(b)**

**Line 1**

After "application fee", insert the following:

as established by 201 KAR 20:240

**Page 6**

**Section 5**

**Line 17**

After "KRS 314.041", insert "(16)".

Delete "(13)".

**Line 18**

After "KRS 314.041", insert "(16)".

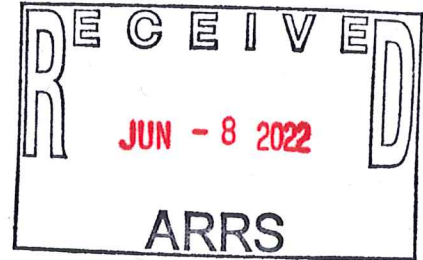
Delete "(13)".

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](http://kbn.ky.gov)

Andy Beshear  
Governor



June 8, 2022


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

Re: 201 KAR 20:370. Applications for licensure.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:370, the Kentucky Board of Nursing proposes the attached agency amendment to 201 KAR 20:370.

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](mailto:Jeffrey.prather@ky.gov)

**Final, 5-25-2022**

**AGENCY AMENDMENT**

**BOARDS AND COMMISSIONS  
Board of Nursing**

**201 KAR 20:370. Applications for licensure.**

**Page 1**

**Section 1(1)(b)**

**Line 18**

After "(b)", delete "For".

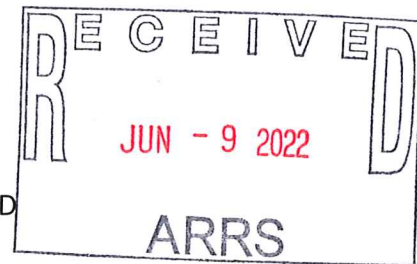
**Page 3**

**Section 2(1)**

**Line 15**

After "endorsement, within", insert "one (1) year".

Delete "six (6) months".



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD

**Andy Beshear**  
Governor

P. O. Box 1360  
Frankfort, Kentucky 40602  
Phone (502) 892-4249  
Fax (502) 564-4818  
<https://aba.ky.gov>

June 9, 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: **201 KAR 43:010**, Application procedures for licensure.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After further consideration of the issues raised by 201 KAR 43:010, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached agency amendment to 201 KAR 43:010.

Sincerely,

A handwritten signature in blue ink, appearing to read "KRW", with a stylized flourish extending to the right.

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc:

Karen Howard

Revised: 5/27/22  
**AGENCY AMENDMENT**

**BOARDS AND COMMISSIONS**  
**Kentucky Applied Behavior Analysis Licensing Board**

**201 KAR 43:010. Application procedures for licensure.**

RELATES TO: KRS 319C.070, 319C.080(1), (2)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for licensure.

Section 1. Application Procedures. (1) An Application for Licensure as a behavior analyst ~~shall~~~~[or assistant behavior analyst may]~~ be submitted after the requirements established in KRS 319C.080(1)~~[and (2)]~~ are met.

(2) An Application for Licensure as an assistant behavior analyst shall be submitted after the requirements established in KRS 319C.080(2) are met.

(3) The application required by subsections (1) and (2) of this section shall be made by submitting a completed Form ABA-001, Application for Licensure, to the board. The application shall include:

(a) A certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that~~[the board shall take disciplinary action in accordance with KRS 319C.070 if the application contains]~~ a misrepresentation or falsification in the application is grounds for denial or revocation of the license at any time; [and]

(b) A copy of the degree obtained;~~[An official transcript for all levels of education required for licensure.]~~

(c)[(4)] A check or money order payable to the Kentucky State Treasurer for the application review [fee] and [the] licensure fee as required by 201 KAR 43:030;

(d)[(5)] Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1) for applicants seeking licensure as a behavior analyst and KRS 319C.080(2) for applicants seeking licensure as an assistant behavior analyst; and

(e)[(6)] Proof of completion of at least five (5) hours of training in:

1.[(a)] Adult abuse and neglect;

2.[(b)] Child abuse, neglect, and dependency; or

3.[(c)] A combination of subparagraphs 1.[(a)] and 2.[(b)] of this paragraph[subsection]. The completed **proof[proof(s)]** shall indicate that abuse, neglect, or dependency was explicitly covered in the training.

(4)[(7)] Applicants for licensure as an assistant behavior analyst shall also submit a completed Supervisory Plan, Form ABA-002, as incorporated by reference in 201 KAR 43:050, for board approval.

(5)[(8)] A licensed assistant behavior analyst may apply for licensure as a licensed behavior analyst at any time within the two (2) year licensure period after meeting the requirements established in this administrative regulation. A final Report of Supervision, Form ABA-003, as incorporated by reference in 201 KAR 43:050, shall also be submitted for board approval.

Section 2. Applications Committee. The applications committee shall consist of at least two (2) board members appointed by the chair of the board. The applications committee may be assisted by the board staff and counsel to the board. The applications committee shall:~~[Licensure of Behavior Analysts. The applicant for licensure as a behavior analyst shall submit]:~~

(1) Review applications for licensure including renewals and reinstatements;~~[A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;]~~

(2) Review Supervisory Plans and Reports of Supervision;~~[Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1); and]~~

(3) Make recommendations to the board to approve, defer, or deny applications; and~~[Proof of completion of at least five (5) hours of training in:~~

~~(a) Adult abuse and neglect prevention;~~

~~(b) Child abuse, neglect, and dependency prevention; or~~

~~(c) A combination of paragraphs (a) and (b) of this subsection.]~~

(4) Make recommendations to the board to approve or require revisions to Supervisory Plans and Reports of Supervision.

Section 3. ~~[Licensure of Assistant Behavior Analysts. The applicant for licensure as an assistant behavior analyst shall submit:~~

~~(1) A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;~~

~~(2) Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(2); and~~

~~(3) Proof of completion of at least five (5) hours of training in:~~

~~(a) Adult abuse and neglect prevention;~~

~~(b) Child abuse, neglect, and dependency prevention; or~~

~~(c) A combination of paragraphs (a) and (b) of this subsection.~~

Section 4.] Incorporation by Reference. (1) Form ABA-001, "Application for Licensure", May 2022[October 2021]~~[October 2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC32~~[911 Leawood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at aba.ky.gov.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

### Changes to Material Incorporated by Reference:

#### Form ABA-001

##### Page 1

##### Application Type Checkboxes

**LBA:** After "(LBA)–", insert "**\$400.00 Application Review and Licensure Fee**".

Delete "Application Review Fee \$100.00; Licensure Fee \$300.00".

**LaBA:** After "(LaBA) –", insert "**\$300.00 Application Review and Licensure Fee**".

Delete "Application Review Fee \$100.00; Licensure Fee \$200.00".

**TLBA:** After "(TLBA) –", insert "**\$300.00 Application Review and Licensure Fee**".

Delete "Application Review Fee \$100.00; Temporary Licensure Fee \$200.00".

**TLaBA:** After “(TLaBA) –”, insert “**\$200.00 Application Review and Licensure Fee**”.  
Delete “Application Review Fee \$100.00; Temporary Licensure Fee \$100.00”.

**Page 3**

**Question 25**

After the blank line following the second “Certification Number:”, insert the following:

**Do you have more than one (1) supervisor? ☐ Yes ☐ No**  
**If yes, then provide the name and certification number of each supervisor,**  
**and provide detailed information as to how the supervisors shall**  
**communicate and coordinate with each other in providing the required**  
**supervision (see 201 KAR 43:050 Sec. 5(2)). Attach extra pages if necessary.**

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**Page 3**

**Question 26**

After “expire”, insert “**two (2)**”.

Delete “four (4)”.

After “date of issuance”, insert “**but may**”.

Delete “and cannot”.

**Pages 1-4**

**Edition Date**

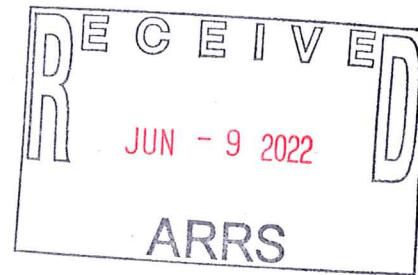
Insert “**May 2022**”.

Delete “October 2021”.





KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD



Andy Beshear  
Governor

P. O. Box 1360  
Frankfort, Kentucky 40602  
Phone (502) 892-4249  
Fax (502) 564-4818  
<https://aba.ky.gov>

June 9, 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: **201 KAR 43:020**, Application procedures for temporary licensure.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After further consideration of the issues raised by 201 KAR 43:020, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached agency amendment to 201 KAR 43:020.

Sincerely,

A handwritten signature in blue ink, appearing to read "KRW", with a long horizontal flourish extending to the right.

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc:

Karen Howard

Revised: 5/27/22  
AGENCY AMENDMENT

BOARDS AND COMMISSIONS  
Kentucky Applied Behavior Analysis Licensing Board

201 KAR 43:020. Application procedures for temporary licensure.

RELATES TO: KRS 319C.070, 319C.080(3)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for temporary licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for temporary licensure.

Section 1. Application procedures. (1) An application for a temporary license as a behavior analyst or assistant behavior analyst shall~~[may]~~ be submitted after the requirements established in KRS 319C.080(3) are met.

(2) The application required by subsection (1) of this section shall be made by submitting to the board a completed Form ABA-001, Application for Licensure, as incorporated by reference in 201 KAR 43:010.

(a) The application shall include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;

2. Applicant is aware that~~[the board may take disciplinary action in accordance with KRS 319C.070 if the application contains]~~ a misrepresentation or falsification in the application is grounds for denial or revocation of the license; and

3. Applicant is aware that any~~[the]~~ temporary license issued expires two (2)~~[four (4)]~~[shall expire two (2)] years from the issuance date and may be renewed only once, if the temporary licensee produces a record signed by the supervisor with his or her renewal application indicating that fieldwork hours toward a BACB credential were being accumulated every month while credentialed as a temporary licensee or produces documentation showing extenuating circumstances that prevented the accumulation of fieldwork hours, such as illness of the temporary licensee, maternity leave of the temporary licensee, or the temporary licensee's displacement from employment~~[shall not be renewed]~~.

(b) If the applicant has completed the coursework through a Behavior Analyst Certification Board (BACB) or Association for Behavior Analysis International (ABAI) Verified Course Sequence (VCS)~~[BACB-approved program]~~, the application shall include an official~~[original, certified]~~ post-secondary transcript and VCS course sequence number.

(c) If the applicant has completed coursework from a non-BACB or non-ABAI VCS~~[approved]~~ program, the application shall include an official post-secondary transcript and course syllabi for all behavior-analytic coursework showing that the applicant has met the most current BACB coursework requirements for eligibility to sit for the Board Certified Behavior Analyst (BCBA) examination for applicants applying for a temporary license as a behavior analyst or the Board Certified Assistant Behavior Analyst examination for applicants applying for a temporary license as an assistant behavior analyst~~[for a Board Certified Behavior Analyst® or Board Certified Assistant Behavior Analyst.]~~

(3) The applicant shall submit check or money order payable to the Kentucky State Treasurer for the application review [fee]~~and [the]~~ licensure fee as required by 201 KAR 43:030.[;]

(4) The applicant shall submit proof of compliance with the [educational, examination, and credentialing] requirements established in KRS 319C.080(3).[(1); and]

(5) The applicant shall submit proof of completion of at least five (5) hours of training in:  
(a) Adult abuse and neglect;  
(b) Child abuse, neglect, and dependency; or  
(c) A combination of paragraphs (a) and (b) of this subsection. The completed  
**proof[proofs(s)]** shall indicate that abuse, neglect, or dependency was explicitly covered in the  
training.

(6) Applicants for temporary licensure as a behavior analyst or assistant behavior analyst shall  
also submit a completed Supervisory Plan for board approval, **Form ABA-002, as incorporated**  
**by reference in 201 KAR 43:050.**

(7) An application for full licensure may be submitted at any time within the **two (2)[four (4)]**  
year[period] temporary licensure period after meeting the requirements established in KRS  
319C.080(1) and (2). A final Report of Supervision, **Form ABA-003**, as incorporated by reference  
in 201 KAR 43:050, shall also be submitted for board approval.[]

~~Section 2. Temporary Licensure of Behavior Analysts. The applicant for temporary licensure~~  
~~as a behavior analyst shall:~~

- ~~(1) Submit a check or money order payable to the Kentucky State Treasurer for the application~~  
~~review fee and the temporary licensure fee as required by 201 KAR 43:030;~~
- ~~(2) Submit proof of compliance with the requirements established in KRS 319C.080(3); and~~
- ~~(3) Submit proof of completion of at least five (5) hours of training in:~~
  - ~~(a) Adult abuse and neglect prevention; and~~
  - ~~(b) Child abuse, neglect, and dependency prevention.~~

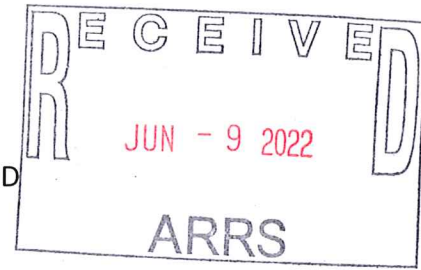
~~Section 3. Temporary Licensure of Assistant Behavior Analysts. The applicant for temporary~~  
~~licensure as an assistant behavior analyst shall:~~

- ~~(1) Submit a check or money order payable to the Kentucky State Treasurer for the application~~  
~~review fee and the temporary licensure fee as required by 201 KAR 43:030;~~
- ~~(2) Submit proof of compliance with the requirements established in KRS 319C.080(3); and~~
- ~~(3) Submit proof of completion of at least five (5) hours of training in:~~
  - ~~(a) Adult abuse and neglect prevention; and~~
  - ~~(b) Child abuse, neglect, and dependency prevention.[]~~

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing,  
500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD



Andy Beshear  
Governor

P. O. Box 1360  
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June 9, 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: 201 KAR 43:030, Fees.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After further consideration of the issues raised by 201 KAR 43:030, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached agency amendment to 201 KAR 43:030.

Sincerely,

A handwritten signature in blue ink, appearing to read "KRW", with a long horizontal stroke extending to the right.

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc:

Karen Howard

Revised: 5/27/22  
**AGENCY AMENDMENT**

**BOARDS AND COMMISSIONS**  
**Kentucky Applied Behavior Analysis Licensing Board**

**201 KAR 43:030. Fees.**

RELATES TO: KRS 319C.060(2)(f), 319C.080(1), (2), (3)

STATUTORY AUTHORITY: KRS 319C.060(2)(f), **319C.120**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(f) requires the board to promulgate administrative regulations establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes those fees.

Section 1. Application and Licensure Fees for Licensed Behavior Analysts. (1) An applicant for licensure as a licensed behavior analyst shall pay the following:

(a) A ~~\$400~~~~[400 nonrefundable]~~ application review and licensure fee~~;~~ for the first two (2) year licensure period~~;~~and

(b) A licensed assistant behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their~~[A \$300 licensure fee for the first]~~ two (2) year licensure period shall pay a \$100 non-refundable application review fee;

(c) A temporary licensed behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their **two (2) year**~~[four (4)]~~ licensure period shall pay a non-refundable \$100 application review fee; and

(d) A temporary licensed assistant behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their **two (2) year**~~[four (4)]~~ licensure period shall pay a non-refundable \$100 application review fee.

(2) The licensure renewal fee for a licensed behavior analyst for each subsequent, two (2) year licensure period shall be \$300.

Section 2. Application and Licensure Fees for Licensed Assistant Behavior Analysts. (1) An applicant for licensure as a licensed assistant behavior analyst shall pay the following:

(a) A ~~\$300~~~~[400 nonrefundable]~~ application review and licensure fee~~;~~ for the first two (2) year licensure period~~;~~and

(b) A temporary licensed assistant behavior analyst applying for licensure as a licensed assistant behavior analyst for the remainder of the **two (2)**~~[four (4)]~~[A \$200 licensure fee for the first two (2)] year licensure period shall pay a \$100 non-refundable application review fee.

(2) The licensure renewal fee for a licensed assistant behavior analyst for each subsequent, two (2) year licensure period shall be \$200.

Section 3. Application and Temporary Licensure Fees. (1) An applicant for a temporary license as a behavior analyst shall pay a \$300 ~~[the following:~~

(a) ~~A \$100 nonrefundable]~~ application review ~~[fee;]~~ and[

(b) ~~A \$200 temporary]~~ licensure fee for the **two (2)**~~[four (4)]~~[two (2)] year temporary licensure period.

(2) **The licensure renewal fee for a temporary licensed behavior analyst for a one (1) time subsequent two (2) year licensure period shall be \$200.**

**(3)** An applicant for a temporary license as an assistant behavior analyst shall pay a \$200 ~~[the following:~~

(a) ~~A \$100 nonrefundable]~~ application review ~~[fee;]~~ and[

(b) A \$100 temporary] licensure fee for the two (2)[four (4)][two (2)] year temporary licensure period.

**(4) The licensure renewal fee for a temporary licensed assistant behavior analyst for a one (1) time subsequent two (2) year licensure period shall be \$100.**

Section 4. Fees for Inactive Status. (1) A licensed behavior analyst or a licensed assistant behavior analyst who applies for inactive status shall pay a fee of \$100.

(2) A licensed behavior analyst or a licensed assistant behavior analyst who applies to renew their inactive status shall pay a fee of \$100.

Section 5. **Fee for Retired Status.** A licensed behavior analyst or a licensed assistant behavior analyst who applies for retired status shall pay a fee of \$100 dollars.

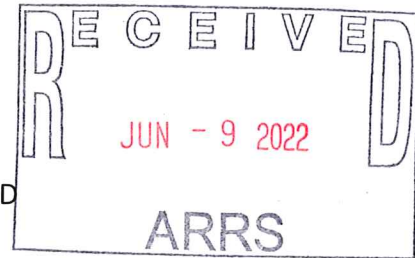
Section 6. Fees for Late Renewal or Reinstatement~~[of a Licensed Behavior Analyst and Licensed Assistant Behavior Analyst]~~. (1) A licensee~~[licensed behavior analyst or a licensed assistant behavior analyst]~~ who files to renew his or her license after its renewal date but within thirty (30) days of that renewal date shall pay a late fee of fifty (50) dollars in addition to the fee set forth in Section 1 or 2 of this administrative regulation.

(2) A licensed behavior analyst or a licensed assistant behavior analyst who files to reinstate his or her expired license more than thirty (30) days after its renewal date ~~[but within three (3) years of that renewal date]~~ shall pay a reinstatement fee of \$250 in addition to the renewal fee set forth in Section 1, ~~for~~ 2, or 3 of this administrative regulation.

(3) A licensed behavior analyst or a licensed assistant behavior analyst who applies to reinstate following a period of board-approved inactive status or retirement shall pay a reinstatement fee of \$100 in addition to the renewal fee set forth in Section 1 or 2 of this administrative regulation.

Section 7. For applications that are denied, the applicant may request a fifty (50) percent refund of the application and licensure review fee in writing to the board administrator within ninety (90) days.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD

Andy Beshear  
Governor

P. O. Box 1360  
Frankfort, Kentucky 40602  
Phone (502) 892-4249  
Fax (502) 564-4818  
<https://aba.ky.gov>

June 9, 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: 201 KAR 43:040, Code of ethical standards and standards of practice.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After further consideration of the issues raised by 201 KAR 43:040, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached agency amendment to 201 KAR 43:040.

Sincerely,

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc:

Karen Howard



Revised: 6/8/22  
AGENCY AMENDMENT

BOARDS AND COMMISSIONS  
Kentucky Applied Behavior Analysis Licensing Board

201 KAR 43:040. Code of ethical standards and standards of practice.

RELATES TO: KRS 202A.400, 319C.060(1), (2)(c), 620.030, 645.270

STATUTORY AUTHORITY: KRS 319C.060(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(c) requires the board to adopt a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes the code of ethical standards and standards of practice for licensees.

Section 1. Definitions. (1) "BACB Code" means the Behavior Analyst Certification Board (~~["BACB"]~~) January 1, 2022 Ethics Code for Behavior Analysts.

(2) ~~[In addition to the definition set forth in the BACB Code,]~~ "Behavior analyst" means a person ~~[was]~~ licensed under KRS Chapter 319C as a licensed behavior analyst, a licensed assistant behavior analyst, or a temporary licensee.

(3)~~[(2)]~~ ~~[In addition to the definition set forth in the BACB Code,]~~ "Client" means:

~~(a) A client as defined in the BACB Code;~~

~~(b) A person who receives behavior analytic assessment, intervention, consultation, treatment, or other professional services for the purpose of practicing applied behavior analysis;~~

~~(c)[.] A corporate entity or other organization [shall be considered the client] if the professional contract is to provide a professional service of benefit to the corporate entity or organization; and~~

~~(d)[.] The [A] legal guardian of a minor or a legally incompetent adult [shall be considered the client] for a decision-making purpose. [who meets the requirements established in Section 2 of this administrative regulation.]~~

(4)~~[(3)]~~ "Confidential information" means information revealed by a client or clients or otherwise obtained by a behavior analyst in a professional relationship and includes all **protected health information (PHI) and educational records** [data, assessments, and recommended interventions as confidential].

~~(5)~~[(4)]~~ ["Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if the authority has been lawfully delegated to the magistrate or administrator.~~

~~(6)~~[(5)]~~ "Kentucky Code" means the Code of Ethics set forth in this administrative regulation.~~

~~(6)~~[(7)]~~ "Professional relationship" means a mutually agreed upon relationship between a behavior analyst and a client for the purpose of the client obtaining the behavior analyst's professional expertise.~~

~~(7)~~[(8)]~~ [(6)] "Professional service" means all actions of the behavior analyst in the context of a professional relationship with a client.~~

~~[(9)~~[(7)]~~ ["Technician" [Supervisee]] [means a person who functions under the extended authority of the behavior analyst to implement] [provide] [behavioral services.~~

~~(10)~~[(8)]~~ [In addition to the definition set forth in the BACB Code, "Trainee" means a person who is acquiring experience in applied behavior analysis toward an eligibility requirement for either a Board Certified Behavior Analyst (BCBA) or Board Certified Assistant Behavior Analyst (BCaBA)] [BCBA or BCaBA] [certification credential.]~~



Section 2. Administration and Enforcement of the Code of Ethics. (1) Notwithstanding the requirements of the BACB Code, the changes established in the Kentucky Code shall be mandatory and shall supersede any conflicting provisions of the BACB Code.

(2) Except as superseded by the provisions of this administrative regulation and the Kentucky Code, the BACB Code shall be the mandatory ethics code for Kentucky Applied Behavior Analysts.

Section 3. Additional Requirements for Kentucky Licensees. (1) Reporting of abuse of children and vulnerable adults. The behavior analyst shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.

(2) Disclosure without informed written consent. The behavior analyst shall disclose confidential information without the informed consent of the client if the behavior analyst has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.

**Section 4. Incorporation by Reference. (1) "Ethics Code for Behavior Analysts", Behavior Analyst Certification Board, January 1, 2022, is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

**(3) This material is also available on the Behavior Analyst Certification Board's Web site at <https://www.bacb.com/wp-content/ethics-code-for-behavior-analysts/>.** [Client

Requirements. (1) Identification of a client. A client shall be a person who receives:

- (a) An evaluation, assessment, or professional services;
- (b) Other professional services for the purpose of practicing applied behavior analysis or applied behavior analysis interventions; or
- (c) Consultation regarding applied behavior analysis or applied behavior analysis interventions in the context of a professional relationship.

(2) A corporate entity or other organization shall be considered the client if the professional contract is to provide a professional service of benefit to the corporate entity or organization.

(3) A legal guardian of a minor or legally incompetent adult shall be considered the client for a decision-making purpose.

(4) A person identified as a client pursuant to subsections (1) to (3) of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.

~~Section 3. Competence. (1) Limits on practice. The behavior analyst shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.~~

~~(2) Maintaining competency. The behavior analyst shall maintain current competency in the areas in which he or she practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.~~

~~(3) Adding new services and techniques. The behavior analyst, if developing competency in a service or technique that is new either to the behavior analyst or new to the profession, shall engage in ongoing consultation with other behavior analysts or relevant professionals and shall obtain appropriate education and training. The behavior analyst shall inform a client of the innovative nature and the known risks associated with the service, so that the client can exercise freedom of choice concerning the service.~~

~~(4) Referral. The behavior analyst shall make or recommend a referral to other professional, technical, or administrative resources if a referral is clearly in the best interests of the client.~~

~~(5) Sufficient professional information. A behavior analyst rendering a formal professional opinion in a report, letter, or testimony about a person shall not do so without direct and substantial professional contact with or a formal assessment of that person.~~

~~(6) Maintenance and retention of records.~~

~~(a) The behavior analyst rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include:~~

- ~~1. The presenting problem, purpose, or diagnosis from another mental health professional;~~
- ~~2. The fee arrangement;~~
- ~~3. The date and substance of each professional contact or service;~~
- ~~4. Test results or other evaluative results obtained and the basic test data from which the results were derived;~~

~~5. Notation and results of a formal consult with another provider; and~~

~~6. A copy of all test or other evaluative reports prepared as part of the professional relationship.~~

~~(b) The behavior analyst shall ensure that all records are maintained for a period of not less than six (6) years after the last date that services were rendered.~~

~~(c) The behavior analyst shall store and dispose of written, electronic and other records in a manner which shall ensure their confidentiality.~~

~~(d) For each person supervised pursuant to KRS Chapter 319C, the behavior analyst shall maintain for a period of not less than six (6) years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.~~

~~(7) Continuity of care. The behavior analyst shall make arrangements for another appropriate professional or professionals to provide for an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.~~

~~Section 4. Impaired Objectivity, and Dual Relationships. (1) Impaired behavior analyst.~~

~~—(a) The behavior analyst shall not undertake or continue a professional relationship with a client if the objectivity or competency of the behavior analyst is impaired due to a mental, emotional, physiologic, pharmacologic, or substance abuse condition.~~

~~(b) If an impairment develops after a professional relationship has been initiated, the behavior analyst shall:~~

- ~~1. Terminate the relationship in an appropriate manner;~~
- ~~2. Notify the client in writing of the termination; and~~
- ~~3. Assist the client in obtaining services from another professional.~~

~~(2) Prohibited dual relationships.~~

~~(a) The behavior analyst shall not undertake or continue a professional relationship with a client, or the client's parent or legal guardian, if the objectivity or competency of the behavior analyst is impaired because of the behavior analyst's present or previous familial, social, sexual, emotional, financial, supervisory, administrative, or legal relationship with the client or a relevant person associated with or related to the client.~~

~~(b) The behavior analyst, in interacting with a client, or the client's parent or legal guardian, shall not:~~

- ~~1. Engage in verbal or physical behavior toward the client, or the client's parent or legal guardian, which is sexually seductive, demeaning, or harassing;~~
- ~~2. Engage in sexual intercourse or other physical intimacy with the client or the client's parent or legal guardian; or~~
- ~~3. Enter into a potentially exploitative relationship with the client, or the client's parent or legal guardian.~~

~~(c) The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the behavior analyst.~~

~~Section 5. Client Welfare. (1) Providing explanation of procedures. The behavior analyst shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The behavior analyst shall keep the client fully informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.~~

~~(2) Termination of services.~~

~~(a) If professional services are terminated, the behavior analyst shall offer to assist the client in obtaining services from another professional.~~

~~(b) The behavior analyst shall:~~

~~1. Terminate a professional relationship if the client is not benefiting from the services; and~~

~~2. Prepare the client appropriately for the termination.~~

~~(3) Stereotyping. The behavior analyst shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis, which would interfere with the objective provision of professional services to the client.~~

~~(4) Solicitation of business by clients. The behavior analyst providing services to an individual client shall not induce that client, or the client's parent or legal guardian, to solicit business on behalf of the behavior analyst.~~

~~(5) Referrals on request. The behavior analyst providing services to a client shall make an appropriate referral of the client to another professional if requested to do so by the client.~~

~~Section 6. Welfare of Supervisees, and Research Subjects. (1) Welfare of supervisees. The behavior analyst shall not exploit a supervisee.~~

~~(2) Welfare of research subjects. The behavior analyst shall respect the dignity and protect the welfare of his or her research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research subjects.~~

~~Section 7. Protecting the Confidentiality of Clients. (1) General. The behavior analyst shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the behavior analyst shall obtain the informed written consent of the client prior to disclosing confidential information.~~

~~(2) Disclosure without informed written consent. The behavior analyst shall disclose confidential information without the informed consent of the client if the behavior analyst has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.~~

~~(3) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:~~

~~(a) Apply to information that pertains to:~~

~~1. The corporation or organization; or~~

~~2. An individual, including personal information, if the information is obtained in the proper course of the contract; and~~

~~(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:~~

~~1. Obtained in a separate professional relationship between the behavior analyst and the individual; and~~

~~2. Subject to the confidentiality requirements established in this section.~~

~~(4) Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the behavior analyst to a client or clients, the behavior analyst shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.~~

~~(5) Multiple clients. If service is rendered to more than one (1) client during a joint session, the behavior analyst shall, at the beginning of the professional relationship, clarify to all parties the manner in which confidentiality shall be handled.~~

~~(6) Legally dependent clients. At the beginning of a professional relationship, the behavior analyst shall inform a client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality with respect to his or her communications with the behavior analyst.~~

~~(7) Limited access to client records. The behavior analyst shall limit access to client records to preserve their confidentiality and shall ensure that all persons working under the behavior analyst's authority comply with the requirements for confidentiality of client material.~~

~~(8) Release of confidential information. The behavior analyst shall release confidential information upon court order or to conform with state law, including KRS 422.317, or federal law or regulation.~~

~~(9) Reporting of abuse of children and vulnerable adults. The behavior analyst shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.~~

~~(10) Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with other appropriate professionals concerning the welfare of the client, the behavior analyst may share confidential information about the client if the behavior analyst takes reasonable steps to ensure that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.~~

~~(11) Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the behavior analyst shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client identification.~~

~~(12) Observation and electronic recording. The behavior analyst shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.~~

~~(13) Confidentiality after termination of professional relationship. The behavior analyst shall continue to treat as confidential information regarding a client after the professional relationship between the behavior analyst and the client has ceased.~~

~~Section 8. Representation of Services. (1) Display of credentials. The behavior analyst shall display his or her current credential to practice on the premises of his or her professional office.~~

~~(2) Misrepresentation of qualifications. The behavior analyst shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.~~

~~(3) Misrepresentation of affiliations. The behavior analyst shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the behavior analyst is associated.~~

~~(4) False or misleading information. The behavior analyst shall not include false or misleading information in a public statement concerning professional services offered.~~

~~(5) Misrepresentation of services or products. The behavior analyst shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:~~

~~(a) The service or product;~~

~~(b) The degree of his or her responsibility for the service or product; or~~

~~(c) The nature of his or her association with the service or product.~~

~~(6) Correction of misrepresentation by others. The behavior analyst shall correct others who misrepresent the behavior analyst's professional qualifications or affiliations.~~

~~Section 9. Disclosure of Cost of Services. The behavior analyst shall not mislead or withhold from a client, prospective client, or third party payor, information about the cost of his or her professional services.~~

~~Section 10. Assessment Procedures. (1) Confidential information. The behavior analyst shall treat as confidential assessment results or interpretations regarding an individual.~~

~~(2) Protection of integrity of assessment procedures. The behavior analyst shall not disseminate a test in a way that may invalidate it.~~

~~(3) Information for professional users. The behavior analyst offering an assessment procedure or automated interpretation service to another professional shall:~~

~~(a) Accompany this offering by a manual or other printed material which describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population;~~

~~(b) State the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly; and~~

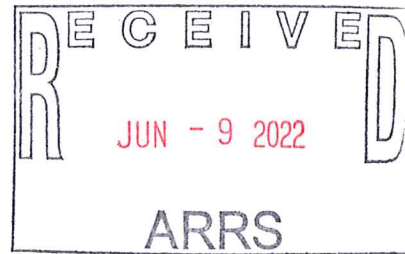
~~(c) Ensure that advertisements for the assessment procedure or interpretive service are factual.~~

~~Section 11. Delegating professional responsibility. The behavior analyst shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide professional services.]~~

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD



Andy Beshear  
Governor

P. O. Box 1360  
Frankfort, Kentucky 40602  
Phone (502) 892-4249  
Fax (502) 564-4818  
<https://aba.ky.gov>

June 9, 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: 201 KAR 43:050, Requirements for supervision.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After further consideration of the issues raised by 201 KAR 43:050, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached agency amendment to 201 KAR 43:050.

Sincerely,

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc:

Karen Howard

5/27/22  
AGENCY AMENDMENT

BOARDS AND COMMISSIONS  
Kentucky Applied Behavior Analysis Licensing Board

201 KAR 43:050. Requirements for supervision.

RELATES TO: KRS 319C.050(1), ~~[and]~~ 319C.060(2)(a)-(d)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)-(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate an administrative regulation governing the supervision of a licensed assistant behavior analyst, temporarily licensed behavior analyst, and temporarily licensed assistant behavior analyst. This administrative regulation establishes the requirements for supervision.

Section 1. Definitions. (1) "Direct supervision" means in-person interactions between the supervisor and the licensee under his or her supervision which includes direct observation of actual service provision to individuals.

(2) "General supervision" means interactions between the supervisor and the licensee under his or her supervision involving real time visual and auditory contact, conducted in-person or via electronic means.

(3) "Licensed supervisee" means an individual permitted to practice applied behavior analysis under the direction of a Licensed Behavior Analyst qualified to supervise while holding licensure in Kentucky as a:

(a) Licensed assistant behavior analyst; [permitted to practice the items from the most current BACB BCaBA Task List or BCaBA Test Content Outline under the direction of a Licensed Behavior Analyst qualified to supervise,]

(b) Temporarily licensed behavior analyst; [permitted to practice the items from the most current BACB BCBA Task List or BCBA Test Content Outline under the direction of a Licensed Behavior Analyst qualified to supervise,] or

(c) Temporarily licensed assistant behavior analyst; [permitted to practice the items from the most current BACB BCaBA Task List or BCaBA Test Content Outline under the direction of a Licensed Behavior Analyst qualified to supervise licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst permitted to practice the items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts under the direction of a Licensed Behavior Analyst qualified to supervise] [licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst permitted to practice the items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts under the direction of a Licensed Behavior Analyst qualified to supervise].

(4) "Paraprofessional" means a person who assists in delivering behavior analysis services and practices under the direction and close supervision of a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst qualified to supervise.

(5) "Supervisee" means a person as defined by KRS 319C.010(10) who is a paraprofessional [not licensed but acts under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst to provide applied behavior analysis services; and limits their practice to the items from the most current BACB Registered Behavior Technician Task List].

(6) "Supervisor" means a Licensed Behavior Analyst in good standing that meets the qualifications to supervise under his or her Behavior Analyst Certification Board (BACB) Board Certified Behavior Analyst (BCBA).

(7) "Trainee" means a person who is enrolled in an Association for Behavior Analysis International (ABAI) accredited program or Verified Course Sequence (VCS) while acquiring experience in applied behavior analysis toward an eligibility requirement for either a Behavior Analyst Certification Board (BACB) Certified Behavior Analyst (BCBA) or BACB Board Certified Assistant Behavior Analyst (BCaBA) credentialing examination.

[(5) "Unlicensed supervisee" means an individual accruing fieldwork/experience toward fulfilling eligibility requirements for BCaBA or BCBA certification without a license permitted to practice the items from the most current BCBA Task List for Temporary licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts under the direction of an individual qualified to supervise under the Behavior Analyst Certification Board's (BACB) supervision standards under limited conditions.]

Section 2. Qualifications to Supervise. In order to provide supervision to a licensed supervisee[assistant behavior analyst, a temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst], a Licensed Behavior Analyst[licensed behavior analyst] shall:

- (1) Be licensed in good standing in Kentucky; and
- (2) Have completed supervision training as identified in the Behavior Analyst Certification Board's (BACB) Certificant Registry[Be currently certified by the Behavior Analyst Certification Board as a:
  - (a)[(4)][Board Certified Behavior Analyst][,][ (BCBA); or
  - (b)[(2)][Board Certified Behavior Analyst – Doctoral][,][ (BCBA-D); and
- (3) Meet and maintain qualifications to supervise under the Behavior Analyst Certification Board's (BACB) supervision requirements].

Section 3. Supervisory Plan and Report of Supervision[Supervisor Responsibilities]. (1) [Except as provided in Section 15][16][of this administrative regulation, a supervisory arrangement shall be submitted to the board for approval using a completed Supervisory Plan][the Application for Licensure Form][, as incorporated by reference in 201 KAR 43:010, by][with][the supervisor and the licensed supervisee][assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst petitioning the board in writing][,].

(2)] The supervisor and the licensed supervisee shall jointly complete and the licensed supervisee shall submit to the board a completed Supervisory Plan upon application for licensure and again annually or biennially[biannually] as required by subsection (3) of this section[in this administrative regulation].

(2)[(3)] The supervisor and the licensed supervisee shall jointly complete and the licensed supervisee shall submit to the board a Report of Supervision either annually or biennially[biannually] as required by subsection (3) of this section[in this administrative regulation. A final Report of Supervision shall also be submitted to the board by the licensed supervisee at the end of the supervisory relationship in accordance with Section 10(2) of this administrative regulation].

(3)[(4)] In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.

(a) A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a Report of Supervision and an updated Supervisory Plan every two (2) years prior to renewal.



(b) A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a Report of Supervision and an updated Supervisory Plan annually on **or before** the anniversary of the date of licensure as a licensed assistant behavior analyst and prior to renewal.

(c) A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a Report of Supervision and an updated Supervisory Plan annually on **or before** the anniversary of the date of licensure as a temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst. A final Report of Supervision **shall[must]** be submitted **by the licensed supervisee** upon application for full licensure.

~~(4) [(5)]~~ The Supervisory Plan shall include **a minimum of three (3) measurable goals for supervision and shall focus on *extending the supervisee's skills beyond the scope of practice as a paraprofessional as it relates to applied behavior analysis, within the following areas, and a minimum of two (2) goals shall encompass competencies included in paragraphs (a) through (e) of this subsection:***

~~(a) Behavior-change procedures;~~

~~(b) Concepts and principles;~~

~~(c) Ethical and professional issues;~~

~~(d) Measurement, data display, and interpretation;~~

~~(e) Selecting and implementing interventions;~~

~~(f) Personnel supervision and management;~~

~~(g) Experimental design; and~~

~~(h) Behaviorism and philosophical foundations[a majority of items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts].~~

~~(5) [(6)]~~ The Report of Supervision shall include:

~~(a) A description of the frequency, format, and duration of supervision;~~

~~(b) An assessment of the functioning of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, including the strengths and weaknesses;~~

~~(c) The methods that the supervisor and licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to plan, report, and evaluate the supervisory process; and~~

~~(d) Any other information, which the supervisor deems relevant to an adequate assessment of the practice of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.~~

~~(6) [(7)]~~ The **licensed supervisee[supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst], or temporarily licensed assistant behavior analyst** shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement by submitting an updated [Annual] Supervisory Plan no later than thirty (30) days after a change in the effective date of the arrangement or change. **A final Report of Supervision shall also be submitted by the licensed supervisee at the termination of any supervisory relationship[in accordance with Section 10(2) of this administrative regulation].**

~~[(8) The board may require additional supervised practice if recommended by the supervisor on a licensee's Supervisory Plan or Report of Supervision.]~~

Section 4. Supervisory Responsibilities. (1) The supervisor shall assure that the practice of each licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ is in compliance with this administrative regulation. ~~[The supervisor shall include in the Annual Supervisory Plan and keep in the record as required by subsection (6) of this section review, discussions, and recommendations and shall focus on:~~

- (a) Case background information;
- (b) Planned behavioral assessment procedures;
- (c) Assessment outcomes;
- (d) data collection procedures;
- (e) Intervention procedures and materials;
- (f) Intervention outcome data;
- (g) Modifications of intervention procedures;
- (h) Ethical issues associated with behavior change services or employment; and
- (i) Professional development needs and opportunities.]

(2) The supervisor shall report to the board an apparent violation of KRS Chapter 319C on the part of the **licensed supervisee**[licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst].

(3) The supervisor shall inform the board administrator in writing or electronically[immediately] of a change in the ability to supervise, or in the ability of a licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] to function in the practice as a licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] in a competent manner.

(4) The supervisor shall control, direct, or limit the behavior analytic duties performed by the licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] practicing under the direction of the supervisor to ensure that these duties are competently performed.

(5)(a) The supervisor of record shall be responsible for the behavior analytic duties of the licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] practicing under the direction of the supervisor.

(b) If the board initiates an investigation concerning a licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] practicing under the direction of the supervisor, the investigation shall include the supervisor of record.

(6)(a) For each **supervisee and licensed supervisee**[~~person supervised~~], the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session.

(b) This record shall be maintained for a period of not fewer than seven (7)[six (6)] years after the last date of supervision.

Section 5. Multiple Supervisors. [(1) In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.

(2) The board may require additional supervised practice if recommended by the supervisor on a licensee's Annual Supervisory Plan or Annual Report of Supervision.

(3)(a) The supervisor shall provide reports to the board of the supervision of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor as follows:

1. A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a report every two (2) years on the anniversary of the date of licensure as a licensed assistant behavior analyst.

2. A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a report annually on the anniversary of the date of licensure as a licensed assistant behavior analyst.

3. A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a report annually on the anniversary of the date of licensure as a temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst.

(b) The report shall be submitted on the Annual Report of Supervision which shall include:

1. A description of the frequency, format, and duration of supervision;
2. An assessment of the functioning of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, including the strengths and weaknesses; and
3. Any other information which the supervisor deems relevant to an adequate assessment of the practice of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

Section 6.] (1) If a licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and their licensed supervisee[they] shall each provide individual Supervisory Plans and Reports of Supervision to the board for each supervisor[as well as][and][copies to each other].

(2) A request to have more than two (2) supervisors at one (1) time shall be subject to board approval and shall be submitted by new applicants on the licensure application and the[Annual] Supervisory Plan and by existing licensees on the[Annual] Supervisory Plan, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 6.[Section 7.] Supervisor Experience. If a licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] practicing under the direction of the supervisor is a behavior analyst with less than five (5) years of fulltime, post-certification practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all assessments and treatment plans to assess the competency of the licensed supervisee to render applied behavior analytic services;

(2) Review[treatment plans,] notes and correspondence on an as-needed basis[to assess the competency of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to render applied behavior analytic services];

(3) [Jointly establish a supervisory plan with the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;

(4)] Conduct[Have] general supervision of the work performed by the licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] practicing under the direction of the supervisor at least twice per month;

(4)][(5)] Have direct supervision of the work performed by the licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant

behavior analyst] practicing under the direction of the supervisor at least once every three (3) months;

~~(5)[(6)] Have direct knowledge of the size and complexity of the caseload for each licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] practicing under the direction of the supervisor;~~

~~(6)[(7)] Limit and control the caseload as appropriate to the level of competence of each licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] practicing under the direction of the supervisor;~~

~~(7)[(8)] Have knowledge of the techniques being used by the licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]; and~~

~~(8)[(9)] Have knowledge of the physical and emotional well-being of each licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.~~

Section 7.[Section 8.] Licensed Supervisee Experience. If the licensed assistant behavior analyst[or temporarily licensed behavior analyst] is a behavior analyst with more than five (5) years of fulltime, post-certification practice, or its equivalent, the supervisor of record shall:

(1) Review and countersign assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

~~[(3) Jointly establish a supervisory plan with each licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:~~

~~(a) Be updated or revised and submitted to the board with the regular report of supervision;~~

~~(b) Include intended format, and goals to be accomplished through the supervisory process; and~~

~~(c) Include methods that the supervisor and licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;]~~

~~(3)[(4)] Have general supervision of the work performed by each licensed assistant behavior analyst[or temporarily licensed behavior analyst] practicing under the direction of the supervisor at least once per month;~~

~~(4)[(5)] Have direct supervision of the work performed by each licensed assistant behavior analyst[or temporarily licensed behavior analyst] practicing under the direction of the supervisor at least twice a year;~~

~~(5)[(6)] Have direct knowledge of the size and complexity of the caseloads for each licensed assistant behavior analyst[or temporarily licensed behavior analyst] practicing under the direction of the supervisor;~~

~~(6)[(7)] Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst[or temporarily licensed behavior analyst];~~

~~(7)[(8)] Have knowledge of the techniques being used by each licensed assistant behavior analyst[or temporarily licensed behavior analyst]; and~~

~~(8)[(9)] Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst[or temporarily licensed behavior analyst] practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.~~

Section 8.[Section 9.] Supervision Requirements. (1)[(a)] A licensed assistant behavior analyst shall meet these supervision requirements, even if he or she is not currently providing behavior analytic services, unless having obtained Inactive status by the board.

(2)[(b)] If the licensed assistant behavior analyst is not currently providing behavior analytic services, supervision may focus on guiding the development and maintenance of the licensed assistant behavior analyst's professional knowledge and skills and remaining current with the professional literature in the field.

(2) Upon resumption of practice, the licensed assistant behavior analyst shall document compliance with continuing education requirements and shall report on his or her activities and employment related to behavior analysis during the period in which the analyst did not practice.]

Section 9.[Section 10.] Supervision for Part-Time Practice. Supervision requirements for part-time practice may be modified by the board upon approval of the submitted plan. Additional modifications of the format, frequency, or duration of supervision may be submitted for approval by the board.

Section 10.[Section 11.][**Supervisory Changes. (1) Upon a change of supervisor, an updated**][Annual][**Supervisory Plan shall be submitted by the**][supervisor that is starting supervision and the ~~]~~**licensed supervisee**][assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst][**to the board for approval.**][**This plan may require additional supervision than was previously approved by the board.**]

~~[(2) Upon termination of the supervisory relationship, the final~~][Annual][**Report of Supervision shall be submitted to the board by the supervisee**][supervisor that is discontinuing supervision ~~]~~**within thirty (30) days of the termination.**

**Section 11.**[Section 12.] **Licensed Supervisee Responsibilities.**[Responsibilities of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] The licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] shall:

(1) Keep the supervisor adequately informed at all times of his or her activities and ability to function;

(2) Seek supervision as needed in addition to a regularly scheduled supervisory session;

(3) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(4) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 3[5] of this administrative regulation; and

(5) Report to the board any apparent violation of KRS Chapter 319C on the part of the supervisor.

Section 11[12].[Section 13.] Identification of Provider in Billing. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the **supervisee, licensed supervisee, or supervisor**~~assistant behavior analyst, temporarily licensed behavior analyst, trainee, supervisee, technician, or other provider and supervised by the licensed behavior analyst~~].

Section 12[13].[Section 14.] Disciplinary Procedures and Supervision of a Disciplined License Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined license holder for the period of time defined by the final order or settlement agreement conferring the discipline.

(2) When specified by the final order or settlement agreement, the disciplined license holder shall be responsible for paying the costs of supervision.

(3) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

- (b) Meet with the disciplined license holder and the board liaison to:
  - 1. Summarize the actions and concerns of the board;
  - 2. Review the goals and expected outcomes of supervision submitted by the board liaison;
  - 3. Develop a specific plan of supervision; and
  - 4. Review the reporting requirements that shall be met during the period of supervision;
- (c) Meet with the disciplined license holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;
- (d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;
- (e) Ensure that the disciplined license holder's practice is in compliance with KRS Chapter 319C and 201 KAR Chapter 43;
- (f) Report to the board any apparent violation of KRS Chapter 319C on the part of the disciplined license holder;
- (g) Immediately report to the board, in writing, a change in the ability to supervise, or in the ability of the disciplined license holder to function in the practice of a licensed behavior analyst in a competent manner;
- (h) Review and countersign assessments as needed or appropriate;
- (i) Review treatment plans, notes, and correspondence as needed or appropriate;
- (j) Have direct observation of the disciplined license holder's work on an as-needed basis;
- (k) Have direct knowledge of the size and complexity of the disciplined license holder's caseload;
- (l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined license holder; and
- (m) Have knowledge of the disciplined license holder's physical and emotional wellbeing when it has direct bearing on the disciplined license holder's competence to practice.
- (4) The supervisor shall control, direct, or limit the disciplined license holder's practice to ensure that the disciplined license holder's practice is competent.
- (5) The supervisor shall contact the board liaison with any concern or problem with the disciplined license holder, his or her practice, or the supervision process.
- (6)(a) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision.
- (b) The meeting shall include the supervisor, disciplined license holder, and board liaison.
- (c) A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

**Section 13[14].**~~[Section 15.]~~ Board Liaison for Disciplined License Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

- (1) Recruit the supervising licensed behavior analyst from a list provided by the board;
- (2) Provide the supervising licensed behavior analyst with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action;
- (3) Ensure that the supervising licensed behavior analyst is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board and has immunity commensurate with that of a board member;
- (4) Provide the supervising licensed behavior analyst with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;
- (5) Ensure that the board has sent a written notification letter to the disciplined license holder. The notification letter shall:
  - (a) State the name of the supervising licensed behavior analyst; and
  - (b) Specify that the disciplined license holder shall meet with the supervising licensed behavior analyst and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising licensed behavior analyst and disciplined license holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined license holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the Report of Supervision to the board for approval.

(a) The liaison shall place the Report of Supervision on the agenda for review and approval at the next regularly scheduled board meeting.

(b) In the interim, the supervising licensed behavior analyst and disciplined license holder shall continue to meet;

(8) Remain available to the supervising licensed behavior analyst to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising licensed behavior analyst;

(10) Review the quarterly Report of Supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising licensed behavior analyst and the disciplined license holder at the end of the term of supervision to summarize the supervision.

**Section 14[15]. Training. Trainees shall:**

**(1)[Section 16. Graduate Training.][Unlicensed supervisees shall: (1) Be enrolled in coursework at a Verified Course Sequence (VCS) that meets the most current coursework requirements for eligibility to sit for a Behavior Analyst Certification Board's (BACB) exam;**

**(2)] Be supervised by a Licensed Behavior Analyst[an individual] qualified to supervise [under the BACB supervision standards];**

**(2) Be permitted, without a license as defined in KRS 319C.010, to practice applied behavior analysis under the close supervision and direction of a qualified supervisor;**

**(3) Not identify his or her status as a licensed behavior analyst, licensed assistant behavior analyst, temporary licensed behavior analyst, or temporary licensed assistant behavior analyst; and[Meet the BACB's most current experience requirements for individuals accruing fieldwork hours to fulfill the eligibility requirements for a BCBAA or BCaBA certification exam;]**

**(4)[Clearly identify his or her status as an unlicensed supervisee to all clients and payors; and**

**(5)] Give to all clients and payors the name of the supervisor or supervisors responsible for his or her work.[Applied behavior analysis graduate students. Graduate-level applied behavior analysis students who are providing services in mental health care settings including independent practice settings shall:**

**(1) Be supervised by a behavior analyst licensed by the board in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;**

**(2) Be registered for credit in his or her course of study;**

**(3) Clearly identify his or her status as unlicensed trainees to all clients and payors;**

**(4) Give to all clients and payors the name of the licensed behavior analyst responsible for his or her work; and**

**(5) Not accept employment or placement to perform the same or similar activities following the completion of his or her university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board].**

**Section 15[16]. [Section 17.] Incorporation by Reference. (1) The following material is incorporated by reference:**

(a) [ABA-003, "Annual Report of Supervision", July 2015; and

(b)] **Form** ABA-002, "[Annual]Supervisory Plan", **May 2022**~~[October 2021]~~; and

(b) Form ABA-003, "Report of Supervision", **May 2022**~~[October 2021]~~[July 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 500 Mero Street, 2 SC 32~~[911 Leawood Drive]~~, Frankfort, Kentucky 40602, [(502) 892-4249/564-3296,] Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at aba.ky.gov.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

### **Changes to Material Incorporated by Reference:**

#### **Form ABA-002**

##### **Page 3**

##### **Question 4**

After "4. Measurable goals for supervision", insert the following:

**Pursuant to 201 KAR 43:050 Sec. 3(4), include a minimum of three (3) measurable goals for supervision that focus on extending the supervisee's skills beyond the scope of practice as a paraprofessional as it relates to applied behavior analysis, within the following areas; a minimum of two (2) goals shall encompass competencies included in (a) through (e):**

**(a) Behavior-change procedures;**

**(b) Concepts and principles;**

**(c) Ethical and professional issues;**

**(d) Measurement, data display, and interpretation;**

**(e) Selecting and implementing interventions;**

**(f) Personnel supervision and management;**

**(g) Experimental design; and**

**(h) Behaviorism and philosophical foundations.**

##### **Page 5**

##### **Question 10**

After "No", insert the following:

**If yes, please submit a supervisory plan for each supervisor, and provide detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision (see 201 KAR 43:050 Sec. 5(2)).**

#### **Pages 1-5**

##### **Edition Date**

Insert "**May 2022**".

Delete "July 2021".

#### **Form ABA-003**

##### **Page 6**

##### **Question 12**

After "for each supervisor.", insert the following:



**13. Describe the methods employed to plan, report, and evaluate the supervisory process.**

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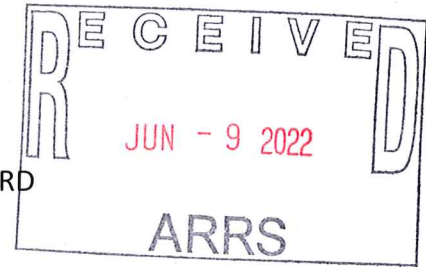
**Pages 1-6**

Insert "**May 2022**".

Delete "October 2021".



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD



Andy Beshear  
Governor

P. O. Box 1360  
Frankfort, Kentucky 40602  
Phone (502) 892-4249  
Fax (502) 564-4818  
<https://aba.ky.gov>

June 9, 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: **201 KAR 43:060**, Complaint and disciplinary process.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 43:060, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached amendment to 201 KAR 43:060.

Sincerely,

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc:

Carrie Nichols

Final, 3-23-2022

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS

Kentucky Applied Behavior Analysis Licensing Board

201 KAR 43:060. Complaint and disciplinary process.

RELATES TO: KRS 319C.050(4), 319C.060(2), 319C.070, 319C.110

STATUTORY AUTHORITY: KRS 319C.060(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2) requires the board to promulgate an administrative regulation governing the regulation of licensees. KRS 319C.070, 319C.050(4), and 319C.110 require the board to investigate and take disciplinary action against licensees who violate KRS Chapter 319C and the associated administrative regulations. This administrative regulation details the process by which the board completes those investigations and takes that action.

Section 1. Definitions. (1) "Act" means KRS Chapter 319C.

(2) "Board" is defined by KRS 319C.010(3).

(3) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS Chapter 319C or 201 KAR Chapter 43.

(4) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a licensee or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(6) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in unlicensed practice or using a title without holding a license.

(7) "Order" means the whole or a part of a final disposition of a hearing.

(8) "Presiding officer" means the person appointed by the board to preside at a hearing held pursuant to KRS Chapter 13B, and shall include a hearing officer, a member or members of the hearing panel, or both.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) Source of initiating complaint. An initiating complaint may be initiated by the board, by the public, or by a governmental agency. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.

(2) Form of initiating complaint. Initiating complaints shall:

(a) Be in writing;

(b) Clearly identify the person against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify by signature the person making the initiating complaint; and

(e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) Receipt of initiating complaint. An initiating complaint shall be submitted to the Board Office at the Department of Professional Licensing~~[Office of Occupations and Professions]~~.

(4) Response. A copy of the initiating complaint shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint:

- (a) Within fifteen (15) days of the date on which the initiating complaint was mailed; or
- (b) 1. Within a specified period of time if an extension is requested in writing by the respondent and granted by the board. In order to be granted an extension, the respondent shall provide proof of good cause justifying the extension.

**2. Good cause includes instances such as family emergencies, medical needs, and undue hardship.**

(5) Complaint Committee.

(a) The complaint committee shall consist of three (3)~~no more than two (2)~~ board members appointed by the chair of the board to:

- 1. Review initiating complaints, responses, and investigative reports;
- 2. Participate in informal proceedings to resolve formal complaints; and
- 3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.

(b) The complaint committee may be assisted by the board staff and counsel to the board.

(6) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or the complaint committee shall review the initiating complaint and response. The board, upon recommendation of the complaint committee, shall determine if an investigation is warranted, and if so, the board shall appoint an agent or representative of the board to conduct an investigation of the initiating complaint.

(7) Investigation.

(a) If the board directs that an investigation be completed, the respondent shall be interviewed as a part of that investigation. With the consent of the respondent, a meeting may be scheduled at which time the respondent may respond further to the allegations of the initiating complaint. The board and the respondent shall have the right to be represented at the meeting by legal counsel. The respondent's failure to submit to an interview or cooperate with an investigation shall not deprive the board of the authority to take action pursuant to paragraph (c) of this subsection.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of complaint and investigative report. Based on consideration of the complaint; the investigative report, if any; and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act.

1. If it is determined that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall **provide written notice to**~~notify~~ the person or entity making the initiating complaint and the respondent that no further action shall be taken at the present time.

2.a. If it is determined that there is a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall issue a formal complaint against the licensee or applicant.

b. In the case of a prima facie violation of KRS 319C.020(1) and the respondent is not a licensee or an applicant, the board shall take one (1) or all of the following actions:

- (i) Issue a cease and desist order;
- (ii) File suit to enjoin the violator pursuant to KRS 319C.050(2); or
- (iii) Seek criminal prosecution pursuant to KRS 319C.050(2).]

~~(d) If a board member participates in the review of a matter, either as a member of the complaint committee or as the investigator, that person shall not vote according to the process outlined in paragraph (c) of this subsection. However, that person may be counted as a present member for the purposes of establishing and maintaining a quorum of the board.]~~

Section 3. Formal Complaint. If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

Section 4. Formal Response. (1) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing.

(2) Allegations not properly responded to shall be deemed admitted.

(3)(a) The board may, if there is good cause, permit the late filing of a response.

**(b) Good cause includes instances such as family emergencies, medical needs, and undue hardship.**

Section 5. Composition of the Hearing Panel. Disciplinary actions shall be heard by a hearing officer and:

(1) The full board or a quorum of the board;

(2) A hearing panel consisting of at least one (1) board member appointed by the board; or

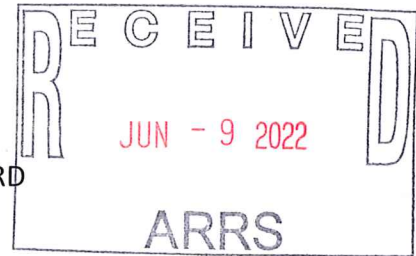
(3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 6. Notification of Complainant. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the person or entity making the initiating complaint of the outcome of the action in writing.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD



Andy Beshear  
Governor

P. O. Box 1360  
Frankfort, Kentucky 40602  
Phone (502) 892-4249  
Fax (502) 564-4818  
<https://aba.ky.gov>

June 9, 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: 201 KAR 43:071, Repeal of 201 KAR 43:070.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 43:071, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached amendment to 201 KAR 43:071.

Sincerely,

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc:

Carrie Nichols

Final, 3-23-2022

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS**

**Kentucky Applied Behavior Analysis Licensing Board**

**201 KAR 43:071. Repeal of 201 KAR 43:070.**

RELATES TO: KRS 319C.060(1)

STATUTORY AUTHORITY: KRS 319C.060(1)

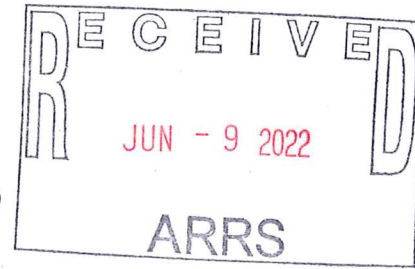
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the Kentucky Applied Behavior Analysis Board to promulgate administrative regulations required to establish qualifications and requirements for supervisees of a behavior analyst. This administrative regulation repeals 201 KAR 43:070 because the necessary substantive provisions of that administrative regulation have been incorporated into 201 KAR 43:050~~[other existing administrative regulation]~~ concerning the same subject matter for improved efficiency and ease of use.

Section 1. 201 KAR 43:070, Supervisees, is hereby repealed.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD



Andy Beshear  
Governor

P. O. Box 1360  
Frankfort, Kentucky 40602  
Phone (502) 892-4249  
Fax (502) 564-4818  
<https://aba.ky.gov>

June 9, 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: 201 KAR 43:080, Renewals.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After further consideration of the issues raised by 201 KAR 43:080, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached agency amendment to 201 KAR 43:080.

Sincerely,

A handwritten signature in blue ink, appearing to read "KRW", with a stylized flourish extending to the right.

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc: Sarah Amburgey



**Agency Amendment**  
**Kentucky Applied Behavior Analysis Licensing Board**

**201 KAR 43:080. Renewals.**

**(AMENDED AFTER COMMENTS version)**

**Page 3**

**Section 5(1)**

**Line 1**

After " Application", ", insert "May 2022".

Delete "October 2021".

---

**Material Incorporated by Reference**

**Form ABA-004:      Application for Renewal or Reinstatement**

**Pages 1-6**

**Bottom of page**

Change edition date to "May 2022".

**Page 1**

**Application Type**

After "Licensed Assistant Behavioral Analyst (LaBA)      Renewal Fee: \$200", insert the following:

☐ Temporary Licensed Behavior Analyst (TLBA) (one time renewal)      Renewal Fee: \$200

☐ Temporary Licensed Assistant Behavior Analyst (TLaBA) (one time renewal)      Renewal Fee: \$100

- If you are requesting to renew a temporary credential, have you requested a renewal previously? ☐ Yes ☐ No
- Pursuant to 201 KAR 43:020 Section 1(2)(a)3, a temporary license may be renewed only once.
- If eligible for the one time renewal of a temporary license, additional documentation is required, see question #2.

**Page 2**

**Application Information**

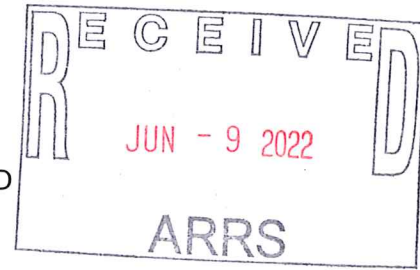
Insert new Question # 2:

2. If applying for a temporary license renewal, please provide a record signed by your supervisor with this renewal application indicating that fieldwork hours towards a BACB credential were being accumulated every month while credentialed as a temporary licensee, or provide documentation showing extenuating circumstances that prevented the accumulation of fieldwork hours, such as illness of the temporary licensee, maternity leave of the temporary licensee, or the temporary licensee's displacement from employment.

Renumber remaining questions.



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD



Andy Beshear  
Governor

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Frankfort, Kentucky 40602  
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June 9, 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: 201 KAR 43:090, Voluntary inactive and retired status.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 43:090, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached amendment to 201 KAR 43:090.

Sincerely,

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

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc: Sarah Amburgey

**Suggested Amendment**  
**Kentucky Applied Behavior Analysis Licensing Board**

**201 KAR 43:090. Voluntary inactive and retired status.**

**Page 1**

**STATUTORY AUTHORITY**

**Line 6**

After "KRS", insert "319C.050(1), 319C.060".

Delete "319C.".

**Page 1**

**NECESSITY, FUNCTION, & CONFORMITY**

**Line 7**

After "KRS", insert the following:

319C.050 and 319C.060 require the Applied Behavior Analysis Licensing Board to promulgate administrative regulations establishing licensure requirements and licensure and renewal fees.

Delete "31C authorizes" through "retired status.".

**Line 9**

After "establishes", insert the following:

requirements relating to

Delete "procedures".

**Page 1**

**Section 2(1)**

**Line 14**

After "completed", delete "an".

**Page 2**

**Section 3(1)**

**Line 6**

After "ABA-004", insert the following:

, incorporated by reference in 201 KAR 43:080,

**Page 2**

**Section 3(4)**

**Line 15**

After "complaint", insert "and".

Delete "and/or".

**Page 3**

**Section 4(2)(a)**

**Line 1**

After "age;", delete "or".

**Page 3**

**Section 5(1)(b)**

**Line 10**

After "(b)", insert "Conditions".

Delete "Condition(s)".

**Page 3**

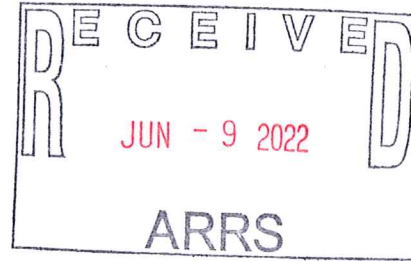
**Section 5(2)(a)**

**Line 14**

After "43:030;", delete "and".



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD



Andy Beshear  
Governor

P. O. Box 1360  
Frankfort, Kentucky 40602  
Phone (502) 892-4249  
Fax (502) 564-4818  
<https://aba.ky.gov>

June 9, 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: 201 KAR 43:100, Telehealth and telepractice.  
Kentucky Applied Behavior Analyst Licensing Board

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 43:100, the Kentucky Applied Behavior Analyst Licensing Board proposes the attached amendment to 201 KAR 43:100.

Sincerely,

Kevin R. Winstead, Commissioner  
Department of Professional Licensing  
(Contact person for this regulation)  
[KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov)  
Office: 502-782-8805

cc: Sarah Amburgey

**Suggested Amendment**  
**Kentucky Applied Behavior Analysis Licensing Board**

**201 KAR 43:100. Telehealth and telepractice.**

**Page 1**

**NECESSITY, FUNCTION, & CONFORMITY**

**Line 7**

After "requires the", insert the following:  
Applied Behavior Analysis Licensing Board

Delete "board".

**Page 1**

**Section 1(1)(c)**

**Line 19**

After "accessible", insert "if there is".  
Delete "in the event of".

**Page 3**

**Section 2(1)**

**Line 9**

After "provided shall be", insert the following:  
required to be

**Page 3**

**Section 2(2)**

**Line 12**

After "Kentucky shall be", insert the following:  
required to be

**Line 13**

After "other states", insert "if".  
Delete "where the".  
After "the client", insert "in another state".

**Page 3**

**Section 3(1)**

**Line 16**

After "advertising;", insert "or".  
Delete "and".

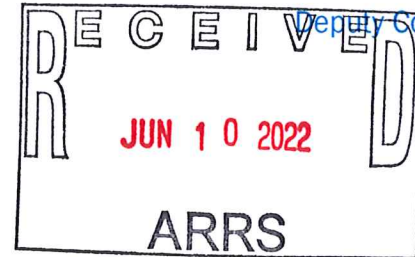


## KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

**Rich Storm**  
Commissioner

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

**Brian Clark**  
Deputy Commissioner



June 9, 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 4:001**. Selection of Fish and Wildlife Resources Commission nominees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 4:001, Selection of Fish and Wildlife Resources Commission nominees, proposes the attached amendment to 301 KAR 4:001.

Sincerely,

A handwritten signature in cursive script that reads "Jenny Gilbert".

Jenny Gilbert  
Commissioner's Office  
Kentucky Department of Fish and Wildlife Resources  
1 Sportsmen's Lane  
Frankfort, KY 40601

## SUGGESTED SUBSTITUTE

Final Version: 5/18/2022 8:25 AM

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

#### 301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

RELATES TO: KRS 150.022, 150.023

STATUTORY AUTHORITY: KRS 150.022, 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department of Fish and Wildlife Resources to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. KRS 150.022 requires that a meeting of sportsmen in a commission[wildlife] district be held to nominate five (5) candidates for membership on the Kentucky Fish and Wildlife Commission. These five (5) candidate names shall then be submitted to the Governor for his or her selection. This administrative regulation establishes the procedures for nominating the ~~[five (5)]~~ candidates for commission membership[member].

Section 1. Scheduling of Meetings and Notification of the Public. (1) At least thirty (30) days prior to the expiration of the term of a member of the Fish and Wildlife Resources Commission, the commissioner shall select the time and place for a public meeting to select a list of five (5) nominees to submit to the governor. The meeting shall be held within a county of the commission[wildlife] district that shall be[is] centrally located and easily accessible to the majority of the sportsmen of that district.

(2) The location of the meeting shall be in a public building with facilities adequate to accommodate the expected turnout. If more participants attend than the facilities can reasonably accommodate, the commissioner (or his or her designee) may order a change in location, if a suitable site is readily available, or may take whatever steps he or she deems necessary to ensure[insure] the orderly and safe conduct of the meeting.

(3) Each meeting shall be called to order at 7:30 p.m. local prevailing time. If a change of location is called as established[provided for] in subsection (2) of this section, the commissioner shall delay the beginning of the meeting for at least one (1) hour. The commissioner [He] may also delay the beginning of the meeting for any other reason [he or she deems] necessary, but [under no circumstances may] the commissioner shall not convene the meeting earlier than the stated starting time.

(4) The facilities where the meeting is held shall be made available to the public by at least 6 p.m. local prevailing time.

(5) The commissioner shall cause to be published in each newspaper in the district a legal notice announcing the purpose, time, and place of the meeting. The commissioner [He] shall also prepare and distribute news releases announcing the meeting to all major mass media outlets in the district. In addition, the commissioner shall prepare and distribute posters about the meeting for posting at each county courthouse in the district and at those places where sportsmen are known to gather or frequent.



Section 2. Conduct of the Meeting. (1) The commissioner, or an official of the department designated by the commissioner, shall serve as **chair[chairman]** of the meeting~~[,]~~ and **[this chairman]** shall be the final arbiter of any disputes or procedural questions **that[which-may]** arise during the course of the meeting.

(2) After calling the meeting to order, the **chair[chairman]** shall explain the purpose of the meeting and the rules under which it **shall[will]** be conducted.

(3) The **chair[chairman]** shall then open the floor to nominations.

(4) As each name is placed in nomination, the nominee shall sign an affidavit attesting to his or her residency in the district.

(5) The **chair[chairman]** shall not close the nominations until he or she has called three (3) times for additional nominations and has received none. Motions to close the nominations shall not be recognized while there are still those waiting to place a name in nomination.

(6) **If[Should]** no more than five (5) names **are[be]** placed in nomination, the **chair[chairman]** shall declare that the purpose of the meeting has been fulfilled and shall adjourn the meeting.

Section 3. Balloting to Select Five (5) Nominees. (1) **If[Should]** more than five (5) names **are[be]** placed in nomination, the list of nominees shall be narrowed to five (5) names by secret ballots cast by the qualified sportsmen in attendance.

(2) The **chair[chairman]** shall direct each nominee to appoint at least one (1) individual to serve on a balloting committee. The **chair[chairman]** shall determine the number needed for this committee, and each nominee shall be allowed an equal number of committee members.

(3) Members of the balloting committee shall distribute ballots to the participants in the meeting. Each ballot shall consist of two (2) parts: an affidavit by which each participant shall attest to his or her legal right to participate in the selection process as **established[stipulated]** in KRS 150.022 and a ballot with which the participant may vote for one (1) nominee.

(4) Each eligible participant shall complete the information requested on the affidavit and ~~[then-all-shall]~~ swear an oath attesting to the veracity of that information.

(5) Each eligible participant shall then vote for the nominee of his or her choice on the ballot provided. Ballot boxes, overseen by personnel of the department, **shall[will]** be available at designated exits. Each eligible participant shall hand the department employee his or her signed affidavit and shall place his or her ballot in the ballot box.

(6) After depositing his or her ballot, each participant shall immediately leave the meeting room and shall not return until all ballots are cast and the ballot boxes are closed.

(7) The ballot boxes shall be opened in the presence of the balloting committee, who shall count the ballots in the presence of the **chair[chairman]** or his or her **designee[designee(s)]**.

~~[(8) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.]~~

~~(8)~~(9) Each member of the balloting committee shall sign an affidavit attesting to the ballot count and to the fact that, to the best of his or her knowledge, the process of distributing and counting the ballots was conducted in a fair and impartial manner. The **chair[chairman]** shall obtain a written statement from any committee member who feels that irregularities did occur during the course of the meeting.

(9) Immediately after the ballots are counted and the results certified by the balloting committee, the **chair[chairman]** shall announce the full results of the balloting and shall then adjourn the meeting.

Section 4. Resolving Disputes. (1) In the event of a tie vote for fifth and sixth place, the **chair[chairman]** shall settle the issue by the toss of a coin. Tie votes **that[which]** do not affect the outcome of the selection of the five (5) names **shall[will]** not be resolved.

(2) Any other disputes, whether over vote counts or over procedural matters, shall be arbitrated immediately by the **chair[chairman]**, whose decision shall be binding unless subsequently overturned by the commission or the courts~~[as stipulated below]~~.

(3) Any individual who is aggrieved by a decision of the **chair[chairman]** or by any other action at the meeting may appeal in writing to the Fish and Wildlife Resources Commission. **An appeal shall be made** within ten (10) calendar days after the meeting.

(4) Upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(5) Any party aggrieved by a final order of the commission may appeal to Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 5. Submission of the List of Nominees to the Governor. (1) The commissioner shall, within five (5) working days after the meeting, submit to the governor the names of the five (5) nominees chosen at the meeting.

(2) If balloting was used to limit the list to five (5) names, the commissioner shall not submit any ballot totals to the governor.

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

## KENTUCKY STATE POLICE

919 Versailles Road  
Frankfort, Kentucky 40601  
[www.kentuckystatepolice.org](http://www.kentuckystatepolice.org)

Kerry Harvey  
Secretary

Col. Phillip Burnett, Jr.  
Commissioner



June 10, 2022

Emily Caudill  
Legislative Research Commission  
029, Capitol Annex  
702 Capital Avenue  
Frankfort KY 40601

Re: **502 KAR 30:010** Definitions for 502 KAR Chapter 30  
502 KAR 30:020 Arrest and disposition reporting procedure  
502 KAR 30:030 Audit of Criminal History Record Information System  
502 KAR 30:050 Security of centralized criminal history record information  
502 KAR 30:060 Dissemination of criminal history record information

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060.

Sincerely,

A handwritten signature in black ink that reads "Angela Parker".

Angela Parker  
Staff Assistant

enclosures

Final: 5/20/22  
SUGGESTED SUBSTITUTE

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Kentucky State Police

502 KAR 30:010. Definitions for 502 KAR Chapter 30~~[Criminal History Record Information System]~~.

RELATES TO: KRS 15A.160, 17.140

STATUTORY AUTHORITY: KRS 15A.160, 17.140(1), 17.150(6) [47.080]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.140(1) requires a centralized criminal history record information system to be established in the Justice and Public Safety Cabinet under the direction, control, and supervision of the commissioner of the Department of Kentucky State Police. KRS 15A.160 authorizes~~[provides and]~~ [47.080 provide]~~[that]~~ the secretary of the Justice and Public Safety Cabinet to~~[may]~~ adopt [such] administrative regulations to~~[as]~~~~[are]~~~~[necessary to properly]~~ administer the cabinet. KRS 17.150(6) requires the secretary of the Justice and Public Safety Cabinet to adopt administrative regulations necessary to carry out the provisions of the centralized criminal history record information system and insure the accuracy of criminal history record information being reported to the system.~~[KRS 17.140 requires the Justice and Public Safety Cabinet to establish]~~~~[establishes]~~~~[the centralized criminal history record information system, under the direction, control and supervision of the Commissioner of the Department of the Kentucky State Police.]~~ This administrative regulation establishes the definitions to be used in the administration of the centralized criminal history record information system.

Section 1. Definitions. ~~[As employed in 502 KAR 30:010 through 502 KAR 30:070, unless the context requires otherwise:]~~

(1) "Administration of criminal justice":

(a) Means performance of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders; and

(b) [The administration of criminal justice] Includes criminal identification activities and dissemination of CHRI. ["Criminal History Record Information System" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.]

(2) "Criminal history record information~~[,]~~" or "CHRI"~~[,]~~ ~~[hereinafter referred to as CHRI,]~~ means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including~~[, but not limited to,]~~ sentencing, correctional supervision, and release. ~~[CHRI shall not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system, or the evaluative information, such as statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. CHRI shall be limited to information concerning persons who have attained the age of eighteen (18) and shall not include any information concerning criminal offenses of acts of delinquency committed by any person before that person has attained the age of eighteen (18); provided, however, that if a person under the age of eighteen (18) is adjudicated as an adult and found guilty in a circuit court, information relating to such criminal offense shall~~

be deemed CHRI. CHRI shall not include any information concerning any offense which is not punishable by incarceration.]

(3) "Criminal History Record Information System" means a system including equipment, facilities, procedures, agreements, and ~~organization~~**[organizations]** thereof, for the collection, processing, preservation, or dissemination of criminal history record information. ["Criminal justice agency" means:

(a) Courts for purposes agreed upon between the secretary and Chief Justice;

(b) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer, warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution of the retarded; state police, State Fire Marshal, Board of Alcoholic Beverage Control; Justice Cabinet; Cabinet for Human Resources; Transportation Cabinet; Corrections Cabinet; and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents.]

(4) "Criminal justice agency" means:

(a) The persons and entities listed in KRS 17.150(1);

(b) The Court of Justice and the Administrative Office of the Courts to the extent and for purposes agreed upon between the secretary and Chief Justice; or

~~(c)(b)~~ A government agency or any subunit [that]thereof that[which] performs the administration of criminal justice pursuant to a statute or executive order, and[which] allocates a substantial part of its annual budget to the administration of criminal justice[; or

~~(c) Any other agency as agreed upon by the secretary.~~

~~(d) The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer, warden of a prison, mental hospital or institution; state police, State Fire Marshal; Department of Alcoholic Beverage Control; Justice and Public Safety Cabinet; Department of Corrections; and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents].~~ ["Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of CHRI.]

(5) "Disposition":

(a) Means information disclosing that criminal proceedings have been;

1. Concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, and also disclosing the nature of the termination of proceedings; or

2.[information disclosing that proceedings have been] Indefinitely postponed and also disclosing the reason for ~~the[such]~~ postponement; and

(b) Includes[.Dispositions shall include], but not be limited to: Acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetency, guilty plea, nolle prosequi, no paper, nolo contendere plea, conviction~~[convicted]~~, youthful offender determination, death~~[deceased]~~, deferred disposition, dismissed-civil action,

found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled or released from correctional supervision, or any other disposition deemed appropriate by the court.

(6) ~~"NLETS" means the National Law Enforcement Telecommunication System.~~

~~[(7)]~~ "Nonconviction data" means ~~[arrest]~~ information obtained ~~[without disposition if an interval of one (1) year has elapsed]~~ from the date of arrest ~~to [and no active prosecution of]~~ the date of disposition, in matters that do not result in a conviction, including ~~[charges is pending; all]~~ information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, including [as well as] all acquittals and [all] dismissals.

~~[(7)] "NLETS" means the National Law Enforcement Telecommunication System.]~~ ~~["Uniform offense report", hereinafter "UOR-1," means the report form developed pursuant to KRS 15A.190 and 17.150 on which every felony case, every misdemeanor case of theft by unlawful taking or disposition, every case of unauthorized use of a motor vehicle, and every other instance where there is an allegation that a criminal offense has been committed against a victim's person or property and a uniform citation will not suffice, shall be recorded and reported by forwarding a completed UOR-1 form to the Kentucky State Police, Records Section, hereinafter Records.~~

~~(8) "Court disposition uniform offense report," hereinafter "UOR-3," means that report form developed pursuant to KRS 15A.190 and 17.150 on which either preliminary or final court dispositions on all criminal offenses involving arrest(s) other than those reported on a uniform citation shall be recorded with final dispositions on all cases reported by forwarding a completed UOR-3 to Records.~~

~~(9) "NLETS" means the National Law Enforcement Telecommunication System.]~~

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email [brenn.combs@ky.gov](mailto:brenn.combs@ky.gov).



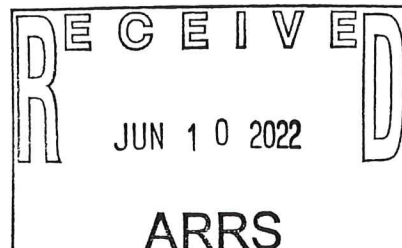
Andy Beshear  
Governor

## KENTUCKY STATE POLICE

919 Versailles Road  
Frankfort, Kentucky 40601  
[www.kentuckystatepolice.org](http://www.kentuckystatepolice.org)

Kerry Harvey  
Secretary

Col. Phillip Burnett, Jr.  
Commissioner



June 10, 2022


Emily Caudill  
Legislative Research Commission  
029, Capitol Annex  
702 Capital Avenue  
Frankfort KY 40601

Re: 502 KAR 30:010 Definitions for 502 KAR Chapter 30  
502 KAR 30:020 Arrest and disposition reporting procedure  
502 KAR 30:030 Audit of Criminal History Record Information System  
502 KAR 30:050 Security of centralized criminal history record information  
502 KAR 30:060 Dissemination of criminal history record information

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060.

Sincerely,

  
Angela Parker  
Staff Assistant

enclosures

Final: 5/20/22  
SUGGESTED SUBSTITUTE

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Kentucky State Police

502 KAR 30:020. Arrest and disposition reporting procedure.

RELATES TO: KRS 17.110, 17.115, **17.140**

STATUTORY AUTHORITY: 15A.160, ~~[17.080,]~~ 17.150(6)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 17.140(1) requires a centralized criminal history record information system to be established in the Justice and Public Safety Cabinet under the direction, control, and supervision of the commissioner of the Department of Kentucky State Police.** KRS 17.110(1) ~~requires~~**mandates that** all city and county law enforcement agencies~~[shall]~~ submit to the Justice and Public Safety Cabinet, Department of **Kentucky** State Police, photographs, **a set of fingerprints**, and a description report of the offense on all persons arrested~~[on a felony charge]~~. KRS 17.115(2) requires persons in charge of any penal or correctional institution to provide the cabinet with fingerprints and descriptions on all persons committed to their custody or detained by them on cases where fingerprints and descriptions are taken, together with a report of the disposition. **KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet.** KRS 17.150(6) ~~requires~~**authorizes** the secretary of ~~the cabinet~~**Justice** to adopt administrative regulations~~[that are]~~ necessary to **carry out the provisions of the centralized criminal history record information system and** insure the accuracy of [said] criminal history record information **being reported to the system**. This administrative regulation establishes arrest and disposition reporting procedures.

Section 1. Offense Reporting Procedure. ~~[Within thirty (30) days of the arrest for an offense covered by KRS 17.110, two (2) sets of fingerprint cards, a mug shot or the negative of the mug shot, and a general description report (UOR-1) of the offense shall submitted to Records. Further,]~~ Law enforcement and criminal justice agencies shall cooperate with **the Criminal Identification and Records Branch** by complying with **the use of** a "unique numbering system" to allow court disposition tracing. The "unique numbering system" shall be accomplished by the issuance of a Uniform Citation with every ~~[felony]~~ arrest as it relates to **this administrative regulation**~~[502 KAR 30:020]~~ subject to an agreement with the Chief Justice of the Supreme Court of Kentucky as set out in Section 2(2) of this administrative regulation.

Section 2. Disposition Reporting Procedures.

(1) Dispositions shall be submitted from each city and county law enforcement agency to **the Criminal Identification and Records Branch**~~;~~~~[in the form of the Uniform Offense Report (UOR-3),]~~~~[or any subsequent disposition reporting instrument required by the Department of Kentucky State Police].~~

(2) Upon suitable written agreement with the Chief Justice of the Kentucky Supreme Court and the secretary of the Justice and Public Safety Cabinet, a unique tracking number **shall**~~[will]~~ be assigned to each offender at the time of arrest. This unique number **shall**~~[will]~~ be utilized throughout the movement of the offender through the criminal justice system, thereby enabling the Administrative Office of the Courts to provide a system compatible ~~format~~~~[computer tape]~~ to **the Criminal Identification and Records Branch** for automatic update of court dispositions in the CHRI files.



CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email [brenn.combs@ky.gov](mailto:brenn.combs@ky.gov).



Andy Beshear  
Governor

## KENTUCKY STATE POLICE

919 Versailles Road  
Frankfort, Kentucky 40601  
[www.kentuckystatepolice.org](http://www.kentuckystatepolice.org)

Kerry Harvey  
Secretary

Col. Phillip Burnett, Jr.  
Commissioner



June 10, 2022

Emily Caudill  
Legislative Research Commission  
029, Capitol Annex  
702 Capital Avenue  
Frankfort KY 40601

Re: 502 KAR 30:010 Definitions for 502 KAR Chapter 30  
502 KAR 30:020 Arrest and disposition reporting procedure  
502 KAR 30:030 Audit of Criminal History Record Information System  
502 KAR 30:050 Security of centralized criminal history record information  
502 KAR 30:060 Dissemination of criminal history record information

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060.

Sincerely,

  
Angela Parker  
Staff Assistant

enclosures

Final: 5/20/22  
SUGGESTED SUBSTITUTE

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Kentucky State Police

502 KAR 30:030. Audit of Criminal History Record Information System.

RELATES TO: KRS 17.140, 17.150, 28 C.F.R. 20.21(e)

STATUTORY AUTHORITY: KRS 15A.160,~~[17.080,]~~ 17.150~~(6)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.140~~(1)~~ requires~~[establishes]~~ a centralized criminal history record information system to be established in the Justice and Public Safety Cabinet under the direction, control, and supervision of the commissioner of the Department of Kentucky State Police. KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to adopt administrative regulations to administer the cabinet. KRS 17.150~~(6)~~ requires the secretary of the Justice and Public Safety Cabinet to~~[provides that the Secretary of Justice shall]~~ adopt administrative regulations~~[that are]~~ necessary to carry out the provisions of the centralized criminal history record information system and insure the accuracy of criminal history record information being reported to the~~[centralized criminal history record information]~~ system. This administrative regulation establishes the requirements for audits of the centralized criminal history record information system and law enforcement and criminal justice agencies that~~[which]~~ submit or receive criminal history record information to or from the centralized criminal history record information system.

Section 1. The Criminal Identification and Records Branch~~[Records Section]~~ shall annually conduct an in-house audit of a random representative sample of hard copy data contained in the centralized Criminal History Record Information System. The scope of the audit shall include~~[but is not limited to]~~:

- (1) Adherence to federal and state administrative regulations;
- (2) Completeness and accuracy of CHRI;
- (3) CHRI dissemination procedures;
- (4) Security; and
- (5) Compliance with mandated access and review procedures. The~~[Said]~~ audit shall be conducted in accordance with guidelines set out in 28 C.F.R.~~[;]~~ 20.21(e)~~[utilizing the standard audit instrument as prescribed by Records]~~. A report of the audit findings shall be submitted by the administrative head of the Criminal Identification and Records Branch to the commissioner, Department of Kentucky State Police and the secretary of the Justice and Public Safety Cabinet on or before January 10 of each year.

Section 2. The Criminal Identification and Records Branch~~[Records]~~ shall conduct, on an annual basis, audits of at least four (4) criminal justice agencies, submitting or receiving data from or to the centralized Criminal History Record Information System. The criminal justice~~[Said]~~ agencies shall be picked at random. The~~[Such]~~ audits shall be conducted in accordance with guidelines set out in 28 C.F.R.~~[;]~~ 20.21(e), utilizing the standard audit instrument. A report of the audit findings shall be submitted to the administrative head of the respective criminal justice agency within thirty (30) working days after the audit has been completed. The scope of the audit shall include~~[but not be limited to]~~:

- (1) Adherence to federal and state administrative regulations;
- (2) Completeness and accuracy of CHRI;
- (3) CHRI dissemination procedures;
- (4) Security; and

(5) Compliance with mandated access and review procedures.

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email [brenn.combs@ky.gov](mailto:brenn.combs@ky.gov).



Andy Beshear  
Governor

## KENTUCKY STATE POLICE

919 Versailles Road  
Frankfort, Kentucky 40601  
[www.kentuckystatepolice.org](http://www.kentuckystatepolice.org)

Kerry Harvey  
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June 10, 2022


Emily Caudill  
Legislative Research Commission  
029, Capitol Annex  
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Frankfort KY 40601

Re: 502 KAR 30:010 Definitions for 502 KAR Chapter 30  
502 KAR 30:020 Arrest and disposition reporting procedure  
502 KAR 30:030 Audit of Criminal History Record Information System  
502 KAR 30:050 Security of centralized criminal history record information  
502 KAR 30:060 Dissemination of criminal history record information

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060.

Sincerely,

  
Angela Parker  
Staff Assistant

enclosures

Final: 5/20/22  
**SUGGESTED SUBSTITUTE**

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Kentucky State Police**

**502 KAR 30:050. Security of centralized criminal history record information.**

RELATES TO: KRS 17.140, **17.150**

STATUTORY AUTHORITY: KRS **15A.160**~~[15A.060]~~, ~~[17.080]~~ **17.140, 17.150(6)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS~~[17.080]~~ authorizes the Secretary of Justice to institute rules and administrative regulations and direct proceedings and actions for administration of laws and functions that are invested in the Justice Cabinet. KRS] 17.140 requires a centralized criminal history record information system to be established[establishes,] in the Justice and Public Safety Cabinet under the direction, control, and supervision of the commissioner of the Department of Kentucky State Police[, a centralized criminal history record information system. KRS 17.140 defines a centralized criminal history record information system as the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation, or dissemination of criminal history records maintained by the Justice Cabinet]. KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet. KRS 17.150(6) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement the criminal history record information system. This administrative regulation sets specific security standards to preserve the CHRI in an acceptable state.

Section 1. Procedures shall be implemented in the centralized criminal history record information system to insure that access to criminal history record information is restricted to authorized persons. The ability to access, modify, change, update, purge, or destroy~~[such]~~ information shall be limited to authorized criminal justice personnel, or other authorized persons who provide operational support, such as programming or maintenance. Technologically advanced software or~~[and/or]~~ hardware designs shall be implemented to prevent unauthorized access to criminal history record information.

Section 2. Procedures shall be implemented in the centralized criminal history information system to determine what persons have authority to enter in areas where criminal history information is stored and implement access control measures to insure entry is limited to specific areas where authorization is valid. Further, access control measures shall be implemented to insure unauthorized persons are totally denied access to areas where criminal history record information is stored.~~[Said]~~ Access constraints shall include~~[, but not be limited to,]~~ the system facilities, systems operating environments, data file contents, whether while in use or when stored in media library, and system documentation.

Section 3. Procedures shall be implemented in the centralized criminal history information system to insure that computer operations that[which] support the criminal history record information data base, whether dedicated or shared, operate in accordance with procedures developed or approved by the Justice **and Public Safety** Cabinet, and further insure that:

(1) CHRI is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by unauthorized persons.

(2) Operational programs shall be/are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than designated terminals within the Criminal Identification and Records Branch.

(3) The destruction, partial deletion, total deletion, or record correction shall be/is limited to designated terminals under the direct control of Criminal Identification and Records Branch[records].

(4) Operational programs shall be/are used to detect and store for the output of designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program or file.

(5) The programs specified in subsections (2) and (4) of this section shall be/are known only to criminal justice agency employees responsible for criminal history record information system control or individuals in agencies pursuant to a specific written agreement with the Justice and Public Safety Cabinet to provide the[such] programs, and the operational programs shall be/program(s) are continuously kept under maximum security conditions.

(6) Procedures shall be/are instituted to assure that any individual or agency authorized direct access is responsible for:

(a) The physical security of criminal history record information under its control or in its custody; and

(b) The protections of [such] information from unauthorized access, disclosure, or dissemination.

Section 4. Procedures shall be implemented in the centralized criminal history record information system to protect CHRI from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

Section 5. Emergency Plans Required. Written plans and instructions dealing with emergencies described in Section 4 of this administrative regulation shall be developed in manual form and cover all foreseeable incidents ranging from minor accidents to major disasters causing the destruction of computer facilities, entire data bases, and[and/or] CHRI contained in manual files. Employees of the centralized criminal history record information system shall be trained in procedures and specifically assigned responsibilities in case of an emergency. Plans and instructions shall include[should be inclusive of, but not limited to,] emergency shutdown and evacuation procedures, a disaster recovery plan to restart critical system functions, procedures for backup files for critical data such as fingerprint cards, and duplicate system designs. The commissioner of the Department of Kentucky State Police shall make available needed personnel to reinstitute the centralized criminal history record information system as soon as feasible after accident or disaster.

~~[Section 6. The records commander shall institute procedures for the screening, supervising, and disciplining of agency personnel in order to minimize the risk of compromising internal security. A background investigation of all prospective employees for records shall be conducted. The scope of the background investigation shall include][be inclusive of, but not limited to]:~~

~~(1) Verification of all items as listed on the employment application;~~

~~(2) Moral character;~~

~~(3) Financial history;~~

~~(4) Individual as well as spouse arrest history inclusive of juvenile files; and~~

~~(5) Agency personnel records. All records employees shall][will] [agree to and sign nondisclosure statements and notice of security breach forms. The records commander shall so notify the Commissioner of the State Police as to any violation of security policy. A violation of said security policy shall include][, but not be limited to,] [the intentional~~

~~violation or wanton disregard of the~~[any or all] ~~[security policies with regard to criminal history record information as set forth by section policy or]~~[.] ~~[the compromising of an employee's security by committing, facilitating, or being a party to a crime. Upon notification by the records commander of a security compromise, the commissioner shall take immediate appropriate administrative action.]~~

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email [brenn.combs@ky.gov](mailto:brenn.combs@ky.gov).





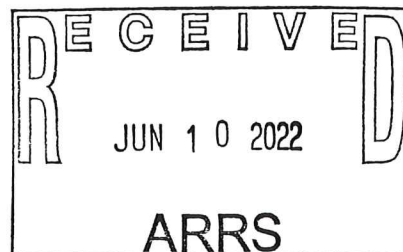
Andy Beshear  
Governor

## KENTUCKY STATE POLICE

919 Versailles Road  
Frankfort, Kentucky 40601  
[www.kentuckystatepolice.org](http://www.kentuckystatepolice.org)

Kerry Harvey  
Secretary

Col. Phillip Burnett, Jr.  
Commissioner



June 10, 2022

Emily Caudill  
Legislative Research Commission  
029, Capitol Annex  
702 Capital Avenue  
Frankfort KY 40601

Re: 502 KAR 30:010 Definitions for 502 KAR Chapter 30  
502 KAR 30:020 Arrest and disposition reporting procedure  
502 KAR 30:030 Audit of Criminal History Record Information System  
502 KAR 30:050 Security of centralized criminal history record information  
502 KAR 30:060 Dissemination of criminal history record information

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 30:010, 502 KAR 30:020, 502 KAR 30:030, 502 KAR 30:050, and 502 KAR 30:060.

Sincerely,

  
Angela Parker  
Staff Assistant

enclosures

Final: 5/20/22  
**SUGGESTED SUBSTITUTE**

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of State Police**

**502 KAR 30:060. Dissemination of criminal history record information.**

RELATES TO: KRS 11.160(1)(e), 11.160(2)(e), 15.540, 17.115, 17.140, 17.147, 17.151, 17.152[17.152], 17.160, 17.167(4), [154.650,] 237.110(7), 311A.100

STATUTORY AUTHORITY: KRS 15.382, 15A.150, [15.382,] 17.150(6), 17.160(3), 17.165, 17.167, 156.483, 160.151, 160.380, 161.148, 199.462(5)[(4)], 216.793, 238.525, 281A.040, 281A.300, 324.045, 329.030, 329A.025, 351.090, 351.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.115 requires[authorizes][provides that] the Justice and Public Safety Cabinet to[shall] cooperate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification. KRS 17.147(6) requires[provides that] the Department of Kentucky State Police to[shall] supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs. [Further,]KRS 17.150(6) requires the Secretary of the Justice and Public Safety Cabinet to adopt administrative regulations to carry out the provisions of the criminal history record information system. This administrative regulation establishes the conditions required for[under which] the dissemination of data from the criminal history record information system[may disseminate data].

Section 1. Dissemination of Criminal History Record Information (CHRI). Use of CHRI disseminated to noncriminal justice agencies shall be limited[to the purpose for which it was given]. An agency or individual shall not confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information itself. [Dissemination of] CHRI shall [be regulated by the specific category of criminal history record information. Those categories shall]include:

(1) Nonconviction data. Dissemination of nonconviction data shall not include[with the exception of the computerized Kentucky State Police] files available for access[accessed] by an open records[record] request.[directly to] The dissemination[Department] of nonconviction data shall[State Police,] be limited, [whether]directly or through an intermediary, to:

(a) Criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment;[.]

(b) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court order, as determined by the General Counsel of the[.] Justice and Public Safety Cabinet;[.]

(c) Individuals and agencies pursuant to a specific agreement[as outlined in 502 KAR 30:040] with the Department of Kentucky State Police, to provide services required for the administration of criminal justice pursuant to that agreement; and[.]

(d) Individuals and agencies for the express purpose of evaluation research, or statistical activities pursuant to an agreement with the Criminal Identification and Records Branch of the Kentucky State Police[(Records)]. The agreement shall:

1. Limit the use of data to evaluation, research, or statistical purposes;
2. Insure the confidentiality and security of the data consistent with these administrative regulations; and
3. Provide sanctions for violations of the agreement.

(2) Conviction data. Dissemination of conviction data shall be limited as follows:

(a) Juvenile records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall not be released to the public without court order. This restriction shall not apply to juveniles~~[who were]~~ tried as an adult.

(b) Criminal history record checks for employment or volunteer purposes.

1. CHRI~~[Criminal history record information]~~ ~~concerning[of]~~ a conviction ~~[nature]~~ may be disseminated to potential employers of persons. To obtain CHRI~~[criminal history record information]~~ regarding convictions, a prospective employee or volunteer through the potential employer shall complete the following relevant form ~~that[, located on the Kentucky State Police Web site,]~~~~[prescribed by this administrative regulation,]~~~~[which]~~ is appropriate for the request:

a. Request for Conviction Records – Employment/Professional License;

b. Request for Conviction Records/Minors;

c. Request for Conviction Records/Long-Term Care Facility;

d. Request for Conviction Records/Child Care;

e. Request for Conviction Records – Fire Department, Ambulance Service, Rescue

Squad;

f. Request for Conviction Records – Commercial Guide License; or

g. Request for Criminal History Record Information - Secondary Metal Recycler Certificate.

2. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the potential employer, or other entity requesting the CHRI, signature of the prospective employee or volunteer, and a witness signature. The form shall also include sex, race, date of birth, Social Security number, and previous addresses of the prospective employee or volunteer.

3. The prospective employer shall be responsible for the completion of the appropriate form and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer, with the necessary release form.

(c) Nonemployment criminal records checks.

1. CHRI ~~regarding[Criminal history record information of]~~ a conviction~~[nature]~~ may be disseminated to individuals, entities, or organizations in regard to potential adoptive or foster home providers, an adult household member of a potential adoptive or foster home provider, or for emigration or housing. To obtain CHRI~~[criminal history record information]~~ regarding convictions, an individual shall complete the following relevant form ~~that[, located on the Kentucky State Police Web site,]~~~~[prescribed by this administrative regulation,]~~~~[which]~~ is appropriate for the request:

a. Request for Conviction Records/Adoptions and Foster Homes;

b. Request for Conviction Records/Emigration; or

c. Request for Conviction Records/Housing.

2. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the recipient individual, entity or organization, signature of the person about whom the CHRI is being requested ~~[individual requester]~~, and a witness signature. The form shall also include sex, race, date of birth, Social Security number and previous addresses of the person about whom the CHRI is being requested ~~[individual applicant]~~. [The applicable forms shall be as follows:

1. Request for KSP Conviction Records/Housing, 10/03 edition; and

2. Request for Conviction Records/Emigration, 10/03 edition.]

3. The applicant shall be responsible for the completion of the form and shall submit a check or money order in the amount of twenty (20) dollars, made payable to the Kentucky State Treasurer. [

~~(d) In regard to employment criminal records checks, the prospective employer shall be responsible for the completion of the appropriate form as indicated in paragraph (b) of this~~

subsection and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer.

(e) If the criminal records check is nonemployment in nature, the applicant shall be responsible for the completion of the form as listed in paragraph (c) of this subsection and shall submit a check or money order in the amount of twenty (20) dollars, made payable to the Kentucky State Treasurer.]

(d)[(f)] Pursuant to KRS 17.167(4), employees and members of fire departments, ambulance services, and rescue squads shall be exempted from a[the] fee[required in this section].

(e)[(g)] The fee in this section shall not apply to applications for a license, or a renewal of a license, to carry a concealed deadly weapon. The fees for this license are provided in KRS 237.110(7).

Section 2. Electronic Log. ~~(1)[As outlined in 502 KAR 30:040,]~~ The computerized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHRI from the computerized criminal history record information system shall electronically log all disseminations of CHRI.

(2) The log shall contain [at least] the following information:

(a) The name of the agency and individual receiving CHRI;[f,]

(b) The date of release;[f,]

(c) The individual to whom the CHRI relates;[f,]

(d) The items of CHRI released;[f,] and

(e)[f,] In the case of secondary dissemination, the agency which provided the CHRI.

(3) Transaction logs shall be maintained in a records subject accessible state for at least twelve (12) months from the date of CHRI dissemination.

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

(a) "Request for Conviction Records – Employment/Professional License", 2008;

(b) "Request for Conviction Records/Minors", 2008;

(c) "Request for Conviction Records/Long-Term Care Facility", 2008;

(d) "Request for Conviction Records/Child Care", 2008;

(e) "Request for Conviction Records – Fire Department, Ambulance Service, Rescue Squad", 2003;

(f) "Request for Conviction Records – Commercial Guide License", 2008;

(g) "Request for Criminal History Record Information - Secondary Metal Recycler Certificate", 2012;

(h) "Request for Conviction Records/Adoptions and Foster Homes", 2009;

(i) "Request for Conviction Records/Emigration", 2008; and

(j) "Request for Conviction Records/Housing", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Police, Criminal Identification and Records Branch, 1266 Louisville Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. until 4:30 p.m. This material is also on the agency Web site at <http://kentuckystatepolice.org/forms/background-check-forms/>.

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

(a) "Request for Conviction Records – Employment/Professional License", 10/08 edition;

(b) "Request for Conviction Records/Child Care", 9/08 edition;

(c) "Request for Conviction Records/Adoptions and Foster Homes", 9/08 edition;

(d) "Request for Conviction Records/Lottery", 10/08 edition;

(e) "Request for Conviction Records/Long-Term Care Facility", 10/08 edition;

~~(f) "Request for Conviction Records/Kentucky Department of Mines and Minerals", 10/08 edition;~~

~~(g) "Request for Conviction Records/Fire Department, Ambulance Service and Rescue Squad", 10/03 edition;~~

~~(h) "Request for Conviction Records/Minors", 10/08 edition;~~

~~(i) "Request for Conviction Records/Nonpublic Schools", 9/08 edition;~~

~~(j) "Request for Conviction Records/Department of Education", 9/08 edition;~~

~~(k) "Request for Conviction Records/Legislative Research Commission", 10/08 edition;~~

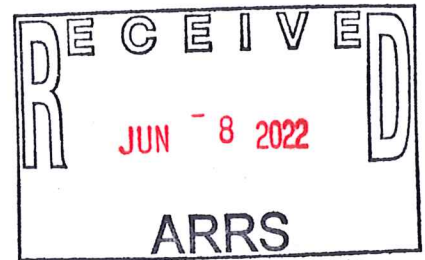
~~(l) "Request for Conviction Records/Housing", 10/08 edition;~~

~~(m) "Request for Conviction Records/Emigration", 9/08 edition; and~~

~~(n) "Request for Conviction Records/Public Schools", 10/08 edition.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Post 12 at 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-2221, Monday through Friday, 8 a.m. until 4:30 p.m.]~~

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email [brenn.combs@ky.gov](mailto:brenn.combs@ky.gov).



EDUCATION and WORKFORCE DEVELOPMENT CABINET  
Department of Workforce Investment

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

Office of Vocational Rehabilitation  
500 Mero Street, 4<sup>th</sup> Floor  
Frankfort, KY 40601  
502-564-4440

**Mary Pat Regan**  
Deputy Secretary

**Kish Cumi Price, Ph.D**  
Commissioner

June 6, 2022

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **781 KAR 001:010**, 781 KAR 001:020, 781 KAR 001:030, 781 KAR 001:040 and 781 KAR 001:050, the Office of Vocational Rehabilitation proposes the attached suggested amendments to 781 KAR 001:010, 781 KAR 001:020, 781 KAR 001:030, 781 KAR 001:040 and 781 KAR 001:050.

Sincerely,

*Cora McNabb*

Cora McNabb, Executive Director  
Kentucky Office of Vocational Rehabilitation  
Mayo-Underwood Building  
500 Mero, 4<sup>th</sup> Floor  
Frankfort, KY 40601

TEAM  
KENTUCKY

## SUGGESTED SUBSTITUTE

Final Version: 6/6/2022 2:20 PM

### Education and Workforce Development Cabinet Department of Workforce Investment Office of Vocational Rehabilitation

**781 KAR 1:010. Office of Vocational Rehabilitation ~~[Department of Vocational Rehabilitation]~~ appeal procedures.**

RELATES TO: KRS 151B.190, 151B.200, 34 C.F.R. Part 361, 29 U.S.C. 722

STATUTORY AUTHORITY: KRS 13B.170, 151B.195(1), 29 U.S.C. 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. 29 U.S.C. 722(c) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation services. Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner to promulgate administrative regulations for the department. This administrative regulation establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

Section 1. Definitions. (1) "Administrative hearing" is defined by~~[has the same meaning as]~~  
KRS 13B.010(2).

(2) "Administrative review" means an informal process through which ~~[the]~~office personnel not involved in the initial decision conduct ~~[conducts]~~a review of an office decision to ensure the decision complies with office policy.~~[The review shall be conducted by office personnel not involved in the initial decision.]~~

(3) "Appellant" means an applicant, potentially eligible, or eligible individual who requests an appeal of an office decision in accordance with this section.

(4) "Applicant" means an individual who submits an application for vocational rehabilitation services.

(5) "Branch manager" means the office staff who is responsible for the operations of an office branch.

(6) "Case record" means the official written or electronic record of the vocational rehabilitation case of an applicant, potentially eligible, or eligible individual.

(7) "Competitive integrated employment" is defined by~~[has the same meaning as]~~ 34 C.F.R. 361.5(c)(9).

(8)~~[(2)]~~ "Eligible individual" means an applicant for vocational rehabilitation services who the office determines is an individual with a disability who requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

(9)~~[(3)]~~ "Executive director" means the Executive Director of the Office of Vocational Rehabilitation.

(10) "Hearing officer" is an individual who meets the qualifications established~~[set forth]~~ in

KRS 13B.010(7) and who has knowledge of the laws applicable to the office.

~~(11)[(4)] "Office" means the Office of Vocational Rehabilitation[and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement].~~

~~(12) "Office Appeal Form" **means[is]** the office form **incorporated by referenced and** used by an applicant, potentially eligible, or eligible individual to request an appeal of an office decision.~~

~~(13) "Potentially eligible individual" means an individual who **might[may]** be eligible for vocational rehabilitation services, but whose eligibility has not yet been determined.~~

~~(14) "Secretary" means the Secretary of the Education and Workforce Development Cabinet.~~

Section 2. Right to Appeal[Hearing Officer]. (1) The office shall notify every applicant, potentially eligible individual, or eligible individual that the individual has the right to appeal any determination made by the office that affects the provision, denial, reduction, suspension, or cessation of that individual's vocational rehabilitation services.

~~(1)To conduct a hearing under this administrative regulation, a hearing officer shall not:~~

~~(a) Be an employee of a public agency, other than an administrative law judge, hearing examiner, or employee of an institution of higher education;~~

~~(b) Be a member of the Vocational Rehabilitation Council;~~

~~(c) Have been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; or~~

~~(d) Have personal or financial interest that would be in conflict with the objectivity of the individual.]~~

(2) The office shall provide to every applicant, potentially eligible individual, or eligible individual:

(a) **As established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual**, the procedure for requesting an appeal, including the name and address of office staff to whom a request for appeal shall be submitted; and

(b) The Office Appeal Form.~~(2) To conduct a hearing under this administrative regulation, a hearing officer shall:~~

~~(a) Have knowledge of the delivery of vocational rehabilitation services, the federal and state laws and the administrative regulations governing the provision of vocational rehabilitation services; and~~

~~(b) Have training with respect to the performance of official duties.]~~

(3) A request for appeal shall be submitted using the Office Appeal Form and shall be submitted to the office within fourteen (14) days of receipt of written notice of an office decision[;] or receipt of verbal notice of an office decision, as determined by the date in the case record.

(4) An appellant shall have the right to be represented by an advocate or attorney at all appellate proceedings, and the appellant shall bear all cost for [such]representation.

(5) Upon receipt of a request for an administrative hearing, the office shall:

(a) Conduct an administrative review of the decision on appeal prior to the administrative hearing; and

(b) Convene an administrative hearing within sixty (60) days, except that a time extension, not



to exceed one (1) year, shall be granted upon agreement by both parties.

(6) During an appeal, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained through:

1. Misrepresentation;

2. Fraud;

3. Collusion; or

4. Criminal conduct; or

(b) The appellant requests the action.

Section 3. Administrative Review. (1) Upon receipt of a notice of appeal, the office shall conduct an informal administrative review of the decision.~~[An applicant or eligible individual may request an informal administrative review conducted by an office staff member from the director of program services or a designee.]~~

(2) The director or designee shall select a[an] branch manager~~[administrator from a district]~~ not involved in the action in question who shall conduct the administrative review of the decision within ten (10) days.

(3) ~~The [administrator shall conduct the]~~ administrative review shall be conducted either in person or by teleconference, and the appellant shall be invited to participate.

(4) The branch manager~~[administrator]~~ shall issue a written a determination within five (5) business days~~[make a determination]~~ and notify~~[forward a copy to]~~ the appellant via electronic mail or U.S. Mail~~[individual and the office within five (5) days of the administrative review].~~

~~(5) The applicant or eligible individual shall attend the administrative review and may be represented by an advocate or counsel.]~~

Section 4. Mediation. (1) The appellant shall have the right to participate in mediation before an administrative hearing is convened~~[office and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation].~~

(2) The office shall maintain a list of qualified mediators.

(3) If mediation is requested, the office shall:

(a) Choose a mediator from the list and schedule the mediation for a date prior to an administrative hearing;

(b) Convene the mediation in a location convenient to the office and the appellant~~[7]~~ and provide reasonable accommodations if requested;

(c) Bear the cost of mediation; and

(d) Send a representative of the office to the mediation who is authorized to bind the office to an agreement.~~[The Director of Program Services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.]~~

~~(4) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation.]~~

~~(4)[(5)]~~ The appellant~~[applicant or eligible individual]~~ shall attend the mediation.

~~(5)[(6)]~~ Discussions or agreements arising from the mediation~~[process]~~ shall be confidential and shall not be used as evidence in any subsequent administrative hearing or civil proceeding.

(6) An agreement reached by the parties through mediation shall be documented in writing, signed by both parties prior to the conclusion of the mediation, and a copy shall be issued to both parties.

Section 5. Administrative Hearing~~[Right of Appeal and Information]~~. (1) The office shall conduct an administrative hearing in accordance with KRS 13B and Section 2 **of this administrative regulation if[when]** the appellant elects not to participate in mediation~~[,]~~ or **if** the mediation did not result in an agreement.~~[An applicant or eligible individual may appeal to the Director of Program Services determinations made by the office affecting:~~

~~(a) Furnishing of vocational rehabilitation benefits; or~~

~~(b) Denial, reduction, suspension, or cessation of vocational rehabilitation services.~~

~~(2) An applicant or eligible individual shall:~~

~~(a) Be informed of the:~~

~~1. Entitlements available under this administrative regulation;~~

~~2. Right to appeal;~~

~~3. Right to be represented by an advocate or counsel; and~~

~~4. Names and addresses of office individuals with whom an appeal shall be filed.~~

~~(b) Request an appeal:~~

~~1. In writing;~~

~~2. By telephone through direct contact with the Director of Program Services or a designee;~~

~~or~~

~~3. On tape, except that a voice mail message shall not constitute a request for a hearing.~~

~~(3) The director of program services or a designee shall convene a hearing within sixty (60) days of a request made pursuant to subsection (1) of this section. Reasonable time extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:~~

~~(a) KRS Chapter 13B; and~~

~~(b) This administrative regulation.~~

~~(4) Pending a final determination of a hearing or other final resolution, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:~~

~~(a) It has evidence that the service was obtained by an applicant or eligible individual through:~~

~~1. Misrepresentation;~~

~~2. Fraud;~~

~~3. Collusion; or~~

~~4. Criminal conduct; or~~

~~(b) The applicant or eligible individual, or an authorized representative, requests this action.]~~

Section 6. Client Assistance Program. The office shall advise an applicant, potentially eligible individual, or eligible individual of:

(1) The existence of the Client Assistance Program~~[created by KRS 151B.225];~~

(2) The services provided by the program; and

(3) How to contact a program representative.

~~Section 7. Appeal Time and Hearing Procedures. (1) An applicant or eligible individual shall file an appeal:~~

~~(a) Within sixty (60) days of becoming aware, through the exercise of due diligence, of an office determination affecting the provision or denial of vocational rehabilitation services;~~

~~(b) By contacting the Director of Program Services.~~

~~(2) An applicant or eligible individual shall, at the time of requesting a hearing:~~

~~(a) Identify accommodations required; and~~

~~(b) Submit an issue statement for the hearing.~~

~~(3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the office and Statewide Council for Vocational Rehabilitation.]~~

~~Section 7.[8:] Findings and Decision. (1) The hearing officer shall issue a recommended order in accordance with KRS 13B.110.~~[complete and submit to both parties and the Secretary of the Education Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension].~~~~

~~(2) Either party shall have the right to submit exceptions to the recommended order to the secretary[secretary] as established[set forth] in KRS 13B.110.~~[twenty (20) days from the date the recommended order is mailed within which to file exceptions to the Secretary of the Education Cabinet.]~~~~

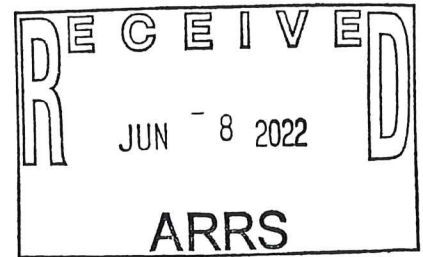
~~(3) The secretary or designee ~~[of the Education Cabinet]~~shall ~~[consider the record, including the recommended order and any timely exceptions filed to the recommended order.]~~issue the final order in accordance with KRS 13B.120~~[(4) The Secretary of the Education Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions].~~~~

**Section 8. Incorporation by Reference. (1) "Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual", June 2022, is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

**(3) This material is also available at [kcc.ky.gov/vocational-rehabilitation](http://kcc.ky.gov/vocational-rehabilitation).**

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email [SusieM.Edwards@ky.gov](mailto:SusieM.Edwards@ky.gov).



EDUCATION and WORKFORCE DEVELOPMENT CABINET  
Department of Workforce Investment

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

Office of Vocational Rehabilitation  
500 Mero Street, 4<sup>th</sup> Floor  
Frankfort, KY 40601  
502-564-4440

**Mary Pat Regan**  
Deputy Secretary

**Kish Cumi Price, Ph.D**  
Commissioner

June 6, 2022

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 781 KAR 001:010, **781 KAR 001:020**, 781 KAR 001:030, 781 KAR 001:040 and 781 KAR 001:050, the Office of Vocational Rehabilitation proposes the attached suggested amendments to 781 KAR 001:010, 781 KAR 001:020, 781 KAR 001:030, 781 KAR 001:040 and 781 KAR 001:050.

Sincerely,

*Cora McNabb*

Cora McNabb, Executive Director  
Kentucky Office of Vocational Rehabilitation  
Mayo-Underwood Building  
500 Mero, 4<sup>th</sup> Floor  
Frankfort, KY 40601

TEAM  
KENTUCKY

**SUGGESTED SUBSTITUTE**

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**Education and Workforce Development Cabinet  
Department of Workforce Investment  
Office of Vocational Rehabilitation**

**781 KAR 1:020. General provisions for operation of the Office of Vocational Rehabilitation.**

RELATES TO: KRS **138.170**, 151B.185, 151B.190, 151B.200, 34 C.F.R. 361.42, 361.49, 29 U.S.C. 722, 723

STATUTORY AUTHORITY: KRS 151B.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 **authorizes the office**~~**[accepts and agrees to]**~~ comply with federal acts relating to vocational rehabilitation when these acts apply to joint state and federally funded vocational rehabilitation programs. KRS 151B.195(1) requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation establishes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that purpose.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

(2) "Eligible individual" means an individual with a disability who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(3) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

(4) "Office" means the Office of Vocational Rehabilitation and its staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(5) "Relative" means an individual related to another individual by lineage, marriage, or adoption and includes a:

- (a) Spouse;
- (b) Parent;
- (c) Grandparent;
- (d) Brother;
- (e) Sister;
- (f) Son;
- (g) Daughter;
- (h) Grandchild;
- (i) Aunt;
- (j) Uncle;
- (k) Niece;
- (l) Nephew; and
- (m) First cousin.

~~[(6) "Visual impairment" means an individual has a condition of the eye which~~

~~constitutes or results for the individual in a substantial impediment to employment.]~~

Section 2. Employees' Request for Services. (1) An employee of the office who wishes to request rehabilitation services shall advise the Director of Field[Program] Services or a designee.

(2) The Director of Field[Program] Services or a designee and the employee shall select a counselor to take the request for services. If practicable, the counselor shall be located in an adjacent district to the district in which the employee resides.

Section 3. Employees' Relatives' Request for Services. (1) An employee of the office shall not take a request for services or provide vocational rehabilitation services to a relative.

(2) The relative shall be referred to the Director of Field[Program] Services or a designee.

(3) The Director of Field[Program] Services or a designee and the individual shall identify a staff member who is not a relative to take the request for services and to provide services as deemed appropriate.

Section 4. Legal Fees. The office shall not be responsible for any fees incurred by an applicant or eligible individual for legal services.

Section 5. Payment Rates for Purchased Services. (1) A service vendor shall not charge or accept from the applicant, eligible individual, or a relative payment for services unless the amount of the charge or payment is first presented to the office.

(2) Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services shall be provided.

Section 6. Potentially Terminal Illness. Services shall not be provided to individuals with a potentially terminal illness unless:

(1) There is a favorable medical prognosis for recovery; or

(2) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(a) If surgery, chemotherapy, nuclear medical treatment, or similar ancillary medical service is expected to cure the condition, it may be provided as with another medical problem.

(b) If the attending physician feels the prognosis is guarded, the office shall request a letter indicating the individual's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

Section 7. Second Opinions. (1) The office may seek a second opinion from a qualified practitioner before determining eligibility or before authorizing services **if the office has reason to believe that a second opinion would provide more information necessary to determine eligibility.**

(2) If the office determines that eligibility is not met or does not authorize services, an individual may utilize the appeals process established in 782 KAR 1:010.

Section 8. Self-employment Enterprises. The requirements established in this section shall be met prior to planning for self-employment for an eligible individual.

(1) An eligible individual shall undergo an assessment to determine work skills~~[potential, includ-~~

~~ing mental and physical abilities, and] interests, interpersonal skills, related functional capacities, [aptitudes, personality traits] and other pertinent characteristics~~**[as prescribed by the office].**

(2) An eligible individual shall participate in prevocational and small business training as **established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010**~~[prescribed by the office].~~

(3) An eligible individual shall obtain any required license, permit, certificate, or lease, and be in conformity with all federal and state laws and local ordinances to commence an enterprise.

(4) An eligible individual seeking to develop a ~~self-employment~~**self-employment** enterprise requiring start up costs of more than \$1,000 shall:

(a) Complete a feasibility study; and

(b) Submit a business plan and have it approved by the office **pursuant to the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010**, prior to provision of services. The business plan shall consist of the following:

1. Executive summary;
2. Description of product or service;
3. Assessment of available consumers to be served;
4. Competitors currently in operation in the industry;
5. Marketing plan;
6. Costs of production;
7. Management details and structure; and
8. Detailed financial analysis.

(5) The office shall not be the sole source of capitalization for a self-employment enterprise with start up costs of \$5,000 or more.

(a) In addition to requirements under subsection (4) **of this section**, an eligible individual seeking financial assistance with start up costs of \$5,000 to \$10,000 shall contribute fifty (50) percent of the cost in excess of \$5,000 either in capital or documented **value of existing equipment used in the daily operation of the business**~~[in-kind resources]~~ and ninety (95) percent of the cost in excess of \$10,000.

(b) An eligible individual shall provide documentation that the assets necessary for the required financial participation are in place prior to provision of services by the office.

(6) The total office expenditures toward the start up costs for a ~~self-employment~~**self-employment** enterprise shall not exceed \$10,000 unless:

(a) All provisions of subsections (1) through (5) of this section are met; and

(b) 1. The nature of the individual's vocational rehabilitation needs make it necessary that the service be provided;

2. The denial of the service will prohibit the individual from achieving the vocational goal; or

3. The provision of the service will result in a cost savings to the office.

Section 9. **Gender Reassignment**~~[Sex Change]~~. Office funds shall not be used to pay for **gender reassignment**~~[sex change]~~ surgery.

Section 10. Tools and Equipment. The eligible individual shall return tools, equipment, and supplies to the office **if**~~[when]~~ no longer used for the employment outcome.

Section 11. Training. Postsecondary training shall be provided for an eligible individual pur-

suant to this section.

(1) Except as provided in subsections (3) and (4) of this section, tuition and initial registration fees provided to the training facility of the eligible individual's choice shall not exceed those of the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation. If there is no similar program in the state, the amount of support ~~shall be/is~~ determined by the current fee for service memo.

(2) The Director of Field~~Program~~ Services or a designee ~~shall~~may make exceptions to the limitations provided by subsection (1) if it is clearly demonstrated that exceptions are necessary to achieve the employment outcome as ~~established~~defined in 34 C.F.R. 361.5(b)(16).

(3) The office shall provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services including:

- (a) Interpreting services;
- (b) Note-taking services; and
- (c) Tutoring services.

(4) Other postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services shall be used if the total cost of attendance does not exceed the total cost of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

(5) Training shall be purchased only from training facilities that are accredited or licensed by accrediting or licensing bodies and ~~that~~which comply with all applicable state and federal requirements.~~[(6) Training shall be provided only to attain entry level of the employment outcome.]~~

~~(6)~~[7] An eligible individual planning to attend a postsecondary training facility shall apply for all financial assistance available through the training facility.

(7)(a) An eligible post-secondary student shall:

1. Maintain full-time status as defined by the institution;
2. Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; or
3. Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year;
4. All coursework shall facilitate the achievement of positive outcomes.
5. By the end of the second term or semester and throughout each subsequent term or semester, the student shall achieve the higher ~~of~~or:
  - (a) An overall "C" grade average; or
  - (b) Standing required for admission, licensure, or certification.
6. An exception to a requirement established in subsection (1) or (4) of this section shall:
  - (a) Be granted if the student:
    1. Has a need or circumstance that renders him unable to meet the requirement; and
    2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.
  - (b) Not be granted for the requirements established in subsection (5) of this section for a period beyond one (1) semester.

~~(8)~~[7] The student shall provide the counselor with a copy of course grades as soon as pos-



sible after the end of each term or semester.

~~(9)~~~~[(8)]~~ If the student does not maintain the standards of this section, the counselor shall:

(a) Terminate **service**~~[serviced]~~ at the institution of higher education; and

(b) Simultaneously notify the student of the appeal procedure established in KRS 138.170.

~~(10)~~~~[(9)]~~ A service terminated under subsection (12) of this section shall be reinstituted if the student:

(a) Successfully appeals the counselors decision, in accordance with KRS 138.170; or

(b) Subsequently meets the standard under which the service was terminated.

Section 12. Computer Hardware and Software Purchases. (1) Except as provided in subsection (2) of this section or in Section 13 of this administrative regulation, the office shall not purchase a computer, microcomputer, **or** other hardware or software for the personal use of an applicant or eligible individual.

(2) The office shall consider the provision or upgrade or replacement of computer hardware and software if **the equipment is**:

(a)1. ~~[The equipment is]~~Essential to compensate for the limitations caused by the disability; or

2. ~~[The equipment is]~~Required for the eligible individual to achieve or maintain a vocational objective of competitive **integrated** employment; and

(b) One (1) of the following criteria are met:

1. The equipment is required for vocational preparation;

2. The equipment is required to perform the job and no provision is made by the employer to supply the equipment; or

3. The equipment enables an eligible individual to become competitive **in an integrated setting** with nondisabled employees performing the same duties.~~[Section 13. Second Time Upgrades or Replacements. (1) Except as provided in subsection (2) of this section, the office shall not provide more than one (1) computer upgrade or replacement per individual.~~

~~(2) The office shall approve a second time upgrade or replacement if:~~

~~(a) The eligible individual has demonstrated a two (2) year continuous work history; and~~

~~(b) The eligible individual's employer attests that the upgrade or replacement is needed to maintain employment.]~~

Section ~~13~~~~[14]~~. ~~Medical treatment~~~~[Transplants or Implants]~~. A ~~medical treatment or~~ ~~[transplant or implant]~~ procedure **that[which]** is experimental or **that[which]** does not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the office.

Section ~~14~~~~[15]~~. Vehicle Purchase. The office shall not purchase a vehicle unless the occupation of the eligible individual requires a vehicle as occupational equipment.~~[Section 16. Visual Impairments. An eligible individual with a secondary disability of visual impairment shall be served if another impairment, other than visual, results in a more substantial impediment to employment.]~~

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.



EDUCATION and WORKFORCE DEVELOPMENT CABINET  
Department of Workforce Investment

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

Office of Vocational Rehabilitation  
500 Mero Street, 4<sup>th</sup> Floor  
Frankfort, KY 40601  
502-564-4440

**Mary Pat Regan**  
Deputy Secretary

**Kish Cumi Price, Ph.D**  
Commissioner

June 6, 2022

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 781 KAR 001:010, 781 KAR 001:020, **781 KAR 001:030**, 781 KAR 001:040 and 781 KAR 001:050, the Office of Vocational Rehabilitation proposes the attached suggested amendments to 781 KAR 001:010, 781 KAR 001:020, 781 KAR 001:030, 781 KAR 001:040 and 781 KAR 001:050.

Sincerely,

*Cora McNabb*

Cora McNabb, Executive Director  
Kentucky Office of Vocational Rehabilitation  
Mayo-Underwood Building  
500 Mero, 4<sup>th</sup> Floor  
Frankfort, KY 40601

TEAM  
KENTUCKY

## **SUGGESTED SUBSTITUTE**

Final Version: 11/19/2021 12:38 PM

### **Education and Workforce Development Cabinet Department of Workforce Investment Office of Vocational Rehabilitation**

#### **781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.**

RELATES TO: KRS 151B.190, 34 C.F.R. 361.36, 361.53, 361.54, 29 U.S.C. 721(a)(5), (15), (21)(A)

STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 29 U.S.C. 709(c), 34 C.F.R. 361.36, 361.54

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195(1) requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. 34 C.F.R. 361.36(c) requires the office to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 C.F.R. 361.36(d) requires[establishes] federal guidelines for the imposition of an order of selection. 34 C.F.R. 361.54(b) authorizes the office to consider an individual's financial need for vocational rehabilitation services. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions. (1) "Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services.

(2) "Executive director" means Executive Director of the Office of Vocational Rehabilitation.

(3) "Individual with a most significant disability" means an individual who has a [significant] disability that limits two (2) or more areas of functional capacity~~[and who:~~

~~(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or~~

~~(b) Has serious limitations in four (4) or more functional capacities in terms of an employment outcome].~~

(4) "Functional capacity" means the capacity to perform tasks required in employment including:

- (a) Mobility;
- (b) Communication;
- (c) Self-care;
- (d) Self-direction;
- (e) Interpersonal skills;
- (f) Work tolerance; or
- (g) Work skills.

(5) "Office" means the Office of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

~~(6)(5)~~ "Non-significant disability" means a disability that does not limit a functional capacity.

Section 2. Economic Need. (1) Economic need shall be considered in determining whether to grant vocational rehabilitation services.

(2) The executive director shall exempt services from the economic needs test if the office is able to provide services to all eligible individuals with significant disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 34 C.F.R. 361.53.

(3) An economic needs test as established in subsection (5) of this section shall be applied as a condition for furnishing the following vocational rehabilitation services:

- (a) Physical and mental restoration services;
  - (b) Tuition and registration fees for vocational or college training;
  - (c) Maintenance other than diagnostic;
  - (d) Transportation other than diagnostic;
  - (e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;
  - (f) Occupational licenses, tools, equipment, or initial stock (including livestock) or supplies;
  - (g) Postemployment services except as provided in subsection (4)(a)-(m) of this section;
  - (h) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of employment outcomes;
  - (i) Initial vehicle and property modifications in excess of \$10,000;
  - (j) Second or subsequent vehicle modifications regardless of cost;
  - (k) Vehicle modification repair or upgrades; or
  - (l) Hearing aid in excess of \$1,000.
- (4) The following services shall be excluded from an economic needs test:
- (a) Assessment for determining eligibility and vocational rehabilitation needs;
  - (b) Counseling and guidance;
  - (c) Placement;
  - (d) Services provided by staff at state-owned and operated rehabilitation facilities;
  - (e) Rehabilitation technology except as specifically provided in subsection (3) of this section;
  - (f) Communication assistance in the individual's native language;
  - (g) Books, supplies, tools, or equipment for vocational or other training;
  - (h) Supported employment;
  - (i) Interpreter services for the deaf;
  - (j) Reader services for the blind;
  - (k) Personal assistance services;
  - (l) Tutors, note takers, or assistive technology education aids; or
  - (m) Other training, including driver training, on-the-job training, job coaching, job development, or job training.

(5) The office's economic needs test shall be based on the most current Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce. If the individual has a

monthly income that exceeds 100 percent of the most current median gross income, the individual shall apply the excess income to rehabilitation services necessary to achieve the employment goal except as provided for in 34 C.F.R. 361.54.

Section 3. Order of Selection. If the executive director determines that the office shall be unable to provide services to all eligible applicants, the office shall implement the order of selection on a state-wide basis. (1) An eligible individual previously declared eligible for and receiving vocational rehabilitation services under an individualized plan for employment shall not be affected if the office implements an order of selection.

(2) The order of selection shall not regulate the provision of information or referral services.

(3) On implementation of the order of selection, the office shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) An applicant shall be declared eligible or ineligible as appropriate.

(6)(a) An eligible individual entering accepted status after implementation of the order of selection shall be assigned to a priority category.

(b) If the priority category is open, the individual shall be served.

(c) If the priority category is closed, the individual's case shall be held on a waitlist in accepted status until the priority category assigned is opened or the order of selection is lifted.

(7) The order of selection shall permit immediate reclassification into a higher priority category if circumstances justify the reclassification.

(8) If the office is unable to provide services to all eligible individuals with significant disabilities, the office shall serve eligible individuals with a most significant disability first and then serve eligible individuals with a significant disability on a first-applied, first-served basis, as established by the date of application within a category. If funds become available, the executive director and Statewide Council for Vocational Rehabilitation shall adjust the priority categories to be served as appropriate to provide services to as many consumers as funds allow.

(9) The order of selection **established/described** in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection shall have ~~[five-(5)]~~ priority categories as follows:

(a) Priority Category I - eligible individuals with a most significant disability that limits three (3) or more functional capacities;

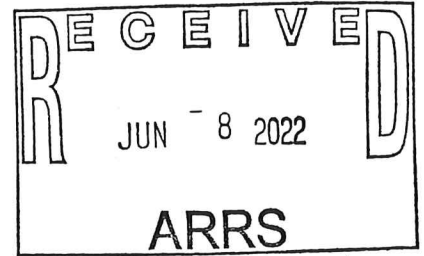
(b) Priority Category II - eligible individuals with a most significant disability that limits two (2) functional capacities~~[who have serious limitations in three (3) functional capacities]~~;

(c) Priority Category III - eligible individuals with a **[most]** significant disability that limits (1) one functional capacity~~[who have serious limitations in two (2) functional capacities]~~;

(d) Priority Category IV - Eligible individuals with a non-significant~~[significant]~~ disability~~[who have serious limitations in one (1) functional capacity]~~; or

(e) Priority Category V - eligible individuals with a nonsignificant disability].

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.



EDUCATION and WORKFORCE DEVELOPMENT CABINET  
Department of Workforce Investment

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

Office of Vocational Rehabilitation  
500 Mero Street, 4<sup>th</sup> Floor  
Frankfort, KY 40601  
502-564-4440

**Mary Pat Regan**  
Deputy Secretary

**Kish Cumi Price, Ph.D**  
Commissioner

June 6, 2022

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 781 KAR 001:010, 781 KAR 001:020, 781 KAR 001:030, **781 KAR 001:040** and 781 KAR 001:050, the Office of Vocational Rehabilitation proposes the attached suggested amendments to 781 KAR 001:010, 781 KAR 001:020, 781 KAR 001:030, 781 KAR 001:040 and 781 KAR 001:050.

Sincerely,

*Cora McNabb*

Cora McNabb, Executive Director  
Kentucky Office of Vocational Rehabilitation  
Mayo-Underwood Building  
500 Mero, 4<sup>th</sup> Floor  
Frankfort, KY 40601

TEAM  
KENTUCKY

## SUGGESTED SUBSTITUTE

Final Version: 6/1/2022 9:07 AM

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET

#### Department of Workforce Investment Office of Vocational Rehabilitation

#### **781 KAR 1:040. Assistive~~[Rehabilitation]~~ technology services.**

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723, 34 C.F.R. 361.5~~(c)(9)~~~~[(b)(11)]~~, 361.42, 361.45, 361.46

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation establishes~~[prescribes]~~ the requirements for the provision of assis-~~live~~~~[rehabilitation]~~ technology services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

#### Section 1. Definitions.

**(1) "Assistive technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.**

**(2)** "Certified driver rehabilitation specialist" means a driver rehabilitation specialist who has obtained certification to provide services from the Association for Driver Rehabilitation Specialists.

**(3)~~[(2)]~~** "Driver evaluation" means a clinical and behind-the-wheel evaluation by a certified driver rehabilitation specialist to identify an eligible individual's driver rehabilitation needs to allow that person to drive independently.

**(4)~~[(3)]~~** "Driver rehabilitation specialist" means an individual who plans, develops, coordinates, and implements driver rehabilitation services for individuals with disabilities.

**(5)~~[(4)]~~** "Driver training" means behind-the-wheel instruction required to teach an individual with a disability to drive with or without vehicle modifications.

**(6)~~[(5)]~~** "Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational assistive~~[rehabilitation]~~ services as defined in 34 C.F.R. 361.42.

**(7)~~[(6)]~~** "Extended driver evaluation" means additional evaluation necessary in those cases in which~~[where]~~ an individual's ability to drive cannot be determined after a driver evaluation.

**(8)~~[(7)]~~** "Family" means spouse, children, parents, grandparents, or siblings.

**(9)~~[(8)]~~** "Individualized plan for employment" means a written plan for a specific employment outcome as required by 34 C.F.R. 361.46.

**(10)~~[(9)]~~** "Office" means the Office of Vocational Rehabilitation and its staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

**~~[(10) "Rehabilitation technology specialist" means an individual who analyzes the needs of~~**

~~individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.~~ **REH**

(11) "Structural addition" means any improvement to real property that would increase the square footage or footprint of the property.

#### Section 2. Driver Rehabilitation Technology Services.

(1) Driver rehabilitation technology services may be provided if:

(a) Personal transportation is required to meet the job goals specified on the individualized plan for employment;

~~[(b) Other modes of transportation that would enable the eligible individual to effectively meet the vocational goal as stated in the individualized plan of employment, such as public transportation, are not available];~~

~~(b)[(c)]~~ The individual meets the economic need qualifications established in 781 KAR 1:030; and

~~(c)[(d)]~~ The individual is within a category that is presently being served in the Order of Selection as established in 781 KAR 1:030.

(2) Driver training and extended driver evaluation may be provided if:

(a) The services are recommended by a certified driver rehabilitation specialist;

(b) If vehicle modification is required, the applicant or eligible individual meets the criteria for vehicle modification, as established in Section 3 of this administrative regulation; **[and]**

(c) The applicant or eligible individual agrees to obtain additional practice as recommended by a certified driver rehabilitation specialist; **and[.]**

(d) The applicant or eligible individual **owns or has access to an appropriate vehicle both during and[must currently own or have access to an appropriate vehicle]** upon completion of driver's training.

(3) Driver rehabilitation technology services may be provided to an applicant or eligible individual who does not meet the requirements of subsection (2) of this section if the Director of Field Services~~[Program Services]~~ or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

#### Section 3. Vehicle Modification Services.

(1) Modification of a private vehicle shall be authorized if the eligible individual:

(a) Completes a driver evaluation and vehicle modification assessment by a rehabilitation technology specialist; and

(b) Obtains a vehicle modification prescription from a certified driver rehabilitation specialist.

(2) Modification of a private vehicle shall be provided on the most cost-effective vehicle necessary for the individual's personal transportation for employment, using the most cost-effective means of modification.

(3) Recoverable, nonpermanent modifications shall be provided for private vehicles if available and cost-effective.

(4) A vehicle modification shall not be performed on a vehicle other than that recommended by a certified driver rehabilitation specialist, unless:

(a) The vehicle can be modified to meet the individual's needs; and



(b) The individual assumes all costs associated with the modification of the vehicle in excess of the cost of modification of the recommended vehicle.

(5) **Before a non-recoverable, permanent vehicle modification will be approved,** an eligible individual shall obtain a valid Kentucky operator's license~~[before a vehicle modification to allow the individual to drive the vehicle will be approved]~~.

(6) A **non-recoverable, permanent** vehicle modification costing in excess of \$5,000 shall not be delivered to the eligible individual unless the eligible individual provides proof of insurance for the replacement cost of the vehicle and vehicle modifications.

(7) A vehicle modification costing in excess of \$10,000 shall not be provided unless the eligible individual:

(a) Has a vocational objective of competitive **integrated** employment;

(b) Is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months; and

(c) The Director of ~~Field Services~~Program Services or designee determines that the modification has a direct relationship to the employment objective and that failure to provide the modification would prevent the successful achievement of the employment objective.

(8) Vehicle modifications in excess of \$10,000 shall not be provided on a used vehicle unless:

(a) The vehicle is no more than two (2) years old;

(b) The odometer on the vehicle reads no more than 50,000 miles; and

(c) **An assistive**~~[A rehabilitation]~~ technology specialist inspects the vehicle and determines that it is appropriate for the required modification.

(9) Vehicle modifications shall not be performed on a leased vehicle unless:

(a) **An assistive**~~[A rehabilitation]~~ technology specialist inspects the vehicle and determines that it is appropriate for the required modification;

(b) Written permission for the specific modification is obtained from the leasing company; and

(c) Recoverable, nonpermanent equipment is used.

(10) The eligible individual shall be solely responsible for providing maintenance, repair, and upkeep to the modifications as **established**~~[specified]~~ in any relevant warranties.

(11) The eligible individual shall pay for any maintenance, service, and repairs for modifications not under warranty except as provided in Section 4(2) of this administrative regulation.

#### Section 4. Upgrade and Repair of Vehicle Modifications.

(1) An upgrade to a vehicle modification shall not be provided unless:

(a) The upgrade is required due to a medically documented change in status or function that necessitates a change in driving equipment or vehicle chassis;~~[and]~~

(b) The eligible individual is employed in a competitive integrated employment setting; and

**(c) The eligible individual completes a driver evaluation or non-recoverable, permanent vehicle modification assessment as established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010.**

(2) If the vehicle upgrade involves the purchase of a driving system, the vehicle shall be inspected by **an assistive**~~[a rehabilitation]~~ technology specialist and found:

(a) To be appropriate for the proposed modification; and

(b) To meet all manufacture requirements for the proposed driving system.

(3) A repair to a vehicle modification shall be provided if:

(a) The eligible individual is currently competitively employed in an integrated setting, as defined in 34 C.F.R. 361.5 ~~(c)(9)(b)(11)~~;

(b) The repair is not required as a result of the eligible individual's negligence, misuse, abuse of the equipment, or failure to provide proper maintenance of the equipment;

(c) The eligible individual provides the office with maintenance records for the vehicle and vehicle modifications; ~~and~~

(d) ~~An assistive~~ ~~[A rehabilitation]~~ technology specialist:

1. Inspects the maintenance records of the vehicle and vehicle modifications;

2. Determines that the maintenance has met manufacturer requirements;

3. Inspects the vehicle and modifications; and

4. Determines that is reasonable to repair the modification; ~~and~~

**(e) The eligible individual completes a driver evaluation by a certified driver rehabilitation specialist and obtains a non-recoverable, permanent vehicle modification prescription from the specialist, if requested by the office as established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010.**

(4) An upgrade or repair to a vehicle modification costing in excess of \$10,000 shall not be provided unless the Director of Field Services ~~[Program Services]~~ or designee determines that failure to provide the update or repair would prevent the successful maintenance of competitive **integrated** employment or would result in a significant cost savings to the office.

(5) An upgrade or repair may be provided to an eligible individual who does not meet the requirements of this section if the Director of Field Services ~~[Program Services]~~ or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

#### Section 5. Repeat Vehicle Modifications.

(1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.

(2) The office shall provide a repeat vehicle modification if:

(a) The eligible individual is currently working in a competitive ~~[an]~~ **integrated** ~~[competitive]~~ **employment setting** ~~[competitively employed]~~, as defined in 34 C.F.R. 361.5 ~~(c)(9)(b)(11)~~;

(b) The eligible individual has a five (5) year work history since the last modification and has been working consistently for a minimum of two (2) years;

(c) The previously modified vehicle has at least 105,000 additional miles on it since the last modification;

(d) ~~An assistive~~ ~~[A rehabilitation]~~ technology specialist inspects the vehicle and modifications and recommends replacement of the vehicle or modifications;

(e) The eligible individual provides the office with a maintenance record for the vehicle and modifications that demonstrates that the maintenance has been provided according to manufacturer requirements;

(f) The eligible individual completes a driver evaluation by a **certified** ~~[rehabilitation]~~ technology specialist and obtains a vehicle modification prescription from the specialist; and

(g) The Director of Field ~~[Program]~~ Services or designee determines that failure to provide

the repeat modification will prevent successful maintenance of competitive integrated employment or would result in a significant cost savings for the office.

#### Section 6. Property Modification.

(1) Permanent, nonrecoverable modification to a private home, business, or property may be provided if:

(a) A qualified rehabilitation counselor determines it is essential to achieve the employment objective of the eligible individual;

(b) The eligible individual meets economic needs qualifications established in 781 KAR 1:030;

(c) A qualified rehabilitation counselor determines that failure to provide the modification will preclude the successful achievement of the employment goal;

(d) A property modification assessment is completed by an assistive[a-rehabilitation] technology specialist;

(e) The eligible individual or family member owns the property to be modified and is current on any mortgage payments;

(f) The eligible individual has not received permanent, nonrecoverable modifications to a home from the office in the past; and

(g) The eligible individual is within a category that is presently being served in the order of selection as established in 781 KAR 1:030.

(2) Property modifications in excess of \$30,000 or twenty (20) percent of the Property Value Administrator (PVA) assessment value of the home or property, whichever is less, shall not be provided.

(3) Property modifications shall be limited to the most cost effective means of safely addressing the disability needs of the eligible individual as required for employment and shall:

(a) Be recoverable, nonpermanent modifications, if possible;

(b) Be cost effective;

(c) Provide access to one (1) entrance to and exit from the home, business, or property;

(d) Provide access to entrance to and exit from one (1) bathroom area and use of the facilities in that bathroom;

(e) Provide access to entrance to and exit from one (1) bedroom area; and

(f) Allow access to corridors necessary to access the bathroom and entrance and exit area of the property.

(4) Property modifications shall not be provided to homes or properties purchased within the last two (2) years unless there is medical documentation to support a finding that there has been a significant change in status or function of the eligible individual that has occurred since the initial purchase of the property, and that finding could not have been anticipated when the home or property was purchased.

(5) Property modifications shall not include structural additions to existing properties or the purchase of new property.

(6) The office shall not restore modified property to its original condition or upgrade areas of the property not affected by the modification into compliance with current local building codes.

(7)(a) **A request from the individual to make changes or additions to the recommendation of the assistive technology specialist shall be approved in writing by the specialist prior to being implemented in order to ensure that the modification does not affect the ac-**

**cessibility of the project**~~[All changes or additions to the recommendations of the rehabilitation technology specialist shall be approved, in writing by the rehabilitation technology specialist];~~ and

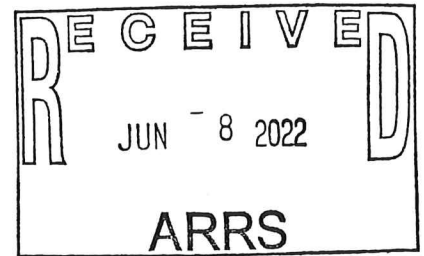
(b) The cost of all changes or additions shall be assumed by the eligible individual.

(8) The eligible individual shall provide maintenance, repair, and upkeep to the modifications as required for relevant warranties.

(9) The eligible individual shall be solely responsible for maintenance, service, and repairs for modifications not under warranty.

(10) Property modifications shall be provided to an eligible individual that does not meet all the requirements of this section if the Director of Field[Program] Services or designee determines that failure to provide the modification would prevent the successful achievement of the vocational objective or would result in a significant cost savings to the office.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email [SusieM.Edwards@ky.gov](mailto:SusieM.Edwards@ky.gov).



EDUCATION and WORKFORCE DEVELOPMENT CABINET  
Department of Workforce Investment

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**Jacqueline Coleman**  
Lieutenant Governor

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500 Mero Street, 4<sup>th</sup> Floor  
Frankfort, KY 40601  
502-564-4440

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Commissioner

June 6, 2022

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 781 KAR 001:010, 781 KAR 001:020, 781 KAR 001:030, 781 KAR 001:040 and 781 KAR 001:050, the Office of Vocational Rehabilitation proposes the attached suggested amendments to 781 KAR 001:010, 781 KAR 001:020, 781 KAR 001:030, 781 KAR 001:040 and 781 KAR 001:050.

Sincerely,

*Cora McNabb*

Cora McNabb, Executive Director  
Kentucky Office of Vocational Rehabilitation  
Mayo-Underwood Building  
500 Mero, 4<sup>th</sup> Floor  
Frankfort, KY 40601

TEAM  
KENTUCKY

## SUGGESTED SUBSTITUTES

Final Version: 11/19/2021 3:30 PM

### Education and Workforce Development Cabinet Department of Workforce Investment Office of Vocational Rehabilitation

**781 KAR 1:050. Carl D. Perkins Vocational Training Center~~[Carl D. Perkins Comprehensive Rehabilitation Center]~~.**

RELATES TO: KRS 151B.190, **Chapter 387**, 34 C.F.R. 361.42, 29 U.S.C. §701 et seq.~~[706(8)(A)]~~

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 **authorizes**~~[directs]~~ the Executive Director, Office of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Office of Vocational Rehabilitation. This administrative regulation establishes the criteria for admission to and discharge from the Carl D. Perkins Vocational Training Center ~~[Carl D. Perkins Comprehensive Rehabilitation Center]~~.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(2) "Director" means Division Director of the Carl D. Perkins Vocational Training Center (CDPVTCT) ~~[Carl D. Perkins Comprehensive Rehabilitation Center]~~.

(3) "Discharge" means an individual~~[shall]~~:

(a) **Does** not have a further CDPVTCT~~[CDPCRC]~~ service provided; and

(b) **Will** be transported to the home area.

(4) "Eligible individual" means an individual who has been determined by an appropriate office staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. Part 361.

Section 2. Admissions Policy. (1) An individual admitted to CDPVTCT~~[CDPCRC]~~ shall **be an**:

(a) ~~[Be-an]~~ Applicant of the Office of Vocational Rehabilitation for whom an assessment is needed prior to making an eligibility or ineligibility decision;

(b) ~~[Be-an]~~ Eligible individual of the Office of Vocational Rehabilitation who requires services of the type provided by CDPVTCT~~[CDPCRC]~~, in order to benefit in terms of a[an] competitive integrated employment outcome~~[; or]~~

~~(c) Have made arrangements to reimburse CDPCRC for the cost of services provided;]~~

(2) A prospect for admission shall provide~~[the following]~~:

(a) A consent for CDPVTCT~~[CDPCRC]~~ to provide emergency medical care signed by:

1. The individual; or

2. If the individual is a minor or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the individual's parent or guardian, as appropriate, subject to the limitations of KRS Chapter 387;

(b) An agreement assuming responsibility for living arrangements upon the individual's discharge from CDPVTC[CDPCRC] by:

1. The individual; or

2. If the individual is a minor or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the individual's parent or guardian, as appropriate, subject to the limitations of KRS Chapter 387; and

(c) A description of each limitation that the individual has in performing an activity of daily living.

(3) An individual shall not be admitted to a CDPVTC[CDPCRC] program if there is evidence that a medical or behavioral condition represents a direct threat to the health or safety of self or others. The determination of whether a condition exists shall be made by a written opinion from a CDPVTC [CDPCRC] professional with expertise concerning the identified condition, based upon documentation submitted at referral, and other information the professional shall gather as needed.

(4) **If**[**When**] it is determined that the documentation submitted indicates the possibility that the individual's medical or behavioral condition represents a direct threat to self or others, the CDPVTC[CDPCRC] admissions counselor shall select a CDPVTC[CDPCRC] professional with expertise concerning the identified condition, and shall submit the documentation to that professional for an opinion.

(5) **If**[**When**] the admissions counselor has requested an opinion from a CDPVTC[CDPCRC] professional, the decision of the professional shall determine whether the individual shall be admitted to CDPVTC[CDPCRC] during that referral. If the individual is referred at a later time, a new opinion shall be submitted.

(6) The admissions counselor or the admissions committee, as appropriate, shall, at the time that the individual is accepted for CDPVTC[CDPCRC] services for evaluation or treatment and training, establish a list of recommended services for the individual and make a referral to the appropriate service area.

(7) **If**[**When**] a decision is made to accept an individual for admission, the individual shall be notified in writing of the decision, and the date of admission, and a copy of that notification shall be sent to the referral sources, as appropriate.

(8) The individual shall agree to and abide by the terms of the signed Individualized Plan for Employment and the Individualized Behavior Management Plan, as appropriate.

(9) **If**[**When**] a decision is made not to admit an applicant or eligible individual to CDPVTC, [CDPCRC] the referral source shall be notified in writing of the decision with justification for that decision. The applicant or eligible individual shall be notified in writing of the decision with justification and informed of the availability of the Client Assistance Program and the right to appeal.

(10) An applicant or eligible individual may appeal the admissions decision. **An appeal shall be** pursuant to 781 KAR 1:010.

Section 3. Retention Policy. The decision to provide further services after an individual has completed a CDPVTC[CDPCRC] program shall be based upon **[the following]**:

(1)(a) A further program shall be requested by the referral source; or

(b) A CDPVTC[CDPCRC] professional shall believe that the individual requires an additional service; **and**

- (2) The **availability of the** program requested for the individual ~~[shall be available]~~; and  
(3) ~~If applicable, the individual shall have made arrangements to reimburse CDPERC for the cost of services provided].~~

Section 4. Discharge Policy. (1) An individual shall be voluntarily discharged from the CDPVTC[CDPERC] if:

(a) The individual has completed a program of services, and is not qualified for another CDPVTC[CDPERC] program;

(b) The individual does not desire further services from CDPVTC[CDPERC];

(c) The individual's medical condition requires treatment away from the CDPVTC [CDPERC] for an extended period of time; or

(d) The individual wishes to leave CDPVTC[CDPERC] ~~[and cannot be convinced to stay];~~

(2) An individual shall be involuntarily discharged from CDPVTC[CDPERC] if:

(a) The individual fails to make progress in the program of services and efforts to resolve the problem have been unsuccessful;

(b) The individual is no longer qualified for the program and no other needed program is available; **or**

(c) The individual's behavioral condition deteriorates to the point of direct threat to the safety of others.~~[;]~~

~~(3)[(4)]~~ An individual shall be discharged from CDPVTC[CDPERC] without prior notice if necessary to prevent harm to a person or property, or to prevent serious disruption of a CDPVTC [CDPERC] program.

Section 5. Due Process. (1) The individual, or the parent or guardian if under eighteen (18) years of age or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the referring counselor, or representative if applicable, shall be notified in writing or other appropriate format of the intent to discharge involuntarily with justification.~~[;]~~

(2) The individual shall be given an opportunity to present facts and views in rebuttal to the director or a designee.~~[;]~~

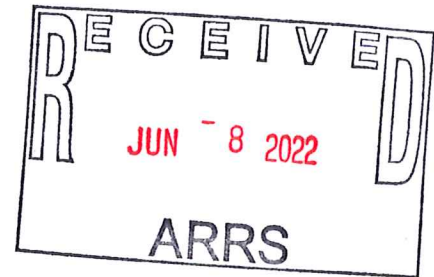
(3) The director or designee shall notify the individual, in writing or other appropriate format, with justification, of the involuntary discharge decision or of intent to rescind the intent to discharge.

(4) At the time an applicant or eligible individual is informed of the involuntary discharge decision, the individual shall be also informed of the availability of the Client Assistance Program and the right to appeal.

(5) An applicant or eligible individual may appeal the discharge decision. **An appeal shall be** pursuant to 781 KAR 1:010.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.





EDUCATION and WORKFORCE DEVELOPMENT CABINET  
Department of Workforce Investment

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Governor

**Jacqueline Coleman**  
Lieutenant Governor

Office of Vocational Rehabilitation  
500 Mero Street, 4<sup>th</sup> Floor  
Frankfort, KY 40601  
502-564-4440

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Commissioner

June 6, 2022

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 782 KAR 001:010 and 782 KAR 001:070, the Office of Vocational Rehabilitation proposes the attached suggested amendments to 782 KAR 001:010 and 782 KAR 001:070.

Sincerely,

*Cora McNabb*

Cora McNabb, Executive Director  
Kentucky Office of Vocational Rehabilitation  
Mayo-Underwood Building  
500 Mero, 4<sup>th</sup> Floor  
Frankfort, KY 40601



## SUGGESTED SUBSTITUTE

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### Education and Workforce Development Cabinet Department of Workforce Investment Office of Vocational Rehabilitation

#### 782 KAR 1:010. Kentucky Business Enterprises.

RELATES TO: KRS 13B, 61.800, 61.870-61.884, 163.470(11), 438.310, 34 C.F.R. Part 361.38, 395, 20 U.S.C. 107-107f

STATUTORY AUTHORITY: KRS 163.470(5), 34 C.F.R. 395.4, 20 U.S.C. 107b(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office to establish and implement policies and procedures for administering the program of services for the blind and visually impaired. 20 U.S.C. 107(b)(5) requires the office to promulgate administrative regulations for the operation of the vending facility program on federal properties in Kentucky. This administrative regulation establishes the operational requirements for the business enterprises program created by KRS 163.470(9) ~~[for the federal Randolph-Sheppard Vending Facility Program]~~.

Section 1. Definitions. (1) "Active participation" means an ongoing process ~~that~~[which]:

(a) Is Between the office and the State Committee of Blind Vendors for joint planning and input on program policies, standards, and procedures; and

(b) Does not supersede the office's final authority to administer the program.

(2) "Administrative Hearing" ~~is~~[means a full evidentiary hearing as] defined ~~by~~[in] KRS 13B.010 Section 2.

(3) ~~[(2)]~~ "Agreement" means a written contract entered into between the office and property management authorizing the establishment of a vending facility and ~~establishing~~[setting forth] the service obligations.

(4) ~~[(3)]~~ "Applicant" means an eligible individual who has been referred by a counselor to be screened for participation in the Kentucky Business Enterprises (KBE) Vendor Training Program.

(5) "Blind person" is defined by 20 U.S.C. 107e(1).

(6) "Committee" means the Kentucky Blind Vendor Committee.

(7) ~~[(4)]~~ "Counselor" means a vocational rehabilitation counselor in the ~~office~~[Office for the Blind].

(8) ~~[(5)]~~ "Director" means the Division Director of Kentucky Business Enterprises.

(9) ~~[(6)]~~ "Eligible individual" means a consumer as defined ~~by~~[at] 782 KAR 1:020, Section 1(4).

(10) ~~[(7)]~~ "Executive director" means the Executive director of the Kentucky Office of Vocational Rehabilitation ~~[Kentucky Office for the Blind]~~.

(11) ~~[(8)]~~ "Kentucky Business Enterprises" or "KBE" means ~~the~~[a] division of the office established by KRS 163.470(11) to administer the blind vendor program in Kentucky.

(12) ~~[(9)]~~ "Licensee" means an eligible individual who:

(a) Has successfully completed the KBE Vendor Training Program;

(b) Has been licensed to operate a KBE vending facility; and

(c) Is not operating a vending facility.

(13)[(10)] "Mediation" means a voluntary process through which a vendor ~~seeks~~**may** an in-  
~~formal option which allows a vendor to~~**seek** resolution of a dispute with an office action  
**that**~~which~~:

- (a) Arises from the operation or administration of the vending facility program; and
- (b) Adversely affects the vendor.

(14)[(11)] "Office" means the Office of Vocational Rehabilitation~~Office for the Blind~~ which is  
the state licensing agency established by KRS.163.470 to comply with 20 U.S.C. 107a(5) for the  
blind vendor program~~Randolph Sheppard Vending Facility Program~~ in Kentucky.

(15)[(12)] "Seniority" means the accumulated period of time during which a vendor has oper-  
ated KBE vending facilities.

(16)[(13)] "Trainee" means an eligible individual who has been selected for, and is actively  
participating in, the KBE vendor training program~~leading to licensure~~.

(17)[(14)] "Vending facility" means a food sales operation within the meaning of 34 C.F.R.  
395.1(x) operated on state, federal, or private property under the auspices of KBE~~by a vendor~~.

(18)[(15)] "Vendor" means a licensee who is~~responsible for~~ operating a vending facility un-  
der terms of a~~an~~ vendor agreement, agreement, permit, or other contract that governs the op-  
eration of ~~relating to~~ the vending facility.

(19)[(16)] "Vendor Agreement~~agreement~~" means the~~a~~ written contract~~entered into~~ be-  
tween the office and a ~~KBE~~ vendor **that**~~which~~~~authorizing the vendor to operate a vending~~  
~~facility at a specific location and setting forth the responsibilities of the parties with respect to~~  
~~the vending facility~~

- (a) Authorizes the vendor to operate a vending facility at a specific location; and
- (b) **Establishes**~~Sets forth~~ the terms of the operation of the vending facility.

**(20) "Vendor training program" means KBE's mandatory training program for eligible**  
**blind individuals seeking a vending license.**

## Section 2. Training and Licensure. (1) Eligibility Criteria.

(a) An applicant shall be screened to enter the KBE vendor training program upon submission  
of documentation by the counselor and the eligible individual which establishes that the criteria  
in paragraph (b) of this subsection have been met.

(b) The applicant shall:

1. Be a~~Meet a visual diagnosis of~~ blind person~~as defined in the federal Randolph Sheppard~~  
~~Act at 20 U.S.C. 107e(1) and the definition of blind person established in 34 C.F.R. 395.1(e);~~
2. Be a citizen of the United States;
3. Have met~~Be certified that the consumer meets~~ the general criteria of eligibility for voca-  
tional rehabilitation services from the office;
4. Have received a high school diploma or GED certification;
5. Have math skills at an eighth-grade level or above;
6. Have financial, verbal communication and public relations skills sufficient to operate~~for~~  
~~operating~~ a vending facility~~business~~;
7. ~~Have verbal and communication skills;~~
8. ~~Have public relations skills;~~

7.[9:] Maintain personal hygiene to meet all health codes applicable to the vending facility and adhere to a dress code appropriate for the vending facility location~~[Have personal hygiene and appearance appropriate for meeting the public];~~

8.[10:] Be independent in performing the activities of daily living~~[daily living activities]~~ with accommodation;

9.[11:] Have mobility skills sufficient to safely navigate the vending facility; and

10.[12:] Have reached the age of eighteen (18)~~[majority]~~.

(2) KBE screening process for training program.

(a) The screening committee shall be composed of:

1. The ~~[KBE division]~~ director or designee;

2. The chair of the ~~Committee~~[State Committee of Blind Vendors] or designee;

3. A KBE vendor appointed by the chair of the ~~committee~~[State Committee of Blind Vendors];

4. The Director of ***the Division of Blind***~~[Consumer]~~ Services or a designee; and

5. The KBE assistant division director or designee.

(b) A designee shall not be the counselor of the applicant.

(3) KBE Vendor Training Program.

(a) The KBE vendor training program shall provide on-the-job work experience and classroom instruction~~[leading to licensure as a KBE vendor]~~.

(b) The curriculum and training manual for the KBE training program shall be developed with the active participation of the ~~Committee~~[State Committee of Blind Vendors] to ensure that a trainee, upon completion of the program, demonstrates proficiency in all aspects of KBE vending facility operation.

(c) ~~[Upon successful completion of the training program,]~~[T]he office shall award a vendor license to a~~[the] trainee who successfully completes the vendor training program.~~

Section 3. KBE Vendor License. (1) License conditions.

(a) A license to operate a KBE vending facility shall be issued for an indefinite period of time.

(b) The office shall provide management services and training to assist the vendor in operating a vending facility~~[fulfilling the terms of the agreement]~~.

(c) KBE shall conduct periodic management reviews, vending facility surveys, and financial audits of vending facilities and records. If ~~KBE determines~~[information is obtained that] the vendor is not meeting the operational standards established in Section 9 of this administrative regulation, remedial steps shall be identified and reviewed by KBE staff with the vendor. Specific training, if appropriate, shall be made available to remedy a deficiency. The office may require the vendor to participate in training provided by, or arranged by, KBE if operational standards established in Section 9 of this administrative regulation are not being met.

(d) The office shall terminate the license of a vendor if, after affording the vendor the opportunity for an~~[a] administrative~~[full evidentiary] hearing, the office finds that:

1. The vending facility is not being operated in accordance with this administrative regulation, the permit or agreement, or the vendor agreement, such as the filing of false set aside reports, the violation of any state or federal law regarding payment of taxes and labor requirements, ***or***~~[and]~~ the failure to maintain insurance as required by Section 9(20) of this administrative regulation; or

2. The vendor's vision has improved so that the vendor no longer meets the definition of blind person[~~established in 34 C.F.R. 395.1(c) of the federal implementing regulations to the Randolph-Sheppard Act, 20 U.S.C. 107 through 107f~~]. In order to ensure compliance, vendors may be required to undergo an ophthalmologic examination. The office shall select and approve the exam provider and shall be responsible for the costs of the examination.

(2) Leave of absence.

(a) The office ***shall[may]*** grant a vendor a leave of absence from a vending facility of up to one (1) year for:

***1. A serious health condition that leaves the vendor unable to perform the functions necessary to manage the vending operation;***

***2. Care for a spouse, son, daughter, parent, or immediate family member with a serious health condition;***

***3. Pregnancy and the birth of a child;***

***4. The placement of a child for adoption or foster care if taken within one (1) year of placement; or***

***5. Another exigent circumstance that is in the best interest of the vendor or the vending operation[~~reasons of health, pregnancy, or personal reasons after a written request with justification is approved by the director~~].***

(b) The vendor shall retain accrued seniority, but shall not accrue any seniority during the leave of absence.

(c) If the vendor is unable to return to the vending facility at the expiration of the approved leave of absence, the vendor shall:

1. Resign from that vending facility; or

2. Be subject to termination of the vendor agreement to operate the vending facility.

(3) Resignation.

(a) Resignation from a vending facility shall result in a vendor returning to licensee status with the right to bid on vending facility vacancies and retention of accrued seniority.

(b) Resignation from KBE shall result in loss of the vendor's license with retention of all accrued seniority.

(c) Reentry into KBE and eligibility to bid on a vending facility by an individual that resigned from KBE shall be allowed only upon completion of training, if the individual that resigned did so for one (1) calendar year or more prior to their attempt to reenter KBE.

Section 4. Vendor Vacancy. (1) The office shall determine that a vendor vacancy exists if:

(a) A new vending facility is established; or

(b) An existing vending facility position is vacated.

(2) If a location becomes available that might support more than one (1) vending facility, the number and types of facilities shall be determined by the director with the active participation of the State Committee of Blind Vendors to prevent unfair competition.

Section 5. Vendor Appointment. (1) Announcement of vacancy.

(a) If a vending facility vacancy is identified, the director shall notify all licensees and vendors of the available position.

(b) Announcements of a vacancy shall be made in alternative format and shall include the closing date and time by which bids shall be received by the director.

(c) Information on the vending facility's operation requirements, previous vending facility gross sales, and arrangements for visitation of the vending facility shall be included in the announcement.

(2) Bids. Any vendor or licensee may make an application for a vacancy by submitting a completed Application for Vending Facility Vacancy Form to the director by the bid closing date. All bids shall be considered without regard to race, color, national origin, gender, religion, age, political affiliation, and disability.

(3) Selection.

(a) The director shall appoint a vendor or licensee to manage each vending facility, in accordance with this subsection.

(b) Except in cases of emergency appointment pursuant to subsection (5) of this section, the director shall solicit the active participation of three (3) representatives of the State Committee of Blind Vendors, who shall be appointed by the committee chair, on each vending facility manager appointment.

(c) The selection process shall begin with compilation of the seniority of each bidder based on currently existing KBE records. Beginning with the bidder with the most KBE seniority, the director and committee representatives shall review that bidder's business practices as documented in the KBE vending facility files in areas such as:

1. Customer relations;
2. Cooperation with property management;
3. Cooperation with KBE staff;
4. Complaints and commendations;
5. Timely and accurate submission of monthly financial reports and set-aside payments;
6. Financial management;
7. Recordkeeping;
8. Audit reports; and
9. Nonnegotiable payments to KBE or suppliers.

(d) The committee representatives shall advise the director of their first and second choice recommendations. The director shall balance the most senior bidder's documented business practices with the requirements of the specific vending facility vacancy. If the bidder's business practices are reasonably satisfactory as they relate to the specific vending facility requirements, in the judgment of the director, the bidder with the highest KBE seniority shall be offered the appointment to the vending facility vacancy.

(e) If the bidder with the most KBE seniority is not offered the appointment under the criteria of this subsection or declines the appointment, the director shall apply the criteria of this subsection to the next bidder with the highest KBE seniority until a bidder is selected and appointed by the director.

(f) If two (2) or more bidders have equal KBE seniority, each bidder's business practices as they relate to meeting the vending facility requirements shall be balanced by the director. The most qualified bidder for the specific vending facility vacancy, in the judgment of the director, shall be selected and offered the appointment by the director.

(g) Consideration of KBE licensees with no KBE seniority shall be based on the following equally weighted criteria:

1. KBE final training test score;
2. On-the-job training reports;
3. Formal education; and
4. Prior work history.

(4) Appointment.

(a) The successful bidder shall be notified of appointment to the vacancy in alternative format as necessary. All appointment letters shall be mailed by certified mail. The appointee shall respond to the director in writing, postmarked within five (5) working days after receipt of the appointment letter, to accept or reject appointment. In the absence of a written response, the offer of appointment shall be rescinded, and the director shall select a new appointee.

(b) If a vendor resigns or abandons a vending facility within six (6) months of appointment to the facility for any reason other than properly documented medical reasons, the vendor shall be ineligible to bid on another vending facility for six (6) months.

(5) Emergency appointment.

(a) The office shall make an emergency appointment of a vendor, licensee, or a nonlicensed individual to a vending facility vacancy if time does not permit adherence to the vendor appointment process. An emergency appointment may occur for a leave of absence, appointment of a vendor or licensee to another vacancy, death, abandonment, health emergency, or other similar occurrence.

(b) A licensee placed by emergency appointment shall accrue seniority for the duration of the emergency appointment period. The State Committee of Blind Vendors shall be notified in writing of an emergency appointment.

(c) An emergency appointment shall not be more than six (6) months in duration from the time the appointment is made.

Section 6. Saleable Stock Inventory Acquisition. (1)(a) If a licensee is placed in a vending facility, a saleable stock inventory shall be provided by the licensee's counselor on a one (1) time basis that is equal to three (3) weeks of the facility's gross sales as determined by the facility's historical data, or if a new facility, the gross sales of a similar facility~~[not to exceed \$5,000]~~. This amount shall be used to reimburse:

1. The stock wholesalers;
2. The vendor exiting the vending facility; or
3. Both.

(b) The amount and type of stock necessary for the successful operation of a vending facility shall be determined by the director or designee, based on the amount and type of stock used previously at the same or similar vending facilities.

(c) Payment for additional stock~~[above the \$5,000]~~ needed for the vending facility shall be the responsibility of the licensee. If the licensee seeks financing for the additional stock, KBE may purchase the stock on the licensee's behalf after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The licensee shall make monthly payments to KBE up to the value of the stock purchases

as set forth in a repayment schedule negotiated and signed by both the licensee and the office's representative.

(2)(a) If a vendor transfers, through the KBE bid process, from one (1) vending facility to another at which KBE owns an initial saleable stock inventory, the entering vendor shall purchase from KBE the initial inventory valued at wholesale costs.

(b) Except as **established[provided]** in paragraph (c) of this subsection, inventory above the initial value at the vending facility shall be bought by the entering vendor from the exiting vendor at wholesale costs through an arrangement between vendors. KBE shall not be a party to that arrangement. KBE staff shall advise what type and amount of stock is needed at the vending facility, whether as the beginning inventory or additional inventory.

(c) The exiting vendor, at his discretion, may choose to dispose of the stock inventory at the vending facility which is above the KBE-owned type and amount of product considered initial stock. The entering vendor shall be responsible for additional stock purchases above the KBE-owned amount. KBE may make stock purchases on behalf of the entering vendor after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The vendor shall make monthly payments to KBE up to the value of the stock purchases.

(3)(a) If an emergency appointment of a vendor is made to an existing vending facility at which the initial saleable stock inventory is owned by KBE, ownership shall be retained by KBE. KBE shall purchase needed inventory above the initial amount at the vending facility, at wholesale cost from:

1. The exiting vendor; or
2. Wholesalers.

(b) The emergency appointee shall be responsible for maintaining a stock inventory value equivalent to the KBE-owned inventory at the vending facility.

(c) If a permanent vendor appointment is made, the appointed vendor shall make arrangements to purchase the entire stock inventory from the exiting vendor or KBE.

(4) If an emergency appointment is made to a new vending facility where there is no existing stock inventory, KBE shall purchase the initial inventory.

(5) If an emergency appointment is made to a vending facility where the exiting vendor has been granted a leave-of-absence, the emergency appointee shall:

- (a) Accept responsibility for total inventory of the vending facility; and
- (b) Maintain an inventory of equal value, in either saleable stock or cash equivalent during the entire emergency assignment.

Section 7. Mediation and Administrative Hearing~~[Vendor Administrative Remedies and]~~ Procedures. (1) Mediation.

(a) A vendor who is dissatisfied with an office action arising from the operation or administration of the vending facility program, which adversely affects the vendor, has the right to request mediation and an administrative hearing. A request shall:

1. Be submitted to the director in writing;

2.] within thirty (30) calendar days from the occurrence of an office action arising from the operation or administration of the vending facility program **that[which]** adversely affects the vendor, a mediation; and



2. Establish~~[3. Set forth]~~ the details of the complaint.

(b) The office shall maintain a list of qualified and impartial mediators and ~~if~~**[when]** a request for mediation is received, the office shall:

1. Choose a mediator, with the agreement of the vendor, from the list and schedule a mediation to be held within forty-five (45) calendar days of the receipt of the request for mediation;

2. Schedule the mediation at a field office convenient to the aggrieved vendor during regular state working hours;

3. Provide reasonable accommodations upon request;

4. Allow the Appellant to be represented by an attorney or advocate at appellant's own expense;

5.~~[6.]~~ Send a representative to the mediation who is authorized to bind the office to an agreement; and

6.~~[7.]~~ Not use the mediation process to deny or delay the vendor's right to pursue resolution of the dispute through an administrative hearing.

(c) If the vendor and office mutually agree to a resolution at the mediation, that agreement shall be documented in writing and signed by both parties before the mediation is concluded.

(d) Discussions arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(e) If a mutually agreeable resolution is not obtained, the vendor may submit a request for an administrative hearing.

(2) Administrative hearing.

(a) If the vendor does not request mediation~~[,]~~ or mediation does not resolve the dispute, the vendor may request an administrative hearing, **which shall be** in accordance with the terms **established~~[set forth]~~** in subsection (1) **of this section**:

(b) Upon receipt of a request for an administrative hearing, the office shall conduct an administrative hearing in accordance with KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final agency decision may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13.[]

(a) Participation in the mediation process shall be voluntary on the part of the vendor. The mediation process shall not be used to deny or delay the vendor's right to pursue resolution of the dispute through an evidentiary hearing.

(b)1. Within thirty (30) calendar days from the occurrence of an office action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation may be requested in writing to the director.

2. The office shall maintain a list of qualified mediators. The director, with the agreement of the vendor, shall choose a mediator from the list and schedule a mediation meeting to be concluded within forty-five (45) calendar days of the receipt of the request.

3. The mediation shall be held at a field office convenient to the aggrieved vendor during regular state working hours.

4. Reasonable accommodations shall be provided upon request.

~~(c) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation. The aggrieved vendor shall attend and may be represented by an advocate or counsel. If the vendor and office mutually agree to a resolution, the mediation agreement shall be signed before the mediation is concluded. Discussion or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.~~

~~(d) If a mutually agreeable resolution is not obtained, the vendor may submit a request for an evidentiary hearing within thirty (30) calendar days of the unresolved mediation.~~

~~(2) Evidentiary hearing.~~

~~(a) If desired, a vendor shall request an evidentiary hearing in writing to the director within thirty (30) calendar days:~~

~~1. Of an unresolved mediation; or~~

~~2. From an office action arising from the operation or administration of the vending facility program which adversely affects the vendor.~~

~~(b) The office shall conduct an evidentiary hearing requested by the vendor pursuant to KRS Chapter 13B.~~

~~(c) A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may seek judicial review in accordance with the provisions of KRS Chapter 13B.~~

~~(3) Arbitration. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13.]~~

Section 8. Kentucky[State] Committee of Blind Vendors. The Kentucky Committee of Blind Vendors[State Committee of Blind Vendors] shall be established to actively participate with the office in the major administrative and policy decisions affecting the overall administration of the blind vendor program in Kentucky[Randolph-Sheppard Vending-Facility Program] and to perform other functions consistent with 34 C.F.R. 395.14.

(1) Election procedures. The office shall provide for the biennial election of the Committee[State Committee of Blind Vendors] consistent with the bylaws drafted by the Committee[procedures established by the general assembly of all blind vendors in accordance with 34 C.F.R. 395.14].

(2) Meetings of the committee.

(a) The Committee[State Committee of Blind Vendors] shall:

1. Conduct all meetings in accordance with the Committee bylaws and the Kentucky Open Meetings Act as established[set forth] in KRS 61.800 et. seq.;

2. M[me]et at least quarterly with the director or his designee in attendance.

(3) The office shall send t[the] announcement of the meeting, and[with] the agenda as drafted by the committee chairperson and the director or designee, [shall be sent][mailed] to the committee members, [and all] vendors, and licensees[by KBE] via electronic mail or U.S. Mail. [Mailings-]The documents shall be provided[prepared] in alternative format as necessary.

(b) Office[The KBE] staff shall record the official minutes of meetings and prepare and send [mail] a copy of the minutes to all vendors and licensees after approval by the committee chair via electronic mail or U.S. Mail. The minutes may be provided[mailed] in alternative format as necessary.

(c)1. The office[KBE] shall make committee meeting space available to the chairperson as necessary to conduct the[for] business of the Committee[State Committee of Blind Vendors].

2. The director and committee chair shall develop an annual committee budget.

3. Expenses incurred by the committee members in conducting the four (4) quarterly meetings shall be reimbursed from the committee's annual budget consistent with 200 KAR 2:006.

4. Additional meetings shall be eligible for reimbursement with the approval of the KBE director or office executive director, based on availability of funds and the purpose of the meeting.

(d) The Committee[State Committee of Blind Vendors] shall adopt bylaws, which shall be approved by the office **if the bylaws comply with state and federal law.**

Section 9. Vendor's Rights and Responsibilities. A vendor shall:

(1) Execute a Vendor Agreement[Enter into an agreement] with the office for the operation of a [Randolph Sheppard] vending facility[-under the auspices of KBE] prior to beginning operation of a vending facility **and thereafter if required to ensure its terms remain compliant with KBE's agreement;**

(2) Operate the vending facility in accordance with accepted-business practices and in compliance with all federal, state, and local laws, administrative regulations, and ordinances applicable to the operation of the vending facility;

(3) Assure proper daily operation of the vending facility to meet the requirements of the permit or agreement and vendor agreement in a business-like manner;

(4) Maintain high-quality fresh merchandise in a quantity sufficient to satisfy customer needs;

(5) Maintain personal hygiene and vending facility sanitation sufficient to meet all health codes applicable to the vending facility, and adhere to a dress code appropriate for the vending facility location;[Maintain presentable personal hygiene, appearance, and vending facility sanitation to assure pleasant accommodations for all customers;]

(6) Provide adequate pest control and janitorial services unless otherwise specified in the vendor agreement;

(7) Post in a conspicuous place a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18) pursuant to KRS 438.310 in any vending facility where tobacco products are sold;

(8) Require proof of age from a prospective buyer or recipient of tobacco products who may be under the age of eighteen (18);

(9) Clean, fill, and service machines and equipment as often as necessary to ensure adequate stock to meet the needs of the customers at the vending facility[daily to assure proper functioning and report promptly to KBE any needed repair of equipment];

(10) Assure proper functioning of all machines and equipment and promptly report the need for equipment repairs;

(11)[(10)] Obtain prior written approval from the director before purchasing equipment for a KBE vending facility from personal funds. If approved, the vendor shall arrange and pay for repair and maintenance and removal, if necessary, of the personally owned equipment;

(12)[(11)] Employ and pay a substitute during times of vendor absence from a vending facility due to vacation or sickness unless the office has made an emergency appointment for an extended leave. Preference may be given to qualified blind or visually-impaired persons if selecting substitutes;

~~(13)~~~~(42)~~ Cooperate with vending facility audits that may be performed periodically at KBE expense;

~~(14)~~~~(43)~~ Pay the monthly seven (7) percent set-aside amount based on net profits of all vending facilities on schedule:

(a) The monthly set-aside payments shall be received by the office on or before the 20th of the following month by check or money order made payable to the Kentucky State Treasurer **or through an electronic payment system established by the office**;

(b) Late set-aside payments shall result in a twelve (12) percent annual interest charge plus a five (5) percent penalty for each thirty (30) day period or portion thereof for which the set-aside payment is in arrears, up to a maximum of twenty-five (25) percent;

(c) A twelve (12) percent annual interest charge shall be assessed for nonnegotiable checks received until the date a replacement certified check or money order is received;

(d) A ten (10) dollar service charge shall be due for a nonnegotiable check;

(e) If a nonnegotiable check is received from a vendor, all future payments made by the vendor shall be by certified check or money order;

(f) If a vendor is late in making the set aside payment to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one (1) year; and

(g) If a vendor is late in making the set aside payment to the office for ninety (90) or more calendar days, or is late in making the set aside payment to the office six (6) or more times in a calendar year, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation, the vendor shall be subject to removal from their vending facility;

~~(15)~~~~(44)~~ Pay resaleable stock suppliers promptly and retain all invoices and receipts for three (3) calendar years;

~~(16)~~~~(45)~~ Include rebates, commissions, or bonuses received by the vendor from suppliers as income of the vending facility and account for this income on the monthly vending facility financial report submitted to KBE on a completed Financial Report Form;

~~(17)~~~~(46)~~(a) Utilize office-established accounting practices and bookkeeping procedures including the establishment of a business bank account to ensure that personal and vending facility funds are not commingled; and

(b) Make available to the office upon request bank statements and other vending facility business records for audit purposes and to satisfy ongoing financial accountability standards;

~~(18)~~~~(47)~~(a) Submit a monthly vending facility financial report on a completed Financial Report Form to be received by the office on or before the 20th of the following month, with the expenses listed deducted as operating expenses on the report:

1. Expendable supplies used in the vending facility;

2. Substitutes for the vendor while the vendor is not present at the vending facility due to sick or annual leave;

3. Rental and commission fees paid to building management as stipulated in the vending facility agreement;

4. Telephone and utility expenses of the vending facility;

5. Pest control services;

6. Delivery charges paid on resaleable stock;

7. Janitorial services;
8. Liability insurance;
9. License and permits required by health departments;
10. Employee wages; and
11. Employee fringe benefits;

(b) If a vendor is late in making the monthly vending facility financial report to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one (1) year;

(c) If a vendor is late in making the monthly vending facility financial report to the office for ninety (90) or more calendar days, or is late in making the monthly vending facility financial report to the office six (6) or more times in a calendar year, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation, the vendor shall be subject to removal from their vending facility;

~~(19)~~~~(18)~~ Reimburse at wholesale cost the vending facility for merchandise taken from the vending facility for any personal use or charitable donation;

~~(20)~~~~(19)~~ Be responsible for payment of any taxes levied or assessed on the operation of the vending facility including local, state, and federal taxes;

~~(21)~~~~(20)~~(a) Obtain, maintain in effect, and pay all premiums of the following insurance coverage:

1. Comprehensive general liability insurance including personal injury, bodily injury, and product liability to meet minimum policy limits set by KBE in compliance with the terms of the vending facility permit. The policies shall insure against any liability which may occur from the operation by the vendor of the vending facility or in connection with the premises; and

2. Pay workers' compensation, Social Security, unemployment compensation, disability insurance, and other insurance coverage required by law for both the vendor and vendor's employees;

(b) Submit proof of insurance as required by this subsection to KBE annually. All policies shall provide for notice to KBE of any cancellation, termination, or nonrenewal of coverage; and

(c) Vendors that fail to annually submit proof of insurance as required by this subsection shall be subject to termination or suspension of the vendor's license, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation;

~~(22)~~~~(21)~~ Not bind or obligate the office or represent to an entity that the vendor is a legal representative, agency, or employee of the office;

~~(23)~~~~(22)~~ Not remove or move any KBE-owned equipment located at any vending facility without approval from the director;

~~(24)~~~~(23)~~ Maintain a separate business bank account for deposit of all lottery sales and proceeds in a vending facility participating in lottery games for which the manager personally has applied and been approved for the sale of lottery tickets by the Kentucky Lottery Corporation;

~~(25)~~~~(24)~~ Adhere to the initial stock inventory requirements established in Section 6 of this administrative regulation;

~~(26)~~~~(25)~~ Cooperate with KBE staff in the ongoing supervision and monitoring of the vending facility to maximize efficiency, productivity, customer satisfaction, and market potential;

(27)[(26)] Participate in training arranged and paid for by the office as required by KBE to correct identified deficiencies and to improve business skills. Vendors may request approval from the office for vending facility management training;

(28)[(27)] Request access in writing, if desired, to all program and financial data of KBE as provided for by the Kentucky Open Records Law, KRS 61.870 through 61.884, and the federal Randolph-Sheppard Act, 20 U.S.C. 107 through 107f. The data may be made available in alternative format. At a vendor's request, the office shall arrange a convenient time for a staff member to assist in the interpretation of the data;

(29)[(28)] Have the opportunity to read and respond to each complaint or commendation placed in a KBE file. A copy of the complaint or commendation shall be delivered to the named vendor by registered or certified mail. A response received from the vendor named in the complaint or commendation shall be filed with the complaint or commendation in the KBE file; **and**

(30)[(29)](a) Be prohibited from bidding on a vending facility for one (1) calendar year dating from the date of the second late payment if the vendor fails to make two (2) consecutive monthly payments in any repayment schedule established pursuant to Section 6 of this administrative regulation;

(b) Be subject to removal from a~~the~~ vending facility, after first affording the vendor an opportunity to request a mediation and administrative hearing~~remedy~~ in accordance with Section 7 of this administrative regulation, if the vendor:

1. Fails to make a payment in any repayment schedule established pursuant to Section 6 of this administrative regulation for ninety (90) or more calendar days; or

2. Is late in making the payment to the office six (6) or more times in a calendar year; **and**

**(31) Not continue vending if KBE's right to vend at a property is terminated.**

Section 10. Office's Rights and Responsibilities. The office shall:

(1) Enter permits or agreements with property management administrators on suitable federal, state, and other property to establish vending facilities;

(2) Assist in stocking vending facilities with initial resaleable products in accordance with Section 6 of this administrative regulation;

(3) Provide new and existing vending facilities with sufficient equipment to meet the terms of the permit or agreement for operation of each vending facility. The office shall:

(a) Retain ownership of all equipment provided and paid for by KBE in each vending facility;

(b) Repair, or cause to be repaired, replace, or maintain all vending facility equipment owned by KBE;

(c) Approve or deny vendor requests for replacement equipment if justified;

(d) Purchase additional equipment for vending facilities if sufficiently justified in terms of the vending facility potential and permit or agreement obligations. The office shall review vendor requests for additional equipment with accompanying justification for the investment. KBE shall make the final decision and notify the vendor; and

(e) Approve requests, if justified, for vendor-purchased equipment.

(4) Develop financial controls to ensure financial accountability of each vending facility;

(5) Establish a seven (7) percent set-aside amount to be paid by each vending facility manager assessed on the monthly net proceeds of the vending facility;

(6) Establish reasonable charges for delinquent monthly set-aside payments and nonnegotiable checks as established in Section 9(13) of this administrative regulation, and take disciplinary action for persistent delinquency or dishonored checks~~[or nonnegotiable checks]~~, including suspension or termination of a vendor's license, after first affording the vendor the opportunity to request mediation and an administrative hearing~~[an administrative remedy]~~;

(7)(a) Periodically conduct or provide for accountability reviews of vending facility financial documentation relating to the vending facility operation; or

(b) Provide, or provide for, temporary assistance or training to a vendor determined to be remiss in recordkeeping or reporting. If the temporary assistance or training does not correct the deficiency, the office may require the vendor to utilize qualified bookkeeping services;

(8) Contract for periodic audits of each vending facility at office expense;

(9) Inventory and establish the wholesale value of the on-hand saleable stock inventory if a vendor leaves a vending facility;

(10) If a vendor appointment is made, take or contract for the taking of an inventory of all on-hand resaleable stock, valued and calculated at wholesale cost;

(11) Determine the product types and quantities necessary for successful operation of a vending facility if appointing a vendor to a vending facility;

(12) Provide each licensee with a copy of this administrative regulation in alternative format as necessary;

(13) Provide each vendor with a copy of all relevant materials pertaining to the operation of the vendor's assigned vending facility in alternative format ***if[as]*** necessary;

(14) Provide ongoing monitoring and supervision of each vending facility to ensure compliance with operating agreements, permits, laws, administrative regulations, vending facility service obligations, and generally-accepted business practices; and

(15) Provide, or provide for, ongoing training as identified by KBE staff or requested by a vendor and approved by the director, based on availability of funding and whether the director reasonably believes the requested training is warranted under the circumstances.

Section 11. Confidentiality. (1) All identifiable personal information concerning applicant, licensee, and vendors shall be confidential consistent with 34 C.F.R. 361.38. Identifiable personal information shall include documentation from an individual's vocational rehabilitation consumer file. Access to, or release of, the confidential personal information shall be governed by the provisions of 34 C.F.R. 361.38. If the personal information is released in response to a judicial order, the applicant, licensee, or vendor shall be notified by KBE within three (3) working days from receipt of the judicial order.

(2) All KBE documents and files pertaining to the operation of KBE vending facilities shall be public records pursuant to KRS Chapter 61. The KBE files shall include business records concerning the operation of vending facilities and shall be maintained by the office consistent with its public purpose. Any information from KBE files pertaining to the operation of KBE vending facilities may be included in bids issued for vendor vacancies and may be shared with members of the State Committee of Blind Vendors to assist their active participation during vendor selection.

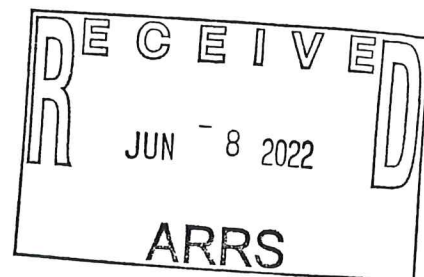
Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Vending Facility Vacancy", February 2001; and
- (b) "Financial Report, Kentucky Business Enterprises", August 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office ~~of~~**for** Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort, Kentucky 40601. [Office for the Blind, 275 East Main Street, Mail Stop 2-EJ, Frankfort Kentucky 40624], Monday through Friday, 8 a.m. to 4:30 p.m. For additional information, please visit [kcc.ky.gov/vocational-rehabilitation](http://kcc.ky.gov/vocational-rehabilitation).

CONTACT PERSON: Susie Edwards, Kentucky Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor NE, Frankfort, Kentucky 40601, phone 502-564-4440, email [SusieM.Edwards@ky.gov](mailto:SusieM.Edwards@ky.gov).





EDUCATION and WORKFORCE DEVELOPMENT CABINET  
Department of Workforce Investment

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

Office of Vocational Rehabilitation  
500 Mero Street, 4<sup>th</sup> Floor  
Frankfort, KY 40601  
502-564-4440

**Mary Pat Regan**  
Deputy Secretary

**Kish Cumi Price, Ph.D**  
Commissioner

June 6, 2022

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 782 KAR 001:010 and **782 KAR 001:070**, the Office of Vocational Rehabilitation proposes the attached suggested amendments to 782 KAR 001:010 and 782 KAR 001:070.

Sincerely,

*Cora McNabb*

Cora McNabb, Executive Director  
Kentucky Office of Vocational Rehabilitation  
Mayo-Underwood Building  
500 Mero, 4<sup>th</sup> Floor  
Frankfort, KY 40601

TEAM  
KENTUCKY

## **SUGGESTED SUBSTITUTE**

Final Version: 11/19/2021 3:31 PM

### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Vocational Rehabilitation**

#### **782 KAR 1:070. Certified driver training program.**

RELATES TO: KRS 186.480(1)(b), 186.576, 186.577(4), 186.578, 186.579, 189A.010  
AUTHORITY: KRS 186.578(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.578(7) requires the Office of Vocational Rehabilitation~~[Office for the Blind]~~ to promulgate administrative regulations setting the standards for a certified driver training program to serve persons with a visual impairment. This administrative regulation establishes standards and procedures for the certified driver training program.

Section 1. Definitions. (1) "Applicant" is defined by KRS 186.576(1).

(2) "Bioptic telescopic device" is defined by KRS 186.576(3).

(3) "Certified driver rehabilitation specialist" means a person who has met basic professional criteria, passed a written test, and maintained continuing education requirements to be certified by the Association for Driver Rehabilitation Specialists, ADED, for the purpose of evaluating, educating, and training persons with disabilities to operate or drive motor vehicles and to prepare for a driving skills test.

(4) "Office" means the Office of Vocational Rehabilitation~~[is defined by KRS 186.576(8)]~~.

Section 2. Certified Driver Training Program Requirements. (1) Any person or entity may apply to the office to become a certified driver training program that satisfies the following requirements:

(a) At least one (1) instructor is a certified driver rehabilitation specialist or is supervised by a certified driver rehabilitation specialist;

(b) All instructors meet the requirements of subsection (4) of this section;

(c) Any vehicle utilized:

1. Has a valid registration;

2. Is in sound mechanical order;

3. Has one (1) operable instructor brake;

4. Has signage indicating student driver on two (2) sides and rear of vehicle; and

5. Has adaptive equipment suitable for functional limitations of students;

(d) Maintains liability coverage that meets the minimum Kentucky insurance limits; and

(e) Uses a curriculum which meets the requirements of subsection (3) of this section.

(2) The following shall be submitted to the office:

(a) Business name, address, telephone number, and office hours;

(b) Copy of the certifications and resumes of each proposed instructor;

(c) Description of the equipment, vehicles with adaptive devices, and facilities to be used in the certified driver training program;

(d) Copy of the valid vehicle registration;

(e) Copy of the liability insurance policy that includes a mandatory ten (10) day written cancellation notice by the insurer to the office;

(f) A detailed copy of the curriculum used; and

(g) The fees charged per hour, per lesson, or per course.

(3) The curriculum to be used shall consist of the following sections:

(a) A theoretical course of instruction that shall include:

1. Subject matter contained in the Kentucky Drivers Manual;

2. Safe driving practices and traffic laws;

3. The "SCAN, Identify, Predict, Decide, Execute" (SIPDE) approach to perceptive driving;

4. Signs, signals, highway markings, and highway design features required for the safe operation of a motor vehicle;

5. Driving emergencies such as brake or tire failure, skidding, stuck accelerator, and running off the roadway;

6. Potential crash locations and situations such as intersections, hydroplaning, railroad crossings, multiple vehicle types in the traffic mix, and pedestrian traffic;

7. Seatbelt usage;

8. Speeding as a major contributing factor in vehicle crashes; and

9. Driver responsibility and accident reporting.

(b) A practical course instruction that shall include:

1. Demonstration, instruction, and practice in the use of the bioptic telescopic device; and

2. Behind the wheel demonstration, instruction, and practice:

a. For a minimum of thirty (30) hours for applicants who have never had an operator's license and fifteen (15) hours for applicants who have had an operator's license; and

b. Consisting of:

(i) Stopping;

(ii) Starting;

(iii) Shifting;

(iv) Turning;

(v) Backing;

(vi) Parallel parking;

(vii) Steering; and

(viii) Driving in residential, medium city, and highway traffic.

(4) Any instructor in an approved certified driver training program shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a four (4) year college degree. Experience as a professional driver education instructor shall substitute year-for-year for the college education if the individual is a high school graduate or equivalent;[

~~(c) Be of good moral character;~~

~~(c) [(d)]~~ Never have been convicted of a felony;

~~(d) [(e)]~~ Never have been convicted of a violation of KRS 189A.010 or its equivalent from another jurisdiction;

(e)[(f)] Never have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in the system;

(f)[(g)] Possess a valid driver's license and have fewer than six (6) points assigned pursuant to 601 KAR 13:025 on his driving history record;

(g)[(h)] Not have had a suspended or terminated[-his] driving privilege ~~withdrawn~~ for any reason in the past five (5) years;

(h)[(i)] ~~Enroll in and~~ Successfully[~~successfully~~] complete the bioptic driving instructor training course offered by the office; and

(i)[(j)] Obtain at least five (5) hours [~~annually~~] of continuing education in low vision rehabilitation each year.

(5) The certified driver training program shall review the driving history record and continuing education requirements of its instructors annually.

Section 3. Certification. (1) The office shall issue a certificate to a[an approved] certified driver training program **as established in Section 5 of this administrative regulation**.

(2) Each certificate shall be valid for three (3) years from the date of issue. Certificates **shall not be[are not]** transferable. If there is a change of ownership, a new application shall be submitted.

Section 4. Performance Inspections. (1) The office may conduct a random or routine performance inspection of a certified driver training program.

(2) The certified driver training program shall be notified in writing of any deficiency discovered in the performance inspection.

(3) The deficiency shall be corrected prior to the next scheduled student or the certified driver training program's approval shall be withdrawn by the office.

Section 5. Acceptance Into a Certified Driver Training Program. (1) An eligible applicant shall:

(a) Meet the minimum visual requirements of KRS 186.578(1);

(b) Obtain the bioptic telescopic device; and

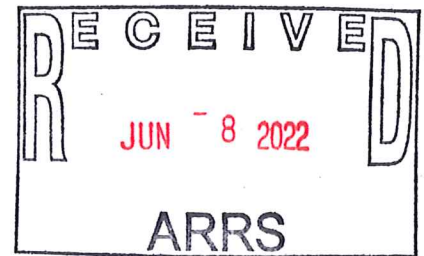
(c) Successfully complete a functional visual assessment by the office.

(2) An eligible applicant **shall[may]** be accepted into a certified driver training program.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.



## KENTUCKY LABOR CABINET



**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

Mayo-Underwood Building  
500 Mero Street, 3rd Floor  
Frankfort, KY 40601  
Telephone: (502) 564-3070

**Jamie Link**  
Secretary

**Vickie L. Wise**  
Deputy Secretary

June 8, 2022

Senator Stephen West and Representative David Hale  
c/o Emily Caudill, Regulations Compiler  
Legislative Research Commission  
029, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff involving 803 KAR 5:005, the Labor Cabinet proposes the attached Subcommittee Substitute to 803 KAR 5:005.

Thank you.

*Rebecca Rodgers-Johnson*

Rebecca Rodgers-Johnson  
Executive Staff Advisor  
Kentucky Labor Cabinet  
500 Mero Street, 3<sup>rd</sup> Floor  
Frankfort, KY 40601

## Subcommittee Substitute

### LABOR CABINET (As Amended at ARRS)

#### **803 KAR 5:005. Employee access to or use of federal tax information; required criminal background check.**

RELATES TO: KRS 18A.095, 336.015, 336.040, 336.125

STATUTORY AUTHORITY: KRS 336.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 336.040 requires the Labor Cabinet to exercise all administrative functions of the state concerned with the employer-employee relationship. KRS 336.125 requires the Labor Cabinet to promulgate administrative regulations to establish requirements concerning criminal background checks for prospective and current employees, including contract staff, with access to or use of federal tax information (FTI). This administrative regulation establishes the guidelines to implement the requirements set forth in KRS 336.125 and IRS Publication 1075.

Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with the Labor Cabinet or its offices, or a contractor working on behalf of the Cabinet or its offices, who has, or will likely have, access to or use of FTI in their regular course of business.

(2) "Contract staff" means an individual employed by the Labor Cabinet or its offices, or a contractor working on behalf of the Cabinet or its offices, who [that] does not meet the definition of ["]employee["] in this section.

(3) "Criminal background check" means a national and state fingerprint-supported criminal history background investigation performed in accordance with KRS 336.125.

(4) "Employee" means either a ["]classified employee["] as defined by KRS 18A.005(7), an ["]unclassified employee["] pursuant to KRS 18A.115, or a ["]federally funded time-limited employee["] as defined by KRS 18A.005(15).

(5) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor, or offense the nature of which indicates that the applicant, employee, or contract staff constitutes an unreasonable and immediate risk to the security of FTI (***including [e.g.,]*** crimes of theft or dishonesty), unless the Labor Cabinet or its offices determine there are mitigating circumstances that sufficiently remediate the existing risk.

(6) "Federal tax information" or "FTI" means federal tax returns and return information received directly from the IRS or obtained through an authorized secondary source, such as the Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of Fiscal Service (BFS), Centers for Medicare and Medicaid Services (CM~~["]~~) or any entity acting on behalf of the IRS pursuant to an IRC 6103 Agreement.

(7) "Office" means any agency, office, department, or commission within the Labor Cabinet.

(8) "Responsible agency" means an office within the Labor Cabinet, or contractor working on behalf of an office, that employs or offers a job to an individual in a position for which the job duties include access to or use of FTI.

## Section 2. Requirements for Criminal Background Checks.

(1) The Labor Cabinet shall require prospective and current employees of the Cabinet or its offices, including contract staff, whose job duties include access to or use of FTI to submit to a fingerprint-based national and state criminal background check as a condition of initial or continued employment. The criminal background check shall occur:

- (a) After the applicant is offered a job but before he or she begins working; and
- (b) At least once every five (5) years for current employees or contract staff.

(2) The Labor Cabinet, its offices, or responsible agency that requests a fingerprint-based national and state criminal background check for an applicant, current employee, or contract staff shall incur all fees associated with the cost of each criminal background check requested.

(3) For contract staff employed by an entity under contract with the Labor Cabinet or its offices, it shall be sufficient for the purposes of this administrative regulation for the entity under contract to provide a national and state criminal background check for contract staff anticipated to have access to or use of FTI in their work for the Labor Cabinet or its offices. The national and state criminal background check provided by the entity under contract **shall [must]** have been completed within two (2) years of the start date for contract staff.

(4) **The** Labor Cabinet, its offices, or responsible agency shall not employ any person in a position for which the job duties include access to or use of FTI if the individual refuses to consent to a fingerprint-based national and state criminal background check.

(5) The Labor Cabinet, its offices, or responsible agency shall notify each applicant, current employee, or contract staff determined to have a disqualifying offense.

Section 3. Disqualification. The Labor Cabinet, its offices, or responsible agency shall not employ or contract with an individual with a disqualifying offense as defined in Section 1(5) of this administrative regulation or whose background check reveals any information that bears upon the fitness of the individual to work in a position with access to or use of FTI. The Labor Cabinet, its offices, or responsible agency shall have the sole discretion to determine if an applicant, current employee, or contract staff is suitable to work in a position with access to or use of FTI and ensure its protection and security in accordance with KRS 336.125, IRS Publication 1075, and any other relevant policy or procedure concerning the confidentiality of FTI.

Section 4. Individuals Ineligible to be Hired. The Labor Cabinet, its offices, or responsible agency may refuse to hire, contract with, or permit to work any applicant that submits to a criminal background check if one (1) or more of the following conditions apply:

- (1) The applicant refuses to provide photo identification and Social Security Number;
- (2) The applicant fails to submit their fingerprints at an authorized collection site within five (5) business days of receiving notice to submit fingerprints;
- (3) Upon completion of the criminal background check, the Labor Cabinet, its offices, or responsible agency receives notice that the applicant is found to have a disqualifying offense; or
- (4) Final and acceptable disposition of a criminal charge related to a disqualifying offense is not provided to the Labor Cabinet, its offices, or responsible agency within sixty (60) days of fingerprint submission.

## Section 5. Notice of a Disqualifying Offense – Applicants.

(1) Upon completion of the criminal background check, the Labor Cabinet, its offices, or responsible agency shall notify applicants determined to have a disqualifying offense.

(2) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the Labor Cabinet, its offices, or responsible agency shall refer the applicant to the appropriate state or federal law enforcement agency.

Section 6. Notice of Disqualifying Offense, Reconsideration, and Appeal – Current Employees.

(1) Upon completion of a criminal background check, the Labor Cabinet, its offices, or responsible agency shall notify current employees determined to have a disqualifying offense. A current employee found to have a disqualifying offense shall immediately be removed from duties with access to or use of FTI.

(2) Upon receipt of notice of a disqualifying offense, a current employee removed from responsibilities requiring FTI access or use may submit a written request for reconsideration to the Labor Cabinet's Division of Human Resources no later than fourteen (14) calendar days from the date the notice is issued.

(3) The current employee's request for reconsideration shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;
2. The number of years since the occurrence of the disqualifying offense;
3. The age of the offender at the time of the disqualifying offense;
4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and

5. Any other relevant and mitigating circumstances regarding the disqualifying offense;

(b) Official documentation showing that all fines, including court-imposed fines, costs or restitution, have been paid, or documentation demonstrating adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to competently perform the employment responsibilities.

(4) A current employee who requests reconsideration may be retained on staff during the review process subject to the following factors:

(a) The nature and severity of the disqualifying offense;

(b) The disposition of the disqualifying offense;

(c) The time elapsed since the disqualifying offense;

(d) The employee's personnel history; and

(e) Whether the employee may be assigned other duties that do not require access to or use of FTI.

(5) After review, the Labor Cabinet, its offices, or responsible agency may:

(a) Transfer the employee to another open position at the same pay grade or lower within the Labor Cabinet, its offices, or responsible agency for which the employee is qualified and for which access to or use of FTI is not part of the job responsibilities;



(b) Dismiss the employee if it is determined that the nature of the disqualifying offense presents an immediate, serious and irreparable risk to FTI if the employee's job duties require access to or use of FTI;

(c) Redefine the employee's job responsibilities to exclude those functions that require access to or use of FTI; or

(d) Any other action permitted by law.

(6) The appointing authority as defined in KRS 18A.005(1), or his or her designee, shall issue a final written determination regarding the reconsideration request. The appointing authority or his or her designee shall notify the employee of the final determination no later than thirty (30) calendar days from receipt of the written request for reconsideration, and the notice shall include any personnel action to be taken by the Labor Cabinet, its offices, or responsible agency as a result of the final determination.

(7) The current employee may have the right to appeal an action taken by the Labor Cabinet, its offices, or responsible agency pursuant to the applicable sections of KRS Chapter 18A and the Kentucky Administrative Regulations.

#### Section 7. Notice of Disqualifying Offense – Contract Staff.

(1) Upon completion of the criminal background check, any contract staff found to have a disqualifying offense shall immediately be subject to one **(1)** or more of the following actions at the sole discretion of the Labor Cabinet, its offices, or responsible agency:

(a) Termination;

(b) If permitted by the contract, removed from all duties requiring access to or use of FTI and assigned other duties that do not require access to or use of FTI; or

(c) Any other action permitted by law.

(2) The Labor Cabinet, its offices, or responsible agency shall notify the contract staff of the action or actions taken within seven (7) days of discovery of the disqualifying offense.

(3) If the contract staff wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the Labor Cabinet, its offices, or responsible agency shall refer the applicant to the appropriate state or federal law enforcement agency.

Section 8. Challenges to Criminal Background Check Information. An individual subject to a criminal background check required by KRS 336.125 and this administrative regulation shall have the right to request and review the results of his or her national and state criminal background check and to request correction of any inaccurate information. All corrections ***shall [must]*** be addressed with the Federal Bureau of Investigation or the Department of Kentucky State Police; the Labor Cabinet cannot assist with this process or correct any inaccurate information.

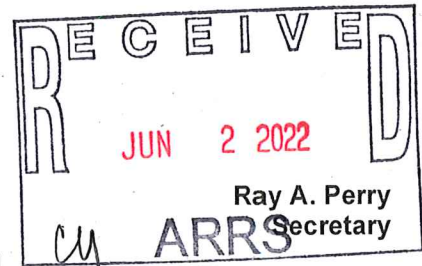
Section 9. Pardons, Diversions, and Expungements. An applicant, employee, or contract staff who has received a pardon for a disqualifying offense, has had a disqualifying offense dismissed after successful completion of a diversion program, or has had the disqualifying offense expunged shall not be barred from employment with the Labor Cabinet, its offices, or responsible agency in a position with job duties that include access to or use of FTI for reasons related to the underlying disqualifying offense(s).

CONTACT PERSON: Rebecca Rodgers, Executive Staff Advisor, 500 Mero Street, 3rd Floor, Mayo Underwood Bldg, phone 502-782-1350, email [rebecca.rodgers@ky.gov](mailto:rebecca.rodgers@ky.gov).

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



Marc Guilfoil  
Executive Director

Jonathan Rabinowitz  
Chairman

June 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: 810 KAR 3:020: Licensing of racing participants

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 810 KAR 3:020, the Kentucky Horse Racing Commission proposes the attached amendment to 810 KAR 3:020.

Very truly yours,

A handwritten signature in cursive script that reads "Jennifer Wolsing".

Jennifer Wolsing  
KHRC General Counsel

**SUGGESTED SUBSTITUTE**

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission**

**810 KAR 3:020. Licensing of racing participants.**

RELATES TO: KRS 12.357, 230.215, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.330

STATUTORY AUTHORITY: KRS 12.357, 230.215(2), 230.240(2), 230.260(4), 230.290(2), 230.310(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes[grants] the Kentucky Horse Racing Commission [the authority] to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.310(1) requires[authorizes] the commission to establish licensing requirements for participation in horse racing. This administrative regulation establishes licensing procedures and requirements for participation in horse racing.

**Section 1. Definitions.**

- (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, limited liability company, association, club, committee, organization, lessor, lessee, racing stable, farm name, or other group of persons acting in concert.
- (2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

**Section 2. Persons Required to Be Licensed.**

- (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission.
- (2) License categories shall include:
  - (a) Association employee;
  - (b) Assistant trainer;
  - (c) Claiming;
  - (d) Commission member;
  - (e) Commission employee;
  - (f) Dental technician;
  - (g) Driver;
    - 1. Qualifying-fair (QF) license;
    - 2. Provisional (P) license; and
    - 3. Full (A) license;
  - (h) Driver/trainer;
  - (i) Equine therapist;
  - (j) Exercise rider;
  - (k) Farm manager or agent;
  - (l) Farrier;
  - (m) Farrier apprentice;
  - (n) Jockey;
  - (o) Jockey agent;

- (p) Jockey apprentice;
- (q) Matinee driver;
- (r) Mutuel employee;
- (s) Owner;
- (t) Owner (Temporary);
- (u) Owner/assistant trainer;
- (v) Owner/trainer;
- (w) Owner/trainer/driver;
- (x) Owner/driver;
- (y) ***[Racing department employee;***
- (z)]***Racing official;
- (z)](aa)]*** Special event employee;
- (aa)](bb)]*** Stable agent;
- (bb)](cc)]*** Stable employee;
- (cc)](dd)](cc)]*** Steeplechase jockey;
- (dd)](ee)](dd)]*** Trainer;
- (ee)](ff)](ee)]*** Vendor;
- (ff)](gg)](ff)]*** Vendor employee;
- (gg)](hh)](gg)]*** Veterinarian;
- (hh)](ii)](hh)]*** Veterinary assistant; and
- (ii)](jj)](ii)]*** Veterinary technologist or technician.

(3) A person working at a licensed racing association in the Commonwealth shall obtain a valid license issued by the commission. The executive director, chief racing steward, the presiding judge, or their designee may refuse entry or scratch any horse involving any person who, after being requested to obtain a valid license, fails or is unable to obtain a license.

(4)

(a) A person required to be licensed shall submit:

1. A completed written application on the form Licensing Application, 3-020-1, or a multi-jurisdictional license form pursuant to Section 8 of this administrative regulation; and
2. The fee required by Section 6 of this administrative regulation.

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section 18 of this administrative regulation.

(c) A conditional license may be issued by the commission or its designee.

### Section 3. General License Application Requirements for All Applicants.

(1) Any person required to be licensed by Section 2 of this administrative regulation and desiring to participate in horse racing in the Commonwealth may apply to the commission for a license.

(2)

(a) An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force.

(b) An application shall be submitted no later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 18 of this administrative regulation.

(c) The license application shall be reviewed and the license issued by commission personnel.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his or her agent shall result in an immediate license

suspension, revocation, refusal, or denial, or imposition of a fine by the commission or the chief racing steward or presiding judge.

(4)

(a) An applicant for licensing shall be a minimum of sixteen (16) years of age except as provided by paragraph (b) of this subsection. An applicant may be required to submit a certified copy of his or her birth certificate or work permit.

(b) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. An application under this subsection shall be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the stewards or judges.

(5) An application from a person or other entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(6) The commission shall notify an applicant that the license has been issued or denied. If all requirements for licensure are met, a license shall be issued to the license applicant.

#### Section 4. Additional Licensing Requirements for Standardbred Driver's License.

(1) A person desiring to drive a harness horse at a race meeting licensed by the commission shall obtain a license from:

(a) The commission; and

(b) The United States Trotting Association, Standardbred Canada, or appropriate international harness racing governing agency.

(2) Commission licenses. A driver's license from the commission shall be issued in one the following categories:

(a) A qualifying-fair (QF) license, which shall be valid for fairs, matinees, qualifying races, and if approved by the presiding judge, nonwagering races at extended pari-mutuel meetings;

(b) A provisional (P) license, which shall be valid at fairs, matinees, qualifying races, and extended pari-mutuel meetings; or

(c) A full (A) license, which shall be valid at all race meetings.

(3) License advancement. An applicant shall initially obtain a qualifying-fair license. Advancement to a provisional license and a full license shall be determined by Rule 17, Sections 1 through 10, of the United States Trotting Association, 2009/2010.

(4) General qualifications. An applicant for a driver's license shall:

(a)

1. Be at least sixteen (16) years of age for a (QF) license;

2. Be at least eighteen (18) years of age for a (P) or (A) license; and

3. Not be denied a driver's license solely on the basis of age if the applicant has previously held any type of license; and

(b) Submit satisfactory evidence of an eye examination indicating:

1. 20/40 corrected vision in both eyes; or

2. If one (1) eye is blind, at least 20/30 corrected vision in the other eye.

#### Section 5. Additional Licensing Requirements for Specific Licenses.

(1) Veterinary personnel.

- (a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.
- (b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by:
  - 1. Evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky; and
  - 2. A Veterinarian Approval Form, KHRC 3-020-4, signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.
- (c) An application from a veterinary assistant shall be accompanied by a Veterinarian Approval Form, KHRC 3-020-4, signed by a licensed veterinarian certifying that the applicant works for him or her as required by KRS 321.443.
- (d) Equine therapist. An application from an equine therapist not defined by KRS Chapter 321 shall be accompanied by a Veterinarian Approval Form, KHRC 3-020-4, signed by a licensed veterinarian and the chief state veterinarian attesting to the skill and integrity of the applicant.
- (2) Farriers. An application from a person not previously licensed in the capacity of farrier shall submit a diploma or other document signifying successful completion of a farrier course or examination recognized by the American Farrier's Association, or submit a letter of recommendation from a licensed farrier.
- (3) Standardbred Licensees.
  - (a) A standardbred owner, trainer, owner/trainer, driver, driver/trainer, owner/trainer/driver, or owner/driver shall have a valid license issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in order to participate in pari-mutuel racing in Kentucky.
  - (b) Any standardbred horse under lease shall race in the name of the lessee and a copy of the lease shall be filed with the clerk of the course. A standardbred horse shall not race under lease without an eligibility certificate issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in the name of the lessee. Both the lessee and lessor shall be licensed by the commission prior to post.
  - (c) If any licensed standardbred trainer is absent from a racing meet for more than six (6) days, the trainer shall appoint and have properly licensed a new trainer of record.
- (4) Special event licenses.
  - (a) A special event license shall be:
    - 1. Issued to employees who are employed by an association only for the duration of a special event; and
    - 2. Valid for the days of the event only.
  - (b) The duration of the license shall not exceed three (3) calendar days.

#### Section 6. Licensing Fees.

- (1) **Except as provided by subsection (2) of this section,** the following annual fees shall accompany the application and shall not be refundable:
  - (a) Association employee:
    - 1. For thoroughbreds: \$25;
    - 2. For standardbreds: \$25; or
    - 3. For other horses: \$10;
  - (b) Assistant trainer:

1. For thoroughbreds: \$150; or
  2. For other horses: \$35;
- (c) Claiming: \$150;
- (d) Dental technician: \$100;
- (e) Driver: \$125;
- (f) Driver/trainer: \$125;
- (g) Equine therapist:
1. For thoroughbreds: \$50;
  2. For standardbreds: \$50; or
  3. For other horses: \$25;
- (h) Exercise rider: \$10;
- (i) Farm manager or agent:
1. For thoroughbreds: \$50;
  2. For standardbreds: \$50; or
  3. For other horses: \$25;
- (j) Farrier:
1. For thoroughbreds: \$100;
  2. For standardbreds: \$100; or
  3. For other horses: \$35;
- (k) Farrier apprentice:
1. For thoroughbreds: \$50;
  2. For standardbreds: \$50; or
  3. For other horses: \$25;
- (l) Jockey:
1. For thoroughbreds: \$150; or
  2. For other horses: \$35;
- (m) Jockey agent:
1. For thoroughbreds: \$150; or
  2. For other horses: \$35;
- (n) Jockey apprentice:
1. For thoroughbreds: \$100; or
  2. For other horses: \$35;
- (o) Matinee driver: \$125;
- (p) Mutuel employee:
1. For thoroughbreds: \$50;
  2. For standardbreds: \$50; or
  3. For other horses: \$20;
- (q) Owner:
1. For thoroughbreds: \$150;
  2. For standardbreds: \$125; or
  3. For other horses: \$35;
- (r) Owner (temporary):
1. For thoroughbreds: \$150;
  2. For standardbreds: \$125; or
  3. For other horses: \$35;
- (s) Owner/assistant trainer:



1. For thoroughbreds: \$150; or
2. For other horses: \$35;
- (t) Owner/trainer:
  1. For thoroughbreds: \$150;
  2. For standardbreds: \$125; or
  3. For other horses: \$35;
- (u) Owner/trainer/driver: \$125;
- (v) Owner/driver: \$125;
- (w) ~~[Racing department employee: \$100;~~
- ~~(x)]~~ Racing official:
  1. For thoroughbreds: \$100;
  2. For standardbreds: \$100; or
  3. For other horses: \$35;
- ~~(x)]~~ Special event employee: \$10;
- ~~(y)]~~ Stable agent: \$50;
- ~~(z)]~~ Stable employee:
  1. For thoroughbreds: \$10;
  2. For standardbreds: \$5; or
  3. For other horses: \$5;
- ~~(aa)]~~ Steeplechase jockey: \$150;
- ~~(bb)]~~ Trainer:
  1. For thoroughbreds: \$150;
  2. For standardbreds: \$125; or
  3. For other horses: \$35;
- ~~(cc)]~~ Vendor:
  1. For thoroughbreds: \$50;
  2. For standardbreds: \$50; or
  3. For other horses: \$25;
- ~~(dd)]~~ Vendor employee: \$25;
- ~~(ee)]~~ Veterinarian:
  1. For thoroughbreds: \$150;
  2. For standardbreds: \$125; or
  3. For other horses: \$35;
- ~~(ff)]~~ Veterinary assistant:
  1. For thoroughbreds: \$50;
  2. For standardbreds: \$50; or
  3. For other horses: \$25; or
- ~~(gg)]~~ Veterinary technologist or technician:
  1. For thoroughbreds: \$50;
  2. For standardbreds: \$50; or
  3. For other horses: \$25.

(2) **A military spouse meeting the requirements of KRS 12.357(1) shall not be required to pay the licensure fee if:**

- (a) The fee waiver is requested on the Licensing Application form, 3-020-1; and**
- (b) The documentation required by KRS 12.357(2) is submitted with the application.**

(3) A replacement fee for a duplicate license shall be ten (10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

#### Section 7. Fingerprinting.

- (1) If requested by the commission, a license applicant shall furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license.
- (2) If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints.
- (3) The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

#### Section 8. Multi-state/National Licenses.

- (1) In lieu of the commission license application form, an applicant may submit an ARCI Multi-Jurisdiction Racing License Owner's Application or the National Racing License Application or Renewal Application.
- (2) The commission shall accept a multi-state or national license if it complies with licensing requirements in this administrative regulation and KRS Chapter 230.

#### Section 9. Consent to Investigate by License Applicants and Licensees. After an applicant files a license application, the commission may:

- (1) Investigate the criminal background, employment history, and racing history record of the applicant;
- (2) Engage in research and interviews to determine the applicant's character and qualifications; and
- (3) Verify information provided by the applicant.

#### Section 10. Search and Seizure.

- (1) The commission or designee may search any location described in KRS 230.260(7).
- (2) The commission or designee may seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of KRS Chapter 230 or KAR Title 810.
- (3) A licensee shall:
  - (a) Cooperate with the commission or designee during an investigation; and
  - (b) Respond correctly to the best of the licensee's knowledge if questioned by the commission or designee about a racing matter.
- (4) A licensee shall consent to out-of-competition testing in accordance with 810 KAR 8:040.

#### Section 11. Employer Responsibility.

- (1)
  - (a) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation.
  - (b) If an employer violates subsection (a) **of this subsection**, the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230 or KAR Title 810.
- (2) Every employer shall report in writing to the commission or its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee's name, occupation, and reason for the discharge.
- (3) Every employer shall be responsible for ensuring compliance with all applicable employment laws.
- (4) The license application of an employee shall be signed by the employer.
- (5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

#### Section 12. Financial Responsibility.

- (1) A licensee shall maintain financial responsibility during the period for which the license is issued.
- (2) A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of any occupation for which a license is required by this administrative regulation shall constitute a failure to meet the financial responsibility requirements of KRS 230.310.
- (3) If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment.
- (4) An applicant for a license may be required to submit evidence of financial responsibility to the commission if a judgment has been rendered against him or her.

#### Section 13. Voluntary Withdrawal of License Application.

- (1) A license applicant may with the approval of the license review committee voluntarily withdraw his or her license application from the license review process.
- (2) If the applicant chooses to voluntarily withdraw his or her application, then the withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.
- (3) The stewards or judges shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the Association of Racing Commissioners International.

#### Section 14. License Review Committee.

- (1) The executive director, chief racing steward, presiding judge, or director of licensing may refer a license application to the license review committee in lieu of denying the application.
- (2) The license review committee shall be composed of the executive director or designee, the director of licensing or designee, the chief state steward or presiding judge or their designee, and at least one (1) other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any license review committee meeting.
- (3) If a referral to the committee is made, then a license shall not be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.
- (4) The denial of the application may be appealed in accordance with KRS Chapter 13B.
- (5) In the alternative, the commission, the license review committee, or the executive director may refer the case directly to the commission without denial or approval of the application.

#### Section 15. License Denial, Revocation, or Suspension.

- (1) The commission, executive director, chief racing steward or presiding judge, or director of licensing may deny a license application, and the commission or chief state steward or presiding judge may suspend or revoke a license, or otherwise penalize in accordance with KRS 230.320(1) a licensee, or other person participating in horse racing, for any of the following reasons:
  - (a) The public interest, for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering, may be adversely affected if the license is issued;
  - (b) The licensee or applicant has any felony or misdemeanor criminal conviction from any jurisdiction, including having entered into any form of diversionary program, within fifteen (15) years preceding

the date of submission of a license application, **provided all requirements of KRS 335B.010 et seq. are satisfied**;

- (c) The licensee or applicant has pending criminal charges or is criminally charged during the license period in any jurisdiction;
- (d) The licensee or applicant has had a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, or revoked;
- (e) The licensee or applicant has had a license issued by the Commonwealth revoked, suspended, or denied;
- (f) The licensee or applicant has applied for and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;
- (g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;
- (h) The licensee or applicant has been ejected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;
- (i) The licensee or applicant has violated or attempted to violate a statute, administrative regulation, or similar rule respecting horse racing in any jurisdiction;
- (j) The licensee or applicant has perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;
- (k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the pre-arrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the stewards or judges;
- (l) The licensee or applicant has demonstrated financial irresponsibility as described by Section 12 of this administrative regulation;
- (m) The licensee or applicant has knowingly failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;
- (n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of a thoroughbred;
- (o) The licensee or applicant has offered, promised, given, accepted, or solicited a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failed to report conduct of this nature immediately to the stewards or judges;
- (p) The licensee or applicant has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse;
- (q) The licensee or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operations at a track, training facility, or satellite facility;
- (r) The licensee or applicant has knowingly entered, or aided and abetted the entry, of a horse ineligible or unqualified for the race entered;
- (s) The licensee or applicant has possessed on association grounds, without written permission from the commission or the chief state steward or presiding judge, any appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout;
- (t) The licensee or applicant has violated any of the alcohol or substance abuse provisions in KRS Chapter 230 or 810 KAR 2:030;
- (u) The licensee or applicant has failed to comply with a written order or ruling of the commission, the stewards, or the judges pertaining to a racing matter or investigation;
- (v) The licensee or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(w) The licensee or applicant has failed to return to an association any purse money, trophies, or awards paid in error or ordered redistributed by the commission;

(x) The licensee or applicant has participated in or engaged in any conduct of a disorderly nature on association grounds, including[which includes, but is not limited to]:

1. Failure to obey the stewards' or judges' or other official's orders that are expressly authorized by KAR Title 810[the administrative regulations of the commission];

2. Failure to race when programmed unless excused by the stewards or judges;

3. Fighting;

4. Assaults;

5. Offensive and profane language;

6. Smoking on the track in colors during actual racing hours;

7. Warming up a horse prior to racing without colors; and

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or insulting language to or interfered with a commission member, employee or agent, or racing official, while these persons are in the course of discharging their duties;

(z) The licensee or applicant is unqualified to perform the duties for which the license is issued;

(aa) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;

(bb) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;

(cc) The licensee or applicant has failed to pay a required fee or fine, or has otherwise failed to comply with KRS Chapter 230 or KAR Title 810;

(dd) The licensee or applicant has failed to comply with a written directive or ruling of the commission or the chief state racing steward or presiding judge;

(ee) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section 17 of this administrative regulation;

(ff) The licensee or applicant has failed to comply with the temporary license requirements of Section 18 of this administrative regulation;

(gg) The licensee or applicant has violated the photo identification badge requirements of Section 21 of this administrative regulation;

(hh) The licensee or applicant has knowingly aided or abetted any person in violation of KRS Chapter 230, KAR Title 810, or any other statute or administrative regulation pertaining to horse racing;

(ii) The licensee or applicant has hired an unlicensed person required by KRS 230.300, 230.310, or this administrative regulation to be licensed;

(jj) The licensee or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:

1. A hypodermic needle, hypodermic syringe, or other device that[which] could be used to administer any substance to a horse, except as permitted by 810 KAR 8:010, Section 3(5); or

2. A medication, stimulant, sedative, depressant, local anesthetic, or any other foreign substance prohibited by KRS Chapter 230 or KAR Title 810; or

(kk) The licensee or applicant has manufactured, attempted to manufacture, or possessed a false license photo identification badge.

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward or presiding judge, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A licensee or applicant may appeal the suspension, revocation, or denial in accordance with KRS 230.320 and Chapter 13B.

#### Section 16. Reciprocity.

(1) If a person's license has been denied, suspended, or revoked in another jurisdiction, the commission may require reinstatement of the license in that jurisdiction before a license is granted by the commission.

(2) If a person has been ruled off, excluded, or ejected from a racetrack in Kentucky or in another jurisdiction, the commission may require reinstatement of the person at that track before a license is granted by the commission.

#### Section 17. Changes in Application Information.

(1) The licensee or applicant shall report changes in any information required for licensing in writing to the commission.

(2) Any change in information required for licensing shall be submitted in writing upon the "Change in Application Information Form", KHRC 3-020-3, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change, unless it is information listed in subsection (3) of this section.

(3) The licensee shall report changes in information in writing within 72 hours of the occurrence for these items:

(a) Criminal charges;

(b) Criminal convictions;

(c) License denials and license suspensions of ten (10) days or more;

(d) License revocations or fines of \$500 or more in other jurisdictions;

(e) Racing related disciplinary charges pending in other jurisdictions; and

(f) Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

#### Section 18. Temporary Licenses.

(1)

(a) Only an owner is eligible for a temporary license.

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "Temporary Owner's License Application", KHRC 3-020-2, on file with the commission.

(c) A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains.

(d) The commission may refuse the license if the applicant fails to supply a name, Social Security number, and mailing address for a temporary license.

(e) A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the 30th day pending completion of all licensing procedures.

(f) Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures.

(g) Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(h) If a temporary license expires prior to the completion of all owner licensing procedures, the applicant shall pay an additional licensing fee.

- (2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.
- (3) A temporary license shall not be valid for claiming.

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except if prohibited by **Section 20 of** this administrative regulation due to a potential conflict of interest.

Section 20. Conflict of Interest.

(1) The license review committee and the chief state steward or presiding judge or their designees shall deny or refuse to process the license of a person, and the commission or the chief state steward or presiding judge shall revoke or suspend the license of a licensee, who is determined to have a conflict of interest. A conflict of interest may exist if a spouse, immediate family member, or other person in a similar relationship to the licensee or applicant holds a license **that[which]** the license review committee or chief state steward or presiding judge finds to be a conflict of interest with the licensee's or applicant's license. A finding of a conflict of interest may be appealed to the commission pursuant to KRS 230.320 and KRS Chapter 13B.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer, or who has any financial interest in a horse entered in a race, shall not participate in that race as any of the following:

- (a) Racing official;
- (b) Assistant starter;
- (c) Practicing veterinarian for any horse other than the owner's;
- (d) Veterinary technician, veterinary technologist, veterinary assistant, or equine therapist for any horse other than the owner's;
- (e) Officer or managing employee;
- (f) Track maintenance supervisor or employee;
- (g) Outrider;
- (h) Race track security employee;
- (i) Farrier;
- (j) Photo finish operator;
- (k) Horsemen's bookkeeper;
- (l) Racing chemist;
- (m) Testing laboratory employee;
- (n) Jockey;
- (o) Apprentice jockey; or
- (p) Jockey agent.

Section 21. License Photo Identification Badges.

- (1)
  - (a) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge).
  - (b) A photo identification badge is available to a licensee upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.
- (2) A person shall present an appropriate license to enter a restricted area.

- (3) The stewards or judges or racing association may require visible display of a license in a restricted area.
- (4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or her badge for any purpose.
- (5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards or judges, the commission director of enforcement, or director of licensing, or designee, upon request.

#### Section 22. Duties of Licensees.

- (1) A licensee shall be knowledgeable of this administrative regulation and, by acceptance of the license, agrees to abide by this administrative regulation.
- (2) A licensee shall report to track security or the stewards or judges any knowledge the licensee has that a violation of this administrative regulation has occurred or may occur.
- (3) A licensee shall abide by all rulings and decisions of the stewards or judges and the commission, and all decisions by the stewards or judges and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.
- (4) Rulings and decisions of the stewards or judges may be appealed to the commission, except those made by the stewards or judges as to:
  - (a) Findings of fact as occurred during and incident to the running of a race; and
  - (b) A determination of the extent of disqualification of horses in a race for fouls committed during the race.
- (5) A licensee shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.
- (6) A licensee shall obey instructions from commission representatives or association security, or both.
- (7) All licensees shall immediately report to the commission any known or suspected irregularities, any violation of KRS Chapter 230 or KAR Title 810, or any wrongdoings by any person, and shall cooperate in any subsequent investigation.

Section 23. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

#### Section 24. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Licensing Application", KHRC 3-020-1, 02/2022~~4/2019~~;
  - (b) "Temporary Owner's License Application", KHRC 3-020-2, 11/2018;
  - (c) "Change in Application Information Form", KHRC 3-020-3, 4/2019;
  - (d) "Veterinarian Approval Form", KHRC 3-020-4, 4/2019; and
  - (e) "Rule 17, Sections 1 through 10", United States Trotting Association, 2009/2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at <http://khrc.ky.gov>.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).





**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of the Secretary**

**Andy Beshear**  
Governor

275 East Main Street, 4W-C  
Frankfort, KY 40621  
[www.chfs.ky.gov](http://www.chfs.ky.gov)

**Eric C. Friedlander**  
Secretary

June 7, 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 20:018**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 20:018, the Cabinet for Health and Family Services proposes the attached amendments to 902 KAR 20:018.

Sincerely,

Lucie Estill  
Executive Staff Advisor  
Office of Legislative and Regulatory Affairs

Attachments



KENTUCKY CABINET FOR  
HEALTH AND FAMILY SERVICES

**SUGGESTED SUBSTITUTE**

Final Version: 5/5/2022 9:21 AM

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Inspector General**

**Division of Health Care**

**902 KAR 20:018. Operation and services; End Stage Renal Disease (ESRD)~~[end-stage renal disease]~~[dialysis] facilities.**

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.042, 216B.045, 216B.050, 216B.055, 216B.075, 216B.085, 216B.105-216B.125, 216B.990(1), (2), 310.021, 314.041, KRS Chapter 333, 335.100, 42 C.F.R. 494.1 – 494.180, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 – 1320d-8 [314.035, 314.137]

STATUTORY AUTHORITY: KRS 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensing standards and procedures to ensure safe, adequate, and efficient ~~[of]~~ health services and health facilities. This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by End Stage~~[end-stage]~~[of] Renal Disease (ESRD) ~~[dialysis]~~ facilities.

Section 1. Definitions. (1) "Administrator" means an individual ~~[a person]~~ who:

- (a) Holds a baccalaureate degree or its equivalent; ~~[and]~~
- (b) Has at least one (1) year of experience working in an ESRD unit; and
- (c) Is responsible for the management of the ESRD facility.

(2) ~~["Anti-HBs" means the antibody to the hepatitis B virus conferred either by vaccination or infection.~~

(3) "Dialysis technician" means a person credentialed by the Board of Nursing as a dialysis technician.

(3)~~[(4)]~~ "End Stage~~[End-]~~~~[ ]~~ Stage Renal Disease" or "ESRD" means a medical condition in which a person's kidneys cease functioning on a permanent basis leading to the need for long-term dialysis or a kidney transplant to maintain life~~[that stage of renal impairment which:~~

- (a) ~~Is irreversible and permanent; and~~
- (b) ~~Requires dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life].~~

(4)~~[(5)]~~ "ESRD facility" means a facility or entity that provides outpatient maintenance dialysis services, home dialysis training and support, or both.

(5) ~~[renal dialysis facility, as included in the definition of "health facility" at KRS 216B.015(10).~~

(6) ~~"HBsAg" means the hepatitis B antigen, present in the blood of persons who are infected by the hepatitis B virus.~~

(7) ~~"HBV negative" means the absence of the hepatitis B virus, the hepatitis B antigen, and the antibody to the hepatitis B virus.~~

(8) "Medical director" means a Kentucky-licensed physician who:

- (a) Is board-certified in internal medicine or pediatrics;
- (b) Has completed a board-approved training program in nephrology; and

~~(c)1.~~ Has ~~[is a board-eligible or certified nephrologist, internist, or pediatrician with]~~ at least twelve (12) months of experience providing care to patients receiving dialysis; or

~~2.[(d)]~~ If the physician does not meet the requirements of paragraphs (a) ~~through~~ (c) of this subsection, has received approval in accordance with 42 C.F.R. 494.140(a)(2) to direct an ESRD facility ~~[training in the treatment and management of ESRD patients].~~

~~(6) [(9)]~~ "Qualified dietitian" means an individual who:

~~(a) Is [a person]~~ licensed pursuant to KRS 310.021; and

~~(b) Has a minimum of one (1) year professional work experience in clinical nutrition as a registered dietitian.~~

~~(7) [(10)]~~ "Qualified medical record ~~technician~~ ~~[practitioner]~~" means an individual who:

~~(a) [a person who]~~ Has graduated from a program for medical record ~~[administrators or]~~ technicians that is accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; ~~;~~ and

~~(b) [who]~~ Is certified as ~~[a registered records administrator or]~~ an accredited record technician by the American Medical Record Association.

~~(8) [(11)]~~ "Qualified registered nurse manager" means a nurse manager responsible for nursing services who:

~~(a) Is [person]~~ licensed to practice as a registered nurse under ~~[to engage in registered nursing practice pursuant to]~~ KRS 314.041;

~~(b) Is a full-time employee of the ESRD facility; and~~

~~(c) Has [who has] at least:~~

~~1. [(a)]~~ Twelve (12) months of experience in clinical nursing; and

~~2. [plus]~~ Six (6) months of experience in providing nursing care to ~~[of ESRD] patients on maintenance dialysis; or~~

~~(b) Eighteen (18) months experience in nursing care of ESRD patients].~~

~~(9) [(12)]~~ "Qualified social worker" means a clinical social worker licensed and practicing in accordance with KRS 335.100 ~~[a social worker licensed to practice in Kentucky, who has completed a course of study with specialization in clinical practice at, and holds a masters degree from, a graduate school of social work accredited by the Council on Social Work Education].~~

~~(10) [(13)]~~ **"Renal dialysis center" means a hospital unit approved to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of ESRD** ~~[dialysis] [patients. Services include]:~~

~~(a) Including [inpatient dialysis furnished directly or under arrangement]; [and do not include] [(b) Excluding] [renal transplants] [transportation];~~

~~(11) [(14)]~~ "Renal transplantation center" means a hospital unit approved to provide kidney transplants ~~[transplantation]~~ and other medical and surgical specialty services required for the care of the ESRD transplant patients, including inpatient dialysis **provided** ~~[furnished]~~ directly or under arrangement ~~[- A renal transplantation center may also be a renal dialysis center].~~

~~(11) [(12)] [(15)]~~ "Self-care dialysis training" means a program to train an ESRD patient or the patient's helper, or both, to perform dialysis.

Section 2. Requirement for Service. An ESRD [A] facility shall not be licensed or relicensed as an ESRD [a renal dialysis] facility unless the facility meets the requirements ~~[it provides the services required in Section 4] of this administrative regulation.~~

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the ESRD facility and for compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility.

(b) The licensee shall develop and enforce written policies for the administration and operation of the ESRD facility. Policies shall include:

1. Personnel practices and procedures;
2. Job descriptions for each level of personnel, including authority and responsibilities for ~~[of]~~ each classification;
3. Qualifications for medical staff membership;
4. Medical care practices and procedures;
5. Prevention and control of hepatitis, peritonitis, and other infections, including appropriate procedures for:
  - a. Surveillance and reporting of infections;
  - b. Housekeeping;
  - c. Handling and disposal of waste and contaminants;
  - d. Sterilization and disinfection; and
  - e. Sterilization and maintenance of equipment; and
6. Procedures to be followed in an emergency, including fire, natural disaster, and equipment failure.

(2) Administrator. An ESRD ~~[The]~~ facility shall have an administrator responsible for the management of the facility, including enforcement of written policies and protection of patients' ~~[personal and property]~~ rights.

(3) An ESRD ~~[The]~~ facility shall:

(a) Demonstrate compliance with the requirements of 42 C.F.R. 494.1 ~~through[-]~~ 494.180, except for an ESRD facility that is state-licensed only~~[Have a permanent site of operation]; and~~

(b) Maintain regularly scheduled hours during which dialysis services shall be~~[are]~~ available.

(4) Emergency coverage.

(a) An ESRD facility's governing body shall ensure that the facility shall provide each patient and facility staff member with written instructions for obtaining emergency medical care.

(b) An ESRD facility shall have available at the nursing station, a roster with:

1. The names of physicians who may be called for emergencies;

2. When the physicians may be called; and

3. How the physicians may be reached.

(c) An ESRD facility shall have an agreement with a hospital that can provide the following services twenty-four (24) hours per day, seven (7) days per week:

1. Inpatient care;

2. Routine and emergency dialysis;

3. Other hospital services; and

4. Emergency medical care.

(d) The agreement shall:

1. Ensure that hospital services shall be available to the ESRD facility's patients as needed;

**and**

**2. Include reasonable assurances that each patient from the ESRD facility shall be accepted and treated in an emergency**~~[Affiliation agreements. An ESRD]~~~~[A renal dialysis]~~~~[facility shall have a written affiliation agreement or arrangement with a]~~~~[agreements or arrangements, in writing, with]~~~~[renal transplantation center and a renal dialysis center that establishes]~~~~[centers and renal transplantation centers which provide]~~~~[the following:~~~~(a) The agreement between an ESRD facility and a renal Transplantation center]~~~~[centers agreement]~~~~[shall ensure the delivery of]~~~~[provide for]~~~~[medical and surgical specialty services required for the care of ESRD patients, including transplantation and inpatient dialysis furnished directly or under arrangement. (b) The agreement between an ESRD facility and a renal Dialysis center]~~~~[centers agreement]~~~~[shall ensure that]~~~~[provide for working relationships under which]~~~~[inpatient hospital care or other hospital services are available promptly to the ESRD]~~~~[dialysis]~~~~[facility's patients as]~~~~[when]~~~~[needed. The agreement shall delineate the following]~~~~[, as follows]~~**:**

**1. Timely transfer or referral of patients between the ESRD**~~[renal dialysis]~~~~[facility and the renal dialysis center shall occur if]~~~~[be effected if it is]~~~~[determined to be medically appropriate by the physicians at both the facility and the center.~~

**2.**~~[The following]~~~~[Information shall be provided to the recipient facility within one (1) working day of a patient's transfer or referral, including the:~~

**a. Patient care plan;**

**b. Medical information; and**

**c. Any other information necessary or useful in the care and treatment of the patient].**

(5) Personnel. An adequate number of personnel shall be present to meet the needs of patients at all times, including emergency situations~~[, including medical and nonmedical emergencies]~~.

(a) Medical staff. An ESRD ~~[The]~~ facility shall have an organized medical staff responsible for the:

1. Quality of all medical care provided to patients in the facility; and

2. Ethical and professional practices of the facility's ~~[its]~~ staff.

(b)1. There shall be a medical director responsible for supervising the staff of the ESRD facility.

2. The medical director shall be a full- or part-time staff member.

3. In the medical director's absence, a physician meeting the qualifications of a medical director or a physician who has received approval in accordance with 42 C.F.R. 494.140(a)(2) to direct an ESRD facility~~[similarly qualified medical staff member]~~ shall be ~~[either]~~ in the unit or immediately available ~~[in the community]~~ **while**~~[when]~~ a patient is being dialyzed.

(c)1. The ESRD facility shall employ at least one (1) full-time qualified registered nurse manager~~[to be]~~ responsible for nursing services.

2. If a patient is undergoing dialysis, a qualified registered nurse manager shall be on duty to **supervise**~~[oversee]~~ patient care.

(d) The ESRD facility shall employ ~~[or have contracts for services with]~~ the following ancillary personnel directly or by contract:

1. A qualified dietician;

2. A qualified medical records technician ~~[practitioner]~~; and

3. A qualified social worker.

(6) Incident and accident reports.

(a) An ESRD ~~[A]~~ facility shall submit an incident report to the cabinet no later than ~~[Cabinet for Health Services, Office of the Inspector General, within]~~ three (3) days after ~~[of the occurrence of]~~

a reportable event as **established[described]** by paragraph (c) of this subsection.

(b) ~~An~~ ESRD [A] facility shall retain a copy of the incident report for inspection by the cabinet.

(c) ~~A~~ reportable event shall [events] include:

1. An incident requiring emergency treatment or hospitalization;

2. A cleaning agent left in a machine that is subsequently used on a patient;

3. Contamination of the water supply;

4. Development of infection or communicable disease; or [and] .

5. An accident or other event having a direct or immediate bearing on the health, safety, or security of a patient or staff member.

Section 4. Services. (1)(a) **Except as established in paragraph (b) of this subsection**, each patient ~~shall be~~[is] admitted ~~under~~[on] the medical authority [~~of,~~] and [~~is under the~~] supervision of[,]  
the medical director.

(b) In the absence of the medical director, a physician meeting the qualifications of a medical director or a physician who has received approval in accordance with 42 C.F.R. 494.140(a)(2) to direct an ESRD facility shall~~[When absent from the facility the medical director shall designate a qualified physician to]~~ be responsible for patient admissions [admission] and supervision~~[of patients]~~.

(2) Laboratory services.

(a) ~~An ESRD [A renal dialysis] facility shall have access to laboratory facilities and services (except tissue pathology and histocompatibility) to meet the needs of each ESRD patient[, with the exception of tissue pathology and histocompatibility testing].~~

(b) The laboratory that provides services shall be [~~performed by~~]:

1. Located

~~[(a) A laboratory]~~ in a licensed hospital; or

2.~~[(b) A laboratory]~~ Licensed in accordance with [~~by the Department for Health Services pursuant to~~] KRS Chapter 333.

(3) Medical records.

(a) ~~An ESRD facility shall maintain complete, accurate, and accessible records for[on]~~~~[A current and complete medical record shall be maintained for]~~ each patient, including home patients who elect to receive dialysis supplies and equipment from a supplier that is not a provider of ESRD services and all other home dialysis patients whose care is under the supervision of the facility.

(b) Organization. The supervisor of medical records shall be responsible for the proper documentation, completion, and preservation of ~~the~~ [all the facility's medical] records.

(c) Indexing. Medical records shall be properly indexed and systematically filed.

(d) Ownership.

1. Medical records shall be the property of the ESRD facility.

2. The original medical record shall not be removed from the facility, except by court order or subpoena.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established by paragraph (e) of this subsection.

(e) Confidentiality and security;[is] use and disclosure.

1. The ESRD facility shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 **through[to]** 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security

requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The facility may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 ~~through~~**[to]** 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation. ~~[A patient's record shall not be removed from the facility's custody except in compliance with a court order or subpoena.~~

~~(e) Confidentiality. A patient's record shall be available for inspection only to members of the professional staff, the patient, or an authorized individual acting in behalf of the patient. Patient records may be used for research or statistical investigation, if each patient's anonymity is protected.]~~

(f) Content. A complete medical record shall be prepared for each patient admitted to the ESRD facility ~~and~~**[, to]** include ~~[at least]~~ the **[following information]**:

1. Name and address of the person or agency responsible for the patient, if applicable~~[and guardian or committee, if any]~~;

2. Patient identification information, including the patient's~~[identity data]~~:

a. Name;

b. Address;

c. Date of birth;

d. Gender; and

e. Marital status;

3. Date of admission;

4. Date of transfer to renal transplantation center, if applicable;

5. Referring and attending physicians' names;

6. History and physical examination record prior to the initial treatment;

7. Treatment plans;

8. Records of special examinations, consultations, and clinical, laboratory, and x-ray services;

9. Doctors' orders, dated and signed;

10. Nurses' notes;

11. Dialysis chart including pulse, respiration, and blood pressure;

12. Social evaluation and plan developed by the social worker; and

13. Orders for medication and treatment written in ink and signed by the prescribing practitioner acting within the scope of practice; **and**

14. A record of each medication administered, including~~[to include]~~:

a. Date and time of administration;

b. Type of medication administered;

c. Amount of medication administered;

d. Method of administration;

e. Name of the prescribing practitioner~~[prescribing medication]~~; and

f. Name of the person who administered the medication.

(g) Retention of records. Medical records shall be retained for at least six (6) years from the date of the patient's discharge, transfer, or death.

~~[1. After the death or discharge of an adult patient, the completed medical record shall be placed in an inactive file and retained for five (5) years;~~

~~2. After the death or discharge of a minor patient, the record shall be placed in an inactive file and retained for five (5) years from the date of the event, or three (3) years after the patient reaches~~

the age of majority, whichever is longer.]

(4) Pharmaceutical services.

(a) An ESRD [The] facility shall have provisions for promptly obtaining prescribed drugs and biologicals from a licensed pharmacy [pharmacies].

(b) The ESRD facility shall provide appropriate methods and procedures for storage, control, and administering of drugs and biologicals.

(c) A medication shall be administered by one (1) of the following practitioners [professionals,] acting within the individual's professional [relevant statutory] scope of practice:

1. A physician;
2. A physician's assistant;
3. An advanced nurse registered practitioner;
4. A registered nurse;
5. A licensed practical nurse; or
6. A dialysis technician.

(5) Social services. The ESRD facility shall have a qualified social worker [shall be] responsible for:

(a) Evaluation of each patient's psychosocial needs [social evaluation and treatment];

(b) Participating in the ESRD facility's interdisciplinary team review of patient progress and recommending any changes, if needed, in treatment based on the patient's current psychosocial [social] needs;

(c) Providing casework, counseling services, and referrals for other social services to assist the patient in achieving and sustaining an appropriate psychosocial status as measured by a standardized mental and physical assessment tool chosen by the social worker [and group work services to patients and their families];

(d) [Financial advice;

(e)] Referrals for vocational rehabilitation services; and

(e)[(f)] Identifying community social agencies and other resources and assisting patients and their families to utilize those resources[them].

(6) Dietetic services.

(a) The nutritional needs of each patient shall be evaluated by the:

1. Attending physician; and
2. [the] Qualified dietitian.

(b) The dietitian, in consultation with the attending physician, shall be responsible for:

1. [(a)] Assessing the nutritional status [and dietetic needs] of each patient;
2. [(b)] Recommending therapeutic diets;
3. [(c)] Counseling patients and their families on prescribed diets; and
4. [(d)] Monitoring adherence and response to diets.

(7) Self-care dialysis support services.

(a) An ESRD facility that offers [A renal dialysis facility offering] self-care dialysis training shall make the following services available, [either] directly[,], or through an [under] agreement[,], or [by] arrangement with another ESRD facility[,], upon completion of patient training:

1. Monitoring the patient's home adaptation, including visits to the patient's home by ESRD facility personnel in accordance with the patient's plan of care [provisions for visits to the home or the facility];

2. Patient consultation as needed [for the patient] with a member of the ESRD facility's



interdisciplinary team (~~[-e.g.,]~~ a qualified social worker ~~or~~ [and a] qualified dietician);

3. A recordkeeping system to assure ~~[which assures]~~ continuity of care;
4. Installation and maintenance of dialysis equipment;
5. Testing and appropriate treatment of the dialysis water;
6. Ordering of supplies as needed; and
7. Infection control, including hepatitis and peritonitis.;

(b) A self-care and home dialysis training nurse shall:

1. Be a registered nurse licensed in accordance with KRS 314.041; and
2. Have at least twelve (12) months of experience in clinical nursing care and ~~[responsible for self-care dialysis training shall have]~~ at least three (3) months of experience in the specific modality for which the nurse will provide self-care training~~[patients for self-care dialysis]~~.

(8) Dialysis services in a Medicare-certified nursing facility. A Medicare-certified ESRD facility or entity may provide dialysis services to a long-term care resident within a designated area of a Medicare-certified nursing facility as ***established in paragraphs (a) through (d) of this subsection.***~~[follows:]~~

(a)1. Prior to providing dialysis in the nursing facility, the ESRD facility or entity shall submit a Form CMS-3427 to the cabinet, completing Section 22 and all other applicable fields.

2. Form CMS-3427 is available for download from the Centers for Medicare and Medicaid Services (CMS) **Web site[website]** at: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS-3427>.

(b)1. The ESRD facility or entity shall comply with the guidance established in the CMS State Operations Manual (SOM), chapter 2, section 2271A Dialysis in Nursing Homes.

2. The SOM, Chapter 2, section 2271A is available for download from the CMS **Web site[website]** at: <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/som107c02.pdf>.

(c)1. The ESRD facility shall enter into a written agreement with each Medicare-certified nursing facility for which the ESRD facility will provide dialysis services.

2. The written agreement shall ***state[delineate]*** the responsibilities of the ESRD facility and the nursing facility regarding the care of the resident before, during, and after dialysis treatments.

(d) The ESRD facility shall be responsible for the safe delivery of dialysis to the nursing facility resident, including:

1. Review of ESRD staff qualifications, training, and competency evaluation; and
2. Monitoring of all ESRD personnel who:
  - a. Administer dialysis treatments in the nursing facility; and
  - b. Provide on-site supervision of dialysis treatments.

Section 5. Physical Environment. (1) Building and equipment.

(a)1. An ESRD facility shall implement and maintain a program to ensure that all equipment ***shall be[is]*** maintained and operated in accordance with the manufacturer's recommendations~~[used in the facility shall be maintained free of a condition posing a potential hazard to patients or personnel]~~.

2. There shall be a program of preventive maintenance of equipment used in dialysis and related procedures in the ESRD facility.

(b)1. Water used for dialysis purposes shall be analyzed periodically and treated as necessary to

maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques.

2. Records of test results and equipment maintenance shall be maintained at the ESRD facility.

(2) ~~[Routine disease testing and]~~ Infection control.

(a) The licensee shall **provide and monitor a sanitary environment to minimize the transmission of infectious agents within and between the ESRD unit and any adjacent hospital or other public areas pursuant to 42 C.F.R. 494.30**~~[establish and enforce routine disease testing and infection control policies that]~~~~[which]~~~~[are consistent with the most recent guidelines established by the Centers for Disease Control and Prevention for preventing the transmission of infection among chronic hemodialysis patients]~~.

(b) An ESRD [A] facility using a central-batch delivery system shall provide, on the premises or through affiliation agreements, sufficient individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(3) Contamination prevention. (a) An ESRD [A] facility shall use ~~[employ]~~ appropriate techniques to prevent cross contamination between the unit and adjacent hospital or public areas including:

1. Food service areas;

2. ~~[ ]~~ Laundry;

3. ~~[ ]~~ Disposal of solid waste and blood-contaminated equipment; ~~[ ]~~ and

4. Disposal of contaminants into sewage systems.

(b) An ESRD facility shall maintain procedures, ~~[Waste storage and disposal shall be carried out]~~ in accordance with applicable law and accepted ~~[acceptable]~~ public health procedures for the:

1. Handling, storage, and disposal of potential infectious waste; and

2. Cleaning and disinfection of contaminated surfaces, medical devices, and equipment ~~[standards]~~.

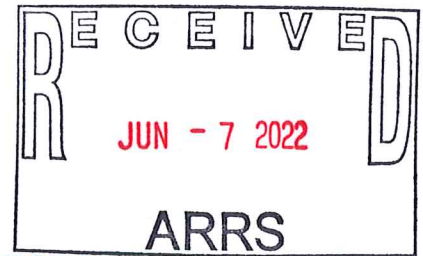
**Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:**

**(a) "End Stage Renal Disease Application and Survey and Certification Report", Form CMS-3427, February 2022; and**

**(b) "CMS State Operations Manual (SOM), Chapter 2, Section 2271A, Dialysis in Nursing Homes", September 2018.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.**

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](http://www.chfs.ky.gov)

**Eric C. Friedlander**  
Secretary

**Kelli Rodman**  
Executive Director

June 7, 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: **922 KAR 1:530** suggested amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 1:530, the Department for Community Based Services proposes the attached LRC suggested amendment. If you have any questions, please feel free to contact Laura Begin at [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

Sincerely,

Executive Staff Advisor  
Office of Legislative and Regulatory Affairs



KENTUCKY CABINET FOR  
HEALTH AND FAMILY SERVICES

**Staff-suggested Amendment**

**Final Version 5/27/2022**

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Community Based Services**

**Division of Protection and Permanency**

**922 KAR 1:530. Post-adoption placement stabilization services.**

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY paragraph**

**Lines 10 and 15**

After "KRS 194A.050(1)", insert "requires".

Delete "authorizes".

After "KRS 199.472", insert "requires".

Delete "mandates that".

After "the cabinet", insert "to".