



State Board of Accountancy

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cpa@ky.gov



Joseph P. Donohue
Executive Director

April 3, 2023

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

Re: **201 KAR 1:190**. Examination sections, applications, and procedures.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 1.190, the Kentucky State Board of Accountancy proposes the attached suggested amendment to 201 KAR 1.190.

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

Sincerely,

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

Enc.

Suggested Amendment
Kentucky State Board of Accountancy

201 KAR 1:190. Examination Sections, applications, and procedures.

Page 1

Section 1(1)

Line 18

After "university", insert "that".

Page 8

Section 9(4)(a)1.

Line 25

After "convicted", insert "pleaded".
Delete "plead".

Page 9

Section 10

Line 24

After "candidates", insert "shall".
Delete "will".

Page 10

Section 11(2)

Line 3

After "4:30 p.m." insert the following:
or at <https://cpa.ky.gov/Pages/Forms.aspx>.



KENTUCKY BOARD OF PHARMACY

Andy Beshear
Governor

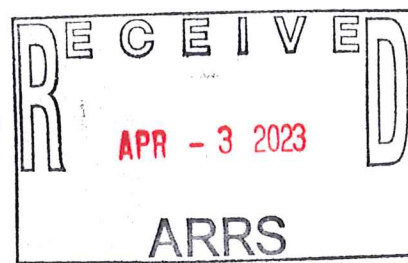
State Office Building Annex, Suite 300
125 Holmes Street
Frankfort KY 40601
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Fax (502) 696-3806
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Board Members
Jason Belcher, Consumer
Peter P. Cohron, R.Ph.
Meredith Figg, Pharm. D.
John Fuller, R.Ph.
Anthony B. Tagavi, Pharm. D.
Jonathan Van Lahr, R.Ph.

Executive Director
Christopher P. Harlow, Pharm. D.

April 3, 2023

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



Re: 201 KAR 2:380

Dear Co-Chairs West and Hale:

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

Sincerely,

Christopher Harlow, Pharm.D.
Executive Director
Kentucky Board of Pharmacy

Final, 3-30-2023

AGENCY AMENDMENT

(Changes made to ordinary version as Amended at ARRS Committee February 14, 2023)

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 2:380. Board authorized protocols.

RELATES TO

After "KRS 315.010(25)," insert "315.121(1)(a)."

Section 2(1)(b)

After "current clinical guidelines, for", delete "acute self-limiting".

After "conditions", insert the following:

listed in Section 5 of this administrative regulation

Delete the following:

and other minor ailments, preventative health services, and disease state monitoring and management as determined appropriate by the board

Section 3(7)

After "approving the protocol," delete "and".

Section 3(8)

After "services under the protocol", insert the following:

: and

(9) The date, and education or training of the pharmacist as referenced in Section 4 of this administrative regulation.

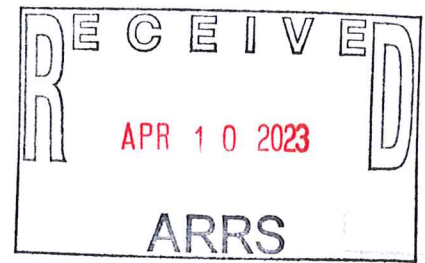
Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the Accreditation Council for Pharmacy Education or by a comparable provider approved by the board. Documentation of education shall be provided to the board upon request. Education shall be obtained prior to initiating care under the protocol. A failure to be educated and trained before utilizing the prescriber-approved protocol may result in disciplinary action pursuant to KRS 315.121(1)(a).

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

- (1) Acute influenza infection pursuant to recommendations by the Centers for Disease Control and Prevention (CDC);
- (2) Acute streptococcal pharyngitis infection;
- (3) Acute, uncomplicated urinary tract infection;
- (4) Acute cutaneous or mucocutaneous fungal infection;
- (5) Alcohol use disorder utilizing naltrexone-based therapy pursuant to recommendations from the American Psychiatric Association;
- (6) Allergic rhinitis;

- (7) Anaphylaxis;
- (8) Colorectal cancer prevention and screening;
- (9) HCV infection screening;
- (10) HIV infection prophylaxis, pre-exposure and post-exposure pursuant to recommendations by the CDC;
- (11) HIV infection screening pursuant to recommendations by the CDC;
- (12) Nutritional supplementation with vitamins and minerals;
- (13) Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;
- (14) Tobacco use disorder;
- (15) Traveler's health pursuant to recommendations by the CDC;
- (16) Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC;
- (17) Self-care conditions appropriately treated with over-the-counter medications and products; and
- (18) Covid-19 infection pursuant to recommendations by the CDC

NOTE TO COMPILER: Renumber the final Section in this administrative regulation by changing it from Section 4 to Section 6.



**KENTUCKY BOARD OF OPTOMETRIC
EXAMINERS**

Andy Beshear
Governor

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Lexington, Kentucky 40504-3333
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William Reynolds, OD, President
Joe Ellis, OD, VP
Freddie Mayes, OD, Secretary/Treasurer
Jonathan Shrewsbury, OD
Laken Albrink

Carson Kerr, Executive Director

April 10, 2023

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: **201 KAR 5:002**. Board administration and optometric practice.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 5:002, the Kentucky Board of Optometric Examiners proposes the attached amendment to 201 KAR 5:002.

Sincerely,

A handwritten signature in cursive script that reads "Carson Kerr".

Carson Forgy Kerr, Executive Director
Kentucky Board of Optometric Examiners
2365 Harrodsburg Road, Suite A240
Lexington, KY 40504

Final, 4-7-2023

SUGGESTED Substitute

Amended After Comments Version

BOARDS AND COMMISSIONS
Board of Optometric Examiners

201 KAR 5:002. Board administration and optometric practice.

RELATES TO: KRS ~~[7,]~~320.230, 320.240(7), 320.295, 320.300(4), 320.310(1)(f), (2), (3), 326.060
STATUTORY AUTHORITY: KRS 320.230, 320.240, ~~[320.240(4), (7),]~~320.295, 320.300(4),
320.310(1)(f), (n), (2), (3)~~[, 320.240(4), (7), (8)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.295 prohibits false, misleading, or deceptive advertising, ~~and]. This administrative regulation describes what an advertisement shall include to avoid being characterized as false, misleading, or deceptive.]~~ this includes advertising in all forms, including print media and electronic media. KRS 320.310(3) authorizes the board to promulgate an administrative regulation to establish minor violations that are subject to expungement. ~~[This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.]~~KRS 320.240(4), (7), and (8) ~~authorize[that]~~ the board ~~[shall have the power]~~ to promulgate an administrative regulation about what acts constitute unprofessional conduct. KRS 320.310(1)(n) authorizes the board to discipline a licensee who violates an administrative regulation promulgated by the board. ~~[This administrative regulation establishes the acts that constitute unprofessional conduct.]~~KRS 320.310(2) permits each doctor of optometry to maintain branch offices. ~~[This administrative regulation requires each doctor of optometry to furnish information concerning each office to the board.]~~ KRS 320.230 ~~authorizes[allows the]~~ board members to receive per diem compensation to be determined by administrative regulation of the board not to exceed \$125. ~~[This administrative regulation prescribes the board member's per diem compensation.]~~ KRS 320.300(4) prohibits a person from practicing optometry under any name other than his or her own except as permitted by the board in its administrative regulations. ~~[This administrative regulation prescribes the instances where a doctor of optometry may practice under a trade name.]~~KRS 320.310(1)(f) authorizes the board to promulgate administrative regulations to permit the practice of optometry outside of the licensee's regular office for a charitable purpose as defined by the board. This administrative regulation establishes requirements for advertising, minor violations subject to expungement, acts that constitute unprofessional conduct, the furnishing of information concerning each office to the board, board member per diem compensation, practice under a trade name, and the standards for the practice of optometry outside the licensee's office for a charitable purpose.

Section 1. Definitions.

- (1) "Board Member's Compensation" ~~means[shall mean]~~ that each board member is eligible for a per diem of \$100 for each day in which that member conducts work on behalf of the board.
- (2) "Charitable organization" means a nonprofit entity accepted by the Internal Revenue Service and organized for benevolent, educational, philanthropic, humane, social welfare, or public health purposes.
- (3) "Charitable purpose" means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.
- (4) "Expungement" means that:
 - (a) The affected records ~~are[shall be]~~ sealed;
 - (b) The proceedings to which they refer ~~are found[shall be deemed]~~ not to have occurred; and
 - (c) The affected party ~~[may-]~~properly ~~represents[represent]~~ that no record exists regarding the matter expunged.
- (5) "Minor violations" means:
 - (a) Failure to timely renew a license;
 - (b) Failure to timely obtain continuing education; and~~[shall not include]~~

- (c) **Does not include** any violations of the laws surrounding the advertisement of optometric services by Doctors of Optometry.

Section 2. Advertising.

- (1) An advertisement shall state if additional charges may be incurred in an eye examination for related services in individual cases.
- (2) An advertisement of price for visual aid glasses, including contact lenses or other optical goods, alone shall clearly state: "does not include eye examination".
- (3) Any doctor of optometry who has been subjected to any disciplinary measures for advertising violations may be required by the board to secure prepublication approval of all advertisements by the board for any period of time which the board **finds[deems]** appropriate.
- (4) When advertising an eye examination, **the[such]** examination shall follow the standards of care and established clinical practice guidelines adopted by the American Optometric Association at the time of the provision of care **and available at <https://www.aoa.org/practice/clinical-guidelines/clinical-practice-guidelines?ss=y>**.
- (5) The advertisement of eye glass lenses shall include: single vision or specified type of multifocal lenses.
- (6) Advertisement of contact lenses shall include:
 - (a) Description of type of lens; for example, "soft, tinted, extended wear toric"; **and**
 - (b) Whether or not professional fees are included in the advertised price.
- (7) If dispensing fees are not included in the advertisement of visual aid glasses, the advertisement shall so state.
- (8) The advertisement of optometric services rendered in Kentucky shall include whether the services will be performed by a licensed doctor of optometry:
 - (a) In-person;
 - (b) Via live or real-time audio and video synchronous telehealth technology; or
 - (c) Via asynchronous store-and-forward telehealth technology.
- (9) Except as provided in subsection (10) of this section, a person, individually or while employed or connected with a corporation or association, shall not advertise the fitting of contact lenses unless they are a doctor of optometry, physician or osteopath.
- (10) An ophthalmic dispenser may advertise that **he or she dispenses[they dispense]** contact lenses, if the patient presents a valid prescription from a doctor of optometry, physician or osteopath.
- (11) Advertising shall be prohibited if it represents a doctor of optometry as a specialist in an optometric specialty if **the Doctor of Optometry has[they have]** not:
 - (a) Been certified by a certifying board which has been approved by the Kentucky Board of Optometric Examiners and recognized by the Federal Government; and
 - (b) Furnished proof of **his or her[their]** certification to the Kentucky Board of Optometric Examiners;
- (12) A doctor of optometry shall not advertise a coded or special name for a visual material or service that has an established trade name, if the coded or special name would deceive consumers.

Section 3. Unprofessional Conduct.

- (1) A doctor of optometry shall not practice optometry in an office if the instruments and equipment, including office furniture, fixtures and furnishings, contained therein are not maintained in a working, clean and sanitary manner.
- (2) **Pursuant to KRS Chapters 311, 320, and KRS 326.030[Under Kentucky law]** only doctors of optometry, osteopaths and physicians are authorized to fit contact lenses. Ophthalmic dispensers may fit contact lenses in the presence of and under the supervision of a doctor of optometry, osteopath or physician.
- (3) The signed spectacle prescription, or contact lens prescription shall be given to the patient at the completion of the examination and payment of fees.
- (4) A doctor of optometry shall use the letters "OD" or "O.D." in any advertisement where a doctor of optometry uses letters to denote an optometry degree.
- (5) A doctor of optometry shall not give or receive a fee, salary, commission, or other remuneration or thing of value, in any manner, or under any pretext, to or from any person, firm, or corporation in return

for the referral of optometric patients, or in order to secure optometric patients. Payment between health providers or from a health services industry, solely for the referral of a patient, is considered fee splitting and unprofessional conduct.

(6) A doctor of optometry shall not be employed by an unlicensed doctor of optometry, firm, or corporation as an optometrist, except to the extent permitted by subsection (7) of this section or an entity approved by the Kentucky Board of Optometric Examiners.

(7) A doctor of optometry shall not enter into a contract, agreement, or arrangement, for the hire or leasing of **his or her[their]** professional services, except that upon the:

(a) Death of a Kentucky licensed Doctor of Optometry, the surviving spouse or estate of the deceased Doctor of Optometry may contract optometric services or employ a Kentucky licensed doctor of optometry for a period not to exceed eighteen (18) months from the time of death; or

(b) Permanent disability of a Kentucky licensed doctor of optometry, the spouse, legal guardian, or disabled doctor of optometry may contract optometric services or employ a Kentucky licensed doctor of optometry for a period not to exceed eighteen (18) months from the time of disability.

(8) The provisions of subsections (5), (6), and (7) of this section shall not prohibit employment of an optometrist by[-a]:

(a) A licensed hospital;

(b) A licensed multidisciplinary health clinic;

(c) A professional service corporation;

(d) A governmental entity; or

(e) Another[Other] entity approved by the Kentucky Board of Optometric Examiners.

(9)[(7)] Clinical patient care shall be determined by the doctor of optometry and not determined by outside influences or third parties.

(10)[(8)] A doctor of optometry shall not engage in any unlawful, grossly unprofessional, or incompetent practice, nor shall they practice in premises where others engage in any unlawful, grossly unprofessional, or incompetent practice, if that practice is known to the doctor of optometry, or would have been known to a person of reasonable intelligence.

(11)[(9)] A doctor of optometry shall not be associated with or share an office or fees with a person who is engaged in the unauthorized practice of optometry.

(12)[(10)] A doctor of optometry shall keep the visual welfare of the patient uppermost at all times and on dismissal of patient **shall[must]** provide adequate opportunity to obtain other eye care regardless of **the patient's[their person's]** financial status.

(13)[(11)] A doctor of optometry shall treat with confidentiality the protected health information obtained from the patient, except as otherwise required by law.

(14)[(12)] A doctor of optometry shall provide care that is consistent with established clinical practice guidelines, specifically those adopted by the American Optometric Association at the time of the provision of care, and shall only employ those clinical procedures and treatment regimens for which they are competent to perform and within the scope of practice.

(15)[(13)] It is unprofessional conduct to fail to maintain in good working order, or to be unable to operate instruments and equipment necessary to provide competent clinical care as established in the clinical **practice[optometric]** guidelines adopted by the American Optometric Association at the time of the provision of care.

(16)[(14)] The patient care performed in a patient's case shall be left to the professional judgment of the doctor of optometry and determined by the established American Optometric Association clinical practice guidelines in effect at that time.

(17)[(15)] An act constituting a violation of KRS Chapter 320, or any applicable state or federal law related to provider-patient care shall be unprofessional conduct.

(18)[(16)] It is unprofessional conduct for a doctor of optometry to fail to inform the board of the change in location, mailing address, and telephone number of each office **he or she practices[they practice]** in within thirty (30) days of any change.

Section 4. Expungement Eligibility and Procedure.

- (1) The licensed doctor of optometry shall not have been the subject of a subsequent violation of the same nature for a period of three (3) years after the date of completion of disciplinary sanctions imposed for the violation sought to be expunged; and
- (2) They shall submit a written request to the board. The board shall consider each request and shall, if the requirements established in KRS 320.310(3) and this administrative regulation are satisfied, expunge the record of the subject disciplinary order.

Section 5. Trade Names. A doctor of optometry may practice under a trade name if:

- (1) It is not the same as his or her name; and
- (2) The name of each doctor of optometry practicing in his or her[their] office is prominently displayed on:
 - (a) The exterior of the main entrance to the office; and
 - (b) Stationery, prescription pads, telephone directory listings, and other items bearing or displaying the trade name, including any form of electronic communication media.

Section 6. Practice of Optometry Outside of Regular Office for a Charitable Purpose.

- (1) In order for a Kentucky licensed doctor of optometry to provide optometric services outside the doctor of optometry's regular office for a charitable purpose, a charitable organization shall provide to the board:
 - (a) A written request to include the services of Kentucky licensed doctor of optometry at least thirty (30) days before the optometric services are to be offered;
 - (b) Proof of its nonprofit status;
 - (c) Assurance that the participating doctor of optometry shall not be compensated or remunerated in any manner;
 - (d) The names of all participating doctors of optometry;
 - (e) The address of the location where the optometric services will be offered;
 - (f) The dates and times the optometric services will be offered, which shall not exceed seven (7) days per event;
 - (g) A statement of the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;
 - (h) A statement that the charitable organization shall retain and maintain a patient record for each individual treated by the participating doctor of optometry, and where the patient may seek access to the[such] record~~require every participating doctor of optometry to develop and maintain a permanent patient record for each individual treated by that doctor of optometry~~; and
 - (i) A statement that the charitable organization shall require every participating doctor of optometry to follow the standards of care and established clinical practice guidelines adopted by the American Optometric Association at the time of the provision of care~~comply with the minimum eye examination requirements of Section 3 of this administrative regulation~~.
- (2) The board or its acting president may waive the thirty (30) day requirement based on exigent circumstances that prevented the charitable organization from complying with the thirty (30) day requirement. Exigent circumstances, for example include instances such as a governor's state of emergency, or as based on some significant need with board approval retroactively at the next meeting.
- (3) The board or its acting president shall notify the charitable organization in writing if its request has been approved within ten (10) business days of receipt of the completed request.
- (4) A written request may include multiple events on different dates if the events are scheduled within twelve (12) months of the date the completed request is received by the board.
- (5) Lenses shall be first quality and meet the requirements of inspection, tolerance, and testing procedures as established[outlined] in the:
 - (a) 1. American National Standards Institute, ANSI Z80 recently approved accredited standards, which may be obtained through the Web site at <https://www.z80asc.com/>; and

2. ANSI Z80 list of currently active standards, which may be obtained through the Web site at <https://www.z80asc.com/Z80asc/Standards/Z80/Standards.aspx?hkey=c8f40f21-a61f-4df3-9821-9f8315e70bde>;

(b) ANSI/ISEA Z87.1-2020, and standards overseen by the ANSI committee relating to occupational and educational safety eyewear, which may be obtained through the ANSI Web store at webstore.ansi.org; and

(c) American Society for Testing and Materials, ASTM International, standards relating to eye safety for sports and recreational safety eyewear, under the ASTM F08.57 committee, which may be obtained through <https://www.astm.org/get-involved/technical-committees/committee-f08/subcommittee-f08/jurisdiction-f0857>

[American Standard Prescription Requirements]. [Requirements for Eyeglasses Provided.]

~~[(a)] [If eyeglasses are provided as part of the charitable service, all materials shall be new, first quality and free from defects.]~~

~~[(b)] [Eyeglass material shall be:]~~

~~[1.] [First quality and meet the requirements of inspection, tolerance, and testing procedures as outlined in the American Standard Prescription Requirements; and]~~

~~[2.] [Made to meet the individual recipient's personal prescription.]~~

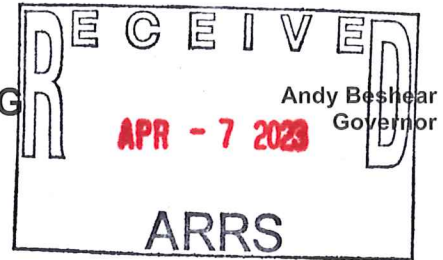
(6) Failure to comply with the terms of this administrative regulation may result in denial or withdrawal of approval.

CONTACT PERSON: Carson Kerr, Executive Director, Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone (859) 246-2744, fax (859) 246-2746, email Carson.Kerr@ky.gov.

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KENTUCKY BOARD OF NURSING

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April 7, 2023

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

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

Dear Co-Chairs West and Lewis:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:411, the Kentucky Board of Nursing proposes the attached suggested substitute to 201 KAR 20:411.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Prather".

Jeffrey R. Prather, General Counsel
Kentucky Board of Nursing
312 Whittington Parkway, Suite 300
Louisville, KY 40222
Phone: (502) 338-2851
Email: Jeffrey.prather@ky.gov

Final, 3-15-2023

SUGGESTED SUBSTITUTE

**GENERAL GOVERNMENT CABINET
Board of Nursing**

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

RELATES TO: KRS 216B.400(2), (4), ~~(5), [(5)]~~, 314.011(14), 314.103, 314.142, 314.475, 403.707, 421.500-421.575, 431.600-431.660

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definitions.

- (1) "Adolescent" means a child who has reached the onset of physiologically normal puberty.
- (2) "Pediatric" means a child who has not reached the age of eighteen (18).
- (3) "SANE-A/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of an adult or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.
- (4) "SANE course" means the SANE-A/A course and the SANE-P/A course.
- (5) "SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application.

- (1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE-A/A course or a SANE-P/A course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:
 - (a) Position description and qualifications of the nurse administrator of the SANE course;
 - (b) Qualifications and description of the faculty;
 - (c) Course syllabus;
 - (d) Course completion requirements;
 - (e) Tentative course presentation dates;
 - (f) Records maintenance policy; and
 - (g) Copy of certificate of course completion form.
- (2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.
- (3) Faculty qualifications. Faculty qualifications shall be consistent with the instructor qualifications set out in Sexual Assault Nurse Examiner (SANE) Education Guidelines. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.
- (4) Course syllabus. The syllabus shall include:
 - (a) Course prerequisites, requirements, and fees;
 - (b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;

- (c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;
- (d) Content as specified in subsection (6) of this section, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;
- (e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;
- (f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and
- (g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

(6) The SANE-A/A course and the SANE-P/A course content shall be consistent with Sexual Assault Nurse Examiner (SANE) Education Guidelines.

(a) In addition to that content, the SANE-A/A course and the SANE-P/A course shall include:

- 1. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;
- 2. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate;
- 3. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process; and
- 4. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and
- 5. The ***Kentucky Crime Victim[victim's]*** Bill of Rights, KRS 421.500 through 421.575.

(b) In addition to the requirements of paragraph (a) of this subsection, the SANE-P/A course shall include:

- 1. Principles of child development;
- 2. Techniques for acute evaluations;
- 3. An overview of Kentucky Child Advocacy Centers; and
- 4. An overview of KRS 431.600 through 431.660 which shall include information about multidisciplinary teams and their functions, model protocols approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, and the role of peer review in child sexual abuse cases.

Section 3. Contact hour credit for continuing education.

- (1) The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.
- (2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.
- (3) Records shall be maintained for a period of five (5) years, including the following:
 - (a) Provider name, date, and site of the course; and
 - (b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.
- (4) A participant shall receive a certificate of completion that documents the following:
 - (a) Name of participant;
 - (b) Title of course, date, and location;
 - (c) Provider's name; and
 - (d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course.

- (1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.
- (2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.
- (3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed.

- (1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.
- (2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential.

- (1) The applicant for the SANE-A/A or SANE-P/A credential shall:
 - (a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;
 - (b) Have completed a board approved SANE educational course or a comparable course, which the board or its designee shall:
 1. Evaluate to determine its course comparability; and
 2. Advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed.
 - (c) Complete the ~~[Sexual Assault Nurse Examiner-]~~Application for Credential as a Sexual Assault Nurse Examiner;
 - (d) Pay the fee established in 201 KAR 20:240;
 - (e) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);
 - (f) Use the FBI Applicant Fingerprint Card;
 - (g) Pay any required fee to the KSP and the FBI;
 - (h) Complete the criminal record check within six (6) months of the date of the application;
 - (i) Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
 - (j) Provide a letter of explanation that addresses each conviction, if applicable.
- (2) Upon completion of the application process, the board shall issue the appropriate SANE credential for a period ending October 31.
- (3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal.

- (1) To renew the SANE-P/A or the SANE-A/A credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.
- (2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201

KAR 20:240, the appropriate SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement.

(1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the ~~[Sexual Assault Nurse Examiner]~~ Application for Credential as a Sexual Assault Nurse Examiner;

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a criminal record check by the KSP and FBI;

(e) Using the FBI Applicant Fingerprint Card;

(f) Paying any required fee to the KSP and the FBI;

(g) Completing the criminal record check within six (6) months of the date of the application;

(h) Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(i) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Initial or Continued SANE Course Approval", 10/2018;

(b) ~~"[Sexual Assault Nurse Examiner]~~ Application for Credential as a Sexual Assault Nurse Examiner", 10/2022[2018];

(c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 02/2021;

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 02/2021; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2018, International Association of Forensic Nurses.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site/website[Web site] at <https://kbn.ky.gov/General/Pages/Document-Library.aspx> [<https://kbn.ky.gov/legalopinions/Pages/laws.aspx>].

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

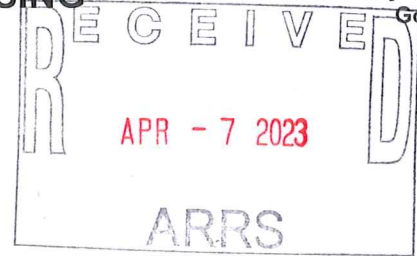
CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, KY 40222 (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

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Andy Beshear
Governor



April 7, 2023


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

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

Dear Co-Chairs West and Lewis:

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

Sincerely,


Jeffrey R. Prather, General Counsel
Kentucky Board of Nursing
312 Whittington Parkway, Suite 300
Louisville, KY 40222
Phone: (502) 338-2851
Email: Jeffrey.prather@ky.gov

Final, 3-15-2023

SUGGESTED SUBSTITUTE

GENERAL GOVERNMENT CABINET
Board of Nursing

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

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

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians and includes establishing required standards for training programs~~[-and includes establishing required standards for training programs].~~

This administrative regulation establishes the requirements for dialysis technician training programs.

Section 1.

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

(2)

(a) A dialysis technician training program that seeks to be approved by the board shall file an Application for Dialysis Technician Training Program [Approval] and pay a fee of \$2,000; and

(b) The dialysis technician training program shall include with its application:

1. A copy of the approval of certification for the dialysis technician training program's governing organization to operate a renal dialysis center from the Centers for Medicare and Medicaid Services (CMS); and

2. The most recent site visit or survey report, and if applicable,~~[-and if applicable,]~~ a statement of deficiencies,~~[-]~~ and a plan of correction~~[-if applicable].~~

Section 2.

(1) A training program that prepares an individual to become a dialysis technician which is located in this state shall meet the standards established by this administrative regulation.

(2) A training program that is located out of state shall not be subject to the approval process specified in this administrative regulation. However, an applicant who has completed an out of state training program may apply for a dialysis technician credential pursuant to 201 KAR 20:476, Section 1 ~~(2)(1)(b)~~.

Section 3. Renal Dialysis Organization.

(1)

(a) An organization which is licensed to operate a renal dialysis center pursuant to 902 KAR 20:018 shall assume full legal responsibility for the overall conduct of the dialysis technician training program.

(b) The organization shall appoint a program administrator who shall be administratively responsible for the oversight of the dialysis technician training program on a twelve (12) month basis.

(c) The organization shall submit to the board in writing the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.

(d) The board shall be notified in writing of a change, vacancy, or pending vacancy, in the position of the program administrator within thirty (30) days of the dialysis technician training program's awareness of the change, vacancy, or pending vacancy.

(2) The organization shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each dialysis technician training program location.

(3) A system of official records and reports essential to the operation of the dialysis technician training program shall be maintained according to institutional policy. Provisions shall be made for the security

and protection of records against loss and unauthorized distribution or use. The system of records shall include:

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

Section 4. Program Administrator and Assistant Program Administrator.

(1) The program administrator shall have the following qualifications:

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

(2) A dialysis technician training program may have an assistant program administrator at each location. An assistant program administrator shall have the following qualifications:

- (a)
 1. ~~[4.]~~ A minimum of a baccalaureate degree in nursing;
 2. An assistant program administrator who currently does not hold a baccalaureate degree in nursing from an accredited college or university shall obtain the degree within five (5) years of the effective date of this administrative regulation. The assistant program administrator shall provide documentation that shows active and steady progression towards the degree; and
 3. The board may waive the baccalaureate degree requirements in this paragraph upon a showing that the proposed assistant program administrator is otherwise qualified, such as possessing a minimum of five (5) years of experience in dialysis patient care and administration;
- ~~[2.] [An assistant program administrator who currently does not hold a baccalaureate degree in nursing from an accredited college or university shall obtain the degree within five (5) years of the~~

~~effective date of this administrative regulation. The assistant program administrator shall provide documentation that shows active and steady progression towards the degree; and]~~

~~[3.] [The board may waive the baccalaureate degree requirements in this paragraph upon a showing that the proposed assistant program administrator is otherwise qualified, such as possessing a minimum of five (5) years of experience in dialysis patient care and administration;]~~

- (b) A minimum of the equivalent of one (1) year of full time teaching experience;
- (c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;
- (d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;
- (e) An active and unencumbered Kentucky registered nurse license, temporary work permit, or multistate privilege; and
- (f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.

Section 5. Faculty.

- (1) The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the student, and the educational technology utilized.
- (2) The faculty shall be approved by the program administrator and shall include didactic and clinical faculty.
- (3) The name, title, and credential identifying the education and professional qualifications of each didactic and clinical faculty shall be provided to the board within thirty (30) days of hire. With each change in faculty, whether a new hire or a termination or retirement, an updated list of current faculty shall be provided to the board.
- (4) Didactic faculty.
 - (a) Didactic faculty shall consist of multidisciplinary members with expertise in the subject matter.
 - (b) Didactic faculty shall possess:
 - 1. A minimum of a baccalaureate degree from an accredited college or university; or
 - 2. An associate degree from an accredited school of nursing.
 - (c) Nursing didactic faculty shall possess:
 - 1.
 - a. A current state license as a registered nurse; or
 - b. A privilege to practice in the state; and
 - 2. A minimum of one (1) year of experience with dialysis patient care.
 - (d) Didactic faculty shall document a minimum of two (2) years full time or equivalent experience in their profession or discipline.
 - (e) Didactic faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.
 - (f) Didactic faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.
- (5) Clinical faculty and preceptors.
 - (a) Clinical faculty or a preceptor shall hold a current, unencumbered Kentucky nursing license, temporary work permit, or multistate privilege or a current, unencumbered Kentucky dialysis technician credential.
 - (b) Clinical faculty or a preceptor shall have evidence of clinical competencies in end stage renal disease and dialysis care.
 - (c) A preceptor who is a dialysis technician shall hold certification by one (1) of the ~~following~~following dialysis technician certification organizations:
 - 1. The Board of Nephrology Examiners Nursing Technology (BONENT); or

2. The Nephrology Nursing Certification Commission (NNCC)~~[- or]~~
~~[3.] [The National Association of Nephrology Technicians/Technologists (NANT)].~~

(6) There shall be documentation that the clinical faculty have been oriented to the course, program outcomes, student learning objectives, evaluation methods used by the faculty, and documented role expectations.

Section 6. Standards for Training.

(1) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the training program shall be clearly defined in writing by the faculty and shall be consistent with those of the Renal Dialysis Center.

(b) The program outcomes shall be consistent with those required by the Centers for Medicare and Medicaid Services and the dialysis technician certification organizations listed in Section 5(5)(c) of this administrative regulation~~[subsection (3)(b) of this section]~~.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(d) The training program shall include a minimum of 200 hours of didactic course work and 200 hours of direct patient contact. The didactic course work and direct patient contact shall be at least ten (10) weeks. The training program shall maintain a log of clinical hours for each student. It ~~may~~**shall**~~may~~ also include an internship of at least 160 hours. The internship shall begin after two (2) unsuccessful attempts to pass the final examination. The internship shall be completed prior to a third final examination attempt. The internship shall be under the supervision of a registered nurse and shall include a preceptor.

(2) The curricula of the program shall minimally include the following topics:

(a) The legal and ethical aspects of practice including:

1. The history of dialysis;
2. The state and federal regulations governing dialysis including 201 KAR 20:478, 902 KAR 20:018, 907 KAR 1:400, and 42 C.F.R. 494.140;
3. The resources available for pursuing personal and career development;
4. The principles and legal aspects of documentation, communication, and patient rights;
5. The roles of the dialysis technician and other multidisciplinary team members;
6. The principles related to patient safety; and
7. The role of the board of nursing.

(b) Anatomy and physiology applicable to renal function including:

1. Renal anatomy;
2. Organs of the urinary system and components of the nephron; and
3. Functions of the normal kidney.

(c) Diseases of the kidney including:

1. Causes and complications of acute renal failure; and
2. Causes and complications of chronic renal failure.

(d) The psychosocial and physical needs of the end stage renal disease (ESRD) patient and family including:

1. The impact on family and social systems;
2. Coping mechanisms utilized;
3. Rehabilitative needs;
4. Community resources available;
5. All aspects of renal diet and fluid restrictions; and
6. Educational needs of patients receiving dialysis including the role of the technician and resources available.

(e) The principles of pharmacology as related to ESRD including:

1. Commonly used medications and their side effects;
2. The principles of medication administration;
3. The indications, dosage, action, and adverse effects of heparin, local anesthetics, and normal saline; and
4. The accurate administration of heparin, local anesthetics, and normal saline.

- (f) Aseptic techniques and established infection control practices including:
 1. Dialysis precautions as issued by the United States Centers for Disease Control; and
 2. Proper hand washing technique.
- (g) Principles of dialysis and dialysis treatment including:
 1. Definitions and terminology;
 2. Principles of osmosis, diffusion, ultrafiltration, and fluid dynamic;
 3. The structure and function of various types of circulatory access sites and devices;
 4. The indications, advantages, disadvantages, and complications of internal arteriovenous (A/V) fistulas and A/V grafts, and central venous access devices;
 5. The various types of dialyzers;
 6. The benefits, risks, and precautions associated with dialyzer reuse;
 7. The purpose and concept of water treatment;
 8. Knowledge and ability to manage and operate dialysis equipment;
 9. Knowledge and ability to appropriately monitor and collect data throughout the course of treatment;
 10. The etiology, signs and symptoms, prevention, intervention and treatment, and options for the most common complications;
 11. The knowledge and ability to safely initiate and discontinue treatment; and
 12. Routine laboratory tests, values, and collection techniques.
- (h) Other treatment modalities for ESRD including:
 1. Renal transplantation; and
 2. Home dialysis options.

(3) Implementation of the curriculum.

- (a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.
- (b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program and shall prepare the student to meet the qualifications for certification as established by the dialysis technician certification organizations listed in Section 5(5)(c) of this administrative regulation~~[Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT)]~~.
- (c) The dialysis technician training program shall have written measurable program outcomes that reflect the role of the dialysis technician graduate upon completion of the program.
- (d) The dialysis technician training program shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.
- (e) A course syllabus shall be developed to include outcomes, planned instruction, learning activities, and method of evaluation.
- (f) The teaching methods and activities of both instructor and learner shall be specified. The activities shall be congruent with stated objectives, and content shall reflect adult learning principles.
- (g) A copy of the course syllabus shall be on file in the dialysis technician training program office and shall be available to the board upon request.
- (h) Any proposed substantive changes to the dialysis technician training program syllabus shall be submitted to the board in writing at least two (2) months prior to implementation and shall not be implemented without approval from the board. A substantive change is any change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum.
- (i) Training may be offered through distance learning technologies. Training offered through the use of distance learning technologies shall be comparable to the training offered in a campus based program.

(4) The curriculum shall require that the student hold a current Basic Life Support (BLS) certificate.

Section 7. Students in Dialysis Technician Training Programs.

- (1) Preadmission requirements shall be stated [and published] in all publications utilized by the dialysis technician training program including recruitment materials.
 - (a) Program information communicated by the program shall be accurate, complete, consistent, and publicly available.

- (b) Participation shall be made available for students in the development, implementation, and evaluation of the program.
- (2) Written dialysis technician training program student policies shall be accurate, clear, and consistently applied.
- (3) Upon admission to the training program, each student shall be advised in electronic or written format of policies pertaining to:
 - (a) Prerequisites for admission, readmission, or dismissal;
 - (b) Evaluation methods that include the grading system;
 - (c) Any fees or expenses associated with the training program and refund policies;
 - (d) Health requirements and other standards as required by the renal dialysis center;
 - (e) Student responsibilities;
 - (f) A plan for emergency care while in the clinical setting; and
 - (g) Program completion requirements.
- (4) A student enrolled in a training program is exempt from the credentialing requirement while enrolled. The student shall use the title dialysis technician (DT) trainee.

Section 8. Program Completion Requirements.

- (1) Requirements for successful completion of the dialysis technician training program shall be clearly specified.
- (2) The requirements shall provide evidence of clinical competency through the use of evaluation methods and tools that measure the progression of the student's cognitive, affective, and psychomotor achievement of clinical outcomes based on published rubrics and sound rationale.
- (3) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.
- (4) A final examination shall be administered only during the final forty (40) hours of the first 400 hours of the training program.
 - (a) The final examination shall be mapped to program outcomes and blueprinted to the examination content of one (1) of the **dialysis technician** certification organizations as listed in Section 5(5)(c)~~[Section 6(3)(b)]~~ of this administrative regulation.
 - (b) Following successful completion of the final examination, the student may begin the internship.
- (5) The individual who successfully completes the training program, including the internship, shall receive a certificate of completion that documents the following:
 - (a) Name of individual;
 - (b) Title of training program, date of completion, and location;
 - (c) Provider's name;
 - (d) The program code number issued by the board; and
 - (e) Name and signature of the program administrator or the assistant program administrator.
- (6) The program shall submit the List of Dialysis Technician Training Program Graduates within three (3) working days of the program completion date.

Section 9. Incorporation by Reference.

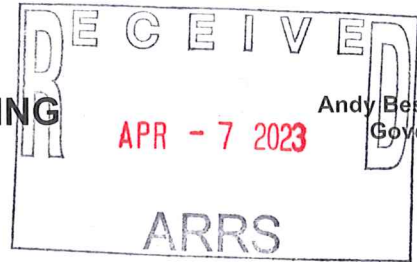
- (1) The following ~~**material is**~~~~**materials are**~~~~[material is]~~ incorporated by reference:
 - (a) "Application for Dialysis Technician Training Program ~~**Approval**~~", 4/2021; and
 - (b) "List of Dialysis Technician Training Program Graduates", 4/2021.
- (2) This material may be inspected,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

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300 Louisville, Kentucky 40222, (502) 338-2851, jeffrey.prather@ky.gov or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

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April 7, 2023

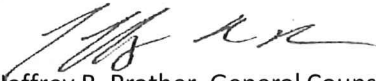
Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill, Regulation Complier
Adminstrative Regulation Review Subcommittee
Legislative Research Commission
029, Captiol Annex
Frankfort, KY 40601

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

Dear Co-Chairs West and Lewis:

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

Sincerely,


Jeffrey R. Prather, General Counsel
Kentucky Board of Nursing
312 Whittington Parkway, Suite 300
Louisville, KY 40222
Phone: (502) 338-2851
Email: Jeffrey.prather@ky.gov

Final, 3-15-2023

SUGGESTED SUBSTITUTE

**GENERAL GOVERNMENT CABINET
Board of Nursing**

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

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

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

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

Section 1. Requirements for Initial Dialysis Technician Credential.

(1) An individual who wants to be credentialed as a dialysis technician (DT) in order to engage in dialysis care shall:

- (a) File with the board the Application for Dialysis Technician Credential;
- (b) Pay the fee established in Section 4 of this administrative regulation;
- (c) Have completed a board approved DT training program;
- (d) Submit the Checklist for Dialysis Technician Competency Validation; and
- (e) Submit a criminal record check pursuant to subsection (3) of this section and meet the requirements of that subsection.

(2)

(a) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who does not hold certification from one (1) of the certification organizations listed in ***201 KAR 20:472, Section 5(5)(c)[subsection (4)(b) of this section]*** shall submit to the board the training program's curriculum and evidence of completion of the training program.

1. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as established in 201 KAR 20:472.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of 201 KAR 20:472, Section 6.

(b) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who holds certification from one (1) of the certification organizations listed in ***201 KAR 20:472, Section 5(5)(c)[subsection (4)(b) of this section]*** shall complete an educational module that covers the information contained in 201 KAR 20:472, Section 6(2)(a)2.

(3)

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

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

(c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is ***found as[deemed]***~~[found as]~~ necessary,

the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(4)

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

(b) The provisional credential shall expire eighteen (18) months from the date the provisional credential is issued~~[application is received]~~ by the board. During that time, the applicant shall obtain certification from one (1) of the ~~[following]~~ certification organizations listed in 201 KAR 20:472, Section 5(5)(c).~~[-]~~

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

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

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

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

(d) A DT applicant~~[application]~~ shall be issued a provisional credential under this section only one (1) time, and it shall expire after eighteen (18) months.

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

- (a) The credential is issued;
- (b) The application is denied by the board; or
- (c) The application lapses.

(6)

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

(b) If the credential is issued prior to May 1, it shall expire on October 31 of the current credentialing period as defined in 201 KAR 20:085, Section 2.

(c) If the credential is issued on or after May 1, it shall expire on October 31 of the succeeding credentialing period as defined in 201 KAR 20:085, Section 2.

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

Section 2. Renewal.

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

(a) The Application for Dialysis Technician Credential Renewal~~[of the Dialysis Technician Credential]~~~~[Renewal]~~;

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

(c) Evidence of current certification by one (1) of the organizations listed in 201 KAR 20:472, Section 5(5)(c)~~[1(4)(b) of this administrative regulation]~~.

(2) If the application form is submitted online at www.kbn.ky.gov~~[at www.kbn.ky.gov]~~, it shall be received by the board prior to midnight on the last day of the credentialing period.

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

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

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

Section 3. Reinstatement.

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

- (a) Submit the Application for Dialysis Technician Credential;
- (b) Provide evidence of certification from a DT certification organization listed in 201 KAR 20:472, Section 5(5)(c)[1(4)(b) of this administrative regulation];
- (c) Pay the fee established in Section 4 of this administrative regulation; and
- (d) Provide a criminal record check by the Department of the Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and comply with the requirements of subsection (2) of this section.

(2)

- (a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee required by the KSP and the FBI.
- (b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.
- (c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is found as[deemed][found as] necessary, the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(3) If the DT credential has lapsed for more than twelve (12) months, an individual may reinstate the credential by one (1) of the following methods.

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

1. Complete a DT training program approved by the board;
2. After completion of the training program, submit an Application for Dialysis Technician Credential;
3. The supervising registered nurse shall complete and submit the Checklist for Dialysis Technician Competency Validation to the board;
4. Pay the fee established by Section 4 of this administrative regulation; and
5. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section.[; and]

~~[6.] [Provide evidence of certification from a]~~

(b) After the applicant has met the requirements of **paragraph [this subsection (3)](a)** of this **subsection[section]** and provides evidence of a current certification from one (1) of the certification organizations listed in 201 KAR 20:472, Section 5(5)(c), the applicant's credential shall be reinstated.

(c) If the applicant for reinstatement under this subsection does not hold a current certification from one (1) of the organizations listed in 201 KAR 20:472, Section 5(5)(c), the applicant shall be referred to as a DT Applicant and the board may issue a provisional credential to the DT Applicant, if:

1. The DT Applicant previously held a dialysis technician credential; and
2. Provides verification that the DT Applicant has previously held a certification from one (1) of the organizations listed in 201 KAR 20:472, Section 5(5)(c).

(d) A provisional credential issued under **paragraph [subsection 3](c)** of this **subsection[section]** shall expire eighteen (18) months from the date provisional credential is issued by the board. During that time, the applicant shall obtain recertification from one (1) of the[DT] certification organizations listed in 201 KAR 20:472, Section 5(5)(c)[Section 1(4)(b) of this administrative regulation].

(e) A DT Applicant shall be issued a provisional credential only one (1) time under **paragraph [the subsection 3](c)** of this **subsection[section]**.

(f) The DT Applicant shall practice dialysis care under the supervision of a registered nurse, an advanced practice registered nurse, a physician, or a physician's assistant.

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

1. Submit an Application for Dialysis Technician Credential;
2. Submit verification of working as a DT in another state;
3. Pay the fee established by Section 4 of this administrative regulation;
4. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and
5. Provide evidence of certification from a DT certification organization listed in **201 KAR 20:472, Section 5(5)(c)[1(4)(b) of this administrative regulation]**.

(4) An Application for Dialysis Technician Credential submitted for reinstatement shall be valid for one (1) year from the date of receipt by the board.

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

Section 4. Fees.

- (1) The application fee for the initial credential shall be seventy (70) dollars.
- (2) The credential renewal fee shall be thirty-five (35) dollars.
- (3) The credential reinstatement fee shall be \$100.
- (4) A fee of ten (10) dollars shall be charged for issuing a duplicate of the credential.
- (5) A check submitted to the board for payment of a fee that is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.
- (6) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.
- (7) A fee of twenty-five (25) dollars shall be charged for a name change and the issuance of a new credential.
- (8) All fees shall be nonrefundable.

Section 5. Material Incorporated by Reference.

(1) The following ~~material is~~~~materials are~~[material is] incorporated by reference:

- (a) "Application for Dialysis Technician Credential", 4/2021;
- (b) "Application for **Dialysis Technician Credential Renewal**~~[of Dialysis Technician Credential]~~~~[Renewal]~~", 4/2021; and
- (c) "Checklist for Dialysis Technician Competency Validation", 4/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>[<https://kbn.ky.gov/legalopinions/Pages/laws.aspx>].

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, jeffrey.prather@ky.gov or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

Rich Storm
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Brian Clark
Deputy Commissioner

Gabe Jenkins
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April 10, 2023

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

Re: **301 KAR 2:144**. Fall Turkey hunting., 301 KAR 2:300. Black Bear Seasons and Requirements

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 2:144, and 301 KAR 2:300, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 2:144 and 301 KAR 2:300.

Sincerely,

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

SUGGESTED SUBSTITUTE

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

301 KAR 2:144. Fall wild turkey hunting.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.305, 150.360, 150.390, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag[bag] limits and methods of take, and to make these[such] requirements apply to a limited area. KRS 150.390(1) requires that wild turkeys shall not be taken in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301[~~KAR~~]. This administrative regulation establishes seasons, bag [bag] limits, and methods of take, hunter requirements, and special area restrictions for fall wild turkey hunting.

Section 1. Definitions.

- (1) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.
- (2) "Wildlife Management Area" or "WMA" means a tract of land:
 - (a) Controlled by the department through ownership, lease, license, or cooperative agreement; and
 - (b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Statewide Wild Turkey Season Dates. Except as established in 301 KAR 2:111, a person shall only take wild turkey[turkeys] during the seasons established in subsections (1) through (3) of this section:

- (1) Archery season shall be the first Saturday in September through the third Monday in January;
- (2) Crossbow season shall be:
 - (a) From October 1 through the end of the third full weekend in October; and
 - (b) From the second Saturday in November through December 31; and
- (3) Firearm season shall be:
 - (a) For seven (7) consecutive days beginning the fourth Saturday in October; and
 - (b) For seven (7) consecutive days beginning the first Saturday in December.

Section 3. Legal Equipment.

- (1) A person shall only use legal weapons and ammunition as established in 301 KAR 2:140.
- (2) Fall archery season. Archery equipment may be used.
- (3) Fall crossbow season. Crossbows and archery equipment may be used.
- (4) Fall firearm season. Archery equipment, crossbows, and firearms may be used.

Section 4. Fall Wild Turkey Bag Limits. A person shall **not** take ~~[no]~~more than:

- (1) Two (2) wild turkeys statewide, of which only:
 - (a) One (1) shall have a visible beard at least three (3) inches long; and
 - (b) One (1) shall have no visible beard or a beard less than three (3) inches long; ~~and~~;
- ~~[(4)] [A person shall not take more than four (4) wild turkeys, no more than two (2) of which shall be taken with a firearm.]~~
- ~~(2) One (1) wild turkey per day [Only one (1) of the turkeys taken pursuant to subsection (1) of this section shall have a visible beard at least three (3) inches long].~~
- ~~[(3)] [A person shall not harvest more than one (1) wild turkey per day.]~~

Section 5. Hunter Restrictions.

- (1) Dogs may be used to aid in taking wild turkey[s] during any fall season.

(2) A person may take a wild turkey from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(3) A person hunting wild turkey[turkeys] in the fall shall comply with all license, permit, and check-in requirements established in 301 KAR 2:140.

(4) A person shall not take a wild turkey within 600 feet of a baited area, as defined by 301 KAR 2:140, or for thirty (30) days after the bait has been removed, except that this prohibition shall[is] not apply[applicable].

(a) To bona fide agricultural practices;

(b) To crop manipulation for a wildlife management purpose; and

(c)[(b)] Across property boundaries.

Section 6. Wildlife Management Areas. Except as established in subsections (1) through (6) of this section, Wildlife Management Areas shall be open to fall wild turkey hunting pursuant to this administrative regulation and 301 KAR 2:140.

(1) Ballard Wildlife Management Area. A person shall not hunt wild turkey[s] during the fall firearm, crossbow, or archery seasons.

(2) Barren River Wildlife Management Area. On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:

(a) Shall not hunt during the fall firearm season with a breech-loading firearm;

(b) May use a muzzleloading shotgun or crossbow during the fall firearm season; and

(c) May use a crossbow during the fall archery season.

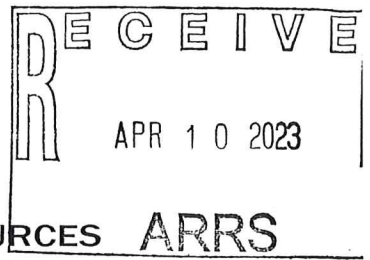
(3) Higginson-Henry Wildlife Management Area. A person shall not use a firearm while turkey hunting.

(4) Pioneer Weapons Area. A person may use a crossbow during the fall archery turkey season.

(5) Main block of Robinson Forest. A person shall not hunt wild turkey[turkeys] during the fall firearm, crossbow, or archery seasons[season] except a person participating in a department-authorized hunt.

(6) Swan Lake Unit of Boatwright Wildlife Management Area. A person shall not hunt wild turkey[turkeys] during the fall firearm, crossbow, or archery seasons[season].

CONTACT PERSON: Jenny Gilbert, Legislative Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

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Rm 029, Capitol Annex
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Re: 301 KAR 2:144. Fall Turkey hunting, 301 KAR 2:300. Black Bear Seasons and Requirements

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 2:144, and 301 KAR 2:300, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 2:144 and 301 KAR 2:300.

Sincerely,

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

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

SUGGESTED SUBSTITUTE

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

301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes bear hunting and chasing seasons, bear hunting areas, legal methods of take, and permitting, checking, and recording requirements.

Section 1. Definitions.

- (1) "Adult" means an individual who is at least eighteen (18) years of age.
- (2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.
- (3) "Arrow" means the projectile fired from a bow or crossbow.
- (4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.
- (5) "Bear" means the species *Ursus americanus*.
- (6) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.
- (7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex.
- (8) "Bear Zone 1" means Bell, Harlan, Letcher, and McCreary Counties.
- (9) "Bear Zone 2" means Adair, Bath, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Elliot, Estill, Fleming, Floyd, Garrard, Greenup, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Lewis, Lincoln, Madison, Magoffin, Martin, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.
- (10) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.
- (11) "Combination bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex and to use dogs to chase a bear.
- ~~(12)[(41)]~~ "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.
- ~~(13)[(42)]~~ "Firearm" means a breech- or muzzle-loading rifle, shotgun, or handgun.
- ~~(14)[(43)]~~ "License year" means the period from March 1 through the last day of February.
- ~~(15)[(44)]~~ "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.
- ~~(16)[(45)]~~ "Muzzleloader" means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.
- ~~(17)[(46)]~~ "Youth" means a person under the age of sixteen (16) on the day of the hunt.
- ~~(18)[(47)]~~ "Youth bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements.

(1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry on his or her person any[a] valid **annual** Kentucky hunting license and a valid:

- (a) Bear chase permit;[-or]
- (b) Youth bear chase permit; or[-]
- (c) Combination bear permit.

~~[(2)] [A bear chase permit or youth bear chase permit shall only be purchased by a resident of Kentucky.]~~

~~(2)~~~~(3)~~ A person shall not:

- (a) Kill or intentionally injure a bear during a chase-only season;
- (b) Chase a bear except during daylight hours while a chase season is open;
- (c) Chase a bear from a baited area:
 - 1. While bait is present; or[-or]
 - 2. For thirty (30) days after the bait has been removed; or
- (d) Disturb a bear in a den.

~~(3)~~~~(4)~~ A person shall only use a dog to chase a bear on public hunting areas, or on private land with permission of the landowner, in all bear zones, except that it shall be prohibited to chase bears with dogs in the areas established in paragraphs (a) through (g) of this subsection:

- (a) Daniel Boone National Forest;
- (b) Miller-Welch Central Kentucky Wildlife Management Area;
- (c) Beaver Creek Wildlife Management Area;
- (d) Cane Creek Wildlife Management Area;
- (e) Mill Creek Wildlife Management Area;
- (f) Pioneer Weapons Wildlife Management Area; and
- (g) Redbird Wildlife Management Area.

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the seasons established in subsections (1) and (2) of this section.

(1) The chase-only season shall be from:

- (a) June 1 through August 31; ~~and~~~~and~~
- (b) September 9 through September 30; and

(2) The bear hunt with dogs season shall be pursuant to Section 8(1) of this administrative regulation and shall also be open as a chase-only season.

Section 5. Bear Permit Requirements.

(1) Unless exempted by KRS 150.170, a person hunting a bear during the archery, crossbow, or modern gun seasons shall carry on his or her person a valid annual Kentucky hunting license and a valid bear permit or combination bear permit while hunting.

(2) Unless exempted by KRS 150.170, during the bear hunt with dogs season:

(a) A person attempting to harvest a bear shall carry on his or her person a valid annual Kentucky hunting license ~~and~~~~[in addition to]~~ either a **valid**:

- 1. ~~[A-]~~Bear permit and ~~[a-]~~bear chase permit; or
- 2. ~~[A-]~~Combination bear permit; ~~and~~

(b) A person in a bear hunt or bear chase party who does not intend to harvest a bear shall carry on his or her person a **valid annual** Kentucky hunting license and either a **valid**:

- 1. ~~[a-]~~Bear chase permit; or
- 2. ~~[a-]~~Combination bear permit.

(3) Unless exempted by KRS 150.170, during a bear chase season, a person in a hunt party engaged in the pursuit of bear with the use of dogs shall carry on his or her person any **valid annual** Kentucky hunting license and either a **valid**:

- (a) ~~[A-valid-]~~Bear chase permit; or
- (b) ~~[A-]~~Combination bear permit~~[while chasing bears].~~

~~[Section 5.] [Bear Permit Requirements. Unless exempted by KRS 150.170, a person hunting a bear shall carry on his or her person a valid Kentucky hunting license and the appropriate valid bear permit or permits while hunting during the seasons established in Section 8(1) of this administrative regulation.]~~

Section 6. Hunter Restrictions.

- (1) A person shall not:
 - (a) Harvest a bear except during daylight hours;
 - (b) Use a dog during the modern gun, muzzleloader, or archery and crossbow season to hunt bear**[bears]**, except leashed tracking dogs may be used to recover a wounded or dead bear;
 - (c) Hunt bear on a baited area:
 1. While bait is present; or
 2. For thirty (30) days after the bait has been removed;
 - (d) Harvest:
 1. A female bear that has a cub; or
 2. A bear that weighs less than seventy-five (75) pounds;
 - (e) Harvest a bear that is swimming;
 - (f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disability hunting methods exemption permit issued by the department as established in 301 KAR 3:027 may use a stationary vehicle as a hunting platform;
 - (g) Harvest a bear in a den;
 - (h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den; or
 - (i) Use radio telemetry equipment to locate a bear that is equipped with a radio-tracking collar.
- (2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Equipment Restrictions.

- (1) A person shall only use the equipment and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:
 - (a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;
 - (b) A modern rifle:
 1. With an action that fires a single round of ammunition upon each manipulation of the trigger;
 2. Loaded with:
 - a. Bullets of .264 caliber (6.5 mm) or larger; and
 - b. Centerfire, single projectile ammunition designed to expand upon impact;
 - (c) A muzzleloader of .45 caliber or larger;
 - (d) A shotgun of twenty (20) gauge or larger loaded with a shell containing a slug or a slug with a sabot; or
 - (e) A handgun loaded with:
 1. Centerfire cartridges;
 2. Bullets of .264 caliber (6.5 mm) designed to expand upon impact; and
 3. Cartridges with a case length of 1.285 inches or larger.
- (2) A crossbow shall contain a working safety device.
- (3) A bear hunter using a modern gun shall not use a magazine capable of holding more than ten (10) rounds.
- (4) A bear hunter may use archery, crossbow, or muzzleloader equipment to take a bear during bear modern gun season.

Section 8. Bear Season Dates and Bag Limits.

- (1) A legal bear hunter shall only kill a bear in the open bear zones during the seasons established in paragraphs (a) through (f) of this subsection:
 - (a) The archery and crossbow season for bears in Bear Zone 1 shall be for three (3) consecutive days beginning on the fourth Saturday in October;

- (b) The archery and crossbow season for bears in Bear Zone 2 shall be for five (5) consecutive days beginning on the fourth Saturday in October;
 - (c) The modern gun season for bears in Bear Zone 1 shall be for three (3) consecutive days beginning on the second Saturday in December;
 - (d) The modern gun season for bears in Bear Zone 2 shall be for five (5) consecutive days beginning on the second Saturday in December;
 - (e) The bear hunt with dogs season in Bear Zone 1 shall be for five (5) consecutive days beginning on the Monday prior to the fourth Saturday in October; and
 - (f) The bear hunt with dogs season in Bear Zone 2 shall be for five (5) consecutive days beginning on the Monday prior to the fourth Saturday in October and for nine (9) consecutive days beginning the Thursday following the fourth Saturday in October.
- (2) A person shall not harvest more than one (1) bear in a license year.

Section 9. Bear Hunt with Dogs Requirements.

- (1) A person shall only harvest a bear using legal equipment with the use of unleashed dogs that are actively pursuing, chasing, baying, or treeing a bear prior to harvest.
- (2) A dog used to harvest bears shall be a purebred or a crossbreed of the recognized dog breeds established in paragraphs (a) through (l) of this subsection.
 - (a) Airedale;
 - (b) American black and tan coonhound;
 - (c) Black mouth cur;
 - (d) Bluetick coonhound;
 - (e) English coonhound;
 - (f) Leopard cur;
 - (g) Majestic tree hound;
 - (h) Mathis;
 - (i) Mountain cur;
 - (j) Plott hound;
 - (k) Redbone coonhound; or
 - (l) Treeing walker coonhound.

~~[(3)] [The bear hunt with dogs season shall also be open as a chase only season for any person who possesses a valid bear chase permit.]~~

Section 10. Hunter Orange Clothing Requirements.

- (1) During any modern gun or muzzleloader season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:
 - (a) Waterfowl; or
 - (b) Furbearers at night during a legal furbearer season.
- (2) The hunter orange portions of a garment worn to fulfill the requirements of this section:
 - (a) May display a small section of another color; and
 - (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 11. Bear Reserves. The areas established in subsections (1) through (3) of this section shall be closed to all bear hunting and bear chase with dogs.

- (1) Cumberland Gap National Historical Park;
- (2) Hensley-Pine Mountain Wildlife Management Area; and
- (3) Big South Fork National River and Recreation Area.

Section 12. Harvest Recording and Check-in Requirements.

- (1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:
 - (a) Species taken;

- (b) Date taken;
 - (c) County where taken; and
 - (d) Sex of the bear.
- (2) A person who has harvested a bear shall:
- (a) Retain a completed hunter's log;
 - (b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:
 - 1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and
 - 2. Recording the confirmation number on the hunter's log;
 - (c) Arrange for department personnel to inspect the bear by:
 - 1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest and prior to removing the harvested bear from the Bear Zone; and
 - 2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex by including the attached:
 - a. Testicles, scrotum, or penis for a male bear; or
 - b. Udder or vulva for a female bear; and
 - (d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

CONTACT PERSON: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov



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

Gabe Jenkins
Deputy Commissioner

April 10, 2023

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

Re: **301 KAR 5:010**. License agent applications and agreements., 301 KAR 5:020. License agent requirements and responsibilities., 301 KAR 5:022. License, tag and permit fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 5:010., 301 KAR 5:020., 301 KAR 5:022, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 5:010, 301 KAR 5:020, 301 KAR 5:022.

Sincerely,

A handwritten signature in black ink that reads "Jenny Gilbert". The signature is written in a cursive, flowing style.

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

SUGGESTED SUBSTITUTE

Final Version: 04/03/23 10:43 a.m.

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

301 KAR 5:010. License agent applications and agreements.

RELATES TO: KRS 150.175

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to provide for the control of the design, issuance, distribution, and other matters relating to licenses and permits issued by the department. This administrative regulation establishes the application procedures for becoming a department license agent.

Section 1. License Agent Applications and Agreements.

(1) Before receiving authorization to serve as license agents, persons, government entities other than the department, businesses, or organizations~~[businesses or governmental agencies]~~ shall:

- (a) Complete and submit a License Agent Application Form;
- (b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the ***License Agent Contractual Agreement, 2023 Edition***~~[appropriate license agent agreement]~~; and
- (c) Complete an Electronic Funds Transfer Request Form that authorizes the department or its vendor to make electronic fund transfers from an[a] ~~[bank]~~ account into which the license agent shall deposit the proceeds from transactions, or establish and agree upon the process for license agent-initiated fund transfers to the department or vendor.

(2) State agencies, other than the department, serving as license agents shall ***[promptly]*** remit payment through the state accounting system.

(3) The department shall not appoint as an agent[s] a business[es] that does not~~[have]~~:

- (a) Possess a[A] valid federal identification number;
- (b) Possess a Kentucky sales tax number, except if it is outside Kentucky; and
- (c) Post a surety bond of \$5,000 if it is an out-of-state, private business.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "License Agent Application Form", ***2023***~~[1995]~~;
- (b) Electronic ***Funds[Fund]*** Transfer ***Request[Authorization]*** Form, ***2023***~~[1995]~~; ***and***
- (c) License Agent Contractual Agreement, ***2023***~~[2022]~~^[18] Edition; and
- ~~[(d)] [Governmental License Agent Contractual Agreement, 2018 edition.]~~

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

- (a) https://fw.ky.gov/Licenses/Documents/LICENSE_AGENT_APPLICATION_FORM.pdf for the "License Agent Application Form";
- (b) https://fw.ky.gov/Licenses/Documents/EFT_TRANSFER_FORM.pdf for the "Electronic Fund Transfer Authorization Form"; and
- (c) <https://fw.ky.gov/Licenses/Documents/licenseagentagreement.pdf> for the "License Agent Contractual Agreement."

SUMMARY OF MATERIALS INCORPORATED BY REFERENCE

(1) License Agent Application Form is the form applicants will use to apply to obtain license agent status.

(2) Electronic Fund Transfer Authorization Form is the form applicants will use to establish the financial authorization necessary for payments.

(3) License Agent Contractual Agreement establishes the contractual relationship between the department and applicants approved to be license agents.

SUMMARY OF CHANGES TO MATERIALS INCORPORATED BY REFERENCE

License Agent Contractual Agreement modified to reflect the issuance fee established in this amendment replacing the previous commission. Added specific prohibition against encouraging or prohibiting one form of payment over another. Added compliance with law paragraph. Made changes to the date to show newest edition of the forms available on the department's website.

KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES
#1 SPORTSMAN'S LANE
FRANKFORT, KY 40601



ELECTRONIC FUNDS TRANSFER REQUEST FORM
(2023 Version)

BUSINESS NAME _____ BUSINESS TELEPHONE# _____

BUSINESS ADDRESS _____

I _____ (BANK ACCOUNT HOLDER) AUTHORIZE MY FINANCIAL INSTITUTION TO ALLOW THE KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES TO MAKE DEBIT/CREDIT TRANSFERS IN THE ABOVE REFERENCED BANK ACCOUNT.

BANK NAME _____ () NEW BANK INFORMATION () REVISED

BANK ADDRESS _____ BANK TELEPHONE# _____

BANK ACCOUNT NUMBER _____ () CHECKING () SAVINGS

BANK ROUTING NUMBER _____

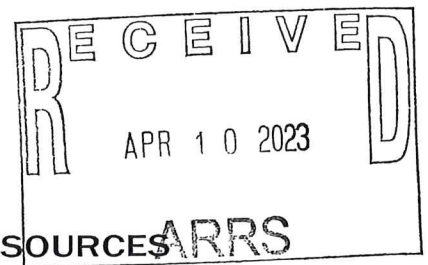
(ATTACH A VOIDED CHECK OR DEPOSIT SLIP SHOWING YOUR NAME AND BANK ACCOUNT NUMBER.) I UNDERSTAND THAT I CONTROL MY PAYMENT AND IF AT ANY TIME I DECIDED TO DISCONTINUE THIS PAYMENT SERVICE, I WILL NOTIFY THE KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES WITHIN 24 HOURS.

SIGNATURE (BANKING ACCOUNT HOLDER) _____

PRINT NAME (BANKING ACCOUNT HOLDER) _____

DATE _____

FOR DEPARTMENT USE ONLY
AGENT NUMBER
DATE PROCESSED



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

Rich Storm
Commissioner

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Frankfort, Kentucky 40601
Phone (502) 564-3400
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Brian Clark
Deputy Commissioner

Gabe Jenkins
Deputy Commissioner

April 10, 2023

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

Re: 301 KAR 5:010. License agent applications and agreements., 301 KAR 5:020. License agent requirements and responsibilities., 301 KAR 5:022. License, tag and permit fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 5:010., 301 KAR 5:020., 301 KAR 5:022, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 5:010, 301 KAR 5:020, 301 KAR 5:022.

Sincerely,

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

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

SUGGESTED SUBSTITUTE

Final Version: 04/03/23 at 4:16 p.m.

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

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS ~~45A.097~~, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to promulgate administrative regulations governing the issuance of licenses and permits. This administrative regulation establishes the requirements for issuing licenses and permits, electronically reporting license and permit sale data and [~~license~~] revenue, and suspending or revoking license agent status.

Section 1. Issuing Licenses and Permits.

- (1) A license agent shall issue a license or permit to a person who completes the registration process with the agent and pays the appropriate license or permit fee as established in 301 KAR 3:022 and applicable issuance and operational fee as established in this administrative regulation.
- (2) A license agent shall not knowingly enter false information while processing a license, permit, or other transaction.

Section 2. Agent [~~Commission~~]Issuance Fee and Depositing of Funds.

- (1) The license agent shall retain as an issuance fee[~~commission~~]:
 - (a) Three (3) percent of the total sale[~~Fifty (50) cents for each Peabody permit issued pursuant to 301 KAR 4:100~~]; or[~~and~~]
 - (b) Print or display, on the initial license or permit issued, a coupon or advertisement, pursuant to a department sponsorship as established in KRS 45A.097, in lieu of retaining the applicable issuance fee. [~~Fifty (50) cents each for other transactions.~~]
- (2) A license agent shall [~~promptly~~]promptly deposit transaction fees, less the issuance fee[~~commissions~~] established in subsection (1) of this section, into the [~~bank~~] account established in 301 KAR 5:010.
- (3) **A license agent shall not require or encourage a particular payment method**[~~License Agents are prohibited from requiring or encouraging particular payment methods~~]. [~~A license agent may elect to print, on any license or permit issued, a coupon or advertisement, pursuant to a department sponsorship established in KRS 45A.097, in lieu of retaining the applicable commissions established in subsection (1) of this section.~~]

Section 3. Electronic Transfer of Funds to the Department.

- (1) The department or its vendor shall provide each license agent with a schedule of dates when electronic fund transfers will be initiated.
- (2) On the day of a scheduled electronic fund transfer, a license agent shall have sufficient funds in the account to cover the amount of the transfer.
- (3) A license agent shall contact the department or its vendor prior to the day of a scheduled electronic fund transfer if there are any discrepancies or concerns that need to be resolved.

Section 4. Voiding Licenses and Permits.

(1) A license agent may, within four (4) hours of issuing a license or permit, void a license or permit if the purchaser:

~~[(a)] [The license does not print correctly; or]~~

~~[(b)] [After the license is printed, the purchaser:]~~

~~(a) [1.] Discovers that the issued license or permit is incorrect;~~

~~(b) [2.] Will not pay for the license or permit; or~~

~~(c) [3.] Refuses to accept the license or permit.~~

(2) An agent shall:

(a) Ensure that a license or permit established in subsection (1) of this section is voided in the system; and

(b) Destroy all paper copies of the voided license or permit.

(3) **A license agent shall** refund license or permit cost as established in 301 KAR 5:030, Section 3(2)(a).

Section 5. Suspensions and Revocation of Agent Status.

(1) In addition to any penalties provided by KRS 150.990, and except as established in subsection (2) of this section, the department shall suspend for one (1) to five (5) years a license agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:

1. KRS 150.195; or

2. **A requirement of KAR Title 301**~~[An administrative regulation adopted pursuant to KRS 150.195].~~

(2) The department shall permanently revoke the agent status of a license agent who:

(a) Commits an offense for which the license agent has been previously suspended;

(b) Does not deposit the required funds in **the[his]** agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;

(c) Fails to notify the department prior to closing **the[his]** agent bank account;

(d) Closes **the[his]** business seasonally without notifying the licensing section supervisor in writing by surface mail, fax, or e-mail and settling **the[his]** account; or

(e) Knowingly issues a license or permit containing false information.

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:

(a) Notify the agent by registered mail that the agent's status is under review; and

(b) Afford the agent the opportunity for an informal meeting with the commissioner or **the commissioner's[his]** designee to show cause why **the[his]** agent status should not be suspended or revoked.

(4) A suspension or revocation shall become effective upon receipt of notification from the department.

(5) A suspended or revoked agent shall:

(a) Allow the department access to financial records dealing with license and permit sales; and

(b) Immediately pay all funds owed to the department.

Section 6. Appeal of Suspension or Revocation of Agent Status.

(1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.

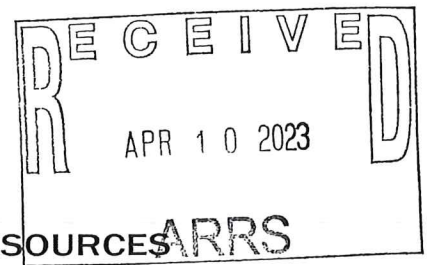
(2) Upon receipt of the request for a hearing, the department shall conduct a suspension or revocation hearing pursuant to KRS Chapter 13B and KRS 150.195.

(3) The hearing officer's findings of fact, conclusions of law, and recommended order shall be considered by the department's commission at the commission meeting immediately following the deadline for the parties' exceptions pursuant to KRS Chapter 13B. **If the suspension or revocation decision is upheld by the commission, the agent may then appeal the decision to the Franklin Circuit Court. An appeal shall be in accordance with KRS Chapter 13B and KRS 150.195.**

(4) The department's commission shall issue a final order pursuant to KRS Chapter 13B.

RICH STORM, Commissioner

CONTACT PERSON: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

Rich Storm
Commissioner

#1 Sportsman's Lane
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Phone (502) 564-3400
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Brian Clark
Deputy Commissioner

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April 10, 2023

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

Re: 301 KAR 5:010. License agent applications and agreements., 301 KAR 5:020. License agent requirements and responsibilities., **301 KAR 5:022.** License, tag and permit fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 5:010., 301 KAR 5:020., 301 KAR 5:022, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 5:010, 301 KAR 5:020, 301 KAR 5:022.

Sincerely,

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

SUGGESTED SUBSTITUTE

Final Version: 04/05/23 at 3:46 p.m.

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

301 KAR 5:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits, and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year, except the senior lifetime combination license shall be valid for the life of the license holder while **the license holder maintains[they maintain]** Kentucky residency.

(1) Sport fishing licenses:

- (a) Statewide annual fishing license (resident): twenty-three (23) dollars;
- (b) Statewide annual fishing license (nonresident): fifty-five (55) dollars;
- (c) Joint married couple statewide fishing license (resident): forty-two (42) dollars;
- (d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and
- (e) Trout permit[~~(resident or nonresident)~~]: ten (10) dollars.

(2) Commercial fishing licenses:

- (a) Commercial fishing license (resident), plus ten (10) resident commercial gear tags: \$150;
- (b) Commercial fishing license (nonresident), plus ten (10) nonresident commercial gear tags: \$600; and
- (c) Commercial fishing license for Asian carp and scaled rough fish (nonresident), plus ten (10) nonresident gear tags: \$150.

(3) Commercial fishing gear tags (**shall** not~~to~~) be sold singly):

- (a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars;
- (b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100; and
- (c) Commercial fishing gear tags for Asian carp and scaled rough fish (nonresident), block of ten (10) tags: fifteen (15) dollars.

(4) Hunting licenses:

- (a) Statewide hunting license (resident): twenty-seven (27) dollars;
- (b) Statewide hunting license (nonresident): \$150;
- (c) Statewide junior hunting license (resident): six (6) dollars;
- (d) Statewide junior hunting license (nonresident): ten (10) dollars;
- (e) Shooting preserve hunting license[~~(resident or nonresident)~~]: five (5) dollars; and
- (f) Migratory game bird and waterfowl permit[~~(resident or nonresident)~~]: fifteen (15) dollars.

(5) Combination hunting and fishing license (resident): forty-two (42) dollars.

(6) Sportsman's licenses:

(a) Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and statewide deer permit: ninety-five (95) dollars;

(b) Junior sportsman's license (resident), which includes a statewide junior hunting license, a statewide youth deer permit, and two (2) youth turkey permits: thirty (30) dollars;

(c) Senior combination hunting and fishing licenses, which include a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory shore and upland game bird, waterfowl permit, and statewide deer permit. Senior licenses shall not be valid unless the holder carries proof of their Kentucky residency and proof of age on **the holder's[his or her]** person while performing an act authorized by the license;

1. Annual senior combination hunting and fishing license (resident): twelve (12) dollars; and

2. Senior lifetime combination hunting and fishing license (resident): \$180;

(d) Disabled combination hunting and fishing license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory shore and upland game bird, waterfowl permit, and statewide deer permit: twelve (12) dollars. [~~Senior or disabled combination hunting and fishing license (resident): twelve (12) dollars.~~]

(7) Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner – tenant): ten (10) dollars;

(c) Trapping license (nonresident): \$130; and

(d) Junior trapping license (resident): five (5) dollars.

(8) Game permits:

(a) Bear permit (resident): thirty (30) dollars;

(b) Youth bear permit (resident): ten (10) dollars;

(c) Bear chase permit (resident): thirty (30) dollars;

(d) Youth bear chase permit (resident): ten (10) dollars;

(e) Combination bear permit (resident), which includes a bear permit and a bear chase permit: fifty (50) dollars;

(f) Bear permit (nonresident): \$250;

(g) Youth bear permit (nonresident): \$100;

(h) Bear chase permit (nonresident): fifty (50) dollars;

(i) Youth bear chase permit (nonresident): fifteen (15) dollars;

(j) Quota cow elk permit (resident): sixty (60) dollars;

(k) Quota cow elk permit (nonresident): \$400;

(l) Quota bull elk permit (resident): \$100;

(m) Quota bull elk permit (nonresident): \$550;

(n) Quota either sex archery and crossbow elk permit (resident): \$100;

(o) Quota either sex archery and crossbow elk permit (nonresident): \$550.

(p) Out-of-zone elk permit (resident): thirty (30) dollars;

(q) Out-of-zone elk permit (nonresident): \$400;

(r) Statewide deer permit (resident): thirty-five (35) dollars;

(s) Statewide deer permit (nonresident): \$185;

(t) Statewide youth deer permit (resident): ten (10) dollars;

(u) Statewide youth deer permit (nonresident): fifteen (15) dollars;

(v) Additional deer permit: fifteen (15) dollars;

(w) Spring turkey permit (resident): thirty (30) dollars;

- (x) Spring turkey permit (nonresident): eighty-five (85) dollars;
- (y) Fall turkey permit (resident): thirty (30) dollars;
- (z) Fall turkey permit (nonresident): eighty-five (85) dollars;
- (aa) Youth turkey permit (resident): ten (10) dollars;
- (bb) Youth turkey permit (nonresident): fifteen (15) dollars;
- (cc) Quota youth elk permit (resident): thirty (30) dollars; and
- (dd) Quota youth elk permit (nonresident): \$200.
- ~~[(a)] [Resident bear: thirty (30) dollars;]~~
- ~~[(b)] [Resident youth bear: ten (10) dollars;]~~
- ~~[(c)] [Nonresident bear: \$250;]~~
- ~~[(d)] [Resident bear chase: thirty (30) dollars;]~~
- ~~[(e)] [Resident youth bear chase: ten (10) dollars;]~~
- ~~[(f)] [Resident quota cow elk permit: sixty (60) dollars;]~~
- ~~[(g)] [Nonresident quota cow elk permit: \$400;]~~
- ~~[(h)] [Resident quota bull elk permit: \$100;]~~
- ~~[(i)] [Nonresident quota bull elk permit: \$550;]~~
- ~~[(j)] [Resident either sex archery and crossbow elk permit: \$100;]~~
- ~~[(k)] [Nonresident either sex archery and crossbow elk permit: \$550;]~~
- ~~[(l)] [Resident out-of-zone elk permit: thirty (30) dollars;]~~
- ~~[(m)] [Nonresident out-of-zone elk permit: \$400;]~~
- ~~[(n)] [Resident deer permit: thirty-five (35) dollars;]~~
- ~~[(o)] [Nonresident deer permit: \$185;]~~
- ~~[(p)] [Resident youth deer: ten (10) dollars;]~~
- ~~[(q)] [Nonresident youth deer: fifteen (15) dollars;]~~
- ~~[(r)] [Additional deer permit (resident or nonresident): fifteen (15) dollars;]~~
- ~~[(s)] [Resident spring turkey: thirty (30) dollars;]~~
- ~~[(t)] [Nonresident spring turkey: eighty-five (85) dollars;]~~
- ~~[(u)] [Resident fall turkey: thirty (30) dollars;]~~
- ~~[(v)] [Nonresident fall turkey: eighty-five (85) dollars;]~~
- ~~[(w)] [Resident youth turkey: ten (10) dollars;]~~
- ~~[(x)] [Nonresident youth turkey: fifteen (15) dollars;]~~
- ~~[(y)] [Resident youth elk: thirty (30) dollars; and]~~
- ~~[(z)] [Nonresident youth elk: \$200.]~~

(9) Peabody individual permit: fifteen (15) dollars.

(10) [Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and deer permit: ninety-five (95) dollars.]

~~[(11)] [Junior sportsman's license (resident), which includes a junior hunting license, junior deer permit, and two (2) junior turkey permits: thirty (30) dollars.]~~

~~[(12)] Land Between the Lakes hunting permit: ***as stated at landbetweenthelakes.us***~~***[twenty (25)]*~~[(20)]~~***[dollars]*.****

~~[(11)]~~~~[(13)]~~ Conservation permit: five (5) dollars.

(12) Bobcat hunting permit: Free.

(13) Commercial guide licenses:

(a) Commercial guide license (resident): \$150; and

(b) Commercial guide license (nonresident): \$400.

Section 2. Licenses, tags, and permits listed in this section shall be valid for the calendar year issued.

- (1) Live fish and bait dealer's licenses:
 - (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
 - (b) Live fish and bait dealer's license (nonresident): \$150.
- (2) Commercial taxidermist license: \$150.
- ~~[(3)] [Commercial guide licenses:]~~
 - ~~[(a)] [Commercial guide license (resident): \$150; and]~~
 - ~~[(b)] [Commercial guide license (nonresident): \$400.]~~
- ~~(3) [(4)]~~ Shooting area permit: \$150.
- ~~(4) [(5)]~~ Dog training area permit: fifty (50) dollars.
- ~~(5) [(6)]~~ Collecting permits:
 - (a) Educational wildlife collecting permit: twenty-five (25) dollars; and
 - (b) Scientific wildlife collecting permit: \$100.
- ~~(6) [(7)]~~ Nuisance wildlife control operator's permit: \$100.
- ~~(7) [(8)]~~ Pay lake license:
 - (a) Pay lakes obtaining all fish from private hatcheries only:
 1. Lakes with two (2) acres or less: \$250; and
 2. Each additional acre or part of an acre: Fifty (50) dollars; and
 - (b) Pay lakes obtaining all or a portion of catfish from public waters:
 1. Lakes with two (2) acres or less: \$600; and
 2. Each additional acre or part of an acre: fifty (50) dollars.
- ~~(8) [(9)]~~ Commercial captive wildlife permit: \$150.
- ~~(9) [(10)]~~ Commercial fish propagation permit: fifty (50) dollars.
- ~~(10) [(11)]~~ Wildlife rehabilitator's permit: twenty-five (25) dollars.
- ~~(11) [(12)]~~ Annual wildlife transportation permit: \$250.
- ~~(12) [(13)]~~ Peabody Wildlife Management Area annual event permit: \$250.
- ~~(13) [(14)]~~ Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue.

- (1) Falconry permit: seventy-five (75) dollars.
- (2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each.

- (1) Short-term licenses:
 - (a) One (1) day ~~[resident]~~ fishing license (resident): seven (7) dollars;
 - (b) One (1) day ~~[nonresident]~~ fishing license (nonresident): fifteen (15) dollars;
 - (c) Seven (7) day ~~[nonresident]~~ fishing license (nonresident): thirty-five (35) dollars;
 - (d) One (1) day ~~[resident]~~ hunting license (resident) (not valid for deer, elk, bear, or turkey hunting): seven (7) dollars;
 - (e) One (1) day ~~[nonresident]~~ hunting license (nonresident) (not valid for deer, elk, bear, or turkey hunting): twenty-five (25) dollars; and
 - (f) Seven (7) day ~~[nonresident]~~ hunting license (nonresident) (not valid for deer, elk, bear, or turkey hunting): sixty-five (65) dollars.
- (2) Individual wildlife transportation permit: twenty-five (25) dollars.
- (3) Special resident commercial fishing permit: \$600.
- (4) Special nonresident commercial fishing permit: \$900.

- (5) Commercial waterfowl shooting area permit: \$150.
- (6) Shoot-[]to-[]retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): seventy-five (75) dollars; and
 - (b) Single day: twenty-five (25) dollars.
- (7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.
- (8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010, ***pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year period,*** and ***containing[shall contain]*** three (3) tiers, ***including:***
 - (a) Tier I: \$100;
 - (b) Tier II: \$200; ***and***
 - (c) Tier III: \$300[; ***and***
 - (d) ~~***The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.***~~
- (9) Peabody individual event permit: twenty-five (25) dollars.
- (10) Commercial roe-bearing fish buyer's permit:
 - (a) Commercial roe-bearing fish buyer's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.
- (11) Commercial roe-bearing fish harvester's permit:
 - (a) Commercial roe-bearing fish harvester's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.
- (12) Otter Creek Outdoor Recreation Area:
 - (a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
 - (b) Daily Special Activities Permit: seven (7) dollars.
- (13) Commercial foxhound training enclosure permit: \$150.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a ***per-unit[per-unit]*** basis as specified.

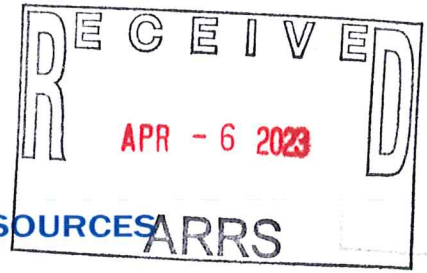
- (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.
- (2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
- (3) Horse stall rental (per space, per day): two (2) dollars.
- (4) Dog kennel rental (per dog, per day): fifty (50) cents.
- (5) Captive cervid permit (per facility, per year): \$150.
- (6) Noncommercial captive cervid permit (per facility, per three (3) years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150;
- (2) Fur buyer's license (resident): fifty (50) dollars; and
- (3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation ***Area[Act]*** permits shall be valid from July 1 through June 30 of the following year:

- (1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and
- (2) Annual Special Activities Permit: seventy (70) dollars.



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

Gabe Jenkins
Deputy Commissioner

April 6, 2023

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

Re: **301 KAR 5:022**. License, tag, and permit fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 5:022, Kentucky Department of Fish and Wildlife Resources proposes the attached agency amendment to 301 KAR 5:022.

Sincerely,

A handwritten signature in black ink that reads "Jenny Gilbert".

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

Agency Amendment

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

301 KAR 5:022. License, tag, and permit fees.

Page 1

Section 1

Line 17

After "lifetime", insert "sportsman's", delete "combination".

Page 3

Section 1(4)(c)

Line 2

After "statewide", insert "youth", delete "junior".

Page 3

Section 1(4)(d)

Line 3

After "statewide", insert "youth", delete "junior".

Page 3

Section 1(6)(b)

Line 12

After "(b)", insert "Youth", delete "junior".

After "statewide", insert "youth", delete "junior".

Page 3

Section 1(6)(c)

Line 14

After "senior", insert "sportsman's", delete "combination hunting and fishing".

Page 3

Section 1(6)(c)1.

Line 19

After "senior", insert "sportsman's", delete "combination hunting and fishing".

Page 4

Section 1(6)(c)2.

Line 1

After "lifetime", insert "sportsman's", delete "combination hunting and fishing".

Page 4

Section 1(6)(d)

Line 2

After "disabled", insert "sportsman's", delete "combination hunting and fishing".

Page 4

Section 1(7)(d)

Line 11

After "(d)", insert "Youth", delete "Junior".

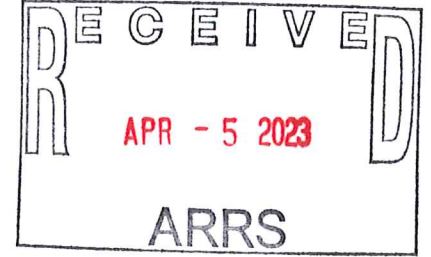


Andy Beshear
GOVERNOR

JUSTICE AND PUBLIC SAFETY CABINET

125 Holmes Street
Frankfort, Kentucky 40601
Phone: (502) 564-7554
Fax: (502) 564-4840

Kerry Harvey
SECRETARY



April 5, 2023

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

Re: **505 KAR 1:140E** Department of Juvenile Justice Policies and Procedures Manual:
Detention Services

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 505 KAR 1:140E, the Justice and Public Safety Cabinet, Department of Juvenile Justice proposes the attached agency amendment to 505 KAR 1:140E.

Sincerely,

Amy V. Barker
Assistant General Counsel

enclosure

AGENCY AMENDMENT

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice**

505 KAR 1:140E. Department of Juvenile Justice Policy and Procedures Manual: Detention Services.

Page 1

Section 1(1)

Lines 18-19

After "Department of Juvenile Justice Policy and Procedures Manual: Detention Services", insert "April 11".

Delete "March 6".

Page 2

Section 1(1)

DJJPP 713

After "(Amended", insert "04/11/23".

Delete "3/6/23".

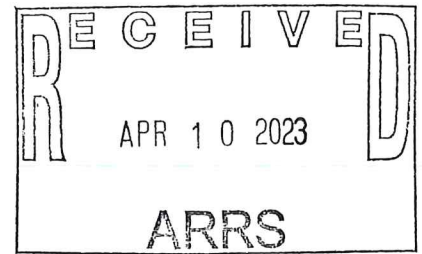
Changes to Material Incorporated by Reference:

DJJPP 713

Page 1, II. Applicability

After "state-operated", insert "juvenile detention centers and level four youth development centers".

Delete "detention centers".



EDUCATION AND LABOR CABINET

Andy Beshear
Governor

Office of General Counsel
Sam Flynn
Chief of Staff and General Counsel
Workforce Development Legal Division
500 Mero Street, 3rd Floor
Frankfort, Kentucky 40601
(502) 564-3070

Jamie Link
Secretary

April 10, 2023

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

Re: 787 KAR 1:090, Unemployed worker's reporting requirements, and
787 KAR 1:100, Week of unemployment defined

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 787 KAR 1:090 and 787 KAR 1:100, the Education and Labor Cabinet, Office of Unemployment Insurance proposes the attached amendments to 787 KAR 1:090 and 787 KAR 1:100. Thank you.

Respectfully,

/s/ Matthew P. Lynch

Matthew P. Lynch
Staff Attorney
Kentucky Education & Labor Cabinet
Workforce Development Legal Division
500 Mero St., 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-2776
Email: matt.lynch@ky.gov

Staff-suggested Amendment

**Final Version 3/16/2023
EDUCATION AND LABOR CABINET
Office of Unemployment Insurance**

787 KAR 1:090. Unemployed worker's reporting requirements.

Page 2

Section 2(1)

Line 18

After "(1)", delete "In order".

Page 4

Section 3(1)(c)

Line 5

Delete the quotation marks from "Work search activities".

Page 4

Section 3(c)5.

Line 11

After "workshop or seminar;", insert "or".
Delete "and".

Page 4

Section 3(1)(d)

Line 14

After "unemployed worker", insert "shall".
Delete "must".

Page 4

Section 3(1)(e)1.

Line 24

Delete the quotation marks from "Training – Providers".

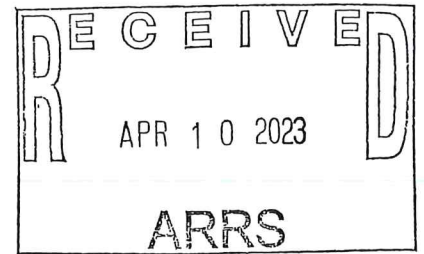
Page 6

Section 3(3)(d)

Lines 8 and 9

After "filed by mail", insert ".lf".
Delete ", and unless".

After "claim is", insert "not".



Andy Beshear
Governor

EDUCATION AND LABOR CABINET

Office of General Counsel
Sam Flynn
Chief of Staff and General Counsel
Workforce Development Legal Division
500 Mero Street, 3rd Floor
Frankfort, Kentucky 40601
(502) 564-3070

Jamie Link
Secretary

April 10, 2023

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

Re: 787 KAR 1:090, Unemployed worker's reporting requirements, and
787 KAR 1:100, Week of unemployment defined

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 787 KAR 1:090 and 787 KAR 1:100, the Education and Labor Cabinet, Office of Unemployment Insurance proposes the attached amendments to 787 KAR 1:090 and 787 KAR 1:100. Thank you.

Respectfully,

/s/ Matthew P. Lynch

Matthew P. Lynch
Staff Attorney
Kentucky Education & Labor Cabinet
Workforce Development Legal Division
500 Mero St., 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-2776
Email: matt.lynch@ky.gov

Subcommittee Substitute

EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(As Amended at ARRS)

787 KAR 1:100. Week of unemployment defined.

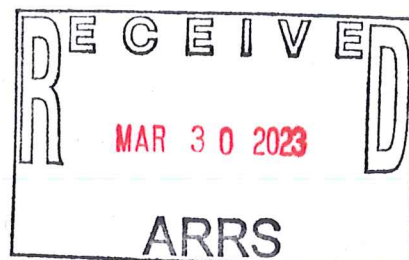
RELATES TO: KRS 341.080

STATUTORY AUTHORITY: KRS ~~341.080(3)~~ [151B.020], 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.080(3) *authorizes* ~~[provides that]~~ the cabinet ~~to~~ *[shall]* prescribe by administrative regulation the period of time which shall constitute a week of unemployment for the purpose of administering the Unemployment Insurance Program in accordance with KRS Chapter 341. ~~[The purpose of]~~ This administrative regulation *establishes an exception to the definition of week of unemployment* ~~[is to satisfy the statutory requirement]~~.

Section 1. *Except for any week a worker received shared work benefits in accordance with KRS 341.4161 to 341.4173*, a ~~[“]~~week of unemployment~~[“]~~ shall be a calendar week of seven (7) consecutive calendar days~~[,]~~ beginning 12:01 a.m. ~~on~~~~[,]~~ Sunday and ending 12 midnight the following Saturday~~[,]~~ ~~except for any week he or she received shared work benefits in accordance with KRS 341.4161 to 341.4173~~. A week of unemployment beginning in a benefit year shall be deemed to be wholly in that benefit year.

CONTACT PERSON: Matthew P. Lynch, Staff Attorney, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone 502-564-2776, email matt.lynch@ky.gov.



Andy Beshear
Governor

PUBLIC PROTECTION CABINET
Department of Insurance
P.O. Box 517
Frankfort, Kentucky 40602-0517
1-800-595-6053
<http://insurance.ky.gov>

Ray A. Perry
Secretary

Sharon P. Clark
Commissioner

March 30, 2023

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

Dear Ms. Caudill:

After internal discussions with the Administrative Regulation Review Subcommittee staff of the issues raised in 806 KAR 6:072, the Department of Insurance proposes the attached subcommittee substitute to 806 KAR 6:072.

Sincerely,

Abigail Gall

Abigail Gall
Regulations Coordinator
Department of Insurance
500 Mero Street
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

Final Version: 03/23/23 at 2:47 p.m.

806 KAR 6:072. Valuation of life insurance and annuity reserves.

RELATES TO: KRS 304.1-050, 304.2-290, 304.3-240, 304.6, 304.15-410

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as ***established[defined]*** in KRS 304.1-010. KRS 304.6-140 authorizes the commissioner to promulgate administrative regulations approving any mortality table "adopted by the National Association of Insurance Commissioners after 1980" for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the framework for valuation standards acceptable to the department and establishes the conditions under which the department actuary will verify the valuation of a company's reserves without cost to the insurer.

Section 1. Definitions. (1) "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December, 1983 by the National Association of Insurance Commissioners.

(2) "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June, 1982 by the National Association of Insurance Commissioners.

(3) "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force, ***containing the projection scale AA, using the methodology established in Section 4(3)(i) of this administrative regulation.***

(4) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table" means the period table, developed by the Society of Actuaries Committee on Life Insurance Research, containing loaded mortality rates for calendar year 2012 and containing rates, qx_{2012} .

(5) "2012 Individual Annuity Reserve Table (2012 IAR Table)" means the generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx_{2012-n} , derived from a combination of the 2012 Individual Annuity Mortality Period (2012 IAM Period) Table and Projection Scale G2 (Scale G2), using the methodology established in Section 4(3)(i) of this administrative regulation.

(6) "Actuarial guidelines" mean a series of interpretive guidelines approved by the National Association of Insurance Commissioners for inclusion in its Handbook for Financial Examiners.

(7) "Annual statement" means the annual statement required by KRS 304.3-240.

(8) "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Mortality Table is included in the report on pages 211-249 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

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

(10) "Department" is defined by KRS 304.1-050(2).

(11) "Department actuary" means the actuary employed by or contracted with the department for the purpose of making or verifying a valuation.

(12) "Generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one (1) year to the next based on a combination of a period table and a projection scale containing rates of mortality improvement.

(13) "Life insurances policies, annuities, and pure endowment contracts":

- (a) Means any contracts, together with all riders or endorsements and all additional benefits related thereto, whether these additional benefits are provided by policy provision or supplementary contract; and
- (b) Does not mean a provision through which the insurer accepts deposits to provide future insurance, annuity, or pure endowment benefits.

(14) "Period table" means a table of mortality rates applicable to a given calendar year.

(15) "Projection Scale AA (Scale AA)" means a table developed by the Society of Actuaries Group Annuity Valuation Table Task Force of annual rates, AAx, of mortality improvement by age for projecting future mortality rates beyond calendar year 1994.

(16) "Projection Scale G2 (Scale G2)" means a table developed by the Society of Actuaries Committee on Life Insurance Research, of annual rates, G2x, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012.

(17) "Qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements of Section 6 of this administrative regulation.

(18) "Reserve comparison" means a calculation:

- (a) Setting out three (3) year tabulations of extracts from a company's valuation; and
- (b) ~~[Which is]~~ Completed by plan, with subtotals by mortality table, interest assumption, and valuation method ~~that/which~~ correspond to the line entries in Exhibit 5 of the current annual statement.

Section 2. Filing Requirements for Domestic Insurers. (1) To facilitate the commissioner's evaluation of the valuation of reserves for life insurance policies, annuities, and pure endowment contracts made by a domestic insurer's actuary or consulting actuary, each insurer shall ~~provide~~~~[furnish]~~ the department actuary an affidavit, signed by the qualified actuary responsible for the valuation and setting out insurance amounts and reserves on all contracts by basis of valuation and a reserve comparison.

(2) Each domestic insurer shall maintain in ~~numerical~~~~[corresponding]~~ order~~[,]~~ with the necessary documentation, lists, tabulations, and working papers for policy contract obligations to be valued, which shall be in readily accessible and auditable form at ~~the domestic insurer's~~~~[its]~~ home office.

Section 3. Valuation Principles. (1) Extraterritoriality. The commissioner ~~shall question and~~ may ~~[question or]~~ reject any valuation made by the insurance supervisory official of another state ~~that/which~~ does not comply with the minimum standards as ~~established~~~~[provided]~~ in KRS Chapter 304.6.

(2) Nature of liabilities.

~~(a)~~ The liabilities covered by reserves for life insurance policies, annuities, and pure endowment contracts shall be generated by recognition of obligations to provide future sums of money, which are guaranteed in these contracts, and the standards of valuation ~~established~~~~[set out]~~ in KRS 304.6-140 through 304.6-180, ~~shall be established~~~~[are set out]~~ in prospective terms.

~~(b) 1.~~ If ~~the~~~~[these]~~ methods ~~established in paragraph (a) of this subsection~~ are not possible to apply directly, retrospective methods, using accumulations at appropriate rates of interest ~~may be used~~.

~~2.~~~~[shall be acceptable; however,]~~ A company using these methods shall be prepared to demonstrate that these methods result in sufficient amounts to fund any obligations ~~established~~~~[set out]~~ in its contracts as guarantees of future performance.

~~3.~~ Obligations ~~that/which~~ arise from known past events shall be valued retrospectively.

Section 4. Specific Requirements. (1) Interest assumptions. The Moody's Corporate Bond Yield Averages referenced in KRS 304.6-145(4) ~~shall be~~~~[are those]~~ for the period ending ~~June 30~~~~[July 1]~~ for each calendar year.

(2) The actuarial guidelines shall be used, ~~except if statutorily prohibited~~~~[as published unless specifically prohibited by statute].~~

(3) Mortality tables.

(a) Except as ***established[provided]*** in paragraph (b) of this subsection, the 1983 Table "a" shall be recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1976.

(b) Except as ***established[provided]*** in paragraph (c) of this subsection, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.

(c) Except as ***established[provided]*** in paragraph (d) of this subsection, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2005.

(d) Except as ***established[provided]*** in paragraph (e) of this subsection, the 2012 Individual Annuity Reserve Table (2012 IAR Table) shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

(e) The 1983 Table "a" without projection shall be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2005, solely ***if[when]*** the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
2. Settlements, ***such as life settlements agreed to outside of court and that do not constitute disability settlements[involving similar actions]***; or
3. Settlements of long-term disability claims ***in which[where]*** a temporary or life annuity has been used in lieu of continuing disability payments.

(f) Except as ***established[provided]*** in paragraph (g) of this subsection, the 1983 GAM Table and the 1983 Table "a" shall be recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1976, under a group annuity or pure endowment contract.

(g) Except as ***established[provided]*** in paragraph (h) of this subsection, the 1983 GAM Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1985, under a group annuity or pure endowment contract.

1. The commissioner shall give consideration to the approval of other tables of mortality ***that[which]*** produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request.

2. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(h) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2015 under a group annuity or pure endowment contract. The commissioner shall give consideration to the approval of other tables of mortality which produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(i)1. In using the 2012 Individual Annuity Reserve Table (2012 IAR Table), the mortality rate for a person age x in year $(2012 + n)$ shall be calculated as follows:

$$q_{x}^{2012+n} = q_{x}^{2012} (1-G2_{x})^n$$

2. The resulting q_{x}^{2012+n} shall be rounded to three (3) decimal places per 1,000.

3. The rounding shall occur according to the formula in subparagraph 1. of this paragraph, starting at the 2012 period table rate.

4. An Example: Rounding Calculations for Mortality Table Construction for 2012 IAR Table page for use of this mortality table is incorporated by reference in this administrative regulation.

(j) In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ shall be calculated as follows where the q_{x}^{1994} and AA_{x} are as **established[specified]** in the 1994 GAR Table:

$$q_{x}^{1994+n} = q_{x}^{1994} (1-AA_{x})^n$$

(4) Changes of method (domestic insurers). The effects of changes in the methods of valuing life contracts shall be reported in Exhibit 5A of the annual statement in the year in which the change first takes place. Exhibit 5A shall show the old and the new method of valuation and the increase or decrease in the actuarial reserve due to the change. If adopting a method that produces an increase in the reserve, the company shall notify the department. ~~[However,]~~ If a change will produce a reserve that will be less than the amount under the old method, the company shall have the prior approval, **pursuant to subsection 3(g) of this section,** of the commissioner.

Section 5. Cost of Noncompliance. (1) If the material is not available as **established in Sections 2 and 4 of this administrative regulation[outlined above]**, the additional burden of cost for additional time required by the staff of the Department of Insurance, or its department actuary, shall be borne by the life insurance company as **established[provided for]** in KRS 304.2-290. A special examination may be ordered by the commissioner, providing for a written report to him or her together with a time and expense billing to the company so examined.

(2) If a **detailed[detail]** audit of reserves reveals that an error was made in the filed annual statement and in the certificate issued by the department, the commissioner may order the withdrawal of certification and reissuance of certificates and copies, and require a refiled annual statement on a significant error, or request the company to file a corrective action plan prior to the next filed annual statement **if[when]** the resultant error is not significant.

Section 6. Qualified Actuary Requirements. (1) In **addition to Section 1(17) of this administrative regulation, in** order to be considered a qualified actuary, a person shall be familiar with the valuation requirements applicable to life and health insurance companies.

(2)(a) The actuary shall not meet the requirements of a qualified actuary if that person has:

1. Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as qualified actuary;
2. Been found guilty of fraudulent or dishonest practices;
3. Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;
4. Submitted an actuarial opinion or memorandum that was rejected because it did not comply with the Kentucky Insurance Code, KRS Chapter 304, or standards established by the Actuarial Standards Board during the past five (5) years; or

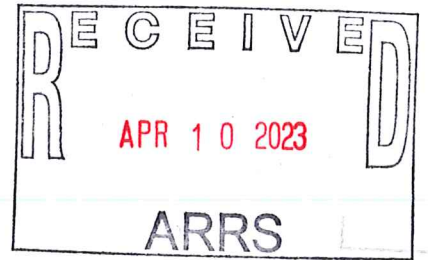
5. Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and
- (b) Failed to notify the commissioner of any adverse action taken against the actuary pursuant to paragraph (a)1. through 5. of this subsection by any insurance regulatory official of any other state.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "1983 Table 'a'", 1/2023;
- (b) "1983 GAM Table", 1/2023;
- (c) "1994 GAR Table", 1/2023;
- (d) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table", 1/2023;
- (e) "2012 Individual Annuity Reserve Table (2012 IAR Table)", 1/2023;
- (f) "Annuity 2000 Mortality Table", 1/2023;
- (g) "Projection Scale AA (Scale AA)", 1/2023;
- (h) "Projection Scale G2 (Scale G2)", 1/2023; and
- (i) "Example: Rounding Calculations for Mortality Table Construction for 2012 IAR Table", 1/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the Web site at: <http://insurance.ky.gov/ppc/CHAPTER.aspx>.



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

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Ray A. Perry
SECRETARY

Justin M. Burse
ACTING COMMISSIONER

April 10, 2023

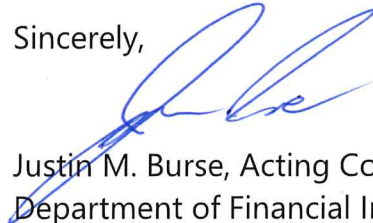
Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: 808 Kentucky Administrative Regulation 10:440, Examples of dishonest and unethical practice for broker-dealers and agents; 808 Kentucky Administrative Regulation 10:450, Examples of dishonest and unethical practice for investment advisers and investment adviser representatives.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 808 KAR 10:440 and 808 KAR 10:450, the Department of Financial Institutions proposes the attached amendments to 808 KAR 10:440 and 808 KAR 10:450.

Sincerely,


Justin M. Burse, Acting Commissioner
Department of Financial Institutions
500 Mero St.
Frankfort, KY 40601

**Suggested Amendment
Public Protection Cabinet
Kentucky Department of Financial Institutions**

**808 KAR 10:440. Examples of dishonest or unethical practice for the broker-dealers
and agents.**

Page 1

STATUTORY AUTHORITY

Line 6

After "292.336", insert "(7), (8), 292.337,".
Delete "(5), (6),".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 9

After "292.336", insert "(7) and (8)".
Delete "(5) and (6)".

Line 14

After "This administrative regulation", insert "establishes requirements concerning".
Delete "provides examples of".

Page 1

Section 1

Line 19

After "principles and", insert the following:
shall be considered to be dishonest and unethical practices that

Page 3

Section 1(7)

Line 2

After "or sell", delete the following:
, as the case may be,

Page 3

Section 1(8)

Line 6

After "market for the", delete "a".

Page 4

Section 1(17)

Line 20

After "operations such as", insert "the".

Page 5

Section 1(22)(a)

Line 13

After "ownership", delete "thereof".

Page 5

Section 1(22)(b)

Line 14

After (b), insert "1.".

After "same size,", delete the following:
at substantially the same

After "time", insert comma.

Line 15

After "and", delete the following:
substantially the same

After "any security", delete comma.

Lines 16-17

After "creating a false or misleading appearance", insert ": a.".

Capitalize "of".

After "in the security", insert semicolon.

After "or", insert "b.".

Delete the following:

a false or misleading appearance

Capitalize "with".

Line 18

After "market for the security", insert ". 2.".

Delete "; except,".

Capitalize "this".

Page 5

Section 1(22)(c)

Line 20

After "with one", insert "(1)".

Page 6

Section 1(24)

Line 5

After "purports to", insert "(a)".
Capitalize "report".

Lines 6-7

After "; or", insert "(b)".
Delete "which purports to".
Capitalize "quote".

Page 7

Section 1(29)(a)

Line 1

After "Information", insert semicolon.

Page 7

Section 1(31)

Line 9

After "unless", insert the following:
: (a) There is a written agreement for
After "arrangements", delete "are agreed to".

Line 10

After "broker-dealer agent", insert "; and (b)".
Delete ", in writing, and".
Capitalize "the".

Page 7

Section 1(32)

Line 14

After "unless", insert the following:
: (a) There is a written agreement for
After "arrangements", delete "are agreed to".

Line 15

After "broker-dealer agent", insert "; and (b)".
Delete ", in writing, and".
Capitalize "the".

Page 7

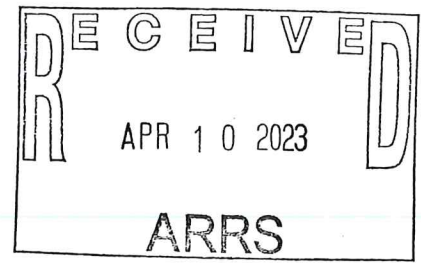
Section 2

Line 23

After "principles and", insert the following:
shall be considered to be dishonest and unethical practices that

Page 8
Section 3
Line 17

After "principles and", insert the following:
shall be considered to be dishonest and unethical practices that



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

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Ray A. Perry
SECRETARY

Justin M. Burse
ACTING COMMISSIONER

April 10, 2023

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

Re: 808 Kentucky Administrative Regulation 10:440, Examples of dishonest and unethical practice for broker-dealers and agents; 808 Kentucky Administrative Regulation 10:450, Examples of dishonest and unethical practice for investment advisers and investment adviser representatives.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 808 KAR 10:440 and 808 KAR 10:450, the Department of Financial Institutions proposes the attached amendments to 808 KAR 10:440 and 808 KAR 10:450.

Sincerely,

Justin M. Burse, Acting Commissioner
Department of Financial Institutions
500 Mero St.
Frankfort, KY 40601

**Suggested Amendment
Public Protection Cabinet
Kentucky Department of Financial Institutions**

**808 KAR 10:450. Examples of dishonest or unethical practice for investment
advisors and investment advisor representatives.**

Page 1

STATUTORY AUTHORITY

Line 7

After "292.336", insert "(7), (8), 292.337,".

Delete "(5), (6),".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 10

After "292.336", insert "(7) and (8)".

Delete "(5) and (6)".

Line 15

After "This administrative regulation", insert "establishes requirements concerning".

Delete "provides examples of".

Page 2

Section 1(1)

Line 2

After "more than one", insert "(1)".

Line 3

After "any one", insert "(1)".

Page 2

Section 2

Line 13

After "benefit of", insert "the person's".

Delete "its".

Page 4

Section 2(8)(c)

Line 6

After "services", insert comma.

Page 5

Section 2(12)(a)

Line 4

After "side of the transaction", insert "shall be".
Delete "is".

Line 5

After "confirmation for each", delete "such".
After "transaction", insert comma.

Page 5

Section 2(12)(c)

Line 20

After "more than one", insert "(1)".

Page 7

Section 2(15)(a)4.

Line 3

After "provisions of", insert "17 C.F.R. 275.206(4)-1".

Page 7

Section 2(15)(b)

Line 9

After "less than one", insert "(1)".

Page 9

Section 2(19)

Line 9

After "808", insert "KAR".

Page 9

Section 2(21)

Line 15

After "1940,", insert "15 U.S.C. 80b-6(4),".

Page 9

Section 2(21)

Lines 15-16

After "under", insert "15 U.S.C. 80b-3".
Delete "Section 203 of the Act".

Page 10
Section 2(27)
Line 11

After "fully satisfy", insert the following:
, or attempting to avoid payment of,

Page 10
Section 2(27)(b)
Line 15

After "agent;", insert "or".

Page 10
Section 2(28)
Lines 16-20

Delete this subsection in its entirety.

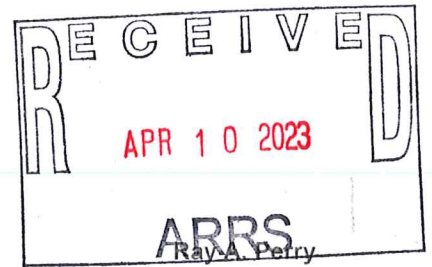
NOTE TO AGENCY: *This subsection is now essentially repeating subsection (27) after the added language above on Line 11, so we don't need it.*

Page 11
Section 2(29)
Line 1

Before "Failing", insert "(28)".
Delete "(29)".

Page 11
Section 3
Line 6

After "advisors", insert the following:
, as defined in KRS 292.310,
After "fraudulent", insert "or".
Delete comma.



Andy Beshear
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ACTING COMMISSIONER

April 10, 2023


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

Re: **808 Kentucky Administrative Regulation 16:010**, Licensing, Registration, Renewals and Fees; **808 Kentucky Administrative Regulation 16:020**, Recordkeeping Requirements; Unfair Deceptive, or Predatory Practices

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **808 KAR 16:010** and **808 KAR 16:020**, the Department of Financial Institutions proposes the attached amendments to **808 KAR 16:010** and **808 KAR 16:020**.

Sincerely,


Justin M. Burse, Acting Commissioner
Department of Financial Institutions
500 Mero St.
Frankfort, KY 40601

Final, 4-5-2023

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
Student Education Loan Servicers

808 KAR 16:010. Licensing, registration, renewals and fees.

RELATES TO: KRS 286.1-010, 286.12-010, 286.12-020, 286.12-030, 286.12-040, 286.12-060, 286.12-070

STATUTORY AUTHORITY: KRS 286.1-011, 286.1-020, 286.12-030, 286.12-040, 286.12-070, 286.12-090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. KRS 286.12-030(2)(a) authorizes the commissioner to prescribe the form and materials required to apply for a license under KRS Chapter 286.12. This administrative regulation establishes licensing and registration requirements for student education loan servicers and procedures for using the Nationwide Multi-state Licensing System (NMLS).

Section 1. Definitions.

- (1) "Applicant" is defined by KRS 286.12-010(2).
- (2) "Commissioner" is defined by KRS 286.1-010(1).
- (3) "Department" is defined by KRS 286.1-010(2).
- (4) "Federal student education loan" is defined by KRS 286.12-020(1).
- (5) "Student education loan servicer" and "servicer" are defined by KRS 286.12-010(13).

Section 2. Initial Application and Notice.

- (1) A person providing notice to the commissioner as a federal student education loan servicer doing business in Kentucky as of July 14~~[prior to December 31]~~, 2022, shall submit:
 - (a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicensingsystem.org>; and
 - (b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicensingsystem.org>;
- (2) Federal student education loan servicers that begin conducting business in Kentucky after July 14, 2022, non-federal student education loan servicers, and federal student education loan servicers that also service non-federal student education loans ~~[, and federal student education loan servicers that begin conducting business in Kentucky after December 31, 2022,]~~ shall submit:
 - (a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicensingsystem.org>; ~~[and]~~
 - (b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicensingsystem.org>;
 - (c) All documents required on the New Application Checklist available online at <http://mortgage.nationwidelicensingsystem.org>;
 - (d) Either:
 1. An audited financial statement prepared by a certified public accountant (CPA), in accordance with generally accepted accounting principles (GAAP), verifying a minimum net worth of at least ~~two hundred and fifty thousand dollars (\$250,000)]~~; or
 2. The following CPA prepared financial statements, if ~~the~~[such] request is made by the applicant and is deemed reasonable by the Commissioner based on the size, structure, and complexity of the applicant:
 - a. A Reviewed financial statement; or

- b. A Compiled financial statement;
- (e) An Electronic Surety Bond online at <http://mortgage.nationwidelicencingsystem.org>, which shall:
 - 1. Include the name of the principal insured, which shall match the full legal name of applicant;
 - 2. Be to the benefit of the department; and
 - 3. Be in an amount of the lessor of:
 - a. ~~One hundred thousand dollars~~ (~~(\$100,000[.00])~~); or
 - b. ~~0.01 percent~~ (~~[.01%]~~ (.0001) of the amount of the Kentucky servicing portfolio; and
- (f) A nonrefundable investigation fee of ~~five thousand dollars~~ (~~(\$5,000[.00])~~).

Section 3. Renewal Applications - All Licensees.

(1) A licensee applying for an annual renewal of a student education loan servicer license, on or before December ~~1st~~~~[31st]~~, shall:

- (a) Submit required updates and attestations verifying that all information in the licensee's record, maintained in the NMLS operated by the State Regulatory Registry, LLC, is correct and available online at <http://mortgage.nationwidelicencingsystem.org>; and
- (b) Pay the annual assessment fee to be established by commissioner's order pursuant to KRS 286.12-070(2). The minimum assessment fee shall be ~~five thousand dollars~~ (~~(\$5,000[.])~~) and the maximum assessment fee shall be ~~twenty thousand dollars~~ (~~(\$20,000[.])~~).

(2) A licensee applying to reinstate a student education loan servicer license after December 1st shall submit all fees and materials required by subsection (1) of this section.

(3) A licensee applying to reinstate a student education loan servicer license after December 31st shall:

- (a) Submit all fees and materials required by subsection (1) of this section; and
- (b) Pay a late filing fee ~~[in the amount]~~ of ~~one thousand dollars~~ (~~(\$1,000[.])~~) on or before January 31st of the following year that the renewal application was due.

(4)[(3)] The commissioner shall not accept an application for ~~[renewal or]~~ reinstatement ~~if~~~~[when]~~ the application, fees, or any required information is not received on or before January 31st of the following year that the renewal application was due. Failure to complete the ~~[renewal or]~~ reinstatement application of a license shall cause the license to automatically expire as of February 1st by operation of law.

Section 4. Change of address, name, control, or agent for service-All Licensees.

(1) A licensee that intends to change its address, name, or agent for service of process shall notify the commissioner in writing at least:

- (a) Ten (10) days prior to the change of address or name; and
- (b) Five (5) days prior to the change of agent for service of process.

(2) A licensee that intends to file for a change of control, as defined by KRS 286.12-010(6), shall notify the commissioner in writing within fifteen (15) days after learning of the proposed change of control and thirty (30) days prior to the effective date of the change of control and shall submit:

- (a) For an existing licensee acquiring another licensee, a change of control fee of ~~one thousand dollars~~ (~~(\$1,000[.])~~); or
- (b) For all non-licensed entities, a change of control fee of ~~five thousand dollars~~ (~~(\$5,000[.])~~).

(3) A licensee changing its address, name, control, or agent for service of process shall update this information in NMLS within the same time periods set forth in this section.

Section 5. Annual Report - All Licensees. Each licensee shall file an annual report electronically with the commissioner, on Form SLSCR-Student Loan Servicer Call Report, on or before November 1st of each year.

Section 6. Electronic Submission of Filings and Fees through the Nationwide Multistate Licensing System Operated by the State Regulatory Registry, LLC.

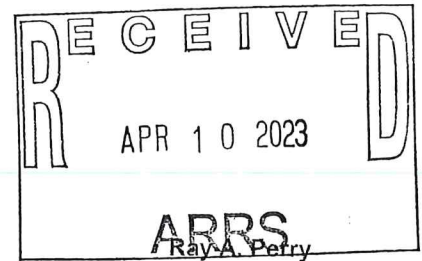
(1) A person applying for licensure, registration, renewal, or reinstatement pursuant to Sections 2, 3, or~~[and]~~ 4 of this administrative regulation shall electronically submit the following to NMLS, at <http://mortgage.nationwidelicencingsystem.org>, as part of the nationwide multi-state licensing system:

- (a) All forms, updates, attestations, reports, and documentation required by Sections 2, 3, and 4 of this administrative regulation, as applicable; and
- (b) All fees referenced in this administrative regulation.
- (2) Any fees assessed by NMLS, to process the electronic submissions referenced in **Sections 2, 3, or 4 of this administrative regulation**~~[subsection (1) and (2) of this section]~~ shall be paid by the applicant.

Section 7. Incorporation by Reference.

- (1) "SLSCR-Student Loan Servicer Call Report", January 2023, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

CONTACT PERSON: Catherine Falconer, Counsel, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, Phone: 502-782-9052, Fax: 502-573-8787, Email: Catherine.Falconer@ky.gov and Marni Gibson, Acting Deputy Commissioner, Dept. of Financial Institutions, Mero Street, 2SW19, Frankfort, Kentucky 40601, Phone: 502-782-9053, Fax: 502-573-8787, Email: Marni.Gibson@ky.gov



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Justin M. Burse
ACTING COMMISSIONER

April 10, 2023


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

Re: 808 Kentucky Administrative Regulation 16:010, Licensing, Registration, Renewals and Fees; 808 Kentucky Administrative Regulation 16:020, Recordkeeping Requirements; Unfair Deceptive, or Predatory Practices

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 808 KAR 16:010 and 808 KAR 16:020, the Department of Financial Institutions proposes the attached amendments to 808 KAR 16:010 and 808 KAR 16:020.

Sincerely,



Justin M. Burse, Acting Commissioner
Department of Financial Institutions
500 Mero St.
Frankfort, KY 40601

Final: 4/5/2023

Subcommittee Substitute

**PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
Student Education Loan Servicers**

808 KAR 16:020. Recordkeeping requirements; unfair, deceptive, or predatory practices.

RELATES TO: KRS 286.12-050, ~~and~~ 286.12-080

STATUTORY AUTHORITY: KRS 286.1-011, 286.1-020, 286.12-050, 286.12-080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to promulgate administrative regulations as are necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.12-080 prohibits a student education loan servicer from engaging in unfair, deceptive, abusive, or predatory ~~practices~~**[practice]** towards any borrower, or from misrepresenting or omitting any material information in connection with servicing a student education loan. This administrative regulation establishes standards that a licensee ~~shall~~**[must]** abide by to maintain accurate records and prevent unfair, deceptive, or predatory practices.

Section 1. Definitions.

(1) "Best financial interest of the borrower" means reducing the total cost of a student loan, including principal balance, interest, and fees to the borrower.

(2) "Commissioner" is defined by KRS 286.1-010(1).

(3) "Necessary information" includes ~~the following~~**:**

(a) A schedule for all transactions credited or debited to the student loan account;

(b) A copy of the promissory note for the student loan;

(c) Notes created by a student loan servicer's personnel reflecting communication with the borrower regarding the student loan account;

(d) A report of the data fields relating to the borrower's student loan account created by the student loan servicer's electronic systems in connection with servicing practices;

(e) Copies of electronic records or any information or documents provided by the borrower to the student loan servicer;

(f) Usable data fields with information necessary to assess qualification for forgiveness, including public service loan forgiveness, if applicable; and

(g) Any information necessary to compile payment history.

(4) "Negative financial consequences" includes:

(a) Negative credit reporting;

(b) Loss or denial of eligibility for a borrower benefit or protection established under federal law or by contract; and

(c) Late fees, interest capitalization, and other financial injury.

(5) "Qualified request" means a request made by a borrower to a student loan servicer in which the borrower either:

(a) Requests specific information from the student loan servicer; or

- (b) Reports what the borrower believes to be an error regarding the borrower's account.
- (6) "Student education loan servicer" and "servicer" are defined by KRS 286.12-010(13).

Section 2. A student loan servicer shall:

(1) Process student loan payments pursuant to the servicer's established payment processing policies, which shall be disclosed and readily accessible to borrowers;

(2) Credit student loan payments to the borrower's account in accordance with the following:

(a) A payment received before 11:59 p.m. on the date on which that payment is due, in the amount, manner, and location indicated by the servicer, shall be credited as effective on the date on which the payment was received by the servicer. A servicer shall treat a payment received from the borrower on the borrower's due date as an on-time payment;

(b) If a payment is made by check, a servicer shall credit the payment on the date the check was received by the servicer regardless of the date of processing;

(c) If the servicer receives a check with no identifying account information, the servicer shall:

1. Within ten (10) days, determine to which account and loan the payment should be credited and credit the payment as of the date it was received by the servicer; and

2. Update the borrower's online account within one (1) business day of the determination made under paragraph (a) of this subsection[subparagraph];

(d) If the borrower submits an overpayment to the student loan servicer, the servicer shall inquire of a borrower, either through electronic communication or in writing, to which account the borrower prefers to apply an overpayment. A borrower's direction regarding application of an overpayment to a student loan account shall be effective with respect to future overpayments during the term of a student loan, until the borrower provides to the servicer written alternative instructions regarding overpayment. In the absence of a direction provided by a borrower, the student loan servicer shall allocate an overpayment in a manner consistent with the best financial interest of the borrower; and

(e) If the borrower submits a partial payment, except as otherwise provided by a student loan agreement, comply with the direction provided by a borrower, regarding which account to allocate a partial payment. In the absence of a direction provided by a borrower, the student loan servicer shall allocate a partial payment in a manner consistent with the best financial interest of the borrower;

(3) Not assess negative financial consequences related to the material change by a servicer of the mailing address, office, or procedures for handling borrower payments causing a delay in the crediting of a borrower payment;

(4) Supervise and monitor actions of service providers, including maintaining policies and procedures to oversee compliance by third-party service providers engaged in all aspects of student loan servicing;

(5) Manage and process loan accounts and paperwork, consistent with existing federal requirements, and maintain records ensuring the servicer's personnel have received[~~the~~ **following**]:

(a) Training on the management and processing of accounts and corresponding paperwork; and

(b) Access to necessary account information regarding forms and applications that have been approved, denied, or are in process, applications for income-driven repayment plans, and all forms

required to access benefits and protections for federal student loans, pursuant to 20 U.S.C. secs. 1070 et seq., as amended;

(6) Unless a longer period of time is stipulated by a student loan agreement or by federal law, maintain all records regarding a borrower's account for the period of time during which a servicer performs student loan servicing and for a minimum of three (3) years after the loan serviced has been paid in full or assigned to collections, or the servicing rights have been transferred;

(7) Institute and maintain policies and procedures permitting a borrower who is dissatisfied with the outcome of an initial qualified request to escalate the borrower's concern to a supervisor or higher level of review;

(8) Not take actions resulting in negative financial consequences that are directly related to the issue identified in a borrower's qualified request, until that request has been resolved;

(9) Not take actions resulting in negative financial consequences that are directly related to a sale, assignment, transfer, system conversion, or payment made by the borrower to the original student loan servicer consistent with the original student loan servicer's policy;

(10) If a sale, assignment, or other transfer of the servicing of a student loan, results in a change in the identity of the party to whom the borrower is required to send payments or direct any communications concerning the student loan account, notify the borrower, in writing, fifteen (15) days prior to the date the borrower's payment is due on the student loan account, of the following:

(a) If applicable, the license number issued by the commissioner of the new student loan servicer;

(b) The name and address of the new student loan servicer to whom subsequent payments or communications are to be sent;

(c) The telephone numbers and the Web sites of the new student loan servicer;

(d) The effective date of the sale, assignment, or transfer;

(e) The date on which the current student loan servicer will stop accepting payments on the borrower's student loan account; and

(f) The date on which the new student loan servicer will begin accepting payments on the borrower's student loan;

(11) Transfer all necessary information regarding a borrower, a borrower's account, and a borrower's complete student loan history to any new student loan servicer within forty-five (45) calendar days of the effective date of the sale, assignment, or transfer;

(12) Provide and maintain a record of specialized training for customer service personnel to inform:

(a) Military borrowers about student loan repayment benefits and protections;

(b) Borrowers working in public service about student loan repayment benefits and protections;

(c) Older borrowers about the risks specifically applicable to older borrowers to ensure that, once identified, older borrowers are informed about student loan repayment benefits and protections, including discharge or loan forgiveness programs for private and federal loans, if applicable; and

(d) Borrowers with disabilities about student loan repayment benefits and protections, including disability discharge programs for private and federal loans;

(13) Respond to a qualified request by:

(a) Acknowledging, in writing or through electronic communication, receipt of the request within ten (10) business days; and

(b) Within thirty (30) business days of receipt of the request, providing information relating to the status of the request and, if applicable, either the action the student loan servicer will take to correct the account or an explanation for a determination that the borrower's account is correct.

1. The thirty (30) day period set out in subsection (13)(b) of this Section may be extended for fifteen (15) days if, before the end of the thirty (30) day period, the servicer notifies the borrower of the extension and the reason for the delay in responding; and

2. A servicer is required to send a borrower up to three **(3)** subsequent notices stating there will be no response to a qualified request if the borrower has previously submitted the same request and received a complete response, and no new information is submitted in subsequent, duplicative qualified requests;

(14) Respond within ten (10) business days to communications from the Commissioner;

(15) Provide information to borrowers, in writing, about the availability of loan forgiveness programs and income-driven repayment plan opportunities;

(16) Maintain on its website, free of charge, complete information and account records for each borrower, which shall:**[;]**

(a) Be accessible to the borrower only, through a secure log-in system;

(b) Include a consolidated account report for each borrower, and a loan history for each student loan serviced; and

(c) Be available to borrowers at all times, except for occasional, short periods of time when the student loan servicer's system is not available because the system is undergoing routine maintenance or is blocked for security reasons.

1. The consolidated account report required under this subsection shall include:

a. Borrower name;

b. Number of student loan(s) serviced for each borrower;

c. Loan number, for each student loan;

d. Loan type, ***whether[i.e.,] Direct Loan,[;] FFELP Loan,[;] Perkins Loan,[;] or private student loan;***

e. Loan disbursement amount and date, for each student loan;

f. Interest rate(s) and maturity date, or number of monthly payments required to repay the loan, for each student loan;

g. Loan balance and status, for each student loan;

h. Cumulative balance owing for each borrower;

i. Whether the borrower has an application pending for, or is repaying under, an alternative repayment plan, and listing the plan chosen by the borrower; and

j. Whether the borrower has an application pending for any loan forgiveness, cancellation, or discharge benefit and current status of the application; and

2. The loan history required under this subsection shall include the following information, including the corresponding dates or data range, for each:

a. ***Disbursement[disbursements];***

b. Interest ***accrual[accruals];***

c. ***Fee[fees];***

d. Late ***charge[charges];***

e. Any other miscellaneous ***amount[amounts]*** charged to the borrower;

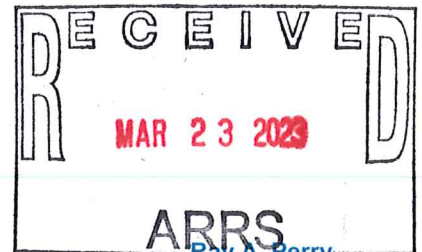
f. ***Payment[payments]*** received;

g. **Payment**~~[payments]~~ toward loan forgiveness programs; and

h. ~~[the-]~~Borrower's repayment plan;

(17) Upon request by a borrower, within (7) days, provide a borrower, free of charge, a complete and accurate payoff statement. The statement shall clearly indicate the date on which it was prepared, the relevant time frame for submission of the payoff amount, and any circumstances which may change the amount required to pay off the loan account. A student education loan servicer is required to provide one (1) payoff statement per quarter, at no charge to the borrower, upon request. Thereafter, the student loan servicer may charge the borrower the actual cost to produce a physical copy of the account record.

CONTACT PERSON: Catherine Falconer, General Counsel, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, phone 502-782-9052, fax 502-573-8787, email Catherine.Falconer@ky.gov and Marni Gibson, Acting Deputy Commissioner, Dept. of Financial Institutions, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, phone 502-782-9053, fax 502-573-8787, email Marni.Gibson@ky.gov.



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET
Kentucky Department of Charitable
Gaming

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Phone: (502) 573-5528
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Ray A. Perry
SECRETARY

Ambrose Wilson IV
COMMISSIONER

March 23, 2023

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

Re: **820 KAR 1:005**. Charitable gaming licenses and exemptions

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 820 KAR 1:005, the Kentucky Department of Charitable Gaming proposes the attached amendment to 820 KAR 1:005.

Sincerely,

Doug Hardin
Staff Attorney

Staff-suggested Amendment

**Final Version 3/23/2023
PUBLIC PROTECTION CABINET
Department of Charitable Gaming**

820 KAR 1:005. Charitable gaming licenses and exemptions.

Page 2

Section 1(1)(f)

Line 7

After "Form", insert "CG-APP-ORG".

Delete "CG-ORG-APP".

Page 3

Section 2(2)(b)1.

Lines 19 and 20

Before "(i)", insert "a."

Delete "(i)".

Before "(ii)", insert "b."

Delete "(ii)".

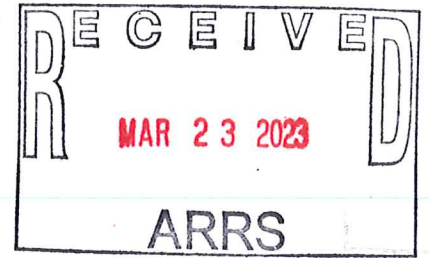
Page 4

Section 2(5)(a)

Line 19

After "KRS 238.535(12)(b)", insert "2".

Delete "(2)".



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET
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Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: **820 KAR 1:025**, Reports

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 820 KAR 1:025, the Kentucky Department of Charitable Gaming proposes the attached amendment to 820 KAR 1:025.

Sincerely,

Doug Hardin
Staff Attorney

Subcommittee Substitute
PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS)

820 KAR 1:025. Reports.

RELATES TO: KRS 238.530, 238.550, 238.555, 238.560, 238.570

STATUTORY AUTHORITY: KRS 238.515, 238.530, 238.550, 238.555, 238.560, 238.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) authorizes the Department of Charitable Gaming to promulgate administrative regulations establishing standards of accounting, recordkeeping, and reporting to ensure [~~insure~~] charitable gaming receipts are properly accounted for. KRS 238.530 authorizes the department to promulgate an administrative regulation to require a licensed distributor to report all activities relating to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment. KRS 238.560 authorizes the department to take administrative action against any person for any violation of the provisions of KRS Chapter 238 and the administrative regulations promulgated thereunder. This administrative regulation establishes the method and time of filing financial reports and remitting payment of fees due.

Section 1. Reporting.

(1) Licensees shall submit corresponding forms and reports quarterly as described in Section (2) of this administrative regulation:

(a) Licensed charitable organizations shall submit Form CG-FIN-ORG[~~CG-FIN~~], [~~"]~~Financial Report for a Licensed Charitable Organization[~~"]~~;

1. Licensed charitable organizations with gross receipts of less than \$200,000 per calendar year and no weekly bingo session shall only be required to submit Form CG-FIN-ORG[~~CG-FIN~~] annually, on or before January 31 of each year;

2. Licensed charitable organizations receiving distributions from organizations described in subsection (1)(d) of this administrative regulation shall submit Form CG-FIN-ORG (RRA)[~~CG-FIN-RA~~], [~~"]~~Financial Report for a Licensed Charitable Organization, Recipient Account[~~"]~~. If the licensed charitable organization receives distributions from more than one **(1) [such]** organization, it shall submit Attachment A-1 and G-1 for each distributing organization;

(b) Licensed charitable gaming facilities shall submit Form CG-FAC[~~CF-FAC~~], [~~"]~~Licensed Charitable Gaming Facility Quarterly Report[~~"]~~;

(c) Licensed distributors shall submit Form CG-FIN-DIS[~~CG-DIS~~] [~~"]~~Licensed Charitable Gaming Distributor Quarterly Report[~~"]~~ for each quarter that the distributor is licensed;

(d) Organizations licensed pursuant to KRS 238.535(14)(b) shall submit Form CG-FIN-SER, [~~"]~~Licensed Organization Financial Report for Special Event Raffle License Only. [~~"]~~

(2) All financial reports shall be:

(a) Submitted on the appropriate form prescribed in Section 1(1) of this administrative regulation;

(b) Typed or in permanent ink;

- (c) Complete, accurate, and legible;
- (d) Contain the original signature and printed name or, if submitted electronically, the typewritten name of either the chief executive officer or the chief financial officer of the charitable organization, facility, or distributor; and
- (e) Contain the original signature and printed name or, if submitted electronically, the typewritten name of the preparer of the report if prepared by an individual other than the chief executive officer or chief financial officer.

Section 2. Quarterly Reporting Requirements.

- (1) A licensee required to submit a quarterly report shall do so on or before the following dates for the preceding three **(3)** month period:
 - (a) April 30;
 - (b) July 31;
 - (c) October 31; and
 - (d) January 31.
- (2) If a date in Section 2(1) of this administrative regulation falls on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.
- (3) The financial report and fee shall be considered timely filed if it has been:
 - (a) Mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date;
 - (b) Received in the department by hand-delivery on or before the due date; or
 - (c) Received by the department electronically on or before the due date.
- (4) If any report or portion thereof is not filed when due, or if any required fee is not remitted when due, the licensee shall be subject to disciplinary action pursuant to KRS 238.560.

Section 3. Specific Reporting Requirements for Licensed Charitable Organizations.

- (1) The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to **the** ~~["]~~Kentucky State Treasurer~~["]~~ at the time the financial report is due.
- (2) If a charitable organization does not have any information to place on an attachment to the financial report, it shall indicate "not applicable" on the attachment.
- (3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN-ORG ~~[CG-FIN]~~, the product description shall be listed in the format "# ON # UP", with:
 - (a) The number "ON" being the number of bingo faces on a bingo paper sheet; and
 - (b) The number "UP" being the number of bingo paper sheets contained in a bingo paper pack.
- (4) If multiple pages are used for inventory, each person completing the inventory shall sign one (1) page of the pages that person completed and initial the remaining pages.
- (5) All expenses incurred by a licensee shall be reported on the financial report for the date on which payment was made, which shall be either the date a check was written or an electronic funds transfer was made, regardless of when the supplies were used or the services were rendered.

Section 4. Incorporation by Reference.

- (1) The following are incorporated by reference:
 - (a) Form CG-FIN-ORG ~~[CG-FIN]~~, "Financial Report for a Licensed Charitable Organization (2023)"

[(2018)]";

(b) Form CG-FIN-ORG (RRA) [~~CG-FIN-RA~~], "Financial Report for a Licensed Charitable Organization, Recipient Account (2023) [(2018)]";

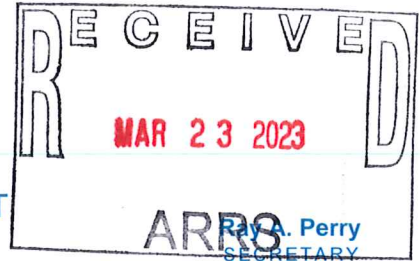
(c) Form CG-FIN-SER, "Licensed Organization Financial Report for Special Event Raffle License Only (2023) [(2018)]";

(d) Form CG-FIN-FAC [~~CG-FAC~~], "Licensed Charitable Gaming Facility Quarterly Report (2023) [(2018)]"; and

(e) Form CG-FIN-DIS [~~CG-DIS~~], "Licensed Charitable Gaming Distributor Quarterly Report (2023) [(2018)]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street 2NW24, Frankfort, Kentucky 40601; Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

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Kentucky Department of Charitable
Gaming

500 Mero Street, 2NW24
Frankfort, KY 40601
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Ambrose Wilson IV
COMMISSIONER

March 23, 2023

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

Re: 820 KAR 1:130. Administrative actions

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 820 KAR 1:130, the Kentucky Department of Charitable Gaming proposes the attached amendment to 820 KAR 1:130.

Sincerely,

Doug Hardin
Staff Attorney

Subcommittee Substitute

PUBLIC PROTECTION CABINET Department of Charitable Gaming (As Amended at ARRS)

820 KAR 1:130. Administrative actions.

RELATES TO: KRS 238.510, 238.515, 238.530, 238.555, 238.560, 238.995

STATUTORY AUTHORITY: KRS 238.515, 238.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 and 238.560 authorize the Department of Charitable Gaming to take appropriate disciplinary action against licensed charitable organizations, charitable gaming facilities, manufacturers, distributors, or persons who do not operate in compliance with KRS Chapter 238 and the administrative regulations promulgated thereunder. KRS 238.560 authorizes the department to classify offenses and recommended administrative actions. This administrative regulation establishes the required classifications and penalties.

Section 1. Department Enforcement Powers. (1) The department may issue a letter of warning, letter of reprimand, or a cease and desist order to any license holder for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may impose administrative action pursuant to KRS 238.560 if the department determines that the action will deter future violations and promote efforts to correct the violation cited.

Section 2. Fines. ~~(1)~~ The department may assess fines against any license holder in accordance with the following schedule:

~~(1)~~~~(2)~~ A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to charitable gaming recordkeeping and reporting requirements, except for failure to file quarterly reports, may be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three ~~(3)~~-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.

~~(2)~~~~(3)~~ A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to the conduct of charitable games, may be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three ~~(3)~~-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.

~~(3)~~~~(4)~~ A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to manufacture, packaging, and distribution of charitable gaming supplies and equipment may be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three ~~(3)~~-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.

~~(4)~~~~(5)~~ A violation of the provisions of KRS 238.530(10) or 238.555(3) relative to conflicts of interest among types of licensees may be subject to a fine not to exceed \$750 for each offense. A second or subsequent violation during a three ~~(3)~~-year period ~~[the same year]~~ may be subject

to a fine not to exceed \$1,000 for each offense.

~~(5)~~~~(6)~~ A violation for conducting any activity without a license for which a license is required pursuant to KRS Chapter 238 and 820 KAR Chapter 1 may be subject to a fine not to exceed \$1,000 for each offense.

~~(6)~~~~(7)~~ A violation for making false statements in any documents submitted to the department may be subject to a fine not to exceed \$1,000 for each offense.

~~(7)~~~~(8)~~ A violation of KRS Chapter 238 or 820 KAR Chapter 1, relative to diversion of net receipts from authorized expenses or charitable purposes, unlawful compensation to an individual involved in the conduct of charitable gaming, or any other inurement of net receipts to the private benefit or financial gain of an individual or person, may be subject to a fine not to exceed \$1,000 for each offense.

~~(8)~~~~(9)~~ A violation of KRS 238.510(5) relative to gambling offenses committed on licensed charitable gaming premises or in conjunction with charitable gaming may be subject to a fine not to exceed \$1,000 for each offense.

~~(9)~~~~(10)~~ Any other violation of KRS Chapter 238 or 820 KAR Chapter 1 for which a fine is not established in this section may be subject to a fine not to exceed \$1,000 for each offense.

Section 3. Probation. (1) The department may impose upon any license holder a term of probation for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may impose this administrative action, pursuant to KRS 238.560(3), if it determines that department oversight and monitoring of the license holder's activities will promote efforts to correct the cited violation and deter future violations.

Section 4. Revocation, Suspension, or Denial of License. (1) The department shall revoke, suspend, or deny a license or application for a license if:

(a) An applicant, license holder, license holder seeking renewal, or individual associated with the applicant or license holder in a capacity established in KRS 238.525(3) fails to meet the requirements of KRS 238.525(4) or 820 KAR 1:005 ~~[Chapter 1]~~;

(b) A license holder fails to pay a fine, correct a violation, or comply with any other requirement imposed by a final order of the department within the previous five (5) years; [A license holder fails to file any reports required pursuant to KRS Chapter 238 or 820 KAR Chapter 1]; ~~[or]~~

(c) A license holder, upon notice of delinquency, fails to remit to the department any charitable gaming fee required pursuant to KRS 238.570(1);~~]~~

(d) A licensed charitable organization fails to maintain its federal tax-exempt status or status as a common school, institute of higher learning, or public college or university, as required by KRS 238.535(12)(a); or

(e) A licensed charitable organization fails to maintain an office ~~[an office]~~ or place of business in the Commonwealth of Kentucky, as required by KRS 238.535(12)(b) and (d).

(2) The department may revoke, suspend, or deny the license or application of a licensed charitable organization, manufacturer, distributor, or charitable gaming facility for violations of KRS Chapter 238 or 820 KAR Chapter 1 if the nature, frequency, and severity of the offenses charged or the license holder's or applicant's history of previous violations demonstrate an unwillingness or inability to operate in compliance with the law.

Section 5. Written Notice of Violation. The department shall issue a written notice of violation to a license holder determined to have violated any provision of KRS Chapter 238 or 820 KAR Chapter 1. ~~[This notice shall be provided on a Form CG-NOV, Notice of Violation(s).]~~ Any notices of violation ~~[Notices of Violation]~~ issued to a license holder shall be considered by the department in evaluating the license holder's history of previous violation. A notice of violation ~~[Notice of Violation]~~ shall state the provisions alleged to have been violated and shall notify the license holder that the department may take administrative action against the license holder as a result of the violations.

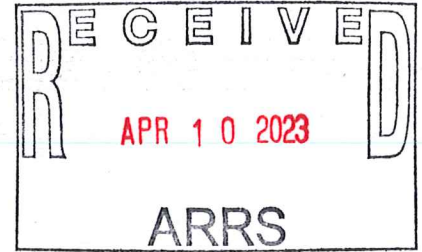
Section 6. Investigations. A person may submit a request, in writing, to the department to initiate an investigation of an alleged violation.

~~[Section 7. Incorporation by Reference. (1) Form CG-NOV, "Notice of Violation(s) (2019)", is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street 2NW24, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 1539; 2039; eff. 3-13-2002; TAm eff. 8-9-2007; 42 Ky.R. 960; eff. 1-4-2016; 44 Ky.R. 2693; 45 Ky.R. 1607; eff. 1-4-2019; TAm eff. 11-22-2019.)]~~

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

Contact person: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

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

Eric C. Friedlander
Secretary

April 4, 2023

Re: **902 KAR 55:110**. Monitoring system for prescription controlled substances.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 55:110, the Office of Inspector General proposes the attached suggested substitute to 902 KAR 55:110.

If you have any questions, please feel free to contact Kara Daniel, Deputy Inspector General, at (502) 564- 4889.

Sincerely,

Krista Quarles
Policy Specialist
Office of Legislative and Regulatory Affairs

Final, 4-3-2023

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 72.026, 216B.015(13), 218A.010(12), ~~(40)(14)~~, 218A.202, 218A.205(2)(a), (6), 218A.240(7)(a), 42 C.F.R. Part 2

STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), ~~(18)(17)~~, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish and maintain an electronic system for monitoring Schedule II, III, IV, and V controlled substances. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. This administrative regulation establishes criteria for reporting prescription data, establishes procedures to correct errors, and allows for disclosure of data[providing reports] to authorized persons[, and a waiver for a dispenser who does not have an automated recordkeeping system].

Section 1. Definitions.

- (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.
- (2) "Cabinet personnel" means an individual who:
 - (a)
 1. Is directly employed by the Cabinet for Health and Family Services; or
 2. Is employed by an agent or contractor of the cabinet;
 - (b) Has undergone KASPER training; and
 - (c) Has been approved to use the KASPER system.
- (3) "Central registry" is an entity defined by 908 KAR 1:374, Section 1(3) that may report information to KASPER on behalf of a narcotic treatment program.
- (4) "Dispenser" is defined by KRS 218A.010(12)~~[218A.010(11)]~~, and ~~[shall]~~:
 - (a) ~~Includes~~**Includes** a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy that has a DEA number;~~and~~
 - (b) ~~Includes~~**Includes** a narcotic treatment program licensed pursuant to 908 KAR 1:374;~~;~~ and
 - (c) **Does** not include an individual licensed to practice veterinary medicine under KRS Chapter 321.
- ~~(5)~~~~(4)~~ "Health facility" is defined by KRS 216B.015(13).
- ~~(6)~~~~(5)~~ "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.
- ~~(7)~~~~(6)~~ "Patient identifier" means a patient's:
 - (a) Full name;
 - (b) Address, including zip code;
 - (c) Date of birth; and
 - (d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.
- ~~(8)~~~~(7)~~ "Practitioner" is defined by KRS 218A.010(40)~~[218A.010(39)]~~.
- ~~(9)~~~~(8)~~ "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.
- ~~(10)~~~~(9)~~ "Suspected drug overdose" means an acute condition that:
 - (a) **Includes conditions such as**~~May include~~ physical illness, coma, mania, or hysteria that is the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined; and

(b) Relates to injury or~~;~~ poisoning by~~;~~ or other adverse effect of~~;~~ any substance corresponding to the following International Classification of Disease (ICD) version 10 (ICD-10) codes available at <https://www.cms.gov/Medicare/Coding/ICD10>~~;~~ or equivalent codes in the most recent version of the International Statistical Classification of Diseases and Related Health Problems];

1. T40;
2. T42; or
3. T43.

Section 2. Data Reporting.

(1) A dispenser or a health facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except:

(a) During the circumstances specified in KRS 218A.202(3)(a) through (c); or

(b) If the controlled substance is dispensed by a narcotic treatment program for use to treat substance use disorder and the patient has not provided written consent that meets the requirements of 42 C.F.R. 2.31.

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

- (a) Patient identifier;
- (b) National drug code of the drug dispensed;
- (c) Metric quantity of the drug dispensed;
- (d) Date of dispensing;
- (e) Estimated days the supply of dispensed medication will last;
- (f) Drug Enforcement Administration registration number of the prescriber;
- (g) Prescription number or dispensing identification number assigned by the dispenser or health facility; and
- (h) The Drug Enforcement Administration registration number of the dispenser.

(3) The data identified in subsection (2) of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.

(4)

(a) An extension may be granted if the dispenser, health facility, or central registry:

1. ~~[The dispenser]~~ Suffers a mechanical or electronic failure; or
2. ~~[The dispenser]~~ Cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) To request an extension, a written request shall~~;~~~~[dispenser shall apply to the branch in writing for an extension]~~

1. Be submitted to the branch:

- a. ~~[listed in paragraph (a) of this subsection]~~ Within twenty-four (24) hours of discovery of the circumstances necessitating the request; or
- b. If state offices are closed, on the next day that~~[date]~~ state offices are open for business~~;~~ following the~~[the]~~ discovery of the circumstances necessitating the request; and

2. Provide a~~[-An application for an extension shall state the]~~ justification for the extension, including the length~~[and the period]~~ of time ~~[for which]~~ the extension is necessary.

(5) An extension shall be granted ~~[to a dispenser]~~ if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (8) of this section, the data shall be transmitted by:

- (a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;
- (b) Secure File Transfer Protocol;
- (c) https protocol; or
- (d) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the telecommunications format for controlled substances established by the most recent version of the Implementation Guide, ASAP Standard for Prescription Monitoring Programs, developed by the American Society for Automation in Pharmacy available at asapnet.org, ~~[Version 4.2,]~~ or a comparable format approved by the branch.

(8) A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the telecommunications format for controlled substances established by the Implementation Guide, ASAP Standard for Prescription Monitoring Programs shall report the data identified in subsection (2) of this section using an Internet accessible web portal designated by the cabinet.

(9) To meet the reporting requirement of KRS 218A.202(4), a hospital shall report to the cabinet all positive toxicology screens ordered by the hospital's emergency department to evaluate a patient's suspected drug overdose via the Kentucky Health Information Exchange.

Section 3. Compliance. A dispenser may presume that the patient identification information [~~established in Section 5 of this administrative regulation and~~] provided by the patient or the patient's agent in accordance with Section 5 of this administrative regulation is correct.

Section 4. Request for Report.

(1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at www.chfs.ky.gov/KASPER.

(3)

(a) A request for a KASPER provider report made by a law enforcement or prosecutorial official [~~peace officer~~] authorized to receive data under KRS 218A.202, or a designated representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the KASPER Report Request for Law Enforcement and Licensure Boards, Form DCB-20L.

(b) If the request made by a law enforcement or prosecutorial official authorized to receive data under KRS 218A.202 is for KASPER data on dispensing of controlled substances by a narcotic treatment program to treat substance use disorder, a report shall not be disclosed to the official unless there is a valid court order and subpoena requiring the release of the information and all other applicable provisions of 42 C.F.R. Part 2, Subpart E are met.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may query KASPER for a report on the decedent.

Section 5. Patient Identification Number.

(1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used in the Social Security field.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the number "000-00-0000" shall be used in the Social Security field.

(5) If a patient is an animal, the number "000-00-0000" shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall have authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER according to the Office of Inspector General's retention schedule on file with the State Libraries, Archives and Records Commission.

Section 8. Error Resolution.

(1) A patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic to whom a report has been disclosed under KRS 218A.202(9) or this administrative regulation may request that information contained in KASPER be corrected if the patient, patient's

representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic believes that any information is inaccurate. The patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic shall:

- (a) Contact the dispenser who reported the information required by Section 2(2) of this administrative regulation; and
 - (b) Request that the dispenser correct the information.
- (2) If, upon receipt of a request from a patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:
- (a) Transmit corrected information to update the KASPER database within seven (7) calendar days of the request for the correction; and
 - (b) Notify the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic that the corrected information has been transmitted.
- (3) If a dispenser identifies a KASPER system generated error, the dispenser shall notify the branch. Upon verification of the error, the branch shall:
- (a) Correct the information in the KASPER database; and
 - (b) Notify the patient, patient's representative, practitioner, pharmacist, health facility, private practitioner's office or clinic within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

Section 10. Disclosure of Data or Report.

- (1) The cabinet shall only disclose data to:
 - (a) The persons and entities authorized to receive that data under KRS 218A.202(7); and[-]
 - (b) The persons and entities authorized to receive data pursuant to 42 C.F.R. Part 2, Subparts C, D, and E if the data to be disclosed includes information on controlled substances dispensed by a narcotic treatment program for use to treat substance use disorder.
- (2) As a condition precedent to the disclosure of data or a report pursuant to KRS 218A.202(7)(f), a hospital or long-term care facility shall maintain, and provide upon request by the cabinet, a copy of the hospital or long-term care facility's policy for the management of KASPER data and reports, which:
 - (a) Describes the hospital or long-term care facility's internal procedures for educating the designated employee or employees on the:
 1. Proper use of the KASPER system;
 2. Prohibition on the improper use or intentional disclosure of KASPER data to unauthorized individuals; and
 3. Sanctions imposed for the improper use or intentional disclosure of KASPER data to unauthorized individuals, including criminal misdemeanor offenses; and
 - (b) Describes the hospital or long-term care facility's internal procedures for auditing the account, including:
 1. The manner in which an employee is added to or removed from access to the account if the employee ends employment or is no longer designated to query KASPER; and
 2. The actions taken if a designated employee with access to the employer's KASPER account intentionally misuses his or her privileges to KASPER data or a report, which shall include a report of the incident to the branch~~[Office of Inspector General]~~.
- (3)
 - (a) An individual authorized to receive data under KRS 218A.202(7) shall not provide the data to any other entity except:
 1. As provided in KRS 218A.202(9); and
 2. For substance use disorder treatment data, as provided in 42 C.F.R. 2.32; or
 - (b) As provided in paragraph (c)~~[(b)]~~ of this subsection.

~~(c)~~[(b)]~~~~ In addition to the purposes authorized under KRS 218A.202(9)(e), and pursuant to KRS 218A.205(2)(a) and (6), a practitioner or pharmacist who obtains KASPER data or a report under KRS

218A.202(7)(e)1. or who in good faith believes that any person, including a patient, has violated the law in attempting to obtain a prescription for a controlled substance, may report suspected improper or illegal use of a controlled substance to law enforcement or the appropriate licensing board.

(4) A hospital or long-term care facility shall maintain and adhere to the entity's internal policy regarding the management of KASPER data and reports.

Section 11. Incorporation by Reference. []

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] ["Implementation Guide, ASAP Standard for Prescription Monitoring Programs", American Society for Automation in Pharmacy, Version 4.2, September 2011; and]~~

~~(1)~~~~[(b)]~~ "KASPER Report Request for Law Enforcement and Licensure Boards", Form DCB-20L, October 2022~~[2017]~~, is ~~incorporated by reference.~~ ***hereby*** incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dai/deppb/Pages/kasper.aspx>.

CONTACT PERSON: Krista Quarles, Policy Specialist, 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.



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

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April 3, 2023



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

Re: 907 KAR 1:082. Coverage provisions and requirements regarding rural health clinic services.

Dear Regulations Compiler:

After discussions with various stakeholders of the issues raised by 907 KAR 1:082, the Department for Medicaid Services proposes the attached agency amendment to 907 KAR 1:082.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

3/31/2023
Agency Amendment
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy

907 KAR 1:082. Coverage provisions and requirements regarding rural health clinic services.

Page 3
Section 1(4)(a)8.
Line 3

After "counselor;" delete "or"

Page 3
Section 1(4)(a)8.
Line 3

After line 8, insert the following:

9. A behavioral health associate, as permissible pursuant to 907 KAR Chapter 15; or

Page 3
Section 1(4)(a)8.
Line 4

Before "9." insert "10.".
Delete "9.".

Page 29
Section 3(3)(k)2.d.(iv)
Line 21

After "working under", insert "billing".
Delete "clinical".

Page 31
Section 3(3)(l)4.
Line 21

After "conducted by a" insert "rural health clinic".
Delete "behavioral health multi-specialty group or a behavioral health provider group".

Page 32
Section 3(4)(m)1.c.
Line 9

Before "Meet the service" insert the following:
If provided for a substance use disorder,
Remove the capitalization for "Meet".

Page 38

Section 3(3)(p)1.c.

Line 1

After "daily functioning" delete the following:
due to a substance use disorder or co-occurring disorders

Page 38

Section 3(3)(p)5.c.

Line 13

Delete "or".

Page 38

Section 3(3)(p)5.d.

Line 15

After "management" insert:
e. Psychoeducation; or
f. Peer support services

Page 40

Section 3(3)(r)2.

Line: 20

After "services shall" delete ":".

Page 40

Section 3(4)(r)2.

Line: 20

Before "Be co-located" delete "a.".
After "current waiver" insert ", as necessary,".

Page 41

Section 3(3)(r)2.-3.

Lines 1-9

Delete lines 1-9 in their entirety.

Page 41

Section 3(3)(r)4.

Line 10

Before "4." Insert "3.".
Delete "4.".

Page 43

Section 3(4)(a)2.

Line 11

After "who" insert "is employed by or".

Page 43

Section 3(5)(b)

Line 17

After "The" insert "withdrawal management".

Delete "detoxification program".

Page 43

Section 3(5)(b)

Line 18

After "of a" insert "withdrawal management".

Delete "detoxification".



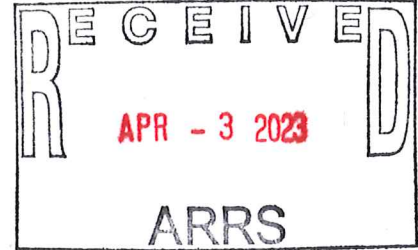
Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

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April 3, 2023



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

Re: 907 KAR 1:082. Coverage provisions and requirements regarding rural health clinic services.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 1:082, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 1:082.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE – To Amended After Comments Version

Final Version: 10/4/2022 12:27 PM

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations**

907 KAR 1:082. Coverage provisions and requirements regarding rural health clinic services.

RELATES TO: KRS 205.510, 205.520, 205.622, 205.8451, 309.080, 309.0831, 309.130, 311.840, 314.011, 319.010, 319.050, 319.053, 319C.010, 335.080, 335.100, 335.300, 335.500, 369.101 ~~–[to]~~ 369.120, 42 C.F.R. 400.203, [42 C.F.R.]405.2401(b), 405.2412-405.2417, 405.2450, 405.2452, 405.2468, 431.17, 438.2, 440.20, [42 C.F.R.]491.1 - 491.11, 45 C.F.R. Part 164, 20 U.S.C. 1400, 21 U.S.C. 823, 29 U.S.C. 701, 42 U.S.C. 1395x(aa) and (hh)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program coverage provisions and requirements relating to rural health clinic services.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(3)[(2)] "Approved behavioral health practitioner" means an independently licensed practitioner who is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) A licensed professional art therapist;
- (l) A licensed clinical alcohol and drug counselor; or

(m) A licensed behavior analyst.

(4) "Approved behavioral health practitioner under supervision" means an individual under

billing supervision of an approved behavioral health practitioner who is:

(a) 1. A licensed psychological associate working under the supervision of a board-approved

licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor; or

9. A licensed assistant behavior analyst; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(5) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-occurring Conditions" published by the American Society of Addiction Medicine.

(6) "Certified alcohol and drug counselor" is defined by KRS 309.080(4).

(7) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(8)[(3)] "Community support associate" means a paraprofessional[an individual] who[:

(a)] meets the community support associate requirements established in 908 KAR 2:250[; and

(b) Has been certified by the Department for Behavioral Health, Intellectual and Developmental Disabilities as a community support associate].

(9) "Co-occurring disorder" means a mental health and substance use disorder.

(10)[(4)] "Department" means the Department for Medicaid Services or its designee.

(11)[(5)] "Enrollee" means a recipient who is enrolled with a managed care organization.

[(6)] "Face-to-face" means occurring:

(a) in person; or

(b) Via a real-time, electronic communication that involves two (2) way interactive video and audio communication.]

(12) "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(13)[(7)] "Federal financial participation" is defined **by/in** 42 C.F.R. 400.203.

(14)[(8)] "Homebound recipient" is defined by 42 C.F.R. 440.20(b)(4)(iv).

(15) "In-person" means a healthcare encounter occurring:

(a) Via direct **consultation**~~[contact]~~ and interaction between the individual and healthcare provider;

(b) At the same location; and

(c) Not via telehealth.

(16)~~[(9)]~~ "Intermittent nursing care" is defined by 42 C.F.R. 405.2401(b).

(17)~~[(10)]~~ "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(18)~~[(11)]~~ "Licensed behavior analyst" is defined by KRS 319C.010(6).

(19) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(7).

(20) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(9).

(21)~~[(12)]~~ "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(22)~~[(13)]~~ "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(23)~~[(14)]~~ "Licensed professional art therapist" is defined by KRS 309.130(2).

(24)~~[(15)]~~ "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(25)~~[(16)]~~ "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(26)~~[(17)]~~ "Licensed professional counselor associate" is defined by KRS 335.500~~(4)~~~~[(3)]~~.

(27)~~[(18)]~~ "Licensed psychological associate" means:

(a) An individual who:

1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) A certified psychologist.

(28)~~[(19)]~~ "Licensed psychological practitioner" means:

(a) An individual who meets the requirements established in KRS 319.053; or

(b) A certified psychologist with autonomous functioning.

(29)~~[(20)]~~ "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(30)~~[(21)]~~ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined **by/in** 42 C.F.R. 438.2.

(31)~~[(22)]~~ "Marriage and family therapy associate" is defined by KRS 335.300(3).

(32)~~[(23)]~~ "Medically necessary" means that a covered benefit or service is necessary in accordance with 907 KAR 3:130.

(33) "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavior therapies, and other

supports.

(34)[(24)] "Other ambulatory services" is defined by 42 C.F.R. 440.20(c).

(35)[(25)] "Part-time nursing care" is defined by 42 C.F.R. 405.2401(b).

(36)[(26)] "Physician" is defined by KRS 205.510(12)[(11)] and 42 C.F.R. 405.2401(b).

(37)[(27)] "Physician assistant" is defined by KRS 311.840(3) and 42 C.F.R. 405.2401(b).

(38)[(28)] "Recipient" is defined by KRS 205.8451(9).

(39) "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(12).

(40) "Registered behavior technician" means an individual who meets the following requirements by the Behavior Analyst Certification Board:

(a) Be at least eighteen (18) years of age;

(b) Have a high school diploma or its equivalent; and

(c) Within six (6) months of hire for a new employee or within six (6) months of **January 1, 2023**[**the effective date of this administrative regulation**] for an existing employee:

1. Complete a training program that is:

a. Approved by the Behavior Analyst Certification Board;

b. Based on the current edition of the RBT Task List endorsed by the Behavior Analyst Certification Board; and

c. Conducted by Behavior Analyst Certification Board certificants;

2. Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant; and

3. Pass the Registered Behavior Technician exam provided by an assistant assessor **supervised**[**overseen**] by a Behavior Analyst Certification Board certificant.

(41)[(29)] "Rural health clinic" or "RHC" is defined by 42 C.F.R. 405.2401(b).

(42)[(30)] "State plan" is defined by 42 C.F.R. 400.203.

(43)[(34)] "Visiting nurse services" is defined by 42 C.F.R. 405.2401(b).

(44) "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

(45) "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

Section 2. Covered Services Other Than Behavioral Health Services. The department shall cover the following medically necessary rural health clinic services **provided**[**furnished**] by a[an] RHC that has been certified in accordance with 42 C.F.R. 491.1 through 491.11:

(1) Services pursuant to 42 U.S.C. 1395x(aa);

(2) Services provided by a physician if the physician:

(a) Complies with the physician responsibility requirements established by 42 C.F.R. 491.8(b); and

(b) 1. Performs the services in a [an] RHC; or

2. Is compensated under an agreement with a [an] RHC for providing services ***provided[furnished]*** to a Medicaid eligible RHC patient in a location other than the RHC;

(3) Services provided by a physician assistant or advanced practice registered nurse who is employed by or receives compensation from the RHC if the services:

(a) Are ***provided[furnished]*** by a member of the RHC's staff who complies with the responsibility requirements established by 42 C.F.R. 491.8(c);

(b) Are ***provided[furnished]*** under the medical supervision of a physician, except for services ***provided[furnished]*** by an APRN as these services shall not be required to be ***provided[furnished]*** under the medical supervision of a physician;

(c) Are ***provided[furnished]*** in accordance with a medical order for the care and treatment of a patient as prepared by a physician or an advanced practice registered nurse;

(d) Are within the provider's legally-authorized scope of practice; and

(e) Would be covered if ***provided[furnished]*** by a physician;

(4) Services or supplies ***provided[furnished]*** as incidental to services provided by a physician, physician assistant, or advanced practice registered nurse if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415;

(5) Part-time or intermittent visiting nurse care and related supplies, except for drugs or biologicals, if:

(a) The RHC is located in an area where a determination has been made that there is a shortage of home health agencies pursuant to 42 C.F.R. 405.2417;

(b) The services are provided by a registered nurse or licensed practical nurse who is employed by or compensated for the services by the RHC; and

(c) The services are ***provided[furnished]*** to a homebound recipient under a written plan of treatment that is:

1. Established and reviewed at least every sixty (60) days by a supervising physician of the RHC; or

2. Established by a physician, physician assistant, or advanced practice registered nurse and reviewed and approved at least every sixty (60) days by a supervising physician of the RHC; or

(6) Other ambulatory services as established in the state plan.

Section 3. Behavioral Health Services. (1) Except as ***established[specified]*** in the requirements stated for a given service, the services covered may be provided for:

(a) A mental health disorder;

(b) A substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2) The department shall cover, and a rural health clinic may provide, the following

services:

(a) Behavioral health services provided by a licensed psychologist, licensed clinical social worker, or advanced practice registered nurse within the provider's legally authorized scope of service; or

(b) Services or supplies incidental to a licensed psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R. 405.2452.

(3) In addition to the services referenced in subsection (2) of this section, the following behavioral health services provided by a rural health clinic shall be covered under this administrative regulation in accordance with the corresponding following requirements:

~~[(a) A screening provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;~~

~~(b) An assessment provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist;~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;~~

~~16. A licensed behavior analyst; or~~

~~17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;~~

~~(c) Psychological testing provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed psychological practitioner; or~~

~~3. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~(d) Crisis intervention provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate working under the supervision of a~~

licensed professional art therapist;

(e) Service planning provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist;
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
11. A certified social worker working under the supervision of a licensed clinical social worker;
12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;
13. A physician assistant working under the supervision of a physician;
14. A licensed professional art therapist;
15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;
16. A licensed behavior analyst; or
17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(f) Individual outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist;
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
11. A certified social worker working under the supervision of a licensed clinical social worker;

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist;~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;~~

~~16. A licensed behavior analyst; or~~

~~17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;~~

~~(g) Family outpatient therapy provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;~~

~~(h) Group outpatient therapy provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist;~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;~~

~~16. A licensed behavior analyst; or~~

~~17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;~~

~~(i) Collateral outpatient therapy provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist;~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;~~

~~16. A licensed behavior analyst; or~~

~~17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;~~

~~(j) A screening, brief intervention, and referral to treatment for a substance use disorder~~

provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist;
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
11. A certified social worker working under the supervision of a licensed clinical social worker;
12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;
13. A physician assistant working under the supervision of a physician;
14. A licensed professional art therapist; or
15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

(k) Day treatment provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist;
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
11. A certified social worker working under the supervision of a licensed clinical social worker;
12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;
13. A physician assistant working under the supervision of a physician;
14. A licensed professional art therapist; or

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;~~

~~(l) Comprehensive community support services provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist;~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;~~

~~16. A licensed behavior analyst;~~

~~17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst; or~~

~~18. A community support associate;~~

~~(m) Intensive outpatient program provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate; or~~

~~(n) Therapeutic rehabilitation program services provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist.~~

~~(4)](a) A screening shall:~~

~~1. Determine[Be the determination of] the likelihood that an individual has a mental health disorder, a substance use disorder, or co-occurring disorders;~~

~~2. Not establish the presence or specific type of disorder;[and]~~

~~3. Establish the need for an in-depth assessment;[.]~~

~~4. Be provided by:~~

~~a. An approved behavioral health practitioner; or~~

~~b. An approved behavioral health practitioner under supervision;[.]~~

~~(b) An assessment shall:~~

~~1. Include gathering information and engaging in a process with the individual that enables the provider to:~~

- a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
 - b. Determine the individual's readiness for change;
 - c. Identify the individual's strengths or problem areas that **could[may]** affect the treatment and recovery processes; and
 - d. Engage the individual in developing an appropriate treatment relationship;
2. Establish or rule out the existence of a clinical disorder or service need;
 3. Include working with the individual to develop a treatment and service plan;[-and]
 4. Not include a psychological or psychiatric evaluation or assessment;
 5. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment that complies with the most current edition of the ASAM Criteria to determine the most appropriate level of care; and
6. Be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision;[-:]
- (c) Psychological testing shall[-include]:
1. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;[-and]
 2. Include an interpretation and a written report of testing results;
3. Be provided by a licensed:
 - a. Psychologist;
 - b. Psychological practitioner; or
 - c. Psychological associate working under the supervision of a licensed psychologist;
- and
4. Be in-person or via telehealth as appropriate pursuant to 907 KAR 3:170;[-:]
- (d) Crisis intervention:
1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:
 - a. The recipient; or
 - b. Another individual;
 2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for an individual with a behavioral health disorder;
 3. Shall be provided:
 - a. On-site at a rural health clinic;
 - b. As an immediate relief to the presenting problem or threat; and
 - c. In a one-on-one[face-to-face, one-on-one] encounter between the provider and the recipient, which **shall be/is** delivered either in-person or via telehealth if appropriate pursuant to 907 KAR 3:170;
 4. May include:

- a. Verbal de-escalation, risk assessment, or cognitive therapy; or
- b. Further service planning including:
 - (i) Lethal means reduction for suicide; or
 - (ii) Substance use disorder or relapse prevention; ~~and~~
- 5. Shall be followed by a referral to non-crisis services if applicable; and
- 6. Shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision; ~~;~~
- (e) 1. Service planning shall:
 - a. Be provided in-person or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;
 - b. Involve ~~consist of~~ assisting a recipient in creating an individualized plan for services needed for maximum reduction of an intellectual disability and to restore the individual to his or her best possible functional level;
 - c. Involve restoring a recipient's functional level to the recipient's best possible functional level; and
 - d. Be performed using a person-centered planning process; ~~;~~
- 2. A service plan:
 - a. Shall be directed and signed by the recipient;
 - b. Shall include practitioners of the recipient's choosing; and
 - c. ~~;~~ May include:
 - (i) A mental health advance directive being filed with a local hospital;
 - (ii) A crisis plan; or
 - (iii) A relapse prevention strategy or plan; ~~;~~
 - (f) Individual outpatient therapy shall:
 - 1. Be provided to promote the:
 - a. Health and wellbeing of the individual; and ~~or~~
 - b. Restoration of a recipient to the recipient's best possible functional level from a substance use disorder or a co-occurring disorder ~~[Recovery from a substance use disorder, mental health disorder, or co-occurring related disorders];~~
 - 2. Consist of:
 - a. An in-person or via telehealth as appropriate pursuant to 907 KAR 3:170, ~~[A face-to-face,]~~ one-on-one encounter between the provider and recipient; and
 - b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;
 - 3. Be aimed at:
 - a. Reducing adverse symptoms;
 - b. Reducing or eliminating the presenting problem of the recipient; and
 - c. Improving functionality; ~~and~~
 - 4. Not exceed three (3) hours per day; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(g)1. Family outpatient therapy shall consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170, [a face-to-face] behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals, including multiple members from one (1) family, who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision; [-]

(h)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and [or]

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorder [Recovery from a substance use disorder, mental health disorder, or co-occurring related disorders];

c. [-] Consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170, [a face-to-face] behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

d. [-] Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

~~f.[d.]~~ Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

~~g.[e.]~~ Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

~~h.[f.]~~ Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. A family outpatient therapy~~[The]~~ group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision;[;]

(i)1. Collateral outpatient therapy shall:

a. Consist of an in-person or appropriate telehealth, provided pursuant to 907 KAR 3:170,[a face-to-face] behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan;~~and]~~

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. Written consent by a parent or custodial guardian~~[Consent]~~ to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision;[;]

(j)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:

a.~~[1-]~~ Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment;~~and]~~

b.~~[2-]~~ Consist of:

(i)~~[a-]~~ Using a standardized screening tool to assess an individual for risky substance

use behavior;

~~(ii)[b.]~~ Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice; and

~~(iii)[c.]~~ Referring a recipient to additional substance use disorder or co-occurring disorder services if the recipient is determined to need[:

~~(i) Therapy; or~~

~~(ii) Other]~~ additional services to address substance use if the recipient is determined to need other additional services;

c. Be provided in-person or via telehealth as appropriate according to 907 KAR 3:170;

d. Be provided by:

(i) An approved behavioral health practitioner; or

(ii) An approved behavioral health practitioner under supervision.

2. A screening and brief intervention that does not meet criteria for referral to treatment may be subject to coverage by the department.

(k)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. An emotional disability, ~~neurobiological disorder,~~ or substance use disorder; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment services shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services (substance use disorder, mental health disorder, or co-occurring ~~mental health and substance use-~~disorders);

b. Have unified policies and procedures that:

(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and

(ii) Have been approved by the recipient's local education authority and the day treatment provider;

c. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skill training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

d. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individualized education program~~[individualized educational plan]~~ if the recipient has an individualized education program~~[individualized educational plan]~~;

(iv) Under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a ~~[an]~~ RHC shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with subparagraph 2. of this **paragraph**[subsection] ~~[(3)(k) of this section]~~ and to coordinate the provision of services among team members;

b. The capacity to provide the full range of services as stated in subparagraphs 1 and 2 of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders, mental health disorders, and co-occurring disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs;

f. The capacity to document and maintain individual case records; and

g. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program~~[plan]~~.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in community-integrated housing;

b. Be intended to ensure successful community living through the utilization of skills training, cueing, or supervision as identified in the recipient's treatment plan;

c. Include:

(i) Reminding a recipient to take medications and monitoring symptoms and side effects of medications; or

(ii) Teaching parenting skills, teaching community resource access and utilization, teaching emotional regulation skills, teaching crisis coping skills, teaching how to shop, teaching about transportation, teaching financial management, or developing and enhancing interpersonal skills; and

d. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

2. To provide comprehensive community support services, a ~~[an]~~ RHC shall have:

a. The capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection (3)(l) of this section and to coordinate the provision of services among team members;

- b. The capacity to provide the full range of comprehensive community support services as stated in subparagraph 1 of this paragraph;
 - c. Demonstrated experience in serving individuals with behavioral health disorders;
 - d. The administrative capacity to ensure quality of services;
 - e. A financial management system that provides documentation of services and costs;
- and
- f. The capacity to document and maintain individual case records.

3. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

4. Support services for comprehensive community support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner shall[may] be provided by a:

a. Community support associate; or

b. Registered behavioral technician under the supervision of a licensed behavioral analyst.

(m)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current version of the ASAM Criteria for intensive outpatient level of care services;

d. Be provided at least three (3) hours per day at least three (3) days per week;

e. Be provided at least six (6) hours per week for adolescents; and

f. [d.] Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, ~~a~~[an] RHC shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, other physician, physician's assistant, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) to one (1);

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with subparagraph 4,~~[subsection (3)(m)]~~ of this paragraph~~[section]~~ and to coordinate the provision of services among team members;

f. The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

g. Demonstrated experience in serving individuals with behavioral health disorders;

h. The administrative capacity to ensure quality of services;

i. A financial management system that provides documentation of services and costs; and

j. The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(n)1. Therapeutic rehabilitation program services shall:

a. Occur at the provider's site or in the community;

b. Be provided to an adult with a severe and persistent mental illness or to a child (under the age of twenty-one (21) years) who has a serious emotional disability;

c. Be designed to maximize the reduction of an intellectual disability and the restoration of the individual's functional level to the individual's best possible functional level; and

d. Not be a residential program.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills; ~~and~~

c. Be delivered individually or in a group; and

d. Include:

(i) An individualized plan of care identifying measurable goals and objectives including discharge and relapse prevention planning;

(ii) Coordination of services the individual **receives**~~[may be receiving]~~; and

(iii) Referral to other necessary service supports as needed.

4. To provide therapeutic rehabilitation program services, ~~a~~ RHC shall:

a. Have the capacity to employ staff authorized to provide therapeutic rehabilitation program services in accordance with **paragraph (n) of this** subsection ~~[(3)(n) of this section]~~ and to coordinate the provision of services among team members;

b. Have the capacity to provide the full range of therapeutic rehabilitation program services as stated in this paragraph;

c. Have demonstrated experience in serving individuals with mental health disorders;

d. Have the administrative capacity to ensure quality of services;

e. Have a financial management system that provides documentation of services and costs; and

f. Have the capacity to document and maintain individual case records.

5. Program staffing for a therapeutic rehabilitation program shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support.

6. Therapeutic rehabilitation services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

7. If not provided by an allowed practitioner pursuant to clause 6. of this subparagraph, support services for therapeutic rehabilitation services shall be conducted by a provider:

a. Working under the supervision of an approved behavioral health practitioner; and

b. Who is:

(i) An adult peer support specialist;

(ii) A family peer support specialist; or

(iii) A youth peer support specialist.

(o) 1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a substance use disorder to a recipient by

sharing a similar substance use disorder in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change;

(iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder; or

(iv) A registered alcohol and drug peer support specialist who has been trained and certified in accordance with KRS 309.0831 and is a self-identified consumer of substance use disorder services who provides emotional support to others with substance use disorder to achieve a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Except for the engagement into substance use disorder treatment through an emergency department bridge clinic, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as **established[specified]** in the recipient's plan of care.

2. To provide peer support services, a chemical dependency treatment center shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, 908 KAR 2:240, or KRS 309.0831;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide ongoing continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting to not exceed eight (8) individuals within any group at one (1) time.

(p)1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks,

- b. Less than twenty-four (24) hours each day;
- c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder or co-occurring disorders;
and
- d. Provided in-person or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 907 KAR 3:170.
- 2. Partial hospitalization may be provided to an adult or a minor.
- 3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.
- 4. A partial hospitalization program shall meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current version of The ASAM Criteria for partial hospitalization level of care services.
- 5. A partial hospitalization program shall consist of:
 - a. Individual outpatient therapy;
 - b. Group outpatient therapy;
 - c. Family outpatient therapy; or
 - d. Medication management.
- 6. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.
- 7.a. A rural health clinic's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.
- b. Services in a Medicaid eligible child's individualized education program shall be coverable under Medicaid.
- 8. Partial hospitalization shall be:
 - a. Provided for at least four (4) hours per day; and
 - b. Focused on one (1) primary presenting problem.
- 9. A partial hospitalization program operated by a rural health clinic shall:
 - a. Include the following personnel for the purpose of providing medical care:
 - (i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and
 - (ii) A board-certified or board-eligible psychiatrist available for consultation; and
 - b. Have the capacity to:
 - (i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;
 - (ii) Employ required practitioners and coordinate service provision among rendering practitioners; and
 - (iii) Provide the full range of services included in the scope of partial hospitalization

established in this paragraph.

(q)1. Withdrawal management services provided by a rural health clinic shall:

a. Be provided in-person or via telehealth as consistent with 907 KAR 3:170 for recipients with a substance use disorder or co-occurring disorder and incorporated into a recipient's care along the continuum of care as needed;

b. Meet service criteria in accordance with the most current version of the ASAM Criteria for withdrawal management levels in an outpatient setting; and

c. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2.

2. A recipient who is receiving withdrawal management services shall meet the most current edition of diagnostic criteria for substance withdrawal management as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

3. Withdrawal management services in an outpatient setting shall be provided by:

a. A physician;

b. A psychiatrist;

c. A physician assistant;

d. An advanced practice registered nurse; or

e. An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant.

(r)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

a. Is:

(i) A physician;

(ii) An advanced practice registered nurse;

(iii) A physician assistant; or

(iv) A psychiatrist;

b. Meets standards established pursuant to 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products including any waiving or expansion of buprenorphine prescribing authority by the federal government; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment supporting behavioral health services shall:

a. Be co-located within the same practicing site as the practitioner who maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products or via telehealth as appropriate pursuant to 907 KAR 3:170; or

b. Have agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol and other substance use disorders, such as:

(i) A licensed behavioral health services organization;

(ii) A multi-specialty group;

- (iii) A provider group; or
- (iv) An individual behavioral health practitioner.

3. **If provided**, medication assisted treatment **shall[may]** be provided in a provider group or multi-specialty group operating in accordance with 908 KAR 1:374, Section 7.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and

(ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

(i) The associated risks and benefits; and

(ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

(s)1. Applied behavior analysis services shall produce socially significant improvement in human behavior via the:

a. Design, implementation, and evaluation of environmental modifications;

b. Use of behavioral stimuli and consequences; or

c. Use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

2. Applied behavior analysis shall be based on scientific research and the direct observation and measurement of behavior and environment, which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to assist recipients in:

a. Developing new behaviors;

b. Increasing or decreasing existing behaviors; and

c. Eliciting behaviors under specific environmental conditions.

3. Applied behavior analysis services may include principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including applications of those principles, methods, and procedures to:

a. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;

b. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals that interact with a recipient;

c. Design, implement, evaluate, and modify treatment programs to change the behavior of a group or groups that interact with a recipient; or

d. Consult with individuals and organizations.

4.a. Applied behavior analysis services shall be provided by:

(i) A licensed behavior analyst;

(ii) A licensed assistant behavior analyst;

(iii) An approved behavioral health practitioner with documented training in applied behavior analysis; or

(iv) An approved behavioral health practitioner under supervision with documented training in applied behavior analysis.

b. A registered behavior technician under the supervision of an appropriate practitioner pursuant to clause a. of this subparagraph may provide support services, **which shall be performed as established in[under]** this paragraph.

(4)(a) Laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a RHC if:

1. The RHC has the appropriate Clinical Laboratory Improvement Amendments (CLIA) certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the RHC.

(b) Laboratory services may be administered, as appropriate, by:

1. An approved behavioral health practitioner; or

2. An approved behavioral health practitioner under supervision.

(5)(a) The requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health and substance use disorders.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(6) The extent and type of assessment performed shall depend upon the problem of the individual seeking or being referred for services.

(7) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(8)(a) Direct **consultation[contact]** between a provider or practitioner and a recipient shall be required for each service, except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(9) A billable unit of service shall be actual time spent delivering a service in an ~~a face-to-face~~ encounter.

(10) A service shall be:

(a) Stated in the recipient's treatment plan;

(b) Provided in accordance with the recipient's treatment plan;

(c) Provided on a regularly scheduled basis, except for a screening or assessment; and

(d) Made available on a nonscheduled basis if necessary during a crisis or time of increased stress for the recipient.

(11) The following services or activities shall not be covered under this administrative regulation:

(a) A behavioral health service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral outpatient therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition for[~~of~~] telehealth established pursuant to KRS 205.510(16) and implemented pursuant to 907 KAR 3:170[face-to-face];

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(12) A third party contract shall not be covered under this administrative regulation.

Section 4. Provision of Services. A[~~A~~] RHC shall comply with the service provision requirements established by 42 C.F.R. 491.9.

Section 5. Immunizations. A[~~A~~] RHC shall provide, upon request from a recipient, the following covered immunizations:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); [~~or~~]

(4) Hemophilus B conjugate vaccine (HBCV);

(5) Hepatitis A;

(6) Meningococcal vaccines;[~~or~~]

(7) Meningococcal ACWY vaccine (MenACWY); or

(8) Any other vaccine that is recommended by the Advisory Committee on Immunization Practice (ACIP) vaccines.

Section 6. Medical Necessity Requirement. To be covered pursuant to this administrative regulation, a service shall be:

- (1) Medically necessary for the recipient; and
- (2) Provided to a recipient.

Section 7. Noncovered Services. (1) The following services shall not be covered as rural health clinic services:

- (a) Services provided in a hospital as defined ***by[in]*** 42 U.S.C. 1395x(e);
 - (b) Institutional services;
 - (c) Housekeeping, babysitting, or other similar homemaker services; ***and***
 - (d) Services ***that[which]*** are not provided in accordance with restrictions imposed by law or administrative regulation.
- (2) A third party contract shall not be covered under this administrative regulation.

Section 8. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a service from an independent behavioral health service provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a rural health clinic.

Section 9. Protection, Security, and Records Maintenance Requirements for All Services. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of ~~the~~ service and ~~the~~ signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record within seventy-two (72) hours of~~on~~ the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3)(a) A provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. If requested, be disclosed to an authorized representative of:
 - a. The department; or
 - b. Federal government.

(c)1. Upon request, a provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, ***if[whether]*** the service is reimbursable by the department.

2. Failure to provide information ***established[referenced]*** in subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Documentation and Records Maintenance Requirements for Behavioral Health Services. (1) The requirements in this section shall apply to health records associated with behavioral health services.

(2) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance or Medicaid information;
- f. Referral source and address of referral source;
- g. Primary care physician and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

- (i) Where the individual is receiving treatment for the physical health diagnosis; and
- (ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

- (i) This administrative regulation;
- (ii) The provider's licensure board;
- (iii) State law; or
- (iv) Federal law;

2. Documentation of the:
 - a. Screening;
 - b. Assessment;
 - c. Disposition; and
 - d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;
 3. A complete history including mental status and previous treatment;
 4. An identification sheet;
 5. A consent for treatment sheet that is accurately signed and dated; and
 6. The individual's stated purpose for seeking services; and
- (b) Be:
1. Maintained in an organized central file;
 2. ***Provided/Furnished*** to the Cabinet for Health and Family Services upon request;
 3. Made available for inspection and copying by Cabinet for Health and Family Services' personnel;
 4. Readily accessible; and
 5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.
- (3) Documentation of a screening shall include:
- (a) Information relative to the individual's stated request for services; and
 - (b) Other stated personal or health concerns if other concerns are stated.
- (4)(a) A provider's notes regarding a recipient shall:
1. Be made within seventy-two (72)~~forty-eight (48)~~ hours of the reconciliation of the record of each service visit; and
 2. Describe the:
 - a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
 - b. Therapist's intervention;
 - c. Changes in the treatment plan if changes are made; and
 - d. Need for continued treatment if continued treatment is needed.
 - (b)1. Any edit to notes shall:
 - a. Clearly display the changes; and
 - b. Be initialed and dated.
 2. Notes shall not be erased or illegibly marked out.
 - (c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional providing the service.
 2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:
 - a. Case; and
 - b. Supervising professional's evaluation of the services being provided to the recipient.

(5) Immediately following a screening of a recipient, the provider shall perform a disposition related to:

(a) An appropriate diagnosis;

(b) A referral for further consultation and disposition, if applicable; and

(c) 1. Termination of services and referral to an outside source for further services; or

2. Termination of services without a referral to further services.

(6)(a) A recipient's treatment plan shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering provider.

(7)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. **Be** dated;

3. **Be** titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering provider and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other nonreimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(8)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's treatment plan;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(9) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(10) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, if the recipient gives the provider written consent to do so, forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient.

(11)(a) If a provider's Medicaid program participation status changes as a result of voluntarily terminating from the Medicaid program, involuntarily terminating from the Medicaid program, a licensure suspension, or death of the provider, the health records of the provider shall:

1. Remain the property of the provider; and
2. ***Comply with***~~*Be subject to*~~ the retention requirements established in Section 9(2) of this administrative regulation.

(b) A provider shall have a written plan addressing how to maintain health records in the event of the provider's death.

Section 11. Medicaid Program Participation Requirements. (1)(a) A participating RHC shall be currently:

1. Enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672; and
2. Except as established in paragraph (b) of this subsection, participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid program.

(2)(a) To be initially enrolled with the department, a[an] RHC shall:

1. Enroll in accordance with 907 KAR 1:672; and
2. Submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as a[an] RHC.

(b) To remain enrolled and participating in the Kentucky Medicaid program, a[an] RHC shall:

1. Comply with the enrollment requirements established in 907 KAR 1:672;
2. Comply with the participation requirements established in 907 KAR 1:671; and
3. Annually submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as a[an] RHC to the department.

(3) A[An] RHC that has been terminated from federal participation shall be terminated from Kentucky Medicaid program participation.

(4) A participating RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a[an] RHC.

(5)(a) If a[an] RHC receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

Section 12. Third Party Liability. A provider shall comply with KRS 205.622.

Section 13. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 ~~through~~**[to]** 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure

fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 14. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 15. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 16. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

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