

## KENTUCKY BOARD OF LANDSCAPE ARCHITECTS

**Andy Beshear**  
Governor

2365 Harrodsburg Road, Suite B350  
Lexington, Kentucky 40504  
Phone: (859) 246.2753  
ky.labd@ky.gov  
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**Jane Alexander**  
Executive Director

April 2, 2024

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 10:030. Code of ethics.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 10:030, the Board of Landscape Architects proposes the attached amendment to 201 KAR 10:030.

Sincerely,

A handwritten signature in cursive script that reads "Jane Alexander".

Jane Alexander, Executive Director  
KY Board of Landscape Architects  
2365 Harrodsburg Road, B350  
Lexington, KY 40504

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS  
Board of Landscape Architects

201 KAR 10:030. Code of ethics.

RELATES TO: KRS 323A.110

STATUTORY AUTHORITY: KRS 323A.210(2)(b)

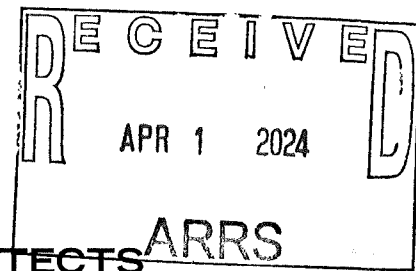
NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~323A.110(2)~~~~[323A.110(1)(b)]~~ authorizes the board to discipline a licensee for unprofessional conduct. KRS 323A.210(2)(b) authorizes the board to ~~promulgate~~~~[adopt]~~ reasonable administrative regulations ~~consistent~~~~[not inconsistent]~~ with KRS Chapter 323A ~~that~~~~[but which]~~ are necessary to carry out the provisions of KRS Chapter 323A. This ~~administrative regulation establishes the~~ code of ethics ~~[is]~~ intended to ~~provide~~~~[establish]~~ guidelines for the determination of unprofessional conduct by landscape architects practicing in the state and for the protection of the public they will be serving.

Section 1. Code of Ethics.

- (1) A violation of this code of ethics shall be considered unprofessional conduct pursuant to KRS 323A.110(2)~~[KRS 323A.110(1)(b)]~~.
- (2) The landscape architect shall conduct ~~the landscape architect's~~~~[his]~~ practice in order to protect the life, health, property, and welfare of the public and shall at all times recognize that his or her primary obligation is to protect the life, health, property, and welfare of the public in the performance of his or her professional duties. If his or her landscape architectural judgment is overruled under circumstances ~~involving~~~~[where]~~ the safety, health, and welfare of the public ~~being~~~~[are]~~ endangered, ~~the landscape architect~~~~[he]~~ shall inform his or her employer of the possible consequences and notify ~~another~~~~[any other]~~ proper authority of the situation, as may be appropriate.
- (3) The landscape architect shall perform his or her services only in areas of ~~the landscape architect's~~~~[his]~~ competence.
  - (a) The landscape architect shall perform landscape architectural assignments only ~~if~~~~[when]~~ qualified by education or experience in the specific technical field of professional landscape architecture involved;
  - (b) The landscape architect may accept an assignment requiring education or experience outside of his or her own field of competence, but only to the extent that his or her services ~~shall be~~~~[are]~~ restricted to those phases of the project in which he or she is qualified. All other phases of that project shall be performed by qualified associates, consultants, or employees;
  - (c) The landscape architect shall not affix his or her signature or seal to any landscape architectural plan or document dealing with subject matter to which he or she lacks competence by virtue of education or experience, or to any ~~[such-]~~ plan or document not prepared under his or her direct supervisory control; and
  - (d) It shall be the responsibility of the licensee to demonstrate competence in the specific technical field in which the licensee is practicing.
- (4) The landscape architect shall be completely objective and truthful in all professional reports, and shall include all relevant and pertinent information in those reports.
- (5) The landscape architect shall avoid conflicts of interest:
  - (a) The landscape architect shall avoid all conflicts of interest with his or her employer or client and shall promptly inform his or her employer or client of any business association, interests, or circumstances which ~~may~~~~[could]~~ influence his or her judgment or the quality of his or her services;
  - (b) The landscape architect shall not accept compensation, financial or otherwise, from more than one (1) party for services pertaining to the same project, ~~and~~~~[unless]~~ the circumstances ~~shall be~~~~[are]~~ fully disclosed to, and agreed to, by all interested parties;

- (c) The landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products;
- (d) The landscape architect shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his or her client or employer in connection with work for which he or she is responsible;
- (e) ~~If~~**When** in public service as a member, advisor, or employee of a governmental body or department, the landscape architect shall not participate in considerations or actions with respect to services provided by the landscape architect[him] or his or her organization in private landscape architectural practices;
- (f) The landscape architect shall not solicit or accept a landscape architectural contract from a governmental body on which a principal or officer of his or her organization serves as a member; or
- (g) The landscape architect shall not attempt to supplant another landscape architect after definite steps have been taken by a client toward the latter's employment, and he or she shall not accept a commission for which another landscape architect has been employed without first conclusively determining that the latter's employment has been terminated.
- (6) The landscape architect shall solicit or accept work only on the basis of his or her qualifications.
- (a) The landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
- (b) The landscape architect shall seek professional employment on the basis of qualification and competence for proper accomplishment of the work.
- (c) The landscape architect shall not falsify or permit misrepresentation of the landscape architect's [his], or his or her associates', academic or professional qualifications. He or she shall not misrepresent or exaggerate his or her degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or the landscape architect's[his] or their past accomplishments with the intent and purpose of enhancing his or her qualifications and his or her work.
- (7) In the practice of landscape architecture, a landscape architect shall associate only with reputable persons or organizations.
- (a) The landscape architect shall not knowingly associate with or permit the use of his or her name or firm in a business venture by any person or firm which he or she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature, or in violation of 201 KAR Chapter 10[these administrative regulations]; or
- (b) If the landscape architect has knowledge or reason to believe that another person or firm may be in violation of 201 KAR Chapter 10[any of these provisions] or KRS Chapter 323A, he or she shall present that information to the board in writing and shall cooperate with the board in furnishing any further information or assistance as may be required by the board.

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email ky.labd@ky.gov.



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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  
083, Capitol Annex  
Frankfort KY 40601

Re: 201 KAR 10:040. Applications.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 10:040, the Board of Landscape Architects proposes the attached amendment to 201 KAR 10:040.

Sincerely,

A handwritten signature in cursive script that reads "Jane Alexander".

Jane Alexander, Executive Director  
KY Board of Landscape Architects  
2365 Harrodsburg Road, B350  
Lexington, KY 40504



Final, 3-27-2024

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS  
Board of Landscape Architects

201 KAR 10:040. Applications.

RELATES TO: KRS ~~323A.010~~, 323A.040, 323A.050, 323A.060, ~~323A.070~~

STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.210 authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 323A. This administrative regulation establishes the procedures for the filing and processing of an application for licensure[registration] as a landscape architect.

Section 1. Application for Initial License.~~[Filing of Applications.]~~

(1) An applicant for a license[registration] as a landscape architect shall file a completed Application for License[Registration] to Practice Professional Landscape Architecture. The application shall be signed by the applicant certifying that the applicant is familiar with and agrees to abide by the provisions of KRS Chapter 323A and the administrative regulations in 201 KAR Chapter 10 ~~and agrees to abide by them~~[:]

~~[(a)] [Be filed during regular business hours at the office of the board;]~~

~~[(b)] [Include an attached photograph, taken within thirty (30) days of the application, of the applicant showing the face of the applicant at least three-fourths (3/4) of an inch wide;]~~

~~[(c)] [List at least five (5) references in accordance with Section 3 of this administrative regulation;]~~

~~[(d)] [Be received by the board by February 1 to be considered for the June examination or by August 1 to be considered for the December examination;]~~

~~[(e)] [Be signed by the applicant, certifying that the applicant:]~~

~~[1.] [Is familiar with the provisions of KRS Chapter 323A; and]~~

~~[2.] [Subscribes to and agrees to abide by the applicable statutes and administrative regulations promulgated by the board; and]~~

~~[(f)] [Be notarized].~~

(2)

(a) An applicant shall take and pass the Landscape Architect Registration Examination (LARE).

(b) The applicant shall cause the results of the LARE to be sent to the board by the exam administrator.~~[An application for a written examination shall be filed at the office of the board at least four (4) months prior to the beginning date of an examination.]~~

(3) The application fee prescribed in 201 KAR 10:050, Section 1 ~~(3)~~(6), shall accompany the application.

Section 2. Verification of Work Experience.~~[Personal References.]~~

(1) An applicant shall cause a Verification of Work Experience form to be submitted by a former or present employer. The former or present employer shall submit the form directly to the board.~~[The application shall list at least five (5) citizens of the United States as a personal reference for the applicant. Three (3) of the five (5) persons listed as a reference shall be a registered professional landscape architect. A personal reference for an applicant:]~~

~~[(a)] [Shall not be a relative of the applicant; and]~~

~~[(b)] [May be contacted by the board for information relating to the applicant's character and professional ability.]~~

~~[(2)] [A member of the board may be listed as a person who has supervised the work of an applicant.]~~

(2) Military experience shall be acceptable if it has been gained in landscape architecture as defined by ~~the provisions of ]~~KRS 323A.010(3).

(3) The sale or installation of a product such as landscape materials (plants and construction) shall not be considered professional experience.

(4) A plan or sketch drawn by a person solely for the promotion or sale of that person's products shall not be considered professional experience.

Section 3. Reciprocity. An applicant who seeks a license[registration] under KRS 323A.050(1) shall submit:

(1) Satisfactory proof of a license[registration] in good standing in a state or country in which the applicant is licensed;[~~and~~]

(2)

(a) An applicant who is licensed in another state of the United States shall have passed the LARE to be considered for licensure by reciprocity.

(b) An applicant who is licensed in another country shall take and pass the LARE to be considered for licensure by reciprocity.[~~A statement that licensure in the state was obtained;~~]

[~~(a) [Under a grandfather clause;]~~]

[~~(b) [By examination; or]~~]

[~~(c) [Other means, including an explanation of the other means;]~~]

(3)

(a) An applicant for licensure by reciprocity who was educated in the United States shall have graduated from a school that is accredited by the Landscape Architectural Accreditation Board (LAAB).

(b) An applicant for licensure by reciprocity who was educated outside the United States shall provide documentation from an educational assessment organization approved by the board that the applicant's education is equal to an accredited landscape architecture curriculum approved by the board. The applicant shall be responsible for any fee charged by ~~the[such an]~~ organization.

Section 4. Board Consideration of Applications for Licensure.

(1) Each applicant shall be considered and voted on by the board.

(2) Approval of an applicant shall require a majority vote of the board.

(3) The action taken by the board shall be recorded in the board minutes.

(4) A copy of the letter from the board notifying an applicant of the board's decision regarding application shall be placed in the applicant's file.

[~~Section 5.] [~~Professional Landscape Architectural Experience.~~]~~

[~~(1) [Military experience shall be acceptable if it has been gained in landscape architecture as defined by the provisions of KRS 323A.010(3).]~~]

[~~(2) [The sale or installation of a product such as landscape materials (plants and construction) shall not be considered a professional experience.]~~]

[~~(3) [A plan or sketch drawn by a person solely for the promotion or sale of that person's products shall not be considered a professional experience.]~~]

Section 5. Renewal.

(1) A licensee shall renew a license annually by July 1 by completing the online renewal form and paying the **renewal** fee required by 201 KAR 10:050. A license may be renewed as active or inactive status.

(2) A licensee who does not renew online shall renew a license annually by July 1 by completing the Annual Active Renewal Notice form or the Inactive Annual Renewal Form and paying the **renewal** fee required by 201 KAR 10:050. In addition, the Annual Active Renewal Notice form shall be accompanied by the Continuing Education Approval Request and Affidavit Form (Form #CE-1), **as incorporated by reference in 201 KAR 10:080.**

Section 6. Change of Status.

(1) A licensee may choose to inactivate the license. To do so, the licensee shall notify the board in writing.

(2) During the period a license is inactive, a licensee shall:

- (a) Be exempt from the provisions of 201 KAR 10:080; and
- (b) Not practice landscape architecture.

#### Section 7. Reinstatement and Reactivation.

- (1) Prior to reinstatement of a suspended or expired license or reactivation of an inactive or retired license, a licensee shall complete the number of continuing education hours required for the annual renewal of the license times the number of years the license was suspended, expired, retired, or inactive.
- (2) The number of continuing education hours required by subsection (1) of this section shall not exceed twenty-four (24) hours.
- (3) The request for reinstatement or reactivation shall be accompanied by the **reinstatement or reactivation** fee required by 201 KAR 10:050.

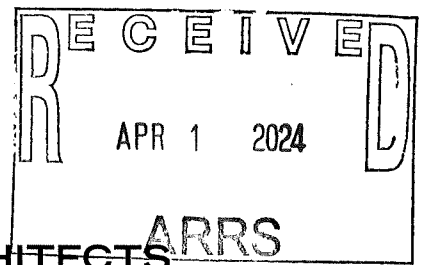
#### Section 8. Retired License.

- (1) A licensee who has retired from the practice of landscape architecture may request a retired license by notifying the board in writing.
- (2) The request shall be accompanied by the **renewal** fee required by 201 KAR 10:050.
- (3) The licensee shall provide evidence of retirement, such as social security benefits or a public or private pension.

#### Section 9. ~~Section 6.~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Application for ~~License~~~~Registration~~ to Practice Professional Landscape Architecture", 7/2023; ~~[May 2002 Edition, Kentucky State Board of Examiners and Registration of Landscape Architects, is incorporated by reference.]~~
  - (b) "Verification of Work Experience", 7/2023;
  - (c) "Annual Active Renewal Notice", 7/2023; and
  - (d) "Inactive Annual Renewal Form", 7/2023.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, 40504, ~~[It may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Examiners and Registration of Landscape Architects, 301 East Main Street, Lexington, Kentucky 40507,]~~ Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the agency's Web site at [kbla.ky.gov](http://kbla.ky.gov).**

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email [ky.labd@ky.gov](mailto:ky.labd@ky.gov).



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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 10:050. Fees.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 10:050, the Board of Landscape Architects proposes the attached amendment to 201 KAR 10:050.

Sincerely,

A handwritten signature in cursive script that reads "Jane Alexander".

Jane Alexander, Executive Director  
KY Board of Landscape Architects  
2365 Harrodsburg Road, B350  
Lexington, KY 40504

Final, 3-27-2024

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS**  
**Board of Landscape Architects**

**201 KAR 10:050. Fees.**

RELATES TO: KRS 323A.040, 323A.050, 323A.060, ~~[323A.070, ]~~323A.100(1), (4), 323A.105

STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.060 requires the board to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall apply:

(1) Renewal fees:

(a) Active license: \$250;~~[-]~~

(b) Inactive license: \$150; ~~and [-]~~

(c) Retired license: twenty-five (25) percent of the active license renewal fee established in paragraph (a) of this subsection;

(2) Duplicate license: twenty-five (25) dollars;~~[-]~~

(3) Application fee: \$250;~~[-]~~

(4) Reinstatement fee:

(a) Within thirty (30) days of expiration: 120 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(b) Between thirty-one (31) and sixty (60) days of expiration: 140 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(c) Between sixty-one (61) days and one (1) year of expiration: 200 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section; or

(d) Beyond one (1) year of expiration: 300 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section; and

(5) Reactivation fee: equal to the active license renewal fee established in subsection (1)(a) of this section.

Section 2. The fees listed in Section 1(1) of this administrative regulation shall be paid annually.

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email ky.labd@ky.gov.

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS  
Board of Landscape Architects

**201 KAR 10:050. Fees.**

RELATES TO: KRS 323A.040, 323A.050, 323A.060, ~~[323A.070, ]~~323A.100(1), (4), 323A.105

STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.060 requires the board to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

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(1) Renewal fees:

(a) Active license: \$250;~~;~~

(b) Inactive license: \$150; ~~and~~

(c) Retired license: twenty-five (25) percent of the active license renewal fee established in paragraph (a) of this subsection;

(2) Duplicate license: twenty-five (25) dollars;~~;~~

(3) Application fee: \$250;~~;~~

(4) Reinstatement fee:

(a) Within thirty (30) days of expiration: 120 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(b) Between thirty-one (31) and sixty (60) days of expiration: 140 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section;

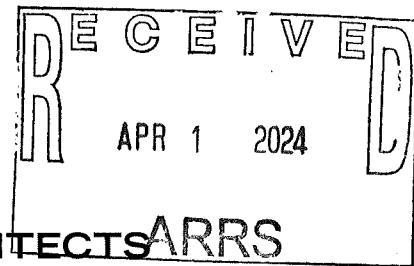
(c) Between sixty-one (61) days and one (1) year of expiration: 200 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section; or

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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 10:070. Seals.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 10:070, the Board of Landscape Architects proposes the attached amendment to 201 KAR 10:070.

Sincerely,

A handwritten signature in cursive script that reads "Jane Alexander".

Jane Alexander, Executive Director  
KY Board of Landscape Architects  
2365 Harrodsburg Road, B350  
Lexington, KY 40504

**SUGGESTED SUBSTITUTE**  
**BOARDS AND COMMISSIONS**  
**Board of Landscape Architects**

**201 KAR 10:070. Seals.**

RELATES TO: KRS 323A.080

STATUTORY AUTHORITY: KRS 323A.080, 323A.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.080 requires that a licensed landscape architect secure an embossed circular seal of the design prescribed by the administrative regulation of the board and that a working drawing, specification or report prepared by, or under the supervision of, the individual, partnership, or firm bear the imprint of the seal. This administrative regulation prescribes the design and size of the required seal.

Section 1. Licensees' Seal. The seal required by KRS 323A.080 shall:

- (1) Be two (2) inches in diameter; and
- (2) Contain ~~[the following information]~~ in the impression of the seal:
  - (a) The words "State of Kentucky" at the top between the two (2) knurled circles;
  - (b) The words "~~Licensed~~[Registered] Landscape Architect" in a like position at the bottom;
  - (c) The individual's name placed horizontally in the circular field; and
  - (d) The individual's ~~license~~[certificate] number placed horizontally beneath the name.

Section 2.

- (1) The seal shall be ~~either~~:
  - (a) An individual embossing seal;
  - (b) A rubber stamp seal; or
  - (c) An electronically generated seal.
- (2) An electronically generated seal shall be used only ~~if~~**when the following requirements are met**:
  - (a) It is a unique identification of the landscape architect;
  - (b) It is verifiable;
  - (c) It is under the landscape architect's direct and sole control;
  - (d) It is linked to a document in ~~such~~ a manner **so** that changes are readily determined and visually displayed if any data contained in the document file was changed subsequent to the electronically generated seal having been affixed to the document;
  - (e) Changes to the document after affixing the electronically generated seal cause the seal to be removed or altered in ~~such~~ a way as to invalidate the seal; and
  - (f) Once the seal is applied to the document, the document shall be available in a view-only format.

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email ky.labd@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

At the time that it files this staff amendment, the agency needs to file one (1) clean copy of a corrected RIA paginated as pages 5-6 that includes the correct regulation number at the top and includes the information as it relates to this administrative regulation.



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

201 KAR 10:070

Contact Person: Jane Alexander

Phone: (859) 246-2753

Email: ky.labd@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes standards for seals for Landscape Architects

(c) How this administrative regulation conforms to the content of the authorizing statutes: It is authorized by KRS 323A.080 and KRS 323A.210(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards for seals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It changes "registration" to "licensure" and sets standards for they type of seal that may be used.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute permits the amendment.

(d) How the amendment will assist in the effective administration of the statutes: By setting standards for seals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Landscape Architects, approximately 350.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to conform to the standards for seals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not anticipated that there will be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional cost beyond the regular operating costs of the agency.

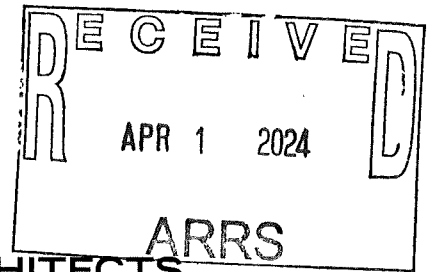
(b) On a continuing basis: See (a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied as the amendment affects everyone equally.



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083, Capitol Annex  
Frankfort KY 40601

Re: 201 KAR 10:080. Continuing education.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 10:080, the Board of Landscape Architects proposes the attached amendment to 201 KAR 10:080.

Sincerely,

A handwritten signature in cursive script that reads "Jane Alexander".

Jane Alexander, Executive Director  
KY Board of Landscape Architects  
2365 Harrodsburg Road, B350  
Lexington, KY 40504

Final, 3-27-2024

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS  
Board of Landscape Architects**

**201 KAR 10:080. Continuing education.**

RELATES TO: KRS 323A.100(1), 323A.210(2)(a)

STATUTORY AUTHORITY: KRS 323A.100(1), 323A.210(2)(a), (b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.100(1) requires a landscape architect to complete the approved continuing education hours established by an administrative regulation promulgated by the board. KRS 323A.210(2)(a) authorizes the board to promulgate administrative regulations to establish a program of continuing education for licensees. This administrative regulation establishes the continuing education requirements for a landscape architect.

Section 1. Definitions.

- (1) "Annually" or "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.
- (2) "Board" is defined by KRS 323A.010(1).
- (3) "Continuing education hour" means a minimum of fifty (50) minutes of actual instruction.
- (4) "Self-directed course[study]" means a course of study that a licensee independently creates~~[a course of study in which a licensee takes and passes any examination offered by the sponsor].~~
- (5) "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.
- (6) "Tour" means a review or inspection of a landscape architectural element specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3).

Section 2. General Statement. Continuing education obtained by a licensee shall maintain, improve, or expand skills and knowledge obtained prior to initial licensure or develop new and relevant skills and knowledge that contribute to the health, safety, and welfare of the public.

Section 3. Continuing Education Requirements.

- (1) A licensee shall acquire twelve (12) hours of continuing education annually.
- (2) A licensee may be credited for a maximum of six (6) hours of continuing education for a tour annually.
- (3) A licensee may carry forward a maximum of twelve (12) hours of continuing education to meet the subsequent year's requirements.~~[Four hours may be carried forward into subsequent years.]~~

Section 4. Approval of Continuing Education Programs.

- (1) The board shall:
  - (a) Approve a continuing education program that it determines:
    1. Is relevant to the practice of landscape architecture;~~[and]~~
    2. Furthers the competence of a licensee; and
    3. Contributes to the health, safety, and welfare of the public; and~~].~~
  - (b) Determine the number of continuing education hours allowed.
- (2)
  - (a) Before the continuing education program is offered, a sponsor may~~[shall]~~ submit a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the hand-out materials and agenda and a description of the topic as well as the presenter, teacher, or speaker.

- (b) A sponsor shall not offer, present, or advertise a program as a continuing education program that meets the continuing education requirements for a licensee unless it has obtained the approval of the board.
- (3) A licensee who completes an educational program that has not been submitted to the board for prior approval shall receive continuing education credit if:
  - (a) The licensee submits to the board a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the course materials, agenda, a description of the course, qualifications of the presenter, examination if one (1) was given; and
  - (b) The board determines that the program meets the requirements of a continuing education program.
- (4) Self-directed courses, including those completed online, audibly, or by video, that meet the requirements of this administrative regulation shall be accepted.
- (5) Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed six (6) hours, of a tour if the licensee has submitted to the board a description of the tour and the board determines that the tour meets the requirements of a continuing education program.

#### Section 5.

- (1) Continuing education activities may include a college or university course that is beyond the basic curriculum for a landscape architect and pertains to the practice of landscape architecture. The conversion of university credits to continuing education hours shall be:
  - (a) One (1) university quarter hour of credit shall equal twelve (12)~~thirty (30)~~ continuing education hours.
  - (b) One (1) university semester hour of credit shall equal fifteen (15)~~forty-five (45)~~ continuing education hours.
- (2)
  - (a) A landscape architect who presents~~prepares and teaches~~ a continuing education course shall be credited with twice the number of hours equal to the time spent teaching the course.
  - (b) Credit shall not be given for repeated instruction of the same course.

#### Section 6. Reporting of Continuing Education Activities.

- (1) Upon license renewal, a licensee shall report continuing education activities for the continuing education period ending June 30.
- (2) The report of continuing education activities shall include:
  - (a) Name of activity;
  - (b) Date of activity;
  - (c) Location of activity; and
  - (d) Continuing education hours earned.
- (3) The report of continuing education activities shall be made on a ~~[""]~~Continuing Education Approval Request and Affidavit Form (Form #CE-1).~~[""]~~
- (4) ~~[The report of continuing education activities shall be:]~~
  - ~~[(a)] [Signed by the licensee; and]~~
  - ~~[(b)] [Affixed with the licensee's seal.]~~
- ~~[(5)]~~ A licensee shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

#### Section 7. Verification of Continuing Education Activities.

- (1) Following each renewal period, the board shall require between five (5) and fifteen (15) percent of the licensees, chosen randomly, to furnish documentation of the completion of the appropriate number of continuing education hours for the previous renewal period, including hours carried forward from the previous year.
- (2) Documentation of attendance and participation in a continuing education activity shall be made by submission of an official document, including a:
  - (a) Transcript;
  - (b) Certificate of attendance;
  - (c) Affidavit signed by the instructor; or

(d) ~~Receipt for a fee paid to a sponsor; or~~

~~(e) A written summary of attendance and participation.~~

(3) If not previously approved, the board shall determine whether the continuing education program submitted is relevant to the practice of landscape architecture and furthers the competence of the licensee.

(a) If the activity qualifies as continuing education, the board shall include the number of hours earned for that activity in determining if the applicant obtained the required twelve (12) hours of continuing education.

(b) If the activity does not qualify as continuing education, the board shall deduct the number of hours claimed for that activity from the total number of hours earned by the licensee. After this calculation, if a licensee does not have the required twelve (12) hours of continuing education, the board shall send written notification to the licensee that:

1. The licensee did not meet the continuing education requirements because an activity listed on the applicant's form as a continuing education activity did not qualify for continuing education credit; and
2. The board shall suspend his or her license if the requirements of subsection (4) of this section are not met.

(4) The license of the licensee shall be suspended if the licensee fails to:

(a) Complete the required number of continuing education hours within sixty (60) days of the notification from the board; and

(b) Submit to the board a completed and updated ~~[""]~~Continuing Education Approval Request and Affidavit Form~~[""]~~ (Form #CE-1) within sixty-five (65) days of the notification from the board.

Section 8. Reciprocity. Credit for continuing education earned by a licensee who does not reside in Kentucky shall be granted if the licensee meets all the requirements of this administrative regulation.

Section 9. Exempt Licensee.

(1) A licensee shall be exempt from the continuing education requirements:

(a) For the partial year period of initial licensure;

(b) During the period of time in which the licensee has an inactive license~~[in accordance with the provisions of Section 10 of this administrative regulation];~~ or

(c) If the board approves a written request for an exemption submitted by the licensee in accordance with the provisions of subsection (2) of this section.

(2) A licensee may request an exemption from the continuing education requirements by submitting written document that the licensee was:

(a) Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days during the calendar year; or

(b) Unable to complete the requirements because of:

1. Physical disability;
2. Personal illness; or
3. Illness of a family member or dependent.

~~[Section 10.] [Inactive License.]~~

~~[(1)] [A licensee may choose to inactivate his license.]~~

~~[(2)] [During the period a license is inactive, a licensee shall:]~~

~~[(a)] [Be exempt from the provisions of this administrative regulation; and]~~

~~[(b)] [Not practice landscape architecture.]~~

~~[Section 11.] [Reinstatement of Suspended or Inactive License.]~~

~~[(1)] [Prior to reinstatement of a suspended or inactive license, a licensee shall complete the number of continuing education hours required for the annual renewal of the license times the number of years the license was suspended or inactive.]~~

~~[(2)] [The number of continuing education hours required by subsection (1) of this section shall not exceed twenty four (24) hours.]~~

Section 10.~~[Section 12.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Continuing Education Approval Request and Affidavit Form" (Form #CE-1), May 2002 edition; and

(b) "Continuing Education Preapproval Request and Affidavit Form" (Form #CE-2), May 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, B350, Lexington, Kentucky 40504, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the agency's Web site at [kbla.ky.gov](http://kbla.ky.gov).**

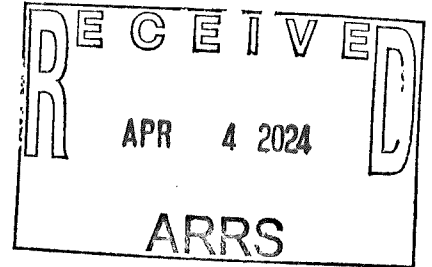
CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email [ky.labd@ky.gov](mailto:ky.labd@ky.gov).

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

## KENTUCKY BOARD OF NURSING

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

Andy Beshear  
Governor



April 4, 2024

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 20:370. Applications for licensure.

Dear Co-Chairs West and Lewis:

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

Sincerely,

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



Final, 3-21-2024

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS  
Board of Nursing**

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

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(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 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

- (1) Submit the completed application to the board office, for:
  - (a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;
  - (b) RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;
  - (c) Licensure or reinstatement as an Advanced Practice Registered Nurse, Application for Licensure as an Advanced Practice Registered Nurse;
  - (d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;
  - (e) Retired licensure status, Application ***to Retire a License[for Retired Status];***
  - (f) APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky); ***or***
  - (g) APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; ~~***or***~~
  - (h) In addition to any other renewal form, for APRN renewal, APRN Practice Data;***
- (2) Submit the current application fee, as required by 201 KAR 20:240;
- (3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;
- (4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;
- (5) Have paid all monies due to the board;
- (6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;
- (7) Submit additional information as required by the board in 201 KAR Chapter 20;
- (8) Meet the additional requirements for:
  - (a) Licensure by examination established by 201 KAR 20:070;
  - (b) Licensure by endorsement established by 201 KAR 20:110;
  - (c) Licensure by reinstatement established by 201 KAR 20:225;
  - (d) Licensure by renewal established by 201 KAR 20:230;
  - (e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or
  - (f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;
- (9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and
- (10) Notify the board upon establishment of a new mailing address.

Section 2. An application shall lapse and the fee shall be forfeited if the application is not completed:

- (1) For an application for licensure by endorsement, within one (1) year from the date the application form is ~~filed~~submitted with the board office;
- (2) For an application for licensure by examination, within one (1) year from the date the application form is ~~filed~~submitted with the board office or the date the applicant fails the examination, whichever comes first; or
- (3) For all other applications except renewal of license applications, within one (1) year from the date the application form is ~~filed~~submitted with the board office.

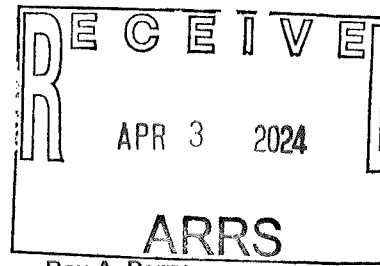
Section 3. A multistate licensee who changes primary state of residence to Kentucky shall apply for a multistate license in Kentucky within sixty (60) days.

Section 4.~~[Section 3.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Application for Licensure", 10/2022, Kentucky Board of Nursing;
  - (b) "Annual Licensure Renewal Application: RN or LPN", 02/2022, Kentucky Board of Nursing;
  - (c) "Application for Licensure as an Advanced Practice Registered Nurse", 10/2022, Kentucky Board of Nursing;
  - (d) "Annual Licensure Renewal Application: RN and APRN", 02/2022, Kentucky Board of Nursing;
  - (e) "Application ~~[for Retired Status]~~to Retire a License", ~~[8/2004]~~11/2023, Kentucky Board of Nursing;
  - (f) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 02/2022, Kentucky Board of Nursing; and
  - (g) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2022, Kentucky Board of Nursing.~~[-; and]~~
  - ~~[(h)] ["APRN Practice Data", 6/2012, Kentucky Board of Nursing.]~~

(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 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx>  
~~[https://kbn.ky.gov/General/Pages/Document-Library.aspx].~~

CONTACT PERSON: Jeffrey R. Prather, General Counsel, 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>



Andy Beshear  
GOVERNOR

Jacqueline Coleman  
LIEUTENANT GOVERNOR

**PUBLIC PROTECTION CABINET**

Department of Professional Licensing  
Kentucky Board of Licensed Professional  
Counselors  
P.O. Box 1360  
Frankfort, KY 40602  
Phone: (502) 782-8803  
Fax: (502) 564-4818

Ray A. Perry  
SECRETARY

April 3, 2024

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: Staff Suggested Amendments  
201 KAR 36:100**

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 36:100, the Kentucky Board of Licensed Professional Counselors proposes the attached amendment to 201 KAR 36:100.

Sincerely,

Sara B. Janes  
Staff Attorney III  
Public Protection Cabinet  
Department of Professional Licensing  
as Board Counsel on behalf of the Kentucky  
Board of Licensed Professional Counselors  
500 Mero Street  
Frankfort, Kentucky 40601

Final, 4-1-2024

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS**

**Board of Licensed Professional Counselors**

**201 KAR 36:100. Counseling compact.**

RELATES TO: KRS 335.560

STATUTORY AUTHORITY: KRS 335.515, 335.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.560, Section 16.B.1. requires the Board of Licensed Professional Counselors to review any rule adopted by the Counseling Compact pursuant to Section 11 of KRS 335.560 within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Counseling Compact.

Section 1. The Board of Licensed Professional Counselors shall comply with all rules of the Counseling Compact, which includes the Counseling Compact Rules as of January 10, 2024~~[October 25, 2023]~~.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "The Counseling Compact Rules", January 10, 2024~~[October 25, 2023]~~, and as revised.

(a) Chapter 2 – Definitions, adopted October 25, 2023;

(b) Chapter 3 – Examination Requirements, adopted October 25, 2023; and

(c) Chapter 4 – Data System Reporting Requirements, adopted January 10, 2024.

(2)

(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may also be obtained on the Board of Licensed Professional Counselors' Web site at <https://lpc.ky.gov/>.

(3) This material may also be obtained at:

(a) The Counseling Compact Commission, 108 Wind Haven Drive, Suite A, Nicholasville, Kentucky 40356; or[-]

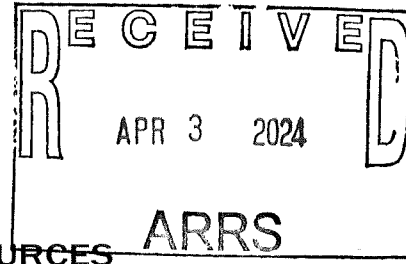
(b) <https://counselingcompact.org/compact-commission/rulemaking/>

[\[https://counselingcompact.org/contact-us/\]](https://counselingcompact.org/contact-us/).

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709 (office), fax (502) 564-4818, email [Sara.Janes@ky.gov](mailto:Sara.Janes@ky.gov), link to public comment portal: [https://ppc.ky.gov/reg\\_comment.aspx](https://ppc.ky.gov/reg_comment.aspx).

**MATERIAL INCORPORATED BY REFERENCE**

At the time that the agency files this staff suggested amendment it needs to file one (1) clean copy of "Chapter 4-Data System Reporting Requirements" as adopted on January 10, 2024.



**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 3, 2024

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

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

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:140, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 1:140.

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: 03/29/24 at 8:26 a.m.

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

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

RELATES TO: KRS 150.010(32), 150.450(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department~~[département]~~of Fish and Wildlife Resources to regulate the size or type of devices and methods used to take fish and wildlife, including places where taking is allowed~~[permitted]~~~~[the places where they may be taken]~~. KRS 150.175(3) ~~and~~~~;~~ (4) ~~authorize~~~~[authorizes]~~ the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes restrictions on the use of gill and trammel nets at Kentucky and Barkley lakes~~[Lakes]~~.

~~Section 1.~~ [Definitions.]

~~[(1)]~~ ["Bar mesh size" means the distance between two (2) knots on a line of a net.]

~~[(2)]~~ ["Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.]

~~[(3)]~~ ["Permit" means a special commercial fishing permit.]

~~[(4)]~~ ["Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin.]

~~[(5)]~~ ["Rough fish" is defined by KRS 150.010(37).]

~~[(6)]~~ ["Whip set" means a gill net or a trammel net rigged so it is free-floating.]

~~[Section 2.]~~ Permit Requirements.

(1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) The department shall not issue more than twenty-five (25) permits.

(3) A permit holder shall submit a completed ~~[permit-]~~Application ***for a Special Commercial Fishing Permit*** to the department, along with the appropriate permit fee established in 301 KAR ~~5:022~~***3:022***, postmarked on or before November 1 to retain the permit privilege.

(4) The ability to purchase a permit shall only be transferred to immediate family members.

(5) New permits shall not be issued until the total number of permits is less than twenty-five (25).

(6) A ~~[lottery-]~~drawing shall be used to select new permittees if the total number of permits is less than twenty-five (25).

(a) A person applying for a vacant permit shall submit to the department a completed Application for a Special Commercial Fishing Permit postmarked on or before November 1, along with the appropriate fee established in 301 KAR ~~5:022~~***3:022***.

(b) The maximum number of permits issued to nonresidents shall be seven (7).

~~Section 3.~~Section 2. [Section 3.] Permit Requirements.

(1) A person shall possess and carry a valid permit and a valid commercial fishing license:

(a) If using a gill net or trammel net to take rough fish:

1. From November 1 through March 31 at both Kentucky and Barkley lakes~~[Lakes]~~; and

2. In the portions of Kentucky and Barkley ~~lakes~~[Lakes] open to commercial fishing as established in 301 KAR 1:150:~~[.]~~

- (b) If transporting a gill net or trammel net; and
- (c) If selling fish taken with a gill net or trammel net.

(2) A person shall:

- (a) Tag a gill net or trammel net as established in KRS 150.175(4);
- (b) Not use a gill net or trammel net with a bar mesh size smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:
  - 1. A whip set may have a minimum bar mesh size of three (3) inches; and
  - 2. Beginning on November 15 and running through March 31 at both Kentucky and Barkley ~~lakes~~[Lakes], gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5) may be used in stationary sets only;
- (c) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;
- (d) Tend each net, except whip sets, at least once every twenty-four (24) hours;
- (e) Not leave whip sets unattended;
- (f) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;
- (g) Not dispose of any commercially caught rough fish at public boat launch areas; and
- (h) Not harvest paddlefish at both Kentucky and Barkley ~~lakes~~[Lakes] during the special commercial fishing season if the paddlefish are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.

(3) A permit holder may be accompanied by two (2) unlicensed helpers, who shall be:

- (a) In the same boat with the permit holder if fishing with a gill net or a trammel net; or
- (b) Accompanied by the permit holder if transporting or selling fish taken under the permit.

(4) A permit holder shall:

- (a) Maintain an accurate record of daily fishing activity; and
- (b) Submit a completed Monthly Report of Commercial Fish Harvest in Kentucky to the department by the tenth day of the following month [~~on the Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department~~].

### Section 3.[Section 4.] Paddlefish Harvest Requirements.

(1) A person who possesses a valid permit shall be allowed to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Commercial Roe-bearing Fish Harvester's Permit.

(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all Commercial Roe-bearing Fish Harvester Permit reporting requirements established in 301 KAR 1:155, Section ~~13(2)~~[4(4)].

### Section 4.[Section 5.] Permit Suspension, Revocation, and Renewal.

(1) The department shall suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee as established in paragraphs (a) through (c) of this subsection.[~~by the following methods:~~]

- (a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

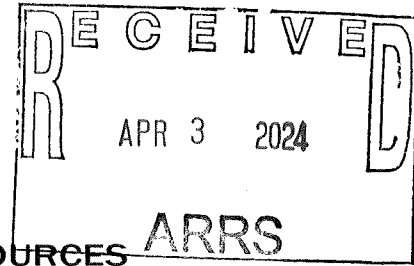
- (b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.
- (c) If a third or subsequent time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.
- (2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.
- (3) The department shall revoke or not renew a person's permit for a period of two (2) years, for the following state violations involving commercial fishing:
  - (a) Use of illegal commercial fishing gear;
  - (b) Knowingly placing commercial fishing gear in a restricted area;
  - (c) Harvesting prohibited species of fish;
  - (d) Commercially fishing, as established by 301 KAR 1:150, in waters not open to commercial fishing;or
  - (e) Knowingly falsifying commercial harvest data.
- (4) A person whose permit has been revoked or denied shall be eligible to enter the ~~[lottery]~~ drawing following the revocation period only if a permit is available based on the twenty-five (25) permit restriction established in Section ~~1[2]~~ of this administrative regulation.
- (5) A person whose permit has been revoked or denied may request an administrative hearing pursuant to KRS Chapter 13B.
- (6) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.
- (7) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.
- (8) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 5.~~[Section 6.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Application for a Special Commercial Fishing Permit", 2007 Edition;
  - (b) "Monthly Report of Commercial Fish Harvest in Kentucky", 2023 Edition~~[2008]~~; and
  - (c) "Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 2008 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.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email [fwpubliccomments@ky.gov](mailto: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 3, 2024

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

Re: 301 KAR 1:146. Commercial fishing gear.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:146, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 1:146.

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: 04/03/24 at 9:31 a.m.

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

**301 KAR 1:146. Commercial fishing gear.**

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), **150.450**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department~~[department]~~ of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting~~[to establish seasons for the taking]~~ of fish and wildlife, the restriction of places where taking is allowed~~[permitted]~~,~~[to regulate bag limits, creel limits, and methods of take,]~~ and the application of~~[to make]~~ administrative regulations~~[those requirements apply]~~ to a limited area or the entire state. This administrative regulation establishes the legal methods that may be used by commercial fishers~~[fishermen]~~ to harvest rough fish.

Section 1. ~~[Definitions.]~~

~~[(1)] ["Bar mesh size" means the distance between two (2) knots on a line of a net.]~~

~~[(2)] ["Commercial gear tag" means a metal tag provided by the department that is attached to legal commercial fishing gear as established in this administrative regulation.]~~

~~[(3)] ["Flag net" means a gill or trammel net that is anchored on one (1) end, with the other end of the net unanchored, allowing this end of the gill or trammel net to float freely.]~~

~~[Section 2.]~~ Gear Requirements.

(1) The gear listed in subsections (2) through (16) of this section shall be the only legal commercial fishing gear allowed in commercial fishing waters established in 301 KAR 1:150 and under the conditions established in 301 KAR 1:155 by a licensed commercial fisher~~[fisherman]~~.

(2) A hoop net, wing net, straight net, or heart lead net shall have a minimum bar mesh size of three (3) inches, except that the minimum mesh size shall be one (1) inch in the following waters:

(a) The Ohio River;

(b) The Mississippi River; and

(c) Those portions of the following waters open to commercial fishing pursuant to 301 KAR 1:150:

1. The Cumberland River below Barkley Dam; and

2. The Tennessee River below Kentucky Dam.

(3) A hoop may be made of any:

(a) Size;

(b) Shape; or

(c) Material.

(4) Wings and leads shall be constructed of ~~[the following material]:~~

(a) Natural multifilament; or

(b) Synthetic **multifilament**.

(5) Netting used for wings and leads shall:

(a) Be constructed of twine no smaller than number six (6) nylon or the equivalent;

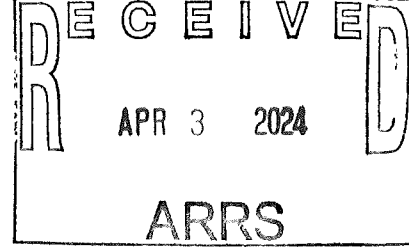
(b) Have a breaking strength of fifty-five (55) pounds or greater; and

(c) Have a bar mesh size no larger than one (1) inch.

- (6) Wings and leads may consist of either:
- (a) Knotted construction; or
  - (b) Knotless construction.
- (7) The maximum length of each hoop net wing or lead shall be sixty (60) feet.
- (8) The following nets shall be fished as individual nets:
- (a) Hoop nets;
  - (b) Wing nets;
  - (c) Straight lead nets; or
  - (d) Heart lead nets.
- (9) Wings or leads shall:
- (a) Not be tied together to become a continuous multiple net unit; and
  - (b) Be used only to lead fish into a hoop net.
- (10) One (1) commercial gear tag shall be attached to the first hoop of each net.
- (11) A gill or trammel net:
- (a) May be fished:
    1. Weighted; or
    2. As a flag net; and
  - (b) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.
- (12) A gill or trammel net shall only be used in:
- (a) The Ohio River;
  - (b) The Mississippi River; or
  - (c) An overflow lake adjacent to the Ohio or Mississippi ~~rivers~~[River] if the lake can be accessed from the river by a boat during high flow conditions, except as prohibited:
    1. On department Wildlife Management Areas pursuant to 301 KAR 4:020 or[and] 4:050; or
    2. Pursuant to the requirements of 301 KAR 1:140.
- (13) The bar mesh size on gill or trammel nets shall be:
- (a) At least three (3) inches in:
    1. The Mississippi River; and
    2. Overflow lakes adjacent to the Mississippi River;
  - (b) At least four (4) inches from November 1 through April 30 in:
    1. The Ohio River; and
    2. Overflow lakes adjacent to the Ohio River; and
  - (c) Between four (4) and four and one-half (4 1/2) inches from May 1 through October 31 in:
    1. The Ohio River; and
    2. Overflow lakes adjacent to the Ohio River.
- (14) A commercial trotline shall:
- (a) Have more than fifty (50) hooks placed no closer than eighteen (18) inches apart;
  - (b) Have one (1) commercial gear tag attached to each end of the trotline[;] and, at a minimum, one (1) commercial gear tag attached to every 100 feet of trotline;[-and]
  - (c) Not be longer than 1,000[6,000] feet; and
  - (d) Be set at least three (3) feet under the surface of the water.
- (15) A seine:
- (a) Shall have a maximum bar mesh size of one (1) inch;
  - (b) May have knotted netting if constructed of twine that is:
    1. No smaller than number six (6) nylon; or
    2. An equivalent having a breaking strength of at least fifty-five (55) pounds;

- (c) May have knotless netting if constructed of twine that is:
    - 1. No smaller than number 147 nylon; or
    - 2. An equivalent having a breaking strength of fifty (50) pounds or greater;
  - (d) Shall be constructed of:
    - 1. Natural multifilament; or
    - 2. Synthetic material;
  - (e) Shall have both float and lead lines;
  - (f) Shall have the following attached at each end:
    - 1. Wood poles;
    - 2. Fiberglass poles; or
    - 3. Brailes;
  - (g) Shall be attended by a person who pulls the seine by hand through the water to entrap fish; and
  - (h) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.
- (16) A slat trap basket shall:
- (a) Not have wire or other mesh added to any part of the trap;
  - (b) Have at least two (2) openings left between slats:
    - 1. No smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap; and
    - 2. That shall not be restricted by cross-bracings to a length shorter than eight (8) inches;
  - (c) Not be larger than two (2) feet in diameter or square-end measure; and
  - (d) Have one (1) commercial gear tag attached to the opening ring or square.

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



**Andy Beshear**  
GOVERNOR

**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR NATURAL RESOURCES**

300 Sower Boulevard  
Frankfort, Kentucky 40601  
Phone: (502) 564- 6940

**Rebecca Goodman**  
SECRETARY

**Gordon R. Slone**  
COMMISSIONER

April 3, 2024

Senator West, Co-Chair  
Representative Lewis, Co-Chair  
Legislative Research Commission  
083, Capital Annex  
702 Capital Avenue  
Frankfort, KY 40601

Dear Co-Chairs:

After consideration of the issued raised by 416 KAR 1:001, 1:010, and 1:020, the Department for Natural Resources proposes the attached suggested substitutes to these regulations.

Sincerely,

Dawn Baase  
Environmental Scientist Consultant  
Department for Natural Resources

## SUGGESTED SUBSTITUTE

Final Version: 04/02/24 at 11:03 a.m.

### 416 KAR 1:001. Definitions for 416 KAR Chapter 1.

RELATES TO: KRS 146.080 - 146.115, 224.71-100 - 224.71-140, 262.610 - 262.660

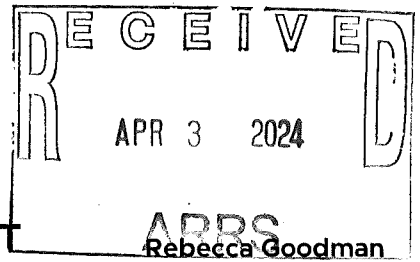
STATUTORY AUTHORITY: KRS 146.110, ~~146.115~~, 262.090, 262.610, 262.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 **and[through]** 146.115 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. KRS 262.660 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing the administration of the Equipment Revolving Loan Fund as expressed in KRS 262.610 through 262.650. This administrative regulation establishes definitions for **terms used in** 416 KAR Chapter 1.

#### Section 1. Definitions.

- (1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as tobacco, corn, soybeans, small grains, fruit, and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.
- (2) "Agriculture water quality plan" is defined by KRS 224.71-100(10).
- (3) "Animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substance emitted by animals, including **from** any form of livestock, poultry, or fish. This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.
- (4) "Applicant" for purposes of 416 KAR 1:010, means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.
- (5) "Available funds" means moneys budgeted, unobligated, and distributed to the commission for the purposes of KRS 146.115.
- (6) "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service or the Soil and Water Conservation Commission.
- (7) "Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.
- (8) "Conservation district" or "district" is defined by KRS 262.010(3).
- (9) "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.
- (10) "Direct aid" means appropriated funds awarded to conservation districts by the commission.
- (11) "District supervisor" means a member of the governing board of a conservation district.
- (12) "Division" means the Kentucky Division of Conservation.
- (13) "Eligible land" means land on which agricultural or silvicultural production is being conducted.
- (14) "Equipment" means heavy or specialized equipment purchased through the Equipment Revolving Loan Program for the purpose of conserving soil resources, the prevention and control of soil erosion, **or[and]** the conservation and protection of water resources related to those purposes.

- (15) "Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.
- (16) "Infrastructure" is defined by KRS 262.010(5).
- (17) "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.
- (18) "Primary applicant":
- (a) For purposes of 416 KAR 1:020, means:
    1. A conservation district applying on its own for equipment;
    2. The person applying jointly with a conservation district for equipment; or
    3. A conservation district applying for infrastructure; **and[.]**
  - (b) **Means the entity**~~[The primary applicant is]~~ responsible for monthly payments, insurance, liability, and operational and reporting requirements.
- (19) "Program year" means the period from July 1 to June 30.
- (20) "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.
- (21) "Surface water":
- (a) Means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes, and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; and
  - (b) Does not mean effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger.
- (22) "Surplus equipment" means heavy or specialized equipment **that is** no longer needed or has become unsuitable for use by the district.
- (23) "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.
- (24) "Watershed" means all the area from which all drainage passes a given point downstream.



**Andy Beshear**  
GOVERNOR

**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR NATURAL RESOURCES**

300 Sower Boulevard  
Frankfort, Kentucky 40601  
Phone: (502) 564- 6940

**Gordon R. Slone**  
COMMISSIONER

April 3, 2024

Senator West, Co-Chair  
Representative Lewis, Co-Chair  
Legislative Research Commission  
083, Capital Annex  
702 Capital Avenue  
Frankfort, KY 40601

Dear Co-Chairs:

After consideration of the issues raised by 416 KAR 1:001, 1:010, and 1:020, the Department for Natural Resources proposes the attached suggested substitutes to these regulations.

Sincerely,

Dawn Baase  
Environmental Scientist Consultant  
Department for Natural Resources



## SUGGESTED SUBSTITUTE

Final Version: 04/02/24 at 2:18 p.m.

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Conservation

#### 416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

RELATES TO: KRS ~~61.805 – 61.850~~, 146.080 - 146.115, 224.71-100 - 224.71-140, 262.010 – 262.660

STATUTORY AUTHORITY: KRS 146.110, ~~[ ]~~ 146.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 ~~and~~**[through]** 146.115 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund, which provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for purposes, such as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes, ~~[ ]~~ reducing the loss of topsoil vital to the sustained production of food and fiber ~~[ ]~~ and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

#### Section 1. ~~[Definitions.]~~

~~[(1)] ["Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as tobacco, corn, soybeans, small grains, fruit, and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.]~~

~~[(2)] ["Agriculture water quality plan" is defined by KRS 224.71-100(10).]~~

~~[(3)] ["Animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substance emitted by animals (including any form of livestock, poultry, or fish). This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.]~~

~~[(4)] ["Applicant" means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.]~~

~~[(5)] ["Available funds" means moneys budgeted, unobligated, and distributed to the commission for the purposes of KRS 146.115.]~~

~~[(6)] ["Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission.]~~

~~[(7)] ["Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.]~~

~~[(8)] ["Conservation district" or "district" is defined by KRS 262.010(3).]~~

~~[(9)] ["Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.]~~

~~[(10)] ["District supervisor" means a member of the governing board of a conservation district.]~~

- ~~[(11)] ["Eligible land" means land on which agricultural or silvicultural production is being conducted.]~~  
~~[(12)] ["Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.]~~  
~~[(13)] ["Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.]~~  
~~[(14)] ["Program year" means the period from July 1 to June 30.]~~  
~~[(15)] ["Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.]~~  
~~[(16)] ["Surface water":]  
(a) [Means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes, and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; and]  
(b) [Does not mean effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger.]~~  
~~[(17)] ["Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.]~~  
~~[(18)] ["Watershed" means all the area from which all drainage passes a given point downstream.]~~

~~[Section 2.] Eligibility of Persons.~~

- (1) Eligible persons. ~~**A person**~~~~**[Persons]**~~ conducting agricultural or silvicultural production shall be eligible to receive cost-share assistance for best management practices if ~~**the person**~~:
- ~~**[The person]**~~Has prepared an agriculture water quality plan; and
  - ~~**[The person]**~~Agrees to perform and to maintain best management practices for the period of time established ~~**for each practice in accordance with the Kentucky Soil Erosion and Water Quality Cost-share Handbook**~~~~**[by the commission]**~~.
- (2) Ineligible persons. A person engaged in agricultural or silvicultural production shall not be eligible for further cost-share assistance if the applicant has ~~**failed**~~:
- ~~**[Failed]**~~Or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" pursuant to KRS 224.71-130~~**(2)**~~; or
  - ~~**[Failed]**~~To comply with practice lifespans or complete previous cost-share projects within five (5) years prior to the application date.

~~Section 2.~~~~[Section 3.] Eligible Best Management Practices.~~

- (1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for:
- Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;
  - Reducing the loss of topsoil vital to sustain production of food and fiber; and
  - Preventing surface water and groundwater pollution.
- (2) Approved best management practices. Complete listings of eligible best management practices are contained in the ~~2019~~-Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook.

~~Section 3.~~~~[Section 4.] Solicitation of Applications.~~

- (1) The commission shall establish for each program year, a deadline for submittal of applications for cost-share assistance.

(2) Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as electronic media, local newspapers, local radio stations, and any newsletters published by the district.

Section 4.~~[Section 5.]~~ Contents and Completion of Applications.

(1) Contents of application. An applicant shall submit to the ~~[conservation]~~ district in which the eligible land is located the Kentucky Soil and Water Cost Share Program Application, found at <https://dep.gateway.ky.gov/eForms/Main/Forms.aspx>, in order to apply for cost-share assistance. The applicant shall include with the application:

(a) An agriculture water quality plan in effect for the eligible land that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110; and

(b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost that the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.

(2) An applicant applying for cost-share funds for best management practices involving nutrient storage shall include a nutrient management plan as established in the Statewide Agriculture Water Quality Plan.

(3)

(a) Completion of applications. An applicant who does not have an agriculture water quality plan that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110, in effect for the eligible land, or who has not determined the anticipated total cost of the requested best management practice, may request technical assistance from the ~~[conservation]~~ district in developing a best management practices plan and determining costs.

(b) If the best management practices plan has been developed and the anticipated total cost determined, the application shall be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

Section 5.~~[Section 6.]~~ Review of Applications.

(1) Each ~~[conservation]~~ district shall review and **verify an applicant's eligibility in accordance with Section 1 of this administrative regulation**~~[determine the eligibility of all applications submitted to the district]~~ by the established deadline.

(2) The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 **through**~~[to]~~ 61.850, and record the outcome in the minutes of the board of supervisors for that meeting.

(3) A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility.

(4) The district shall forward the applications to the commission within fifteen (15) days after determining eligibility.

Section 6.~~[Section 7.]~~ Prioritization of Applications. The commission shall prioritize the applications of persons determined by the ~~[conservation]~~ districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

(1) Classification of priorities. Applications shall be prioritized based on:

- (a) Applicants conducting agricultural or silvicultural production needing animal waste management systems ***in which[where]*** animal waste has been identified by the Energy and Environment Cabinet as a water pollution problem; and
  - (b) Applicants who are members of agricultural districts.
- (2) Applications within each classification established in subsection (1) of this section shall be prioritized based on:
- (a)
    - 1. Presence of water pollution, based on:
      - a. Notification by a local, state, or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;
      - b. Determination of the Energy and Environment Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;
      - c. Identification by the Energy and Environment Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production; or
      - d. Other documentation of water pollution, such as through a biological assessment;
    - 2. Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted;
  - (b) Types of water pollutants:
    - 1. Animal waste;
    - 2. Sediment run-off;
    - 3. Nutrient loading; or
    - 4. Pesticide application, storage or disposal;
  - (c) Proximity of pollutant to groundwater or surface water;
  - (d) Magnitude of water pollution; and
  - (e) Location in a priority watershed as established by the Agriculture Water Quality Authority or Division of Water including a source water protection area.

Section 7. ~~[Section 8.]~~ Allocation of Cost-share Assistance.

- (1) The available funds received by the commission for the cost-share program shall be held by the ~~[Kentucky]~~ Division of Conservation and disbursed to the ~~[conservation]~~ districts based on requests from the districts approved by the commission after a practice has been completed and all paperwork has been signed as complete and submitted for payment. The district shall be granted a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund that shall be held by the division ~~[Kentucky Division of Conservation]~~ based on the commission's approval of an initial district request in accordance with the prioritization system established in Section 6 ~~[7]~~ of this administrative regulation.
- (2) Any funds granted by the commission and distributed by the division ~~[Kentucky Division of Conservation]~~ to a district for a practice that results in overpayment shall revert to the commission if the district has not received prior permission to obligate the funds to another applicant within one (1) year from receipt.
- (3) The commission shall retain ten (10) percent of the annual appropriation in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the agriculture water quality program mandated by ***KRS*** Subchapter ***224.71*** ~~[71 of KRS Chapter 224]~~.

Section 8. ~~[Section 9.]~~ Design of Best Management Practices. Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

Section 9.~~[Section 10.]~~ Execution of Performance and Maintenance Agreements. After an application has been awarded cost-share assistance and before the applicant has received payment of the cost-share funds, the applicant and the ~~[conservation]~~district shall execute a performance and maintenance agreement.

(1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to comply with paragraphs (a) through (d) of this subsection.

(a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation.

(b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed upon in the performance and maintenance agreement.

(c) Upon completion of the approved best management practice, the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all vouchers, bills, and receipts associated with the practice.

(d) The applicant shall agree that, at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed.

(e) Approved applicants shall complete the practice within one (1) year from the date of approval. Upon request, the division~~[Division of Conservation]~~ shall grant a six (6) month extension per approved application. After two (2) extensions have been granted and expired, the landowner shall forfeit the right to the funds.

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed.

(a) The district shall require a refund of cost-share assistance funds if the district determines:

1. An approved best management practice has not been maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement; or

2.

a. The applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of the lifespan.

b. If the applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds pursuant to clause a. of this subparagraph, then the applicant shall only be responsible for refunding to the district the amount of funds prorated on the number of years remaining in the best management practice maintenance agreement.

(b)

1. If the district determines that the applicant shall refund the amount of the cost-share, the applicant shall have thirty (30) days to make payment to the district. The district may grant the applicant an extension of time to make the refund upon the submission of a written request by the applicant.

2. If the applicant fails to timely refund the amount of the cost-share, the district shall refer the matter to the commission.

3. If the district declines to seek a refund, the district shall state its reason for not doing so and notify the commission and the applicant. The commission shall review the matter, **applying the criteria**

**established in paragraphs (a)1. and 2. of this subsection, to verify the district's decision to**~~to determine whether or~~ not ~~[to]~~ seek a refund.

4. If the commission becomes aware of a situation **as established in** in paragraphs (a)1. or (a)2. of this subsection, and the district fails to review the matter, the commission shall conduct **the commission's own**~~[a]~~ review of the matter and determine whether or not to seek a refund.

5. The commission shall be authorized to recover the amount of the cost-share by initiating a legal action in the Franklin Circuit Court.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and that later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has been installed in accordance with the ~~[2019-]~~Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook.

(6) Limitations on awards.

(a) Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may include in-kind support, with a maximum of \$20,000 per year.

(b) An applicant shall only submit one **(1)** application per program year.

(c) Cost-share assistance may be used with federal or local cost-share funds on the same practices if the total cost share payment does not exceed seventy-five (75) percent of the practice cost.

(d) Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 10.~~[Section 11.]~~ Reporting and Accounting. District reporting and accounting. A district shall:

(1) Maintain a control ledger showing the current approved applications to the commission and cost share approved amounts for approved applications, based on estimated cost;

(2) Submit a monthly~~[quarterly]~~ report to the commission indicating any unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(3) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(4) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

(a) The approved application for allocated funds;

(b) A copy of the estimated cost sheet;

(c) Certification of practice completion;

(d) Applicant's vouchers, bills, or receipts;

(e) Final designs for best management practices;

(f) The performance and maintenance agreement;

(g) Any amendments to the performance and maintenance agreement; and

(h) A map locating the practices.

Section 11.~~[Section 12.]~~ Appeals.

(1) Procedure for filing appeal. An applicant aggrieved by a decision of the commission denying an application or limiting the amount of financial assistance may file a written appeal with the commission. The appeal shall be filed within thirty (30) days of the decision and shall state the basis for the appeal.

(2) Procedure for hearing appeal.

(a) The commission shall notify the applicant and the local district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal.

(b) The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

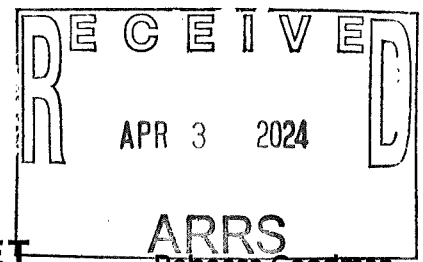
Section 12. [~~Section 13.~~] Incorporation by Reference.

(1) "[~~The 2019-~~]Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook", December 2023 [~~October 2019~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.

(3) This material may also be obtained at the Division of Conservation's Web site at <https://eec.ky.gov/Natural-Resources/Conservation/Pages/State-Cost-Share.aspx>.

CONTACT PERSON: Dawn Baase, Environmental Scientist Consultant, Department for Natural Resources, Office of the Commissioner, 300 Sower Blvd, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6311, fax (502) 564-4245, email Dawn.Baase@ky.gov



**Andy Beshear**  
GOVERNOR

**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR NATURAL RESOURCES**

300 Sower Boulevard  
Frankfort, Kentucky 40601  
Phone: (502) 564- 6940

**ARRS**  
Rebecca Goodman  
SECRETARY

**Gordon R. Slone**  
COMMISSIONER

April 3, 2024

Senator West, Co-Chair  
Representative Lewis, Co-Chair  
Legislative Research Commission  
083, Capital Annex  
702 Capital Avenue  
Frankfort, KY 40601

Dear Co-Chairs:

After consideration of the issues raised by 416 KAR 1:001, 1:010, and 1:020, the Department for Natural Resources proposes the attached suggested substitutes to these regulations.

Sincerely,

Dawn Baase  
Environmental Scientist Consultant  
Department for Natural Resources



## SUGGESTED SUBSTITUTE

Final Version: 04/02/24 at 2:48 p.m.

### 416 KAR 1:020. Equipment Revolving Loan Program.

RELATES TO: KRS Chapter 45A, 56, 61.805 – 61.850, 262.610 - 262.650, 262.660, 355.9-525, Chapter 424

STATUTORY AUTHORITY: KRS 262.090(4), 262.610, 262.660(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.660(1) authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing the administration of the Equipment Revolving Loan Fund as expressed in KRS 262.610 through 262.650. This administrative regulation establishes the requirements and procedures for participation in the Equipment Revolving Loan Program.

#### Section 1. Applicability.

- (1) The provisions of this administrative regulation shall apply to persons and conservation districts applying for Equipment Revolving Loan Program funding for heavy or specialized equipment and infrastructure.
- (2) The Equipment Revolving Loan Program shall be limited to the:
  - (a) Purchase cost of heavy or specialized equipment used for conserving soil resources, prevention and control of soil erosion, and conservation and protection of water resources related to those purposes; and
  - (b) Purchase or lease costs for infrastructure, including costs of improvements to infrastructure, if sought by a conservation district.
- (3) The Equipment Revolving Loan Program shall not be used to reimburse for previous purchases of equipment or infrastructure.
- (4) Equipment purchased using funds from the Equipment Revolving Loan Program shall not be used for:
  - (a) Activities that do not comply with subsection (2)(a) of this section; or
  - (b) ~~including~~ Clear cutting operations or strip mining activities.

#### Section 2. General Requirements.

- (1) Conservation districts, or a district jointly with a person residing within the district, that purchase heavy or specialized equipment using funds from the Equipment Revolving Loan Program shall comply with the requirements in paragraphs (a) through (e) of this subsection.
  - (a) A person residing within the district shall be the primary applicant if[when] applying jointly with a conservation district. if[When] a person residing within the district is the primary applicant, the district shall procure the equipment and execute a lease agreement with the person.
  - (b) Any two (2) or more conservation districts may combine efforts to purchase an eligible piece of equipment, with one (1) district designated as the primary applicant.
  - (c) The primary applicant shall provide one-third (1/3) the amount of the total cost of the equipment.
  - (d) The district shall adhere to the provisions in KRS Chapter 45A.
  - (e) All equipment shall be new, or warranted as new, from a licensed equipment dealer.
- (2) Conservation districts that use funds from the Equipment Revolving Loan Program for infrastructure shall: ~~comply with the requirements in paragraphs (a) through (d) of this subsection.~~
  - (a) Adhere to the provisions in KRS Chapters 45A and 56; ~~;~~
  - (b) Provide, at a minimum, ten (10) percent of the total purchase cost or lease payments; ~~;~~
  - (c) Pay for all necessary property taxes and maintain infrastructure; and; ~~;~~

- (d) Not convey or encumber any interest in infrastructure ~~if [without prior division approval, as long as]~~ the division holds title to the infrastructure.
- (3) Conservation districts ~~that [who]~~ are also the primary applicant for infrastructure may:
- (a) Add costs incurred for completing Finance and Administration Cabinet requirements pursuant to KRS Chapter 56 to the total loan amount advanced by the division. Those funds shall be included in the total funds the primary applicant agrees to repay; and
  - (b) Sublease portions of purchased infrastructure that are not essential to the operation of the district to a capable party or vendor, with the district maintaining primary occupancy of the infrastructure. The primary applicant shall ensure ~~that~~ taxes and insurance requirements ~~shall be [are]~~ maintained.
- (4) Districts shall grant access to the division, Finance and Administration Cabinet, and Auditor of Public Accounts to any books, documents, papers, records, or other evidence directly related to the loan for the purpose of financial audit or program review.
- (5) Any legal action brought to enforce the terms of a promissory note or loan shall be filed in a court in Franklin County, Kentucky.

### Section 3. Equipment Revolving Loan Program Application Procedures.

- (1) Conservation districts, or a district applying jointly with a person residing within the district, seeking funding for the purchase of heavy or specialized equipment, or districts seeking funding for infrastructure shall apply to the Soil and Water Conservation Commission by submitting **a completed Conservation District Equipment Loan Application, DOC-01, [an application]** to the Division of Conservation.
- (2) Prior to applying to the commission, funding requests for equipment and infrastructure shall be voted upon by the board of supervisors for a district at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 through 61.850.
- (3) Upon district approval pursuant to subsection (2) of this section, applications shall be submitted in accordance with subsections (4) through (6) of this section.
- (4) A district requesting funding for heavy or specialized equipment shall:
- (a) Complete a Conservation District Equipment Loan Application, DOC-01, which **shall include [includes]** a copy of the district's most recent Annual Financial Report, a minimum of three (3) bids for each piece of equipment, and documentation demonstrating how the model procurement code shall be followed; and
  - (b) Submit completed applications to the division. If two (2) or more districts are applying jointly, each district shall complete an application. The district designated as the primary applicant shall submit applications from all parties in one **(1)** application package, including all required documentation, to the division.
- (5) A district requesting funding jointly with a person residing within the district for heavy or specialized equipment shall:
- (a) Complete a Conservation District Equipment Loan Application, DOC-01, which **shall include [includes]** a copy of the district's most recent Annual Financial Report and documentation demonstrating how the model procurement code shall be followed;
  - (b) Require the person residing within the district to complete and submit a Joint Equipment Loan Application, DOC-02, which **shall include [includes]** a copy of the person's credit report, and a minimum of three (3) bids for each piece of equipment; and
  - (c) Submit applications, including the required documentation, from all parties in one **(1)** application package to the division.
- (6) A district requesting funding for infrastructure shall:

- (a) Complete an Infrastructure Equipment Loan Application, DOC-03, which ***shall include[includes]*** a copy of the district's most recent Annual Financial Report, current Annual Budget, and documentation demonstrating how the model procurement code shall be followed; and
- (b) Submit completed applications to the division. If two (2) or more districts are applying jointly, each district shall complete an application. The district designated as the primary applicant shall submit applications from all parties in one (1) application package, including all required documentation, to the division.
- (7) The division shall review submitted applications for administrative completeness.
- (a) A district shall be notified of application deficiencies and have the opportunity to make corrections.
- (b) Complete applications shall be referred to the commission for consideration.
- (8) *The commission shall consider the proposed use of the equipment or infrastructure, the district's financial ability to repay the loan, and the district's reporting and payment history in considering application approval.***
- (9)** A district shall be notified of the commission's final decision on the request for funds from the Equipment Revolving Loan Program.
- (10)[(9)]** For loans on heavy or specialized equipment, the district shall submit to the division:
- (a) The signed loan contract;
- (b) A filing fee in an amount established in KRS 355.9-525. The filing fee shall be made by check payable to the Kentucky State Treasurer; and
- (c) In cases ***in which[when]*** the district applies jointly with a person residing within the district, the legally executed lease agreement in accordance with Section 2(1)(a) of this administrative regulation.
- (11)[(10)]** Infrastructure loans ***shall be[are]*** contingent upon the district complying with the Finance and Administration Cabinet requirements pursuant to KRS Chapters 45A and 56.
- (12)[(11)]** Upon completion of the requirements established in subsections (9) and (10) of this section, the division shall file:
- (a) A lien on purchased equipment with the Kentucky Secretary of State office; and
- (b) Titles to infrastructure at the courthouse in the county where the infrastructure project is located.

#### Section 4. Interest Rates.

- (1) Loan interest rates shall be determined by the Soil and Water Conservation Commission.
- (2)
- (a) The commission may adjust interest rates for new loans at each commission meeting.
- (b) Interest rates shall not be adjusted by the commission for open loans.
- (3) The factors in paragraphs (a) and (b) of this subsection shall be considered by the commission ***for[when]*** recommending an interest rate adjustment, and by the Commissioner of the Department for Natural Resources ***for[when]*** making the final determination on the interest rate adjustment. ***Factors shall include:***
- (a) The available balance in the fund; ***and[.]***
- (b) The current interest rate as established by the Federal Open Market Committee.

#### Section 5. Loan Repayment Terms.

- (1) Repayment terms for equipment purchases shall be:
- (a) Three (3) to five (5) years for loans of less than \$100,000; or
- (b) Five (5) to seven (7) years for loans over \$100,000.
- (2) Repayment terms for infrastructure shall be determined by the commission ***based on the district's financial ability to repay the loan.***

(3) Monthly loan payments shall be submitted to the division by the tenth day of each month accompanied by the Equipment Loan Monthly Report, DOC-04, in accordance with Section 7(6) of this administrative regulation. Loan payments shall be submitted by check made payable to the Kentucky State Treasurer.

(4) Repayment penalties shall be applied if a loan is paid off in fewer than eighteen (18) months. The calculated penalty shall be the amount of interest lost by the early payoff.

(5) If a person fails to submit monthly payments under a joint application, the district shall be responsible for delinquent payments.

#### Section 6. Insurance Requirements.

(1) The primary applicant purchasing equipment using funds from the Equipment Revolving Loan Program shall carry property insurance coverage in accordance with paragraphs (a) and (b) of this subsection.

(a) Insurance coverage for property or assets against all risk of physical loss or damage, including flood and rising water, to the equipment. The insurance shall be for the full replacement value of the equipment, parts, attachments, and accessories purchased with the Equipment Revolving Loan Program funds, regardless of where the equipment is stored. The primary applicant ***shall be[is]*** responsible for the total value of the loan even in the event of loss.

(b) Liability coverage, to include bodily injury and property damage, with a combined single limit of a minimum of \$500,000 per occurrence.

(2) Districts purchasing infrastructure using funds from the Equipment Revolving Loan Program shall carry property insurance coverage in accordance with paragraphs (a) and (b) of this subsection.

(a) Insurance coverage for real property against all risk of physical loss or damage, including flood and rising water, to the infrastructure. The insurance shall be for the full replacement value of the infrastructure purchased with the Equipment Revolving Loan Program funds. The division and primary applicant shall receive remuneration in proportion to the amount of equity each party holds in the infrastructure at time of loss. The primary applicant ***shall be[is]*** responsible for the total value of the loan even in the event of loss; ***and[.]***

(b) Liability coverage, to include bodily injury and property damage, with a combined single limit of a minimum of \$1 million per occurrence.

(3) All insurance policies shall include the Commonwealth of Kentucky as an additional insured and loss payee.

(4) Insurance coverage shall be maintained until the loan is fully amortized[;] or until the district or primary applicant has been formally released of further responsibility by the division.

(5) Copies of all insurance policies, endorsements, and certificates of renewal shall be submitted to the division within sixty (60) days of issuance or amendment.

#### Section 7. Operational, Reporting, and Record Keeping Requirements.

(1) Equipment purchased using funds from the Equipment Revolving Loan Program shall meet the operational requirements in paragraphs (a) through (d) of this subsection. ***Equipment shall be:***

(a) Operated within the district, or districts, identified in the loan contract unless ***the district or districts[they]*** approve for the operation outside county boundaries;[.]

(b) Advertised by publication in accordance with the provisions of KRS Chapter 424, at a minimum, annually to inform the public of availability for use.

***1.*** The publication area shall be the district, or districts, identified in the loan contract.

***2.*** The primary applicant shall be the responsible person for publishing advertisements.

3. If the primary applicant is a district or districts, alternative internet and publication procedures may be utilized if the requirements of KRS 424.145 are met:[.]
- (c) Made readily available for rental or hire by the public; and[.]
  - (d) Rented or operated for a minimum of twenty (20) days within a six (6) month period.
- (2) Equipment shall not be used more than sixty-five (65) percent of the time on:
- (a) Land owned by district supervisors or employees of the district if[when] the district is the primary applicant; and
  - (b) Lands owned by the primary applicant if[when] a district applies jointly with a person residing within the district.
- (3) Lease or rental fees on equipment shall be established sufficient to assist in amortization payments, operation and maintenance, operator costs, and transportation of equipment to jobs. Districts shall notify the commission within thirty (30) days of any changes to approved lease or rental fees.
- (4) Administrative fees may be charged to the person by the district, if[when] a district applies jointly with a person residing within the district for equipment, not to exceed five (5) percent of the monthly amortization amount.
- (5) Equipment shall be maintained, kept in working order, and reasonably protected from the weather.
- (6) Reporting requirements for equipment and infrastructure loans shall be as[are] established in paragraphs (a) and (b) of this subsection.
- (a) A person residing within the district, who is the primary applicant of an equipment loan, shall document and report monthly to the district, at a minimum, the information in Section 5 of the Equipment Loan Monthly Report, DOC-04.
  - (b) A district shall complete and submit, to the division by the tenth day of each month, the Equipment Loan Monthly Report, DOC-04. If two (2) or more districts applied jointly, the district designated as the primary applicant shall complete and submit the Equipment Loan Monthly Report, DOC-04, to the division.
- (7) Districts using funding from the Equipment Revolving Loan Program shall maintain records on the:
- (a) Description of the equipment or infrastructure;
  - (b) Terms of the purchase or lease;
  - (c) Terms of the loan;
  - (d) Description of insurance coverage and premiums paid;
  - (e) Major repairs and circumstances impairing the use of purchased equipment or infrastructure; and
  - (f) Dollar amount paid to the division for the purpose of amortizing the loan.

#### Section 8. Default on a Contract.

- (1) Failure to make payments over a three (3) month period or to comply with the requirements in accordance with Sections 5 through 7 of this administrative regulation shall constitute a default on a contract.
- (2) The division shall notify the primary applicant in writing of a default and describe the cause of the default with [reasonable-]specificity.
- (a) The notice shall provide the primary applicant with thirty (30) days from mailing to cure the default.
  - (b) The notice shall be complete upon mailing by certified mail, return receipt requested, to the mailing address listed on the application.
- (3) For equipment purchases:
- (a) Resolutions and remedies for an uncured default shall be as[are] established in subparagraphs 1.[(1)] and 2.[(2)] of this paragraph.

1. **If[When]** a person residing within the district is the primary applicant, the district shall repossess equipment that was purchased using funds from the Equipment Revolving Loan Program. The district shall be responsible for delinquent payments in accordance with Section 5(5) of this administrative regulation and any remaining payments. Following repossession, the district shall:

a. Lease the equipment to another person residing within the district with the approval of the commission **based on the proposed use of the equipment and the financial ability to repay the loan;**

b. Enroll as the primary applicant; or

c. Sell the equipment pursuant to KRS Chapter 45A.

2. **If[When]** a district is the primary applicant, the district shall sell the equipment pursuant to KRS Chapter 45A.

(b) If a district fails to comply with paragraph (a) of this subsection, direct aid **shall[will]** be withheld until the outstanding loan balance is paid.

(c)

1. A person **[that is]** aggrieved by the decision of the district to repossess equipment pursuant to paragraph (a)**1.** of this subsection may file a written appeal with the commission. An appeal shall be filed within thirty (30) days of the repossession and shall state the basis for the appeal.

2. Procedure for hearing appeal.

a. The commission shall notify the district and person that they may appear before the commission to present testimony or written documentation on the issues presented by the appeal. Any hearing for an appeal shall **comply with[conform to the requirements of]** KRS Chapter 13B.

b. The commission shall have 100 days to make a final decision and to notify the district and person.

3. Final decisions of the commission may be appealed by the district or person to a court in Franklin County, Kentucky.

(4) For infrastructure:

(a) Resolutions and remedies for an uncured default **shall be as[are]** established in subparagraphs 1. and 2. of this paragraph.

1. Purchased infrastructure shall be disposed as surplus property pursuant to the provisions of KRS Chapters 45A and 56; or

2. Terminate the lease agreement.

(b) If the primary applicant fails to remedy any default on a contract:

1. The division shall notify the Finance and Administration Cabinet; and

2. Direct aid shall be withheld until the outstanding loan balance is paid.

(c) A district that is aggrieved by the Finance and Administration Cabinet's decision may seek a review of the decision. **The review shall be conducted** pursuant to KRS 45A.230.

#### Section 9. Loan Completion.

(1) Once the loan contract has been satisfied, the division shall issue a letter of completion formally releasing the loan.

(2) Upon receipt of a letter of completion:

(a) Purchased equipment and infrastructure shall be the property of the primary applicant;

(b) For infrastructure loans, the primary applicant shall file a transfer of title at the courthouse in the county where the infrastructure is located and **shall** take full possession of the infrastructure; or

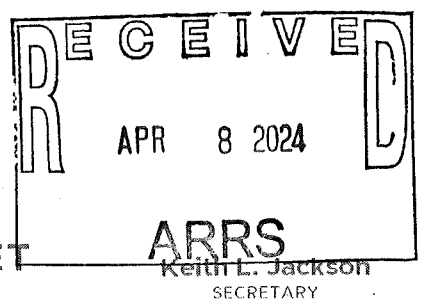
(c) The primary applicant shall be responsible for meeting the requirements of lease agreement or terminate the lease agreement.

(3) The district shall:

- (a) Maintain all records for equipment and infrastructure for ***at least*** five (5) years past the release of the title or termination of loan agreement; and
- (b) Submit to the division, within ninety (90) days from the receipt of the letter of completion, all loan records related to the equipment or infrastructure, and for equipment purchases a lien termination fee in an amount established in KRS 355.9-525. The filing fee shall be made by check payable to the Kentucky State Treasurer.
- (4) For equipment purchases, the division shall file a lien release with the Kentucky Secretary of State's office.

Section 10. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Conservation District Equipment Loan Application", DOC-01, December 2023;
  - (b) "Equipment Loan Monthly Report", DOC-04, December 2023;
  - (c) "Infrastructure Equipment Loan Application", DOC-03, December 2023; and
  - (d) "Joint Equipment Loan Application", DOC-02, December 2023.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.
- (3) This material may also be obtained at the Division of Conservation's Web site at <https://eec.ky.gov/Natural-Resources/Conservation/Pages/Equipment-Revolving-Loan-Program.aspx>.



Andy Beshear  
GOVERNOR

**JUSTICE AND PUBLIC SAFETY CABINET**

125 Holmes St.  
Frankfort, Kentucky 40601  
Phone: (502) 564-7554  
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April 8, 2024

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: 500 KAR 13:020 Internal Investigation Branch

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 500 KAR 13:020 Internal Investigation Branch, the Justice and Public Safety Cabinet proposes the attached amendment to 500 KAR 13:020.

Sincerely,

Nathan Goens, Attorney  
Justice and Public Safety Cabinet  
Office of Legal Services  
125 Holmes Street  
Frankfort, KY 40601  
(502)564-5787



SUGGESTED SUBSTITUTE

JUSTICE AND PUBLIC SAFETY CABINET  
Internal Investigations Branch

500 KAR 13:020. Internal Investigations Branch.

RELATES TO: KRS 15A.020, 620.030, 620.040

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Secretary to promulgate administrative regulations for the proper administration of the Cabinet and its programs. This administrative regulation establishes the procedures for investigations by the Internal Investigations Branch, Office of Legal Services.

Section 1. Definitions.

(1) "Disability" is defined by/in] 42 U.S.C.[A. §] 12102(1).

(2) "Excessive physical contact" means physical contact used or applied by an alleged offender against a juvenile that results in or creates a substantial risk of serious physical injury as defined by KRS 500.080(18)](17)] or death.["Exonerated" means the incident occurred, but the accused's actions were justified or proper.]

(3)](2)] "Exonerated" means the incident occurred, but the offender's actions were not improper, not excessive, or were otherwise reasonable under the circumstances.

(4) "Facility" means a group home, day treatment, residential treatment, youth development center, a detention center, any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice for the placement of juveniles[youth], or any entity housing a juvenile[youth] placed by or committed to the Department of Juvenile Justice.

(5)](4)](3)] "Finding[Findings]" means that once an investigation is completed, an incident, whether a serious incident or special incident, will be classified as being resolved under one of the following categories:

(a) ["]Exonerated, as defined in subsection (3) of this section["];] means the incident occurred, but the offender's actions were not improper, not excessive, or were otherwise reasonable under the circumstances.]

(b) ["]Not Substantiated, as defined in subsection (10) of this section["];] means, based on a preponderance of the evidence, there is insufficient evidence to determine if an incident occurred.]

(c) ["]Pending further investigation, as defined in subsection (12) of this section["];] means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.]

(d) ["]Substantiated, as defined in subsection (15) of this section["]; or] means an incident occurred, the actions of the offender were not justified, and the incident is proven by either the admission of the offender or by a preponderance of the evidence.]

(e) ["]Unfounded, as defined in subsection (16) of this section["];] means the allegations against the offender are false because the incident did not occur; or the offender was not involved in the incident].

(6)](5)](4)] "Inappropriate physical contact" means physical contact used or applied by an offender against a juvenile that has resulted or could result in physical injury as defined by KRS 500.080(16)](15)].

(7)](6)](5)] "Initiated" means any action by the Internal Investigations Branch intended to ensure the immediate safety of the victim or to obtain evidence or information relevant to the investigation.

(8) "Internal Investigations Branch" or "IIB" means the investigation unit that is part of the Office of Legal Services within the [IIB" means Internal Investigations Branch, Office of Legal Services,] Justice and Public Safety Cabinet.

~~(9)(7)(6) [(4)] "Initiation" means any action by the Internal Investigations Branch intended to ensure the immediate safety of the victim or to obtain evidence or information relevant to the investigation.~~

~~(8)(7) "Juvenile" means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.~~

~~(10) "Not substantiated" means, based on a preponderance of the evidence, there is insufficient evidence to determine if an incident occurred.~~

~~(11)(9)(8) [(5)] "Not substantiated" means there is insufficient evidence to determine if an incident occurred or if the accused was involved in the incident.~~

~~(6) "Offender" means a person:~~

- ~~(a) Who is employed at, volunteers in, visits, or contracts with a facility; and~~
- ~~(b) Against whom an allegation of a special incident has been made.~~

~~(12) "Pending further investigation" means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.~~

~~(13)(10)(9) [(7)] "Serious incident" means an act or omission committed by an offender that creates an imminent and substantial risk to, or actually causes harm to the health, safety, or welfare of a juvenile, including:~~

- ~~(a) The use of excessive physical contact that results in injury or could have resulted in injury to a juvenile;~~
- ~~(b) Inappropriate physical contact that results in an injury or could have resulted in an injury to a juvenile;~~
- ~~(c) Sexual activity by an offender on, against, involving, or in the presence of a juvenile, including any contact or interaction, that uses, permits, disregards, or encourages the use or exploitation of a juvenile for the sexual gratification of the offender or another person; or~~
- ~~(d) Permitting, inducing, assisting, or causing a juvenile to engage in:~~
  - ~~1. An offense enumerated in KRS 530.064, 530.065, or 530.070; or~~
  - ~~2. Other illegal activity.~~

~~(14)(11)(10) "Special incident" means an act or omission committed by an offender that creates a risk to, or actually causes harm to the health, safety, or welfare of a juvenile, including:~~

- ~~(a) Failure to provide appropriate supervision, medical care, food, clothing, shelter, or education;~~
- ~~(b) Use of inappropriate consequences, such as exercise, harsh physical labor, or other physical consequences as punishment in violation of accepted practices in accordance with 505 KAR Chapter 1 and DJJ Policies and Procedures;~~
- ~~(c) Harassing a juvenile;~~
- ~~(d) Actual or attempted use by an offender of a juvenile for the offender's or any other person's personal gain or self-interest;~~
- ~~(e) Accepting or soliciting a bribe or other quid pro quo from a juvenile or **the juvenile's[their]** family or indicating to a juvenile or **the juvenile's[their]** family that the offender will accept a bribe or other quid pro quo;~~
- ~~(f) Use of humiliating, demeaning, profane, racially charged, or sexually explicit language directed at a juvenile or use of any language that discriminates against a juvenile based on a juvenile's status regarding race, color, religion or creed, national origin or ancestry, sex, gender, pregnancy, sexual orientation, ~~or~~ gender identity, or disability;~~
- ~~(g) Use by an offender of threats or otherwise communicating or indicating to a juvenile that by, either act or omission, an offender will cause or permit another person to physically harm that juvenile; or~~
- ~~(h) Extending, offering, or agreeing to extend or offer any unearned special privileges to a juvenile in exchange for any money, tangible property, intangible property, services, or any other value paid, delivered, or agreed to be delivered to the offender or any other person by a juvenile.~~

(15) "Substantiated" means an incident occurred, the actions of the offender were not justified, and the incident is proven by either the admission of the offender or by a preponderance of the evidence.

(16) "Unfounded" means the allegations against the offender are false because the incident did not occur; or the offender was not involved in the incident. ["Pending further investigation" means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.]

[(8)] ["Special incident" means an act in which the health or welfare of a youth is harmed or threatened with harm by an offender, including if an offender:]

[(a)] [Uses inappropriate or excessive force that results in injury;]

[(b)] [Uses inappropriate or excessive force that could result in an injury;]

[(c)] [Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a youth for the sexual gratification of the offender or another person;]

[(d)] [Uses inappropriate consequences as punishment such as exercise, harsh physical labor, or other physical consequences outside accepted practices in accordance with 505 KAR Chapters 1 and 2 of the Department for Juvenile Justice Policies and Procedures;]

[(e)] [Allows or encourages a youth to:]

[1.] [Use drugs or alcohol;]

[2.] [Gamble; or]

[3.] [Engage in other illegal activity;]

[(f)] [Does not provide appropriate supervision, medical care, food, clothing, shelter, or education;]

[(g)] [Uses humiliating, demeaning, profane, or racially charged language directed at a youth;]

[(h)] [Uses verbal threats of harm directed at a youth;]

[(i)] [Exhibits a pattern of harassing conduct directed at a youth;]

[(j)] [Uses or attempts to use a youth for personal gain;]

[(k)] [Accepts a bribe from a youth or indicates a bribe would be accepted;]

[(l)] [Enters into any unlawful transaction with a youth as set forth in KRS 530.064, 530.065, or 530.070;]

[(m)] [Enters into a business relationship with a youth; or]

[(n)] [Extends unearned special privileges to a youth in return for something.]

[(9)] ["Substantiated" means that an incident occurred:]

[(a)] [By an admission of the person responsible; or]

[(b)] [By a preponderance of the evidence.]

[(10)] ["Unfounded" means the charges are false or the offender was not involved in the incident.]

[(11)] ["Youth" means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.]

## Section 2. Receiving a Report.

(1) The Internal Investigations Branch shall accept reports alleging facts that may be serious or [of] special incidents.

[(1)]

(a) A toll-free number shall be made available to report an incident, which shall be answered by IIB during normal business hours, 8:00 a.m. to 4:30 p.m. Eastern Time, Monday to Friday [all staff and youth to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours].

(b) A voice mailbox system on the toll-free number shall be available for reporting an incident after normal business hours. IIB shall assign an individual on a rotating basis to check the messages after normal business hours. IIB shall take action immediately if the safety of a juvenile is involved. Otherwise, IIB shall take action on the call the next business day. [The investigator shall attempt to elicit from the person reporting the special incident as much information about the incident as possible, including:]

[1.] [The nature and extent of the special incident;]

- [2.] ~~[The causes of the special incident;]~~
- [3.] ~~[The location of the victim;]~~
- [4.] ~~[Any witnesses to the special incident;]~~
- [5.] ~~[The present danger to the victim;]~~
- [6.] ~~[The offender; and]~~
- [7.] ~~[The reporting person's identity and relationship to the victim.]~~

(2) Anonymous reports that[which] give sufficient information, including the name of the alleged offender and victim, date and time of the alleged conduct, name of the facility, and nature of the alleged conduct,~~[and allege a special incident]~~ shall be accepted.

(3) Referrals from any other source that[which] give sufficient information, including the name of the alleged offender and victim, date and time of the alleged conduct, name of the facility, and nature of the alleged conduct,~~[and allege a special incident]~~ shall be accepted.

(4) If IIB needs additional information to determine whether further investigation is warranted, it shall conduct a preliminary inquiry.

### Section 3. Investigation of Reports of Serious Incidents and Special Incidents.

(1) If IIB receives a report of a serious incident, IIB shall conduct a preliminary inquiry or open an investigation.~~[special incident as defined by Section 1(8)(a) through (e) of this administrative regulation, IIB shall:]~~

~~[(a)] [Conduct an investigation in accordance with Sections 5 and 6 of this administrative regulation; or]~~

~~[(b)] [Conduct a preliminary inquiry to determine if further investigation is warranted.]~~

(2) If IIB receives a report of a special incident, IIB may conduct a preliminary inquiry, an[a full] investigation, or forward the complaint to the Department of Juvenile Justice or another appropriate authority for an investigation.~~[as defined by Section 1(8)(f) through (n) of this administrative regulation, IIB may conduct an investigation.]~~

~~[(a)] [Any allegation of an alleged special incident not investigated by IIB shall be referred by IIB management to another appropriate individual or agency for investigation.]~~

~~[(b)] [If an allegation of a special incident is referred to the Department of Juvenile Justice pursuant to paragraph (a) of this subsection, IIB shall review the investigative report and any supporting documentation.]~~

(3) IIB may investigate a report or allegation~~[involving a person who is employed at, volunteers in, visits, or contracts with a facility that does not meet the definition of a special incident]~~ at the request of the commissioner of the Department of Juvenile Justice, the commissioner's designee,~~[Commissioner or]~~ the secretary of the Justice and Public Safety Cabinet, or the secretary's designee.

(4) A report or allegation not investigated by IIB may be referred~~[by IIB management]~~ to another appropriate individual or agency.

### Section 4. Time Frames for Investigating Reports of Suspected Serious or Special Incidents. Following the receipt of the report, IIB shall complete an intake, and either open a preliminary inquiry or investigation or refer the report~~[the IIB-2 Special Incident Reporting Form shall be completed and the report investigate][d][or referred]~~ in accordance with Section 3 of this administrative regulation. IIB preliminary inquiries and investigations shall be conducted according to the time frames established in this section.

(1) If the report indicates a [the] juvenile[youth] is in imminent danger of physical harm or injury, the preliminary inquiry or investigation shall be initiated immediately including ensuring the safety of the alleged victim and any other juvenile with whom the offender may have contact and the retention of evidence. Personal contact shall be made with the victim within twenty-four (24) hours, if possible. If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort shall be made to have personal contact with the victim within three (3) workdays.

(2) If evidence is obtained that[which] warrants further investigation, an[a full] investigation shall be initiated~~[within one (1) hour and personal contact made with the victim within twenty-four (24) hours].~~

~~(3)~~~~(2)~~ If the report does not indicate imminent danger of physical harm or injury, the preliminary inquiry or investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours.

(4) Unsuccessful efforts to make personal contact shall be documented in the investigative file.

~~(a)~~ [Issues to be considered in determining how soon personal contact is made shall include:]

~~(1.)~~ [The nature of the allegation;]

~~(2.)~~ [How recently the alleged incident occurred; and]

~~(3.)~~ [The measures taken by the facility to ensure the safety of the youth.]

~~(5)~~~~(b)~~ Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

~~(6)~~~~(3)~~~~(f)~~ If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays. Unsuccessful efforts to make personal contact shall be documented in the investigative file.

~~(4)~~ The time[frames] shall begin when the report is received by IIB staff.

Section 5. ~~[Initial]~~ Investigation. The investigation of an allegation or report shall include the following:~~[If investigating an allegation or report, an IIB investigator shall:]~~

(1) A completed intake~~[Complete the IIB-2 form];~~

(2) Report of any special incidents as required by KRS 620.030 and 620.040;

(3) ~~[Notify]~~ The Commissioner of the Department of Juvenile Justice or designee shall be notified of the report;

(4) Interviews with the following:

~~(a)~~ ~~[Interview]~~ The victim, who shall be interviewed privately, outside the presence of the offender, with no more than two (2) persons present in addition to the victim and IIB investigator;

~~(b)~~~~(5)~~ ~~[Interview]~~~~(f)~~ The alleged offender; and

~~(c)~~~~(6)~~ ~~[Interview]~~~~(f)~~ Appropriate witnesses;

~~(5)~~~~(7)~~ A review of documentation relevant to the incident; and

~~(6)~~~~(8)~~ Obtaining and preserving appropriate evidence.~~[Take possession of and preserve appropriate evidence.]~~

Section 6. Determining the Validity of the Report. ~~[After the initial investigation]~~ The investigator shall:

(1) Complete a written report within thirty (30) days of receipt of the allegation, unless there are extenuating circumstances that~~[which]~~ are documented, such as law enforcement action, court proceedings, or investigator workload issues. The report shall contain:

(a) The information gathered during the investigation; and

(b) A finding regarding the allegation as exonerated, pending further investigation, substantiated, not substantiated, or unfounded~~[recommendation regarding the validity of the allegation as substantiated, unfounded, exonerated, not substantiated, or pending further investigation];~~

(2) Submit the report through supervisory channels within IIB and the Office of Legal Services~~[legal counsel]~~ for the Justice and Public Safety Cabinet for review and approval;

(3) Forward all completed investigations to the Commissioner of the Department of Juvenile Justice or the commissioner's designee; and

(4) Forward all completed investigations of substantiated special incidents that may involve abuse or neglect of a child, in accordance with KRS 620.030 to the:

(a) Cabinet for Health and Family Services; and

(b) Local commonwealth or county attorney, law enforcement, or the Kentucky State Police with the exception of all documents and evidence that are protected under Garrity v. New Jersey, 385 U.S. 493 (1967).

~~[Section 7.]~~ ~~[Incorporation by Reference.]~~

~~(1)~~ ["IIB-2, Special Incident Reporting Form", 5/15, is incorporated by reference.]

~~[(2) [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

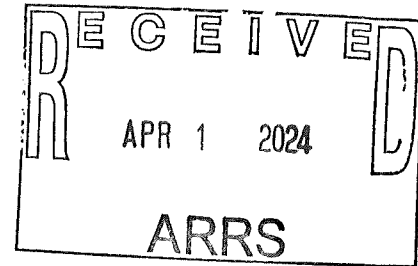
Andy Beshear  
Governor



Jamie Link  
Secretary, Education and  
Labor Cabinet

Robin Fields Kinney  
Interim Commissioner of Education

**KENTUCKY DEPARTMENT OF EDUCATION**  
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March 28, 2024

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

Re: 704 KAR 3:095. The Use of a Multitiered System of Supports

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 704 KAR 3:095, the Kentucky Board of Education proposes the attached amendment to 704 KAR 3:095.

Sincerely,

A handwritten signature in black ink that reads "Todd G. Allen". The signature is written in a cursive style.

Todd G. Allen  
General Counsel

Subcommittee Substitute

EDUCATION AND LABOR CABINET

Kentucky Board of Education

Department of Education

(As Amended at ARRS)

**704 KAR 3:095. The Use of a Multitiered System of Supports~~[Response-to-Intervention in Kindergarten through Grade 3]~~.**

RELATES TO: KRS ~~[158.305,]~~ 156.070, 156.160, 156.488, 158.070(7), **158.305**, 158.645, ~~[158.791,]~~ 158.6451, 158.6453(17)(b), 158.6459, **158.791**

STATUTORY AUTHORITY: KRS 156.070, 156.160, **156.488** 158.305(2), **158.6459**, **158.791**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 158.305(2) requires the Kentucky Board of Education to promulgate administrative regulations to further define a multitiered system of supports~~[for the district-wide use of a response-to-intervention system]~~ for individual students in K-3~~[Kindergarten through Grade 3]~~ that includes a tiered continuum of interventions, using evidence-based research, with varying levels of intensity and duration. KRS 158.6459 requires the Kentucky Department of Education to **offer support and technical assistance to** schools and school districts in developing accelerated learning opportunities to address academic deficiencies of high school students prior to high school graduation. KRS 156.488 requires the Kentucky Department of Education to develop enhanced courses **in English, reading, and mathematics to be offered to ~~[for]~~ students in grade 6, grade 9, grade 10, grade 11, and grade 12 who ~~[that]~~ are academically behind.** KRS 158.791 requires the Kentucky Department of Education to **provide technical assistance to local ~~[support]~~ school districts in **the identification of professional development activities, including ~~[developing]~~ teaching strategies to address academic deficiencies of students.**** This administrative regulation establishes the requirements for a district-wide multitiered system of supports~~[response-to-intervention system]~~ for students in K-12~~[Kindergarten through Grade 3]~~.

Section 1. Definitions. (1) "Diagnostic assessment" means a formal or informal student assessment, utilizing valid and reliable tools, given to guide instruction and tailor interventions based upon individual student academic and behavioral strengths and needs ~~[in order]~~ to accelerate progress toward proficiency.~~;~~["Core instruction" means instruction based on the state's academic standards as set forth in 704 KAR 3:303 and provided to all students.]

(2) "**Differentiated**" ~~["Differentiation"]~~ means the tailoring of curriculum, teaching environments, and practices to create appropriately different learning experiences to meet individual student needs while recognizing each student's learning differences, varying interests, readiness levels, and level of responsiveness to Tier 1 universal instruction.~~;~~

~~{(2) "Differentiated core academic and behavioral instruction" means the tailoring of curriculum,~~



teaching environments, and practices to create appropriately different learning experiences for students to meet each student's needs while recognizing each student's learning differences, varying interests, readiness levels, and level of responsiveness to the standard core instruction.]

(3) "Evidence-based" **is defined by KRS 158.305(1)(f). [~~has the same meaning as in 20 U.S.C. sec. 7801(21);~~]** [means classroom practices for which there is strong evidence of success.]

(4) "Implemented with fidelity" means the accurate and consistent [provision or] delivery or application of instructional resources, interventions, and assessments[instruction] as [it was]they were designed to be used.

(5) "Intervention" means an academic or behavioral instruction, practice, strategy, or curriculum that is identified through data-based problem-solving and provided to meet a student's academic and behavioral needs, in addition to Tier 1 universal instruction. [;]

[(5) "Intensive academic and behavioral intervention" means that, in addition to core instruction and targeted intervention instruction, a student is provided additional intervention services that are tailored to the student's individualized academic or behavioral needs.]

(6) "Multitiered system of supports" or "MTSS" means a multi-level prevention system designed to maximize student achievement and social and behavioral competencies through an integration of differentiated universal instruction, assessment, and intervention.

[(6) "Intervention" means an educational or behavioral instruction, practice, strategy, or curriculum that is provided to meet a student's academic and behavioral needs, in addition to core instruction.]

(7) "Tier 1 universal instruction" means instruction provided to all students based on the state's academic standards as set forth in 704 KAR 3:303 and 704 KAR Chapter 8, and is aligned with KRS 158.6451. [;]

[(7) "Response to intervention" means a multi-level prevention system to maximize student achievement and social and behavioral competencies through an integration of assessment and intervention.]

(8) "Tier 2 targeted intervention" means supplemental evidence-based intervention, in addition to and in alignment with Tier 1 universal instruction, for students identified by universal screening and diagnostic assessment data as at-risk for not meeting grade-level academic or behavioral benchmarks. [;]

[(8) "Targeted intervention" means the use of screening data to design appropriate interventions provided, in addition to core instruction, if a student's universal screening and other data results indicate that the student has not mastered a benchmark skill or grade level expectation in mathematics, reading, writing, or behavior.]

(9) "Tier 3 intensive intervention" means that, in addition to Tier 1 universal instruction and Tier 2 targeted intervention, a student is provided evidence-based intervention services, based on diagnostic assessment and progress monitoring data, with an intensity and duration matched to the student's individualized academic and behavioral needs. [; and]

(10)[(9)] "Universal screening" means a systematic process of analyzing students' performance at certain points during the academic year, utilizing valid and reliable tools to assess[screening that uses specific criteria to evaluate] the learning and achievement of all students in academics and related behaviors, that may include validated indicators such as course performance, attendance, and behavior data to evaluate the effectiveness of Tier 1 universal instruction and determine which students need closer monitoring or intervention[learning differences, class

attendance, tardiness, and truancy, to determine which students need closer monitoring or an intervention].

Section 2. Each local school district shall implement a comprehensive MTSS for K-12~~[response-to-intervention system for Kindergarten through Grade 3]~~ that includes:

(1) A tiered delivery system with a continuum of~~[Multi-tiered systems of support, including] differentiated Tier 1 universal~~~~[core academic and behavioral]~~ instruction~~[-and targeted]~~, Tier 2 targeted intervention, and Tier 3 intensive ~~[academic and behavioral]~~ intervention, delivered by individuals most qualified to provide the intervention services, [in-order] to~~[that]~~ maximize each student's academic and behavioral outcomes~~[student achievement and reduce behavioral problems];~~

(2) Universal screening and diagnostic assessments to determine individual student needs and baseline performance;

(3) Interventions that:

(a) Are evidence-based;

(b) Vary in intensity and duration based on student need;

(c) Meet the needs of the individual student;

(d) Are implemented with fidelity;

(e) Are delivered by individuals most qualified to provide the intervention services; and

(f) Are monitored through a comparison of baseline data collected prior to intervention and ongoing progress data;

(4) Support for early intervention to address academic and behavioral issues; and

(5) Data-based documentation of:

(a) Assessments or measures of behavior;

(b) Progress during instruction;

(c) Evaluation, at regular intervals, for continuous progress; and

(d) Individual student progress reports shared with the parents of each student in K-12~~[Kindergarten through Grade 3]~~ that summarize the student's academic skills~~[in mathematics, reading, and writing; the student's]~~ behavior~~[,]~~ and any intervention plans and services being delivered.

~~[Section 3. The response-to-intervention system for Kindergarten through Grade 3 shall coordinate with district-wide interventions required by KRS 158.792, 158.6453(11)(b), 158.6459(1), (2), (3), 704 KAR 3:305, Section 1(1)(b), (3)(d), 704 KAR 3:530, Section 2(1)(b), 704 KAR 3:285, Section 3(4), 707 KAR 1:300, Section 1, 707 KAR 1:310, Section 1(3)(a), and 707 KAR 1:320.]~~

Section 3.~~[Section 4.]~~ Each local district shall submit to the Kentucky Department of Education by October 1 of each year evidence demonstrating **district-wide** ~~[**districtwide**]~~ implementation of a comprehensive MTSS.~~[the data required by KRS 158.305(10) to the department through the Kindergarten to Grade 3 program review required in 703 KAR 5:230.]~~

(1) Evidence provided by the district shall address implementation requirements as provided in Section 2 of this administrative regulation for grades K-12.

(2) The district shall also submit evidence of implementation for K-3 required by KRS 158.305(2).

**~~[This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).]~~**

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



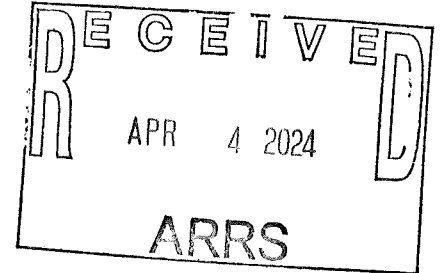
**Andy Beshear**  
GOVERNOR

## CABINET FOR HEALTH AND FAMILY SERVICES

**Eric Friedlander**  
SECRETARY

275 East Main Street, 5W-A  
Frankfort, Kentucky 40621  
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April 4, 2024



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: 900 KAR 7:030

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 900 KAR 7:030, the Cabinet for Health and Family Services proposes the attached LRC suggested substitute to 900 KAR 7:030.

Sincerely,

Stacy Carey  
Executive Staff Advisor  
Office of Legislative and Regulatory Affairs

## SUGGESTED SUBSTITUTE

Final Version: 04/04/24 at 11:08 a.m.

### CABINET FOR HEALTH AND FAMILY SERVICES Office of Data Analytics

#### 900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS [~~Chapter 13B,~~] 216.2920, 216.2925, 216.2927, 304.14-135

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

#### Section 1. Definitions.

- (1) "Ambulatory facility" is defined by KRS 216.2920(1).
- (2) "Cabinet" is defined by KRS 216.2920(2).
- (3) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", ~~and/or~~ "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document created and updated by a contracted vendor selected by the Cabinet that **contains/shall contain**~~[containing]~~ the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.
- (4) "Hospital" is defined by KRS 216.2920(6).
- (5) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for hospice care.
- (6) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.
- (7) "Outpatient services" means services performed on an outpatient basis in a hospital **with records requirements** in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility **with data requirements** in accordance with Section 4 of this administrative regulation.
- (8) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services **and is[as]** defined **accordingly** in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.
- (9) "Record" means the documentation of a hospitalization or outpatient service in the **[format prescribed by the-]** Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities **[as approved by the Statewide Data Advisory Committee-]** on a computer readable electronic medium.
- (10) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its

successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals.

(1) Inpatient hospitalization records. A hospital shall document every hospitalization it provides on a Standard Billing Form and shall, for every record, copy and provide to the cabinet the data ***established[specified]*** in Section 12 of this administrative regulation.

(2) Outpatient services records.

(a) A hospital shall document on a Standard Billing Form, the outpatient services ***the hospital[it]*** provides and shall, for every record, copy and provide to the cabinet the data ***established[specified]*** in Section 12 of this administrative regulation.

(b) A hospital shall submit records that contain the required outpatient services procedure codes ***included[specified]*** in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. A hospital shall submit required data on every patient as ***established[provided]*** in Section 12 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities.

(1) Outpatient services records.

(a) An ambulatory facility shall submit outpatient services records if the ambulatory facility provides one (1) or more of the following outpatient services:

1. Surgery;
2. Childbirth;
3. Urgent treatment of minor illness or injury;
4. Emergency;
5. Mammography;
6. X-ray;
7. Ultrasound;
8. Computed tomography;
9. Magnetic resonance imaging;
10. Cardiac catheterization;
11. Positron emission tomography; and
12. Megavoltage radiation therapy.

(b) An ambulatory facility shall document on a Standard Billing Form, the outpatient services ***the ambulatory facility[it]*** provides and shall, for every record, copy and provide to the cabinet the data ***established[specified]*** in Section 13 of this administrative regulation.

(c) An ambulatory facility shall submit records that contain the required outpatient services procedure codes ***included[specified]*** in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. An ambulatory facility shall submit required data on every patient as ***established[provided]*** in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

## Section 5. Data Finalization and Submission by Providers.

### (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payer for billing purposes, regardless of ***if[whether]*** the record has actually been submitted to a payer.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that ***the data could be adjudicated[it remains subject to adjudication]*** by a payer.

(c) Data on a hospitalization shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

### (2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation by which one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the ***required[specified]*** data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability ***if[when]*** aggregating data with other hospital records that do not contain physician charges.

### (3) Transmission of records.

(a) Records submitted to the cabinet by a hospital shall be uniformly completed and formatted according to coding and transmission specifications ***included in[set forth by]*** the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by an ambulatory facility shall be uniformly completed and formatted according to coding and transmission specifications ***included in[set forth by]*** the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) Each provider shall submit data by electronic transmission as ***included in[specified by]*** the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) Each provider shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

### (4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider, the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's data log and a verification notice.

## Section 6. Data Submission Timetable for Providers.

### (1) Quarterly submissions. Each provider shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data that during that quarter became final as ***established[specified]*** in Section 5(1) of this administrative regulation; and

- (b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.
1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.
  2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.
- (2) Submissions more frequent than quarterly. A provider may submit data after records become final as **established[specified]** in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

#### Section 7. Data Corrections for Providers.

- (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.
- (2) Submission of corrections. The cabinet shall allow a provider thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.
- (a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.
  - (b) A provider shall submit to the cabinet corrected data by electronic transmission within thirty (30) days.
  - (c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications **included[contained]** in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.
- (3) Percentage error rate.
- (a) If editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.
  - (b) If editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.
  - (c) The cabinet may return for further correction, any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

#### Section 8. Fines for Noncompliance for Providers.

- (1) A provider failing to meet quarterly submission guidelines as established in Sections 6 and 7 of this administrative regulation shall be assessed a fine of \$500 per violation.
- (2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.
- (3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine, which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of ~~Health~~Data ~~and~~ Analytics, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.
- (4) Fines during a calendar year shall not exceed \$1,500 per provider.

#### Section 9. Extension or Waiver of Data Submission Timelines.



(1) A provider experiencing extenuating circumstances or a hardship may request from the cabinet, in writing, a data submission extension or waiver.

(a) A provider shall request an extension or waiver from the Office of [~~Health-~~Data~~-and~~] Analytics on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) An extension or waiver shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether **or not** to grant an extension or waiver:

(a) Whether **or not** the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether **or not** the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

#### Section 10. Appeals for Providers.

(1) A provider notified of its noncompliance and assessed a fine pursuant to Section 8(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, the provider shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) An appeal shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary **cabinet** or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

#### Section 11. Working Contacts for Providers.

(1) On or before the last day of the data reporting period, a provider shall report by electronic transmission to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name and telephone number of the replacing person shall be reported immediately to the cabinet.

Section 12. Required Data Elements for Hospitals. A hospital shall ensure that each record submitted to the cabinet contains the data elements **included[identified]** in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

Section 13. Required Data Elements for Ambulatory Facilities. An ambulatory facility shall ensure that each record submitted to the cabinet contains the data elements **included[identified]** in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

Section 14. Required Elements for Manuals. "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" shall be created and updated by a contracted vendor selected by the cabinet. ~~**[Any changes or revisions by the vendor shall require written cabinet approval prior to implementation.]**~~ The manual shall be found on the office's ~~Web site~~~~[website]~~ at: <https://www.chfs.ky.gov/agencies/ohda/Pages/hfsd.aspx>.~~[Incorporation by Reference.]~~

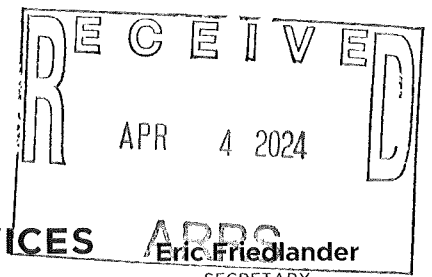
~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] ["Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised January 1, 2019; and]~~

~~[(b)] ["Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised January 1, 2019.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.



Andy Beshear  
GOVERNOR

**CABINET FOR HEALTH AND FAMILY SERVICES**

275 East Main Street, 5W-A  
Frankfort, Kentucky 40621  
Phone: (502) 564-7042  
Fax: (502) 564-7091

**ABPS**  
Eric Friedlander  
SECRETARY

April 4, 2024

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: 900 KAR 7:040

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 900 KAR 7:040, the Cabinet for Health and Family Services proposes the attached amendments to 900 KAR 7:040.

Sincerely,

Stacy Carey  
Executive Staff Advisor  
Office of Legislative and Regulatory Affairs

Attachments

Final, 3-27-2024

**STAFF-SUGGESTED AMENDMENT**

**Cabinet for Health and Family Services  
Office of Data Analytics**

**900 KAR 7:040. Release of public data sets for health facility and services data.**

**Page 4**

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

**Line 15**

After "that contains", insert "cells with".

**Line 17**

After "from the total", insert a semicolon.  
Delete the period.

**Page 4**

**Section 4(2)(b)**

**Line 18**

After "described in", insert "paragraph".  
Delete "subsection".  
After "(a)", insert "of this subsection occur".  
Delete "occurs".

**Page 4**

**Section 4(2)(b)1.**

**Line 19**

After "1.", capitalize the first letter of "totals".  
After "shall", delete "also".  
After "table", insert a semicolon.  
Delete the comma immediately following.

**Page 4**

**Section 4(2)(b)2.**

**Line 20**

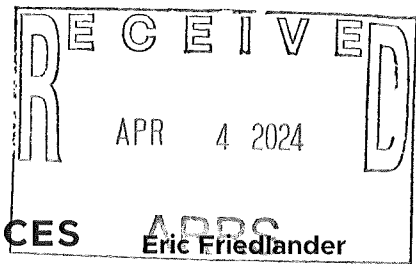
After "2.", capitalize the first letter of "the".

**Page 5**

**Section 6(2)**

**Line 22**

After "4:30 p.m.", insert the following:  
This material is also available on the office's Web site at  
<https://www.chfs.ky.gov/agencies/ohda/Pages/hfsd.aspx>.



Andy Beshear  
GOVERNOR

**CABINET FOR HEALTH AND FAMILY SERVICES**

275 East Main Street, 5W-A  
Frankfort, Kentucky 40621  
Phone: (502) 564-7042  
Fax: (502) 564-7091

April 3, 2024

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: 902 KAR 20:048

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 20:048, the Cabinet for Health and Family Services proposes the attached amendments to 902 KAR 20:048.

Sincerely,

Lucie Estill  
Staff Assistant  
Office of Legislative and Regulatory Affairs

Attachments

Final, 4-1-2024

**STAFF-SUGGESTED AMENDMENT**

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General  
Division of Health Care  
(Amended After Comments)**

**902 KAR 20:048. Operation and services; nursing homes.**

**Page 3**

**Section 1(6)**

**Line 6**

After "portion of a", insert "resident's".  
Delete "patient's".

**Page 7**

**Section 2(7)**

**Line 6**

After "program to", insert "ensure".  
Delete "assure".

**Page 9**

**Section 2(10)(b)**

**Line 19**

After "listed on the", insert "vulnerable adult maltreatment".  
Delete "caregiver misconduct".

**Page 11**

**Section 2(10)(g)2.**

**Line 5**

After "all times to", insert "ensure".  
Delete "assure".

**Page 13**

**Section 2(10)(k)2.c.(ii)**

**Line 17**

After "cards,", insert "resident".  
Delete "patient".

**Page 16**

**Section 2(11)(a)**

**Line 14**

After "records shall", insert "ensure".  
Delete "assure".

**Page 21**

**Section 3(2)(d)**

**Line 4**

After "available to", insert "ensure".

**Page 50**  
**Section 3(26)(b)**  
**Line 22**

After "design for the", insert "residents".  
Delete "patients".

**\*General Reviewer's Note:** Please file one (1) revised copy of the FEDERAL MANDATE ANALYSIS COMPARISON, paginated as page 58. There is a (5) question that was inadvertently omitted.

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation number: 902 KAR 20:048  
Contact Person: Valerie Moore  
Email: valeriek.moore@ky.gov  
Phone: 502-226-0196

(1) Federal statute or regulation constituting the federal mandate.

21 C.F.R. Part, 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8

(2) State compliance standards.

KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate.

21 C.F.R. Part 1317 sets forth the Drug Enforcement Administration's rules for the safe disposal and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances. 29 C.F.R. 1910.1030(d)(2)(vii) establishes universal precautions for preventing contact with blood or other potentially infectious materials. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires nursing homes to ensure that any unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?  
This administrative regulation does not impose requirements that are more strict than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.  
This administrative regulation does not impose requirements that are more strict than federal laws or regulations.





**Andy Beshear**  
GOVERNOR

## CABINET FOR HEALTH AND FAMILY SERVICES

275 East Main Street, 5W-A  
Frankfort, Kentucky 40621  
Phone: (502) 564-7042  
Fax: (502) 564-7091

**Eric Friedlander**  
SECRETARY

April 3, 2024

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: 902 KAR 20:086

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 20:086, the Cabinet for Health and Family Services proposes the attached amendments to 902 KAR 20:086.

Sincerely,

A handwritten signature in cursive script that reads "Lucie Estill".

Lucie Estill  
Staff Assistant  
Office of Legislative and Regulatory Affairs

Attachments

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

Final Version: 04/02/24 at 3:11 p.m.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General  
Division of Health Care**

902 KAR 20:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities~~[the mentally retarded and developmentally disabled]~~.

RELATES TO: KRS 194A.705(2)(c), 209.030, 209.032, 216.510 – 216.525, 216.532, 216.789, 216.793, 216A.080, 310.031, 315.035, 620.030, 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. 1325.3, ~~[45 C.F.R.]~~  
Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8~~[216B.010-216B.131, 216B.990(1), (2), 222.240 et. seq.]~~

STATUTORY AUTHORITY: KRS 216B.042~~[-216B.105]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient~~[mandates that the Kentucky Cabinet for Human Resources regulate]~~ health facilities and health services. This administrative regulation establishes minimum~~[provides]~~ licensure requirements for the operation and services provided by intermediate care facilities for individuals with intellectual disabilities (ICF/IID)~~[of intermediate care facilities for the mentally retarded/developmentally disabled (MR/DD)]~~.

Section 1. Definitions.

(1) "Active treatment" means the delivery of resident-specific specialized and generic training, treatment, health services, and related services directed toward the:

(a) Acquisition of behaviors necessary for the resident to function with as much self-determination and independence as possible; and

(b) Prevention or deceleration of regression or loss of current optimal functional status.~~[daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.]~~

(2) "Administrator" means a person who has a license to practice long-term care administration~~[is licensed as a nursing home administrator]~~ pursuant to KRS 216A.080.

(3) "Aversive stimuli" means things or events that the resident finds unpleasant or painful that are used to immediately discourage undesired behavior.

(4) ~~["Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.]~~

~~[(5)]~~ "Developmental disability" is defined by 45 C.F.R. 1325.3~~[means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in three (3) or more areas of major~~

life activity including self-care, receptive and expressive language, learning, self-direction, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration].

~~(5)~~~~(6)~~~~(5)~~ "Developmental nursing services" means treatment of an individual's~~[a person's developmental]~~ needs by designing interventions to modify the rate or~~[and/or]~~ direction of the individual's development ~~[especially]~~ in the areas of:

~~(a)~~ Self-help skills;~~;~~~~]~~

~~(b)~~ Personal hygiene;~~;~~~~]~~ and

~~(c)~~ Sex education~~[-while also meeting his physical and medical needs;]~~

~~(6)~~ ["Facility" means an intermediate care facility for the mentally retarded and the developmentally disabled (MR/DD).]

~~(7)~~ ["Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection].

~~(6)~~~~(7)~~ "Intellectual disability" is defined by 34 C.F.R. 300.8(c)(6).

~~(7)~~~~(8)~~ "Interdisciplinary team" means the group of people assembled by the facility who represent the professions, disciplines, or service areas that are relevant to:

~~(a)~~ Identify the resident's needs; and

~~(b)~~ Make recommendations for:

1. The resident's individual program plan; and

2. Services designed to meet the resident's needs~~[persons responsible for the diagnosis, evaluation and individualized program planning and service implementation for the resident. The team is composed of relevant professionals, and may include the resident, the resident's family, or the guardian.]~~

~~(9)~~ ["License" means an authorization issued by the cabinet for the purpose of offering intermediate care MR/DD services.]

~~(10)~~ ["MR/DD" means the mentally retarded and the developmentally disabled persons].

~~(8)~~~~(9)~~~~(11)~~ "Normalization principle" means making available to all people with disabilities patterns of life and conditions of everyday living that are as close as possible to the regular circumstances and ways of life or society~~[is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.]~~

~~(12)~~ ["Qualified dietician or nutritionist" means:]

~~(a)~~ [A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or]

~~(b)~~ [A person who has a masters degree in nutrition and is a member of the ADA or is eligible for registration by ADA; or]

~~(c)~~ [A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.]

~~[(13)] ["Qualified occupational therapist" means a graduate of a program of occupational therapy approved by the Council on Medical Education of the American Medical Association and licensed in the state, if required.]~~

~~[(14)] ["Qualified speech pathologist or audiologist" means a person who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent education and experimental requirements for such a certificate].~~

~~(9)~~~~[(10)]~~~~[(15)]~~ "Qualified social worker" means a person who:

~~(a) Meets the requirements of 42 C.F.R. 483.430(b)(5)(vi); or~~

~~(b) Has~~~~[is licensed or exempt from licensure pursuant to KRS Chapter 335 with bachelor's degree in social work from an accredited program or]~~ a bachelor's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a ~~[qualified]~~ social worker who meets the requirements of 42 C.F.R. 483.430(b)(vi).

~~(10)~~~~[(11)]~~~~[(16)]~~ ~~["A]~~Qualified intellectual disability~~[mental retardation]~~ professional (QIDP)" is defined by 42 C.F.R. 483.430(a)~~[means a person who has specialized training or one (1) year of experience in treating or working with the mentally retarded and/or developmental disabilities and is one (1) of the following:]~~

~~[(a)] [A psychologist with a master's degree from an accredited program;]~~

~~[(b)] [A licensed physician;]~~

~~[(c)] [A educator with a degree in education from an accredited program;]~~

~~[(d)] [A social worker who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in:]~~

~~[1.] [Social work from an accredited program; or]~~

~~[2.] [A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social workers;]~~

~~[(e)] [A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association.]~~

~~[(f)] [A speech pathologist or audiologist who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate;]~~

~~[(g)] [A registered nurse;]~~

~~[(h)] [A therapeutic recreation specialist who is graduate of an accredited program and is licensed in the state, if required, or who has:]~~

~~[1.] [A bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or]~~

~~[2.] [An associate degree in recreation and one (1) year of experience in recreation; or]~~

~~[3.] [A high school diploma, or an equivalency certificate; and]~~

~~[a.] [Two (2) years of experience in recreation; or]~~

~~[b.] [One (1) year of experience in recreation plus completion of comprehensive in-service training in recreation; or]~~

~~[4.] [Demonstrated proficiency and experience in conducting activities in one (1) or more recreation program areas; or]~~

[(4)] [A "rehabilitation/counselor" who is certified by the Committee on Rehabilitation Counselor Certification].

~~(11)~~[(12)][(17)] "Restraint" means any pharmaceutical[~~chemical~~] agent or [any] physical or mechanical device used to restrict the movement of a portion of an individual's body[~~an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment~~].

~~(12)~~[(13)][(18)] "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving[~~the retention of a resident alone in a locked room~~].

[(19)] ["Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.]

[(20)] ["Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart][.]

~~(13)~~[(14)][(24)] "Time-out"["Time-out"] means a procedure that[~~which~~] involves removing an individual[~~the person~~] from a reinforcing situation[.] for a period of time if[~~when~~] the individual[~~person~~] engages in a specified inappropriate behavior.

## Section 2. Scope of Operation and Services.

(1) An ICF/IID shall[~~Intermediate care facilities for mentally retarded and developmentally disabled persons~~] provide services for all age groups on a twenty-four (24) hour basis, seven (7) days per[~~a~~] week[.] in an establishment located in a[~~with~~] permanent building with[~~facilities including~~] resident beds for individuals with intellectual disabilities or related conditions who require[~~persons whose mental or physical condition requires~~] developmental nursing services and[~~along with~~] a planned program of active treatment.

(2) The facility shall provide[~~provides special~~] programs as indicated by a resident's individual program plan[~~care plans~~] to maximize the resident's mental, physical, and social development in accordance with the normalization principle.

(3) The facility shall[~~intermediate care facilities for the mentally retarded and developmentally disabled must~~] comply with the facility specification requirements of[~~specifications for Intermediate Care Facilities,~~] 902 KAR 20:056.

## Section 3. Administration and Operation.

(1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the facility; and [~~for~~]

(b) Compliance with federal, state and local laws, and administrative regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who shall[~~is~~]

(a) Be responsible for the day-to-day operation of the facility;

(b) Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's~~(and delegating such responsibility in his)~~ absence; and~~;~~

(c) ~~[The administrator shall]~~Not be the nursing services supervisor.

(3) Contracted services. The licensee shall contract for professional and supportive services not available in the facility based on~~[as dictated by]~~ the needs of each resident~~[the residents. The contract shall be in writing.]~~

(4) Administrative records.

(a) The facility shall maintain a ~~[bound, permanent, chronological]~~ resident registry that documents the~~:[showing date of admission,]~~

1. Name of each resident;

2. Date of admission; and

3. Date of discharge.

(b) The facility shall ~~[require and]~~maintain written recommendations or comments from consultants regarding the active treatment program and its development on a per visit basis.

(c) The facility shall maintain menu and food purchase records~~[-shall be maintained].~~

(d)

1. The administrator or administrator's designee shall make a written report of any incident or accident involving a:

a. Resident,~~[including a medication error[errors] or drug reaction;[reactions];]~~

b. Visitor; or

c. Staff member.

2. The report shall:

a. Identify~~[-be made and signed by the administrator or nursing services supervisor, and]~~ any staff member who witnessed the incident; and~~;~~

b. ~~[The report shall]~~Be filed in an incident file.

(5) Policies. The facility shall have~~[establish]~~ written policies and procedures that govern all services provided by the facility. The ~~[written]~~policies shall~~[-include]:~~

(a) Address resident services, including medical, nursing, habilitation, pharmaceutical~~[-(including medication stop orders policy)]~~, and residential services;

(b) Require~~[Adult and child protection. The facility shall have written policies which assure]~~ the reporting of cases of abuse, neglect, or exploitation of adults or~~[and]~~ children ~~[to the Department for Human Resources]~~ pursuant to KRS 209.030 or 620.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in process~~[Chapters 209 and 620];~~

(c) Ensure that residents are:

1. Free from unnecessary drugs and physical restraints; and

2. Provided active treatment to reduce dependency on drugs and physical restraints; and~~[Use of restraints. The facility shall have a written policy that defines the use of restraints and supportive devices and a mechanism for monitoring and controlling their use; and]~~

(d) Include~~[Missing resident procedures. The facility shall have a written procedure to-]~~**Specify** in a step-by-step manner the actions that~~[which]~~ shall be taken by staff if~~[when]~~ a resident is ~~[determined to be-]~~lost, unaccounted for, or on other unauthorized absence.

(6) Resident[Patient] rights. Resident[Patient] rights shall be provided for pursuant to KRS 216.510 to 216.525.

(7) Admission.

(a) A resident of an ICF/IID[Patients] shall:

1. Be admitted only upon the referral[approval] of a physician; and[;]  
2. ~~[The facility shall admit only persons who-]~~ Have a ~~[physical or mental-]~~ condition that[which] requires developmental nursing services and a planned program of active treatment.

(b) The interdisciplinary team shall consist of:

1. A physician;;  
2. A psychologist;;  
3. A registered nurse;;  
4. A qualified social worker; and  
5. Other professionals, at least one (1) of whom is a QIDP[~~qualified mental retardation profes-~~  
~~sional~~].

(c) Prior to admission, the interdisciplinary team shall:

1. Conduct a comprehensive evaluation of the individual no less than ninety (90) days[~~not more than three (3) months~~] before the date of admission;

2. Assess the individual's[~~covering~~] physical, emotional, social, and cognitive status[factors]; and

3. ~~[2.]~~ Determine[~~Prior to admission define~~] the need for services, including a review of[~~service without regard to availability of those services. The team shall review~~] all available [~~and applicable~~] programs of care, treatment, and training [~~and record its findings~~].

(d) Admission decisions shall be made in accordance with 42 C.F.R. 483.440.

~~(e)~~[(e)] Upon admission, the facility shall provide[~~If admission is not the best plan but the individual must be admitted nevertheless, the facility shall clearly acknowledge that the admission is inappropriate and initiate plans to actively explore alternatives;~~]

[(d)] ~~[Before admission,]~~ the resident and a responsible family member [~~of his family-~~] or guardian, if applicable, with written information regarding the facility's policies, including:

1. Services offered and charges;  
2. ~~[committee shall be informed in writing of the established policies of the facility and fees, reimbursement,]~~ Visitation rights during serious illness;;

3. Visiting hours; and[;]

4. Type of diets offered,

(f) ~~[and services offered; and]~~

[(e)] The facility shall ~~[provide and-]~~ maintain a system for:

1. Identifying each resident's personal property; and[~~facilities for~~]  
2. Safekeeping [~~of his declared-~~] valuables, including **ensuring**[**assurance**] that[;] each resident's clothing and other property **shall be**[is][~~shall be~~] reserved for the resident's[his] own use.

(8) Discharge planning. [~~Prior to discharge~~]

(a) The facility shall have a discharge planning program, which begins at admission and is an integral part of each individual's treatment plan, that [~~postinstitutional plan which-~~] identifies other settings[~~the residential setting~~] and support services that may[~~which would~~] enable a the resident to live in a less restrictive environment[~~alternative to the current setting~~].

(b) If a resident is to be transferred or discharged, the facility shall comply with requirements of 42 C.F.R. ~~483.440(b)(4)~~483.440(4) and (5)~~[Before a resident is released, the facility shall:]~~

~~[(a)] [Offer counseling to parents or guardians who requests the release of a resident concerning the advantages and disadvantages of the release;]~~

~~[(b)] [Plan for release of the resident, to assure that appropriate services are available in the resident's new environment, including protective supervision and other follow-up services; and]~~

~~[(c)] [Prepare and place in the resident's record a summary of findings, progress, and plans].~~

(9) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of a resident to a higher intensity level of care, if indicated~~[residents to other health care facilities which can provide a level of health care not provided by the facility].~~

(b) A~~[Any]~~ facility ~~that~~which does not have a transfer agreement in effect, but has attempted ~~in~~in~~[which documents a]~~ good faith ~~[attempt]~~ to enter into an agreement shall be considered to be in compliance with the requirements of paragraph (a) of this subsection~~[licensure requirement].~~

(c) The facility's transfer procedures and agreements shall:

1. State~~[Specify]~~ the responsibilities of each party~~[institution assumes]~~ in the transfer of a resident;~~[- and shall]~~

2. Establish responsibility for notifying the other party~~[institution promptly]~~ of an~~[the]~~ impending transfer; ~~and [- of a resident and shall]~~

3. Arrange for appropriate and safe transportation of the resident and resident's files.

(d) Except in cases of emergency, the administrator shall:

1. Initiate a transfer through the resident's physician if the resident's~~[When the resident's]~~ condition exceeds the scope of services of the facility; ~~or~~

2. Contract for services~~[- the resident, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for]~~ from another community resource to meet the resident's needs.

~~(e)~~(e) If a resident's condition improves and the resident may be served in a less restrictive environment,~~[When changes and progress occur which would enable the resident to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility,]~~ the facility shall offer assistance in making arrangements for the resident~~[residents]~~ to be transferred to a lower intensity level of care~~[facilities providing appropriate services].~~

~~(f)~~(f) Except in an emergency, the resident, resident's responsible family member~~[his next of kin]~~, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge~~[- of any resident].~~

~~(g)~~(e) If a resident transfers~~[When a transfer is]~~ to another level of care~~[- within the same facility]~~, the complete medical record or a current summary of the resident's medical record shall accompany the resident~~[thereof shall be transferred with the resident].~~

~~(h)~~(f) If the resident is transferred to another health care facility or other community resource, a transfer form shall:

1. Accompany the resident;~~[-]~~

2. ~~[The transfer form shall]~~ Include the following~~[at least]:~~

a. Physician's orders,~~[- (if available)];~~~~[-]~~

b. Current information regarding the resident's~~[relative to]~~ diagnosis with a history of any health conditions that require~~[problems requiring]~~ special care;~~[-]~~



c. A summary of ~~[the course of]~~ prior treatment, special supplies, or equipment needed for the resident's~~[resident]~~ care;~~;~~<sup>i</sup> and

d. Pertinent social information on the resident and resident's family.

(10) Medical records.

(a) The facility shall maintain a record for each resident that includes documentation of~~[for]~~:

1. Planning and continuous evaluation of the resident's habilitation program, including evidence of the resident's progress; and

2. Protecting the resident's rights~~[Furnishing documentary evidence of each resident's progress and response to his habilitation program; and]~~

~~[3.] [Protecting the rights of the residents, the facility and the staff].~~

(b) Each entry in a~~[All entries in the]~~ resident's record shall be legible, dated, and signed.

(c) Each record shall include;~~[At the time a resident is admitted, the facility must enter in the individual's record the following information:]~~

1. Identifying information, including:

a. Resident's name;<sup>i</sup>~~;~~

b. Date of admission;<sup>i</sup>~~;~~

c. Birth date and place of birth;<sup>i</sup>~~;~~

d. Citizenship status;<sup>i</sup>~~;~~

e. Marital status;~~[and]~~

f. Social Security number;

g.~~[2.]~~ Father's name and birthplace;<sup>i</sup>~~;~~

h. Mother's maiden name and birthplace;~~[and]~~

i. Parents' marital status;

j.~~[3.]~~ [Name and] Address of parents, [legal-]guardian, or responsible family member,~~[and next of kin] if applicable~~<sup>[needed]</sup>; and

k.~~[4.]~~ Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;

l.~~[5.]~~ Reason for admission or referral~~[problem]~~;

m.~~[6.]~~ Type and legal status of admission;

n.~~[7.]~~ Legal competency status;

o.~~[8.]~~ Language spoken or understood;

p.~~[9.]~~ Sources of support, including Social Security, veterans' benefits, or~~[and]~~ insurance;

q.~~[10.]~~ Religious affiliation, if any;

r.~~[11.]~~ Documentation of~~[Reports of]~~ the preadmission evaluation~~[evaluations]~~; and

s.~~[12.]~~ Documentation~~[Reports]~~ of assessments~~[previous histories]~~ and any other previous evaluations~~[if any]~~.

(d) Within thirty (30) days~~[one (1) month]~~ after ~~[the-]~~ admission~~[of each resident]~~, the facility shall ~~[ICF/MR must]~~ enter the following in the resident's record:

1. A report of assessments or reassessments performed by the interdisciplinary team to supplement the~~[the review and updating of the]~~ preadmission evaluation;

2. The resident's specific developmental and behavioral management needs~~[A prognosis that can be used for programming and placement]~~; and

3. A comprehensive functional assessment~~[evaluation]~~ and individual program plan developed~~[designed]~~ by the~~[an]~~ interdisciplinary team.

(e) The facility ~~shall~~ must enter the following information in a resident's record ~~during his residence~~:

1. ~~A written report of any accident, seizure, or illness, and treatment services provided~~ Reports of accidents, seizures, illnesses, and treatments for these conditions;

2. Documentation~~Records~~ of immunizations;

3. Documentation of the use of any restraint on the resident, including an explanation of~~Records of all time periods that restraints were used, with justification~~ and authorization for the restraint~~each~~;

4. Documentation of the interdisciplinary team's annual~~Reports of regular, at least annual~~ review and evaluation of the resident's individual program plan, developmental progress, and status ~~of each resident~~;

5. Observations regarding~~of~~ the resident's response to the individual~~his~~ program plan used to evaluate ~~to enable evaluation of~~ its effectiveness;

6. A record~~Records~~ of significant behavior incidents;

7. Documentation~~Records~~ of family visits and contacts;

8. Documentation of any incident in which the resident is lost, unaccounted for, or on other unauthorized absence~~Records of attendance and absences~~;

9. Correspondence pertaining to the resident;

10. ~~Periodic~~Updates as needed to~~of~~ the information initially recorded at the time of admission; and

11. A record of any applicable~~Appropriate~~ authorizations or~~and~~ consent.

(f) The facility shall~~ICF/MR must~~ enter a discharge summary in the resident's record at the time of discharge~~he is discharged~~.

(11) Confidentiality and Security: Use and Disclosure.

(a) The facility shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, and as provided by applicable federal or state law.

(b) The facility may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through 1320d-8, ~~and~~ 45 C.F.R. Parts 160 and 164, ~~and/or~~ as established in this administrative regulation, **if applicable.**

(c) The facility may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(12)~~(11)~~ Personnel.

(a) In accordance with KRS 216.532, an ICF/IID shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, an ICF/IID shall not employ or be operated by an individual who is listed on the **Vulnerable Adult Maltreatment**~~caregiver misconduct~~ Registry established by 922 KAR 5:120.

(c) An ICF/IID shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) An ICF/IID may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) through (c) of this subsection.

(e) A~~(Job descriptions;]~~ written job description~~(descriptions]~~ shall be developed for each category of personnel, including~~:[to include]~~

1. Qualifications;~~;~~
2. Lines of authority; and
3. Specific duty assignments.

(f)~~(b)]~~ [Employee records;] Current employee records shall be maintained on each staff member and contain:

1. Name and address;
2. Verification of~~[shall include a resume of each employee's]~~ training and experience, including evidence of current licensure,~~;~~~~or]~~ registration, or certification, if applicable;
3. Employee~~[where required by law;]~~ health records;
4. Annual performance evaluations; and
5. Documentation of compliance with the background check requirements of paragraphs (a) through (c) of this subsection~~[- records of in-service training and ongoing education, and the employee's name, address and Social Security number].~~

(13)~~(c)]~~ Staffing requirements.

(a) Staffing in the facility shall be sufficient in number and qualifications~~[have adequate personnel]~~ to meet the personal care, nursing care, supervision, and other needs of each resident~~[the residents]~~ on a twenty-four (24) hour basis.~~[The number and classification of personnel required shall be based on the number of residents, the amount and the kind of personal care, nursing care, supervision and program needed to meet the needs of the resident as determined by the interdisciplinary team, and the services required by this administrative regulation.]~~

(b)~~(d)]~~ The licensee shall have a QIPD~~[qualified mental retardation professional]~~ who is responsible for:

1. Supervising the delivery of each resident's individual program plan~~[of care];~~
2. Supervising the delivery of training and habilitation services;
3. Integrating the various aspects of the facility's~~[facility]~~ program;
4. Recording each resident's progress; and
5. Initiating ~~[a periodic]~~ review of each individual program plan ~~[of care]~~ for necessary changes.

(c)~~(e)]~~ Each residential~~[resident]~~ living unit shall maintain direct care staff-to-resident ratios in accordance with 42 C.F.R. 483.430(d)~~[- regardless of organization or design, must have, as a minimum, overall staff-resident ratios (allowing for a five (5) day work week plus holiday, vacation, and sick time) as follows unless program needs justify otherwise:]~~

[1.] ~~[For units serving children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one (1) to two (2);]~~

[2.] ~~[For units serving moderately retarded residents requiring habit training, the overall ratio is one (1) to two and five tenths (2.5); and]~~

[3.] ~~[For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is one (1) to five (5).]~~

~~(f)~~ [When the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination].

~~(d)~~~~(g)~~ A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in case of injury, illness, ~~or~~ fire, or other emergency~~(emergencies)~~.

~~(e)~~~~(h)~~ The use of volunteers shall not be:

1. Included in the~~(counted to make up)~~ minimum staffing requirements of this subsection; or
2. Relied upon to perform direct care services for the facility.

~~(14)~~ Nurse staffing.

~~(a)~~~~(i)~~ The facility shall have~~(Supervision of nursing services shall be by)~~ a registered nurse or licensed practical nurse during~~(employed on)~~ the day shift, seven (7) days per week to supervise nursing services.

~~(b)~~ The supervising nurse~~(supervisor)~~ shall have training and experience in the field of intellectual and developmental disabilities~~(and mental retardation)~~.

~~(c)~~ ~~If~~~~(When)~~ a licensed practical nurse serves as the supervisor, ~~(consultation shall be provided by)~~ a registered nurse shall provide consultation~~(preferably with a baccalaureate degree,)~~ at regular intervals, not less than four (4) hours weekly.

~~(d)~~ The supervising nurse's responsibilities ~~(of the nursing services supervisor)~~ shall include developing and maintaining:

1. Nursing service objectives;~~;~~
2. Standards of nursing practice;~~;~~
3. Nursing procedure manuals;~~;~~ and
4. A written job description for each level of nursing personnel.~~;~~

~~(e)~~~~(2)~~ Nursing service personnel at all levels of experience and competence shall:

1. Be assigned responsibilities in accordance with their qualifications;~~;~~
2. Delegate tasks as authorized under the nurse's scope of practice;~~(authority commensurate with their responsibility, and)~~

3. Provide appropriate professional nursing supervision; and

4.~~(3)~~ Participate in the development and implementation of resident care policies.

~~(15)~~~~(j)~~ Each~~(The)~~ facility shall retain a licensed pharmacist on a full-time, part-time, or consultant basis to direct pharmaceutical services.

~~(16)~~~~(k)~~ Each facility shall have a full-time staff person designated by the administrator who shall be;

~~(a)~~ Responsible for the total food service operation of the facility; and

~~(b)~~ On duty a minimum of thirty-five (35) hours each week.

~~(17)~~~~(l)~~ Each facility shall ensure that supportive personnel, consultants, assistants, and volunteers **shall be**~~(are)~~~~(shall be)~~ supervised and **shall** ~~(shall)~~ function within the policies and procedures of the facility.

~~(18)~~~~(m)~~ An employee who contracts a communicable or~~(Health requirements. No employee contracting an)~~ infectious disease shall:

~~(a)~~ Be immediately excluded from~~(appear at)~~ work; and

~~(b)~~ Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(19) All employees of an ICF/IID shall be screened and tested for tuberculosis in accordance with the provisions of 902 KAR 20:205~~[until the infectious disease can no longer be transmitted. The facility shall comply with the following tuberculosis testing requirements:]~~

~~[1.] [The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.]~~

~~[2.] [All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly, if symptoms persist.]~~

~~[3.] [The administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with paragraphs 1 and 2 of this subsection. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.]~~

~~[4.] [The following shall be reported by the administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; names of staff who have a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.]~~

~~[5.] [Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion for a total of five (5) chest x-rays.]~~

~~[6.] [Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements].~~

(20) In-service training.

~~(a)~~~~(A)~~ Each~~(The)~~ facility shall have a staff training program adequate for the size and nature of the facility with a staff person who is assigned~~(designated the)~~ responsibility for staff development and training.

(b) The training program shall include:

1. Orientation to acquaint~~[fɔː]~~ each new employee ~~[to acquaint him-]~~with the philosophy, organization, program, practices, and goals of the facility;
2. Follow-up~~[in-service]~~ training for any employee who has not achieved the desired level of competence;
3. Continuing in-service training held at least annually for all employees to update and improve their skills; and
4. Supervisory and management training for each employee who is in, or a candidate for, a supervisory position.

Section 4. Provision of Services.

(1) The ~~[professional-]~~interdisciplinary team shall ensure~~[assure]~~ that:

(a) The health needs of each resident~~[the residents]~~ are met; and

(b) Each resident shall have~~[has]~~ an individual program plan developed in accordance with the requirements of 42 C.F.R. 483.440(c) through (f)~~[that plans are developed for each resident which include treatments, medications, dietary requirements, and other program services. All activities shall reflect adherence to the normalization principle. The active treatment program shall assure:]~~

~~[(a)] [An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.]~~

~~[(b)] [Regular participation, in accordance with an individualized plan, in a program of activities that are designed to attain the optimum physical, intellectual, social, and vocational functioning of which a resident is capable.]~~

~~[(c)] [Reevaluation medically, socially, and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individualized plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care].~~

(2) Infection control~~[and communicable diseases]~~.

(a) There shall be written infection control policies that address~~[, which are consistent with the Centers for Disease Control guidelines including]~~:

1. ~~[Policies which address-]~~The prevention of disease transmission~~[to and from patients, visitors and employees]~~, including:

- a. Universal blood and body fluid precautions;
- b. Precautions for infections that~~[which]~~ can be transmitted by the airborne route; and
- c. Work restrictions for employees with infectious diseases; and~~[:]~~

2. ~~[Policies which address the-]~~Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections for all personnel responsible for direct ~~[patient-]~~care.

(c) Sharp wastes.

1. Sharp wastes [~~including needles, scalpels, razors, or other sharp instruments used for patient care procedures,~~] shall be segregated from other wastes and placed in puncture-resistant [~~puncture-resistant~~] containers immediately after use.

2. A needle or other contaminated sharp [~~Needles~~] shall not be recapped [~~by hand~~], purposely bent, [~~or~~] broken, or otherwise manipulated by hand as a means of disposal, except as **allowed** [~~permitted~~] by the Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall [~~The containers of sharp wastes shall either~~] be incinerated on or off-site [~~off-site~~], or be rendered nonhazardous [~~by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet~~].

4. Any non-disposable sharps be placed in a hard walled container for transport to a processing area for decontamination.

(d) Disposable waste.

1. All disposable waste shall be:

a. Placed in a suitable bag [~~bags~~] or closed container [~~containers~~] so as to prevent leakage or spillage; [~~]~~ and [~~shall be~~]

b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The facility shall establish specific written policies regarding handling and disposal of all waste material [~~wastes~~].

[~~3.~~] [~~The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.~~]

[~~4.~~] [~~Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 C.F.R. 403 and 401 KAR 5:055, Section 9.~~]

(e) Infectious or communicable diseases. An individual [~~Patients~~] infected with one (1) of the following diseases shall not be admitted to the facility:

1. Anthrax; [~~]~~

2. Campylobacteriosis; [~~]~~

3. Cholera; [~~]~~

4. Diphtheria; [~~]~~

5. Hepatitis A; [~~]~~

6. Measles; [~~]~~

7. Pertussis; [~~]~~

8. Plague; [~~]~~

9. Poliomyelitis; [~~]~~

10. Rabies (human); [~~]~~

11. Rubella; [~~]~~

12. Salmonellosis; [~~]~~

13. Shigellosis; [~~]~~

14. Typhoid fever; [~~]~~

15. Yersiniosis; [~~]~~

16. Brucellosis; [~~]~~

17. Giardiasis;[;]
18. Leprosy;[;]
19. Psittacosis;[;]
20. Q fever;[;]
21. Tularemia; or[; and]
22. Typhus.

(f) A facility may admit a ~~noninfectious~~~~(noninfectious)~~ tuberculosis resident. ***A noninfectious admittance shall be*** in accordance with 902 KAR 20:200, Section 4 or Section 8(5)~~[patient under continuing medical supervision for his tuberculosis disease].~~

(g) ~~A resident with symptoms or an abnormal chest x-ray consistent with tuberculosis shall be isolated and evaluated in accordance with 902 KAR 20:200, Section 6(4)[Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet].~~

(3) ~~Resident behavior and facility practices~~~~[Use of control and discipline of residents].~~

(a) ~~Each~~~~[The]~~ facility shall develop and implement~~[must have]~~ written policies and procedures for the management of conduct between staff and clients in accordance with 42 C.F.R. 483.450(a)~~[control and discipline of residents that are available in each living unit and to parents and guardians].~~

(b) The facility shall:

1. Develop and implement written policies and procedures that govern the management of inappropriate resident behavior in accordance with 42 C.F.R. 483.450(b); and

2. ~~[1.] Not allow corporal punishment or seclusion of a resident[;]~~

~~[2.] [A resident to discipline another resident, unless it is done as part of an organized self-government program conducted in accordance with written policy; or]~~

~~[3.] [Seclusion of a resident].~~

(c) Chemical and physical restraints shall not be used, except as authorized by KRS 216.515(6).

(d) Restraints that require lock and key shall not be used.

(e) Emergency use of a restraint shall be applied only by appropriately trained personnel if:

1. A resident poses an imminent risk of harm to self or others; and

2. The emergency restraint is the least restrictive intervention to achieve safety.

(f) A restraint shall not be used as:

1. Punishment;

2. Discipline;

3. Convenience for staff; or

4. Retaliation~~[On orders of a physician, or in the case of an emergency until a physician is contacted, the facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others but may not use physical restraint as punishment, for the convenience of the staff, or as a substitute for activities or treatment].~~

~~[(d)] [The facility must have a written policy that specifies how and when physical restraint may be used, the staff members who must authorize its use, and the method for monitoring and controlling its use].~~

~~(g)~~~~[(e)]~~ An order for physical restraint shall:~~[may]~~

1. Be by a physician or other licensed health care practitioner who is acting within the scope of practice and trained in the use of emergency safety interventions;



2. Be carried out by trained staff;

3. Be the least restrictive safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff; and

4. Not be in effect longer than twelve (12) hours.

(h) Appropriately trained staff ~~shall~~**[must]** check a resident placed in a physical restraint at least every thirty (30) minutes and document each check~~[keep a record of these checks]~~.

(i) A resident who is in a physical restraint ~~shall~~**[must]** be given an opportunity for motion and exercise for a period of not less than ten (10) minutes during each two (2) hours of restraint.

(j) A mechanical device~~[devices]~~ used for physical restraint ~~shall~~**[must]** be designed and used in a way that:

1. Avoids~~[causes the resident no]~~ physical injury; and

2. Results in the least possible physical discomfort~~[Restraints that require lock and key shall not be used]~~.

(k)~~(f)~~ A mechanical support~~[supports]~~ used as a protective device ~~shall~~**[devices must]** be designed and applied:

1. Under the supervision of a qualified professional trained in the use of emergency safety interventions~~;~~**[r]** and

2. In accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

(l)~~(g)~~ ~~[The facility may not use chemical restraint excessively, as punishment, for the convenience of the staff, as a substitute for activities or treatment, or in quantities that interfere with a resident's habilitation program.]~~

(~~h~~) Behavior modification programs involving the use of aversive stimuli or time-out devices shall be:

1. Reviewed and approved by the facility's human rights committee or a QIPD ***in order to ensure that residents are not unnecessarily restricted***~~[qualified mental retardation professional]~~;

2. Conducted only with the consent of the affected resident's parents, responsible family member, or ~~[legal]~~ guardian; and

3. Described in written plans that are kept on file in the facility~~[ICF/MR]~~.

(~~m~~)~~(t)~~ A physical restraint used as a time-out device may be applied only:

1. During a behavior modification exercise~~;~~**[exercises]** and~~[only]~~

2. In the presence of the trainer.

(~~n~~)~~(j)~~ A time-out device or~~[devices and]~~ aversive stimuli shall:

1. ~~[may]~~Not be used for longer than one (1) hour~~;~~**[r]** and

2. **Be used**~~[then]~~ only during a behavior modification program ~~[and only]~~ under the supervision of the trainer.

(4) Medical supervision of residents.

(a) ~~Each~~**[The]** facility shall maintain policies and procedures to ensure~~[assure]~~ that each resident ***shall be***~~[is]~~**[shall be]** under the medical supervision of a physician.

(~~b~~)~~(a)~~ The facility shall ***allow***~~[permit]~~ the resident, resident's responsible family member, or guardian to have a ~~[or his guardian]~~ shall be permitted ~~his~~ choice of physicians~~[physician]~~.

~~(c)~~(b) The physician shall visit each resident at least every sixty (60) days or~~[the residents]~~ as often as necessary~~[and in no case less often than every sixty (60) days]~~, unless ***justified and*** documented by the attending physician.

~~(d)~~(e) No less than ninety (90) days prior to the date of admission, each resident shall have a complete medical evaluation to assess the resident's~~[include-]social, physical, emotional, and cognitive status~~~~[factors shall be made of the person desiring or requiring institutionalization prior to, but not to exceed three (3) months before admission].~~

~~(e)~~(d) After admission, each resident shall have a medical evaluation~~[reevaluation]~~ at least annually~~[shall be made by the resident's physician, a physician provided by a community service, or a registered visiting nurse, according to the resources for the community and the apparent needs of the resident receiving intermediate care].~~

~~(f)~~(e) The facility shall have formal arrangements to ensure that a physician or health care practitioner acting within the scope of practice shall be~~[is]~~ available to provide necessary medical care in case of~~[shall be made to provide for]~~ medical emergency~~[emergencies on a twenty-four (24) hour, seven (7) days a week basis. This shall be the responsibility of the facility providing care].~~

(5) Health services.

(a) Health services shall include~~;~~:

~~(a)~~ the establishment of a nursing care plan that:

1. Is~~[as]~~ part of the total habilitation program for each resident~~;~~;

2. ~~[Each plan-]Shall be reviewed and modified as necessary, but no less than~~~~[or at least]~~ quarterly~~; and~~;

3. ~~[Each plan-]Shall include goals~~;~~;~~ and nursing care needs~~;~~;

(b) Nursing care shall help enable each resident~~[to]~~ achieve and maintain the highest degree of function, self-care, and independence, including~~[with those procedures requiring medical approval ordered by the attending physician. Nursing care shall include]:~~

1. Positioning and turning in which~~;~~ nursing personnel shall encourage and assist residents in maintaining good body alignment while standing, sitting, or lying in bed to prevent decubiti~~;~~;

2. Exercises in which~~;~~ nursing personnel shall assist residents in maintaining maximum range of motion~~;~~;

3. Bowel and bladder training in which~~;~~ nursing personnel shall make every effort to train incontinent residents to gain bowel and bladder control~~;~~;

4. Training in habits of personal hygiene, family life, and sex education that includes ~~[but is not limited to-]family planning and venereal disease counseling~~;~~;~~;

5. Ambulation in which~~;~~ nursing personnel shall assist and encourage residents with daily ambulation unless otherwise ordered by the physician~~; and~~;

6. Administration of medications and appropriate treatment.

~~(c)~~(7) A written monthly assessment of the resident's general condition with any changes in the resident's condition, actions, responses, attitudes, or appetite shall be recorded in the resident's record by licensed personnel.

(6) Pharmaceutical services.

(a) The facility shall provide pharmaceutical services, including~~[appropriate methods and]~~ procedures that ***ensure***~~[assure]~~ the accurate acquiring, receiving, ~~[for obtaining,]~~ dispensing, and administering of all drugs and biologicals to meet the needs of each resident~~[developed with the~~

advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacist].

(b) ~~[(f)]~~ The facility shall employ or obtain the services of ~~[has a pharmacy department,]~~ a licensed pharmacist who shall:

1. Provide consultation on all aspects of the provision of pharmacy services in the facility;
2. Establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation;
3. Determine that drug records are in order; and
4. Ensure that an account of all controlled drugs **shall be/is** maintained and reconciled~~[(be employed to administer the pharmacy department)].~~

(c) If the facility does not have a pharmacy department, it shall ensure that~~[have provision for promptly obtaining]~~ prescribed drugs and biologicals may be obtained from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy~~[,] pursuant to KRS 315.035.~~

(d) If the facility does not have a pharmacy department, but maintains a supply of drugs, the consultant pharmacist shall:

1. Be responsible for the control of all bulk drugs;
2. Maintain records of the receipt and disposition of bulk drugs; and
3. Dispense drugs from the drug supply, properly label them, and make them available to appropriate licensed nursing personnel.

(e) A facility that stores and administers non-controlled substances in an emergency medication kit (EMK) shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

(f) A facility that stores and administers non-controlled substances from a long-term care facility drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(a)~~[An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used].~~

(7)~~[(e)]~~ Medication~~[Medication requirement and]~~ services.

(a)~~[(1-)]~~ Medication administered to a resident~~[Conformance with physician's orders. All medications administered to residents]~~ shall be ordered in writing by the prescribing:

1. Physician; or
2. Health care practitioner as authorized by the scope of practice.

(b) If an order is received by telephone, the order shall be:

1. Recorded in the resident's medical record; and
2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen (14) days.

(c) If an order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician or prescribing practitioner that the medication will be stopped at a certain date unless the medication order is continued~~[Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders].~~

(d) A registered nurse or ~~(The)~~ pharmacist ~~[or nurse]~~ shall review the resident's medication profile at least monthly ~~[on a regular basis]~~.

(e) The prescribing physician or other prescribing practitioner shall review the resident's medication profile at least every two (2) months.

~~(f) The facility shall release medications to a resident who is discharged upon [The resident's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the resident's therapeutic regimen is not interrupted. Medications shall be released to residents on discharge or visits only after being labeled appropriately and on the] written authorization of the physician or prescribing practitioner.~~

~~(8)[2:] Administration of medications.~~

~~(a) A licensed health professional [-may]:~~

1. **Shall only** administer medications as authorized under the professional's scope of practice; or

2. **May** delegate medication administration tasks. **Delegation shall be** in accordance with paragraph (b) of this subsection.

~~(b) A facility may allow an unlicensed staff person to administer medication. **Medication given by an unlicensed staff person shall be administered** in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:~~

1. Medication administration **shall be/is]** delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide (KMA) credential from the Kentucky Community and Technical College System (KCTCS); and

3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN~~[All medications shall be administered by licensed nurses or personnel who have completed a state-approved training program, from a state-approved training provider].~~

~~(c) Each medication [dose] administered shall be recorded in the resident's medical record.~~

~~(d) An intramuscular injection [injections] shall be administered by a licensed nurse or [a] physician.~~

~~(e) If an intravenous injection is [injections are] necessary, the injection [they] shall be administered by a licensed physician or [a] registered nurse.~~

~~(f)[a:] The nursing station shall have readily available items necessary [required] for the proper administration of medication [-readily available].~~

~~(g)[b:] A medication that is [Medications] prescribed for one **(1)** resident shall not be administered to any other resident.~~

~~(h)[c:] A resident shall not be allowed to self-administer a medication [Self-administration of medications by residents shall not be permitted] except: [-for drugs]~~

1. On special order of the resident's physician or prescribing practitioner; or [and]

2. In a pre-discharge program under the supervision of a licensed nurse as a part of the resident's treatment plan.

(i) The facility shall **ensure[assure]** that a medication error or drug reaction **shall be[is]**:

1. ~~(d.) [Medication errors and drug reactions shall be]~~ Immediately reported to the resident's physician or practitioner; and

2. Documented~~[pharmacist and an entry thereof made]~~ in the resident's medical record and in~~[as well as on]~~ an incident report.

~~(j)[3.] [The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).]~~

~~[4.] [Labeling and storing medications.]~~ All resident medications shall be plainly labeled with the:

1. Resident's name;~~[-the]~~

2. Name of the drug;~~[-]~~

3. Strength;~~[-]~~

4. Name of the pharmacy;~~[-]~~

5. Prescription number;~~[-]~~

6. Date;~~[-]~~

7. Prescriber's~~[Physician]~~ name; **and**~~[-]~~

8. Caution statements and directions for use, unless a~~[except where accepted]~~ modified unit dose distribution system is~~[systems conforming to federal and state laws are]~~ used.

~~(k) All~~~~[The]~~ medications ~~[of each resident shall be]~~ kept by the facility shall be~~[-and]~~

1. Stored in their original containers; and

2. ~~[transferring between containers shall be prohibited. All medicines kept by the facility shall be]~~ Kept in a locked place.

~~(l) The facility shall ensure that:~~

1. ~~All~~~~[and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key.]~~ medications requiring refrigeration **shall be[are]**~~[shall be]~~ kept in a separate locked box of adequate size in the refrigerator in the medication area;~~[-]~~

2. Drugs for external use **shall be[are]**~~[shall be]~~ stored separately from those administered by mouth injection; and

3. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be[are] returned to the issuing pharmacist or pharmacy for relabeling or disposal~~[-Provisions shall also be made for the locked separate storage of medications of deceased and discharge resident until such medication is surrendered or destroyed in accordance with federal and state laws and regulations].~~

~~(9)[5.] Controlled substances.~~

~~(a) Controlled substances shall be kept under double lock, for example~~~~[(i.e.,)]~~ in a locked box in a locked cabinet, and keys or access to the locked box and locked cabinet shall be accessible to designated staff only~~[-]~~.

~~(b) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.~~

~~(c) For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:~~

1. The medication has been prescribed and labeled in a container for a specific resident;

2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;

3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and

4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.

(d) There shall be a controlled substances bound record book with numbered pages that includes;~~[, in which is recorded]~~

1. The name of the resident;~~[, the]~~

2. Date, time, kind, dosage, ~~[balance remaining]~~ and method of administration of each~~[all]~~ controlled substance~~[substances];~~~~[ the]~~

3. Name of the physician or practitioner who prescribed the medications; and

4. Name of the:

a. Nurse or CMA who administered the controlled substance;~~[it, ]~~or

b. Staff member who supervised the self-administration.

(e) A staff member with access to controlled substances~~[In addition, there]~~ shall be responsible for maintaining a recorded and signed;

1. Schedule II controlled substances count daily;~~[,]~~ and

2. Schedule III, IV, and V controlled substances count at least one (1) time~~[once]~~ per week~~[by those persons who have access to controlled substances].~~

(f) All expired or unused controlled substances shall be disposed of~~[,]~~ or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or

2. From the date the medication was discontinued.

(g) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;

2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

a. Date of destruction;

b. Resident name;

c. Drug name;

d. Drug strength;

e. Quantity;

f. Method of destruction;

g. Name of the person responsible for the destruction; and

h. Name of the witness~~[All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 C.F.R. 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].~~

(h) A facility that stores and administers controlled substances in an EMK shall comply with the:

1. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through (9); and

2. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(10)(7) Personal care services.

(a) Each resident shall receive training in personal skills essential for privacy and independence, ~~[be trained to be as independent as possible to achieve and maintain good personal hygiene]~~ including:

1. Bathing in which the facility shall:

a. ~~[of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall.]~~ Provide soap, clean towels, and wash cloths for each resident; ~~and[.]~~

b. Ensure that toilet articles such as brushes and combs shall not be used in common; ~~[.]~~

2. Personal hygiene; ~~[Shaving.]~~

3. Dental hygiene; ~~[Cleaning and trimming of fingernails and toenails.]~~

4. Dressing;

5. Grooming;

6. Self-feeding; and

7. Communication of basic needs ~~[Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable].~~

~~[5.] [Washing, grooming, and cutting of hair].~~

(b) If a ~~[Each]~~ resident ~~[who]~~ does not eliminate appropriately and independently, the facility shall:

1. Provide a ~~[must be in a regular, systematic]~~ toilet training program; and

2. Document the resident's ~~[a record must be kept of his]~~ progress ~~[in the program]~~.

(c) A resident who is incontinent shall ~~[must]~~ be bathed or cleaned immediately upon voiding or soiling, ~~[unless specifically contraindicated by the training program,]~~ and all soiled items shall ~~[must]~~ be changed.

(d) The staff shall train and ~~if~~ ~~[when]~~ necessary, assist a resident with dressing ~~[the residents to dress in their own street clothing (unless otherwise indicated by the physician)].~~

(11)(8) Dental services.

(a) The facility shall provide or make arrangements for dental services, comprehensive dental diagnostic services, and comprehensive dental treatment in accordance with 42 C.F.R. 483.460(e) through (g).

(b) The facility shall maintain documentation of dental services in accordance with 42 C.F.R. 483.460(h) ~~[shall be provided and if not available within the facility, arrangements with specialists in the dental field will be made for such service.]~~

~~[1.] [Appropriate dental services shall be provided through personal contact with all residents by dentists, dental hygienists, and dental assistants under the supervision of the dentists, health educators, and oral hygiene aids].~~

~~[2.]~~ A dental professional shall participate, as appropriate, on the facility's interdisciplinary team ~~[serving the facility].~~

~~[3.] [There shall be sufficient supporting personnel, equipment, and facilities available to the dental professional if dental services are delivered within the facility.]~~

~~[(b)] [Dental records shall be part of each resident's record.]~~

~~(d)~~ ~~[(e)]~~ A dentist shall be responsible for ensuring ~~[insuring]~~ that direct care staff **shall be** ~~[are]~~ instructed in the proper use of oral hygiene methods for residents.

(12)(9) Social services.

(a) ~~The facility shall provide social services directly or by contract to~~ ~~shall be available either on staff or by formal arrangement with community resources for all~~ residents and their families, including:

1. Evaluation and counseling with referral to, and use of, other planning for community placement; ~~and~~;

2. Discharge and follow up services rendered by or under the supervision of a qualified social worker.

(b) ~~A facility's~~ ~~The~~ social worker ~~[of the intermediate care facility, providing services for the mentally retarded and developmentally disabled]~~ shall be under the supervision of a:

1. Qualified social worker; or

2. QIDP ~~[who is a qualified mental retardation professional].~~

(c) Social services shall be integrated with other elements of the individual program plan ~~[of care].~~

(d) A plan for social services ~~[such care]~~ shall be recorded in the resident's record and ~~[periodically]~~ evaluated in conjunction with resident's individual program plan ~~[total plan of care].~~

~~[(e)] [Social services records shall be maintained as an integral part of case record maintained on each resident.]~~

(13)(10) Recreation services. The facility shall:

(a) Coordinate recreational services with other services and programs that are provided to each resident; ~~[and shall:]~~

(b) ~~[(a)]~~ Provide recreation equipment and supplies in a quantity and variety that ***shall be/is*** sufficient to carry out the stated objectives of the activities programs;

(c) Maintain in the resident's record a review conducted at least annually of each resident's recreational ~~[-].~~

~~[(b)] [Keep resident records that include periodic surveys of the residents' recreation] interests, including a determination of [and] the extent and level of the resident's [residents'] participation in the recreation program; and [-]~~

(d) ~~[(e)]~~ Have enough qualified staff who meet the requirements of 42 C.F.R. 483.430(b)(5)(viii) and support personnel available to carry out the various recreation services ~~[with the qualifications as defined in the definitions].~~

(14)(11) Speech-language ~~[Speech]~~ pathology and audiology services. The facility shall provide speech-language ~~[speech]~~ pathology and audiology services:

(a) By an individual who meets the requirements of 42 C.F.R. 483.430(b)(5)(vii); and

(b) As needed to maximize the communication skills of each resident in need of services ~~[residents needing such services. These services shall be provided by, or under the supervision of, a certified speech pathologist or audiologist who is a member of the interdisciplinary team].~~

(15)(12) Occupational therapy.

(a) The facility shall provide occupational therapy ~~[shall be provided-]~~ by or under the supervision of an ~~[a-qualified]~~ occupational therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(i) to meet a resident's need for services ~~[to residents as required by the resident's needs].~~



(b) The occupational therapist or occupational therapy assistant shall provide services in accordance with~~[act upon]~~ the individual program plan designed by the ~~[professional]~~ interdisciplinary team~~[of which the therapist is a member]~~.

~~(16)~~~~[(13)]~~ Physical therapy.

(a) The facility shall provide physical therapy ~~[shall be provided]~~ by or under the supervision of a licensed physical therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(iii) to meet a resident's need for services~~[to residents as required by the resident's needs]~~.

(b) The physical therapist or physical therapy assistant shall provide services in accordance with~~[act upon]~~ the individual program plan designed by the ~~[professional]~~ interdisciplinary team~~[of which the therapist is a member]~~.

~~(17)~~~~[(14)]~~ Psychological services.

(a) The facility shall provide psychological services as needed by a ~~[shall be provided by a licensed or certified]~~ psychologist who meets the requirements of 42 C.F.R. 483.430(b)(5)(v).

(b) The psychologist~~[pursuant to KRS Chapter 319 who]~~ shall participate in ~~[the]~~ evaluation of each resident~~[and periodic review]~~, individual treatment, and consultation and training of direct care~~[program]~~ staff as a member of the interdisciplinary team.

~~(18)~~~~[(15)]~~ Transportation.

(a) If transportation of residents is provided by the facility to community agencies or other activities, the **provisions established in subparagraphs 1. and 2. of this paragraph**~~[following]~~ shall apply.~~[:]~~

1. Special provision shall be made for each resident~~[residents]~~ who uses a wheelchair~~[use wheelchairs]~~.

2. An escort or assistant to the driver shall accompany a resident or residents,~~[be provided in transporting residents to and from the facility]~~ if necessary, to help ensure~~[for the resident's]~~ safety during transport.

(b) The facility shall arrange for appropriate transportation in case of a medical emergency~~[emergencies]~~.

~~(19)~~~~[(16)]~~ Residential care services.

(a) All facilities shall provide residential care services to all residents including:

1. Room accommodations;
2. ~~[i]~~ Housekeeping and maintenance services;~~[i]~~ and
3. Dietary services.

~~(b) [All facilities shall meet the following requirements relating to the provision of residential care services:]~~

~~[(a)]~~ Room accommodations.

1. The facility shall provide each resident with:

a. ~~A~~~~[shall be provided a standard size]~~ bed that is at least thirty-six (36) inches wide;

b. ~~[equipped with substantial spring,]~~ A clean, comfortable mattress with a support mechanism~~[:]~~

c. A mattress cover;~~[:]~~

d. Two (2) sheets and a pillow; and~~[:]~~

e. ~~[an such]~~ Bed covering ~~[as is required]~~ to keep the resident comfortable.

2. Each bed~~[Rubber or other impervious sheets shall be placed over the mattress cover when ever necessary. Beds occupied by residents]~~ shall be placed so that a~~[no]~~ resident does not~~[may]~~

experience discomfort because of proximity to a radiator, heat outlet, or~~[radiators, heat outlets, or by]~~ exposure to drafts.

3.~~[2.]~~ The facility shall provide:

- a. Window coverings;~~;~~
- b. Bedside tables with reading lamps,~~[(if appropriate);]~~
- c. Comfortable chairs;
- d. A chest or dresser with a mirror for each resident;
- e. ~~[, chests or dressers with mirrors,]~~ A night light;~~;~~ and
- f. Storage space for clothing and other possessions.

4.~~[3.]~~ A resident~~[Residents]~~ shall not be housed in a room, detached building, or other enclosure that has not been previously inspected and approved for residential use by the Office of Inspector General and the Department for Housing, Building, and Construction~~[unapproved rooms or unapproved detached buildings].~~

5.~~[4.]~~ Basement rooms shall not be used for sleeping rooms for residents.

6.~~[5.]~~ Residents may have personal items and furniture, ~~if~~~~[when it is physically]~~ feasible.

7.~~[6.]~~ Each living room or lounge area shall have an adequate number of:

- a. Reading lamps;~~;~~ and
- b. Tables and chairs or settees of sound construction and satisfactory design.

8.~~[7.]~~ Dining room furnishings shall be adequate in number, well-constructed~~[well constructed]~~, and of satisfactory design for the residents.

~~(c)~~~~[8.]~~ ~~[Each resident shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other residents.]~~

~~[(b)]~~ Housekeeping and maintenance services.

1. The facility shall:

- a. Maintain a clean and safe facility free of unpleasant odors; and
- b. Ensure that~~;~~ odors are~~[shall be]~~ eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

2. The facility shall:

- a. Have available at all times, an adequate supply of clean linen essential to the proper care and comfort of residents;

- b. Ensure that~~[shall be on hand at all times;]~~ soiled clothing and linens **shall** ~~[shall]~~ receive immediate attention and **shall** ~~[shall]~~ not be allowed to accumulate;~~;~~

- c. Ensure that clothing and linens~~[or bedding]~~ used by one **(1)** resident shall not be used by another unless~~[until]~~ it has been laundered or dry cleaned; and~~;~~

- d.~~[3.]~~ Ensure that soiled clothing and linens~~[linen]~~ shall be:

- (i) Placed in washable or disposable containers;~~;~~

- (ii) Transported in a sanitary manner; and

- (iii) Stored in separate, well-ventilated areas in a manner to prevent contamination and odors.

3. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area.

5. Handwashing facilities with hot and cold water, soap dispenser, and paper towels shall be provided in the laundry area.

~~6.~~[5.] Clean linen shall be sorted, dried, ironed, folded, transported, stored, and distributed in a sanitary manner.

~~7.~~[6.] Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

~~8.~~[7.] Personal laundry ~~[of residents or staff]~~ shall be:

a. Collected, transported, sorted, washed, and dried in a sanitary manner; separate from bed linens;

~~b.~~[8.] ~~[Resident's personal clothing shall be]~~ Laundered ~~[by the facility]~~ as often as necessary;

~~c.~~ ~~[-Resident's personal clothing shall be-]~~ Laundered by the facility unless the resident or the resident's family accepts this responsibility; and

~~d.~~ ~~[-Residents capable of laundering their own personal clothing may be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be-]~~ Marked or labeled to identify the resident so that it may be~~[owner and]~~ returned to the correct resident.

~~(20)~~[9.] Maintenance. The premises shall be well kept and in good repair as established in paragraphs (a) through (d) of this subsection.

~~(a)~~ ~~[Requirements shall include:]~~

~~(a.)~~ The facility shall ensure~~[insure]~~ that the grounds are well kept and the exterior of the building, including the sidewalks, wide walks, steps, porches, ramps, and fences are in good repair.

~~(b)~~~~(b.)~~ The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors shall be screened.

~~(c)~~~~(c.)~~ Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

~~(d)~~~~(d.)~~ A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

~~(21)~~~~(e)~~ Dietary services.

~~(a)~~ The facility shall provide or contract for food services~~[service]~~ to meet the dietary needs of the residents, including:

1. Modified diets; or

2. Dietary restrictions as prescribed by the attending physician.

~~(b)~~

1. ~~If~~~~[When]~~ a facility contracts for food services~~[service]~~ with an outside food management company, the company shall provide a licensed dietitian~~[qualified]~~ ~~[dietician or certified nutritionist]~~ on a full-time, part-time~~[full time, part time]~~ or consultant basis to the facility.

2. The licensed dietitian~~[qualified]~~ ~~[dietician or certified nutritionist]~~ shall make recommendations to~~[have continuing liaison with]~~ the medical and nursing staff ~~[of the facility for recommendations-]~~ on dietetic policies affecting resident care.

3. The food management company shall comply with the~~[all of the appropriate requirements for]~~ dietary services requirements of this subsection~~[in this administrative regulation]~~.

~~(c)~~~~(1.)~~ ~~[Therapeutic diets-]~~ If the facility provides therapeutic diets and the staff member responsible for the food services is not a licensed dietitian~~[dietician or certified nutritionist]~~, the responsible staff person shall consult with a licensed dietitian~~[designated person responsible for~~

~~food service is not a qualified]~~ **[- dietician or certified nutritionist]** ~~[-consultation by a qualified dietician or qualified nutritionist shall be provided].~~

(d) The facility shall:

1. ~~[2.] Have a~~ ~~[Dietary staffing. There shall be]~~ sufficient number of food service personnel;

2. Ensure that the food service staff schedules **shall be** ~~[are]~~ ~~[employed and their working hours, schedules of hours on duty, and days off shall be]~~ posted; ~~and~~ ~~[.]~~

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety, or time required from regular dietary assignments.

(e) ~~[3.]~~ Menu planning.

1. ~~[a.]~~ Menus shall be planned, written, and rotated to avoid repetition.

2. The facility shall meet the nutrition needs of residents in accordance with a ~~[shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with]~~ physician's orders.

3. ~~[b.]~~ Except as established in subparagraph 5. of this paragraph, meals shall correspond with the posted menu.

4. Menus ~~shall~~ ~~[must]~~ be planned and posted one (1) week in advance.

5. ~~[If~~ ~~[When]~~ changes in the menu are necessary; ~~[.]~~

a. Substitutions shall provide equal nutritive value;

b. The changes shall be recorded on the menu; ~~and~~ ~~[and]~~

c. Menus shall be kept on file for at least thirty (30) days.

(f) ~~[c.]~~ ~~[The daily menu shall include regular and all modified diets served within the facility based on a currently approved diet manual. The manual shall be available in the dietary department. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the resident's care with the resident and resident's chart through such methods as resident instruction, recording diet histories and through participation in rounds and conferences.]~~

~~[4.]~~ Food preparation and storage.

1. ~~[a.]~~ There shall be at least a three (3) day supply of food to prepare **well-balanced** ~~[well balanced]~~, palatable meals.

2. ~~[b.]~~ Food shall be prepared with consideration for any individual dietary requirement.

3. Modified diets, nutrient concentrates, and supplements shall be given only on the written orders of a:

a. Physician;

b. Advanced practice registered nurse; or

c. Physical assistant.

4. ~~[c.]~~ At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the ~~[substantial-]~~ evening meal and breakfast.

5. Between-meal snacks and beverages, including ~~[to include]~~ an evening snack before bedtime, shall be available at all times for each resident, unless ~~[offered to all residents. Adjustments shall be made when]~~ medically contraindicated as documented by a physician in the resident's record.

6. ~~[d.]~~ Foods shall be:

a. Prepared by methods that conserve nutritive value, flavor, and appearance; and

b. ~~[shall be attractively]~~Served at the proper temperature~~[temperatures,]~~ and in a form to meet individual needs.

7. ~~[(A file of tested recipes, adjusted to appropriate yield shall be maintained.)]~~

8. Food shall be cut, chopped, or ground to meet individual needs.

9. If a resident refuses the food served, nutritious substitutions shall be offered.

10. ~~[e.]~~ All opened containers or leftover food items shall be covered and dated when refrigerated.

(g) ~~[5.]~~ Serving of food.

1. ~~If~~~~[When]~~ a resident cannot be served in the dining room, trays shall:

a. Be provided; and~~[-shall]~~

b. Rest on firm supports.

2. Sturdy tray stands of proper height shall be provided for residents able to be out of bed.

3. ~~[a.]~~ Direct care staff shall be responsible for correctly positioning a resident to eat meals served on a tray~~[Correct positioning of the resident to receive his tray shall be the responsibility of the direct care staff].~~

4. A resident in need of~~[Residents requiring]~~ help ~~[in]~~ eating shall be assisted promptly upon receipt of meals~~[according to their training plan].~~

5. ~~[b.]~~ The facility shall provide adaptive feeding equipment if needed by a resident~~[self-help devices shall be provided to contribute to the resident's independence in eating, if assessments deem necessary].~~

6. Food services shall be provided in accordance with~~[Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and] 902 KAR 45:005~~~~[-(Kentucky's Food Service Establishment Act and Food Service Code)].~~ 902 KAR 20:086

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

**\*General Reviewer's Note:** Please file one (1) revised copy of the FEDERAL MANDATE ANALYSIS COMPARISON, paginated as page 60. There is a (5) question that was inadvertently omitted.

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation number: 902 KAR 20:086  
Contact Person: Valerie Moore  
Email: [valeriek.moore@ky.gov](mailto:valeriek.moore@ky.gov)  
Phone: 502-226-0196

(1) Federal statute or regulation constituting the federal mandate.

21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8

(2) State compliance standards.

KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate.

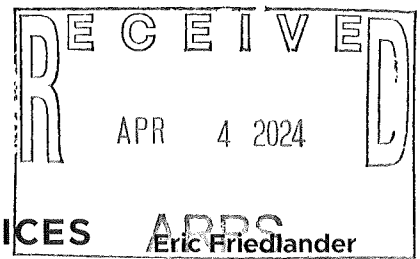
21 C.F.R. Part 1317 sets forth the Drug Enforcement Administration's rules for the safe disposal and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances. 29 C.F.R. 1910.1030(d)(2)(vii) establishes universal precautions for preventing contact with blood or other potentially infectious materials. 34 C.F.R. 300.8(c)(6) establishes the federal definition of "intellectual disability" under the Individuals with Disabilities Education Act. 42 C.F.R. 483.400 – 483.480 establish health and safety requirements that ICF/IID providers must meet in order to participate in the Medicare and Medicaid programs. 45 C.F.R. 1325.3 establishes definitions, including the federal definition of "developmental disabilities." 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires all long-term care facilities, including ICF/IID providers, to ensure that any unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation is not more strict than the federal regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation is not more strict than the federal regulations.



**Andy Beshear**  
GOVERNOR

**CABINET FOR HEALTH AND FAMILY SERVICES**

275 East Main Street, 5W-A  
Frankfort, Kentucky 40621  
Phone: (502) 564-7042  
Fax: (502) 564-7091

April 4, 2024

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

RE: 907 KAR 1:065. Payments for price-based nursing facility services.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 1:065, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 1:065.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Executive Staff Advisor  
Office of Legislative and Regulatory Affairs

**SUGGESTED SUBSTITUTE**

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Fiscal Management**

**907 KAR 1:065. Payments for price-based nursing facility services.**

RELATES TO: KRS 142.361, 142.363, 216.380, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 482.58, 483.10, **483.20**, 42 U.S.C. 1395tt, 1396, 1396a, 1396b, 1396c, 1396d, 1396g, 1396i, 1396n, 1396o, 1396p, 1396r, 1396r-2, 1396r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid program for services provided by a price-based nursing facility.

**Section 1. Definitions.**

(1) "Ancillary service" means a direct service~~[for which a charge is customarily billed separately from the per diem rate]~~including:

- (a) Ancillary services pursuant to 907 KAR 1:023; or
- (b) If ordered by a physician:
  - 1. Laboratory procedures; or
  - 2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department conducts an appraisal of each price-based NF.

(4) "Auxiliary building" means a roofed and walled structure:

- (a) Serviced by electricity, heating, and cooling;
- (b) Independent of an NF;
- (c) Used for administrative or business purposes related to an NF; and
- (d) Constructed on the same tract of ground as an NF.

(5) "Capital rate component" means a calculated per diem amount for an NF based on:

- (a) The NF's appraised depreciated replacement cost;
- (b) A value for land;
- (c) A value for equipment;
- (d) A rate of return;
- (e) A risk factor;
- (f) The number of calendar days in the NF's cost report year;
- (g) The number of licensed NF beds in the NF; and
- (h) The NF's bed occupancy percentage.

(6) "Case-mix" means the time-weighted average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 3.0 data classified through the Patient Driven Payment Model (PDPM)~~[RUG III, M3 p1, (version 5.20) thirty-four (34) group model]~~ resident classification system or equivalent.



- (7) "Core based statistical area" or "CBSA" means the designation of metropolitan and micropolitan population centers based on the national census, as published by the Federal Office of Management and Budget.
- (8) "Department" means the Department for Medicaid Services or its designee.
- (9) "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.
- (10) "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).
- (11) "Hospital-based NF" means an NF that:
- (a) Is separately identifiable as a distinct part of the hospital; and
  - (b) If separated into multiple but distinct parts of a single hospital, is combined under one (1) provider number.
- (12) "Land" means a surveyed tract or tracts of ground that share a common boundary:
- (a) As recorded in a county government office;
  - (b) Upon which a building licensed as an NF is constructed; and
  - (c) Including site preparation and improvements.
- (13) "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.
- (14) "NF" or "nursing facility" means:
- (a) A facility:
    1. To which the state survey agency has granted an NF license;
    2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and
    3. To which the department has granted certification for Medicaid participation; or
  - (b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280, and 482.58.
- (15) "NF building" means a roofed and walled structure serviced by electricity, heating, and cooling and that is also an NF.
- (16) "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.
- (17) "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.
- (18) "Routine services" means the services covered by the Medicaid program pursuant to 42 C.F.R. 483.10(f)(11)(i).
- (19) "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending beyond an NF's foundation if used for NF-related purposes.
- (20) "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component, and capital rate component.
- (21) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care.
- (22) "Time-weighted" means a method of calculating case-mix by determining the number of days that a minimum data set (MDS) record is active over a calendar quarter rather than captured from a single day during the calendar quarter.

## Section 2. NF Reimbursement Classifications and Criteria.

- (1) An NF or a hospital-based NF shall be reimbursed as a price-based NF pursuant to this administrative regulation if:
- (a) It provides NF services to an individual who:
    1. Is a Medicaid recipient;
    2. Meets the NF patient status criteria pursuant to 907 KAR 1:022; and
    3. Occupies a Medicaid-certified bed; and
  - (b)
    1. It has more than ten (10) NF beds and the greater of:

- a. Ten (10) of its Medicaid-certified beds participate in the Medicare program; or
- b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare program; or
- 2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare program.
- (2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.
- (3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:
  - (a) An NF with a certified brain injury unit;
  - (b) An NF with a distinct part ventilator unit;
  - (c) An NF designated as an institution for mental disease;
  - (d) A dually-licensed pediatric facility; or
  - (e) An intermediate care facility for individuals with an intellectual disability.

**Section 3. Reimbursement for Federally-Defined Swing Beds and for Skilled Nursing Facility Services in Critical Access Hospital Swing Beds.**

- (1) The reimbursement rate for a federally-defined swing bed shall be:
  - (a) The average rate per patient day paid to freestanding price-based NFs for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and
  - (b) Established effective January 1 of each year.
- (2)
  - (a) The department shall reimburse a critical access hospital for skilled nursing facility services in a swing bed at the same rate as established by the Centers for Medicare and Medicaid Services for Medicare.
  - (b) The department shall pay an interim per diem rate as established by CMS for the Medicare program.
  - (c) The effective date of a rate shall be the same as used by the Medicare program.
  - (d) A critical access hospital's final reimbursement for skilled nursing facility services in a swing bed shall reflect any adjustment made by the Centers for Medicare and Medicaid Services.
  - (e) Total payments made to a critical access hospital for skilled nursing facility services provided in a swing bed under this section shall be subject to the payment limitation established in 42 C.F.R. 447.271.
  - (f) The provisions established in this subsection shall apply to a critical access hospital that complies with all requirements established in KRS 216.380.

**Section 4. Price-based NF Appraisal.**

- (1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, and every fifth year, in order to calculate the NF's depreciated replacement cost.
- (2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:
  - (a) Ten (10) percent of an NF's average licensed bed value for land; and
  - (b) \$2,000 per licensed NF bed for equipment.
- (3) The department shall utilize the following variables and fields of the nursing home or convalescent center CoreLogic Commercial Express ~~[#5200 model of the Marshall & Swift Boeckh Building]~~ Valuation System ~~[(BVS)]~~ to appraise an NF identified in Section 2(1) of this administrative regulation:
  - (a) Provider number;
  - (b) Property owner - NF name;
  - (c) Address;
  - (d) Zip code;
  - (e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;
  - (f) Occupancy code - nursing home or substructure;
  - (g) Average story height;

- (h) Construction type;
- (i) Number of stories;
- (j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports, and similar areas). In addition, interior square footage measurements shall be reported for:
  1. A non-NF area;
  2. A shared service area by type of service; and
  3. A revenue-generating area;
- (k) Gross perimeter (common walls between sections shall be excluded from both sections);
- (l) Construction quality;
- (m) Year built;
- (n) Building effective age;
- (o) Building condition;
- (p) Depreciation percent;
- (q) Exterior wall material;
- (r) Roof covering material and roof pitch;
- (s) Heating system;
- (t) Cooling system;
- (u) Floor finish;
- (v) Ceiling finish;
- (w) Partition wall structure and finish;
- (x) Passenger and freight elevators - actual number;
- (y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and
- (z) Miscellaneous additional features, which shall be limited to:
  1. Canopies;
  2. Entry foyers (sheltered entry ways):
    - a. The glass and aluminum standard allowance shall be fifty (50)~~[thirty (30)]~~ dollars per square foot;
    - b. Bulkhead standard allowance shall be:
      - (i) Eleven (11)~~[Seven (7)]~~ dollars per square foot for a wood frame;
      - (ii) Twelve (12)~~[Eight (8)]~~ dollars per square foot for a steel frame; or
      - (iii) Thirty-one (31)~~[Twenty (20)]~~ dollars per square foot for brick masonry;
  3. Loading docks;
  4. Code alerts, Wanderguards, or other special electronically-secured doorways, except for a door with a sound detector or sensing unit (the standard allowance shall be \$1,420~~[\$1,500]~~ for each fully-functioning door at the time of appraisal);
  5. A door with a sound detector or sensing unit shall have a standard allowance of \$865~~[\$500]~~ per door;
  6. Automatic sliding doors (the standard allowance shall be \$25,450~~[\$17,000]~~ per doorway);
  7. An automatic door opener shall have a standard allowance of \$9160~~[\$6,500]~~ per door;
  8. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);
  9. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (the standard allowance shall be eighty (80)~~[fifty-six (56)]~~ dollars per square foot);
  10. Walk-in coolers or freezers;
  11. Laundry chutes (the standard allowance shall be \$2,530~~[\$2,400]~~ per floor serviced);
  12. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be \$20,500~~[\$8,000]~~ for the initial two (2) stops for a manual door or \$52,520~~[\$21,000]~~ for the initial two (2) stops for an electric door and \$5,050~~[\$7,000]~~ per additional stop);
  13. Skylights (the standard allowance shall be fifty-seven~~[forty (40)]~~ dollars per square foot);
  14. Operable built-in oxygen delivery systems (valued at \$425~~[\$300]~~ per serviced bed);

15. Carpeted wainscoting (the standard allowance shall be eighty (80)~~[sixty (60)]~~ dollars per licensed bed);
16. Balconies;
17. Ceiling fans for which the standard allowance shall be \$375~~[\$250]~~ for each ceiling fan without a light and \$675~~[\$400]~~ for each ceiling fan with a light;
18. Cupolas for which the standard allowance shall be \$990~~[\$720]~~ each;
19. Fireplaces;
20. Concrete-lined utility tunnels for which the standard allowance shall be thirty-two~~[twenty-five (25)]~~ dollars per cubic foot; and
21. Mechanical penthouses.

(4) An item listed in subsection (3)(z) of this section shall be subject to the CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS model #5200]~~ monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.

(5) The department shall use the corresponding CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS]~~ default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.

(6)

(a) Values from the most recent CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS]~~ tables shall be used during an appraisal.

(b) An adjustment calculation shall be performed if the most recent CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS]~~ tables do not correspond to an appraisal base year.

(7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:

(a) The NF submits written proof of construction costs to the department; and

(b)

1. The NF undergoes renovations or additions costing a minimum of \$150,000 and the NF has more than sixty (60) licensed beds; or

2. The NF undergoes renovations or additions costing a minimum of \$75,000 and the NF has sixty (60) or fewer licensed beds.

(8) An auxiliary building shall be:

(a) Appraised if it rests on land, as defined in Section 1(12) of this administrative regulation; and

(b) Appraised separately from an NF building.

(9) To appraise an auxiliary building, the department shall utilize a CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS model other than the nursing home or convalescent center #5200]~~ model, if the model better fits the auxiliary building's use and type.

(10) If an NF building has beds licensed for non-NF purposes or a provider conducts business activities not related to the NF, the appraisal shall be adjusted between NF and non-NF activity. The appraiser shall determine if the adjustment shall be made by dividing the number of licensed NF beds by the total number of beds, or through the use of an adjustment factor determined in accordance with appraisal industry standards by the appraiser, regardless of the occupancy factor. For example, an adjustment factor may be used to apportion the appraisal by the percent of NF square footage relative to the square footage on non-NF-related business activities.

(11) Cost of an appraisal shall be the responsibility of the NF being appraised.

(12) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.

(13) The department shall not consider the following location factors in rendering an appraisal:

(a) Climate;

(b) High-wind zone;

(c) Degree of slope;

(d) Position;

(e) Accessibility; or

(f) Soil condition.

Section 5. Standard Price Overview.

- (1) Rates shall reflect the differential in wages, property values, and cost of doing business in rural and urban designated areas.
- (2)
  - ~~[(a)] [Except as provided by paragraph (b) of this subsection, and beginning in 2018,] On July 1 of each year, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas always being classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.~~
  - ~~[(b)]~~
    - ~~[1.] [On July 7, 2017, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.]~~
    - ~~[2.] [On July 7, 2017, a change in designation from:]~~
      - ~~[a.] [Rural to urban shall take effect on July 1, 2017; and]~~
      - ~~[b.] [Urban to rural shall take effect July 1, 2018.]~~
- (3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:
  - (a) Staffing ratios;
  - (b) Wage rates;
  - (c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;
  - (d) Fringe benefit levels;
  - (e) Capital rate component; and
  - (f) Noncapital facility-related component.
- (4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:
  - (a) The personnel cost of:
    1. A director of nursing;
    2. A registered nurse (RN);
    3. A licensed practical nurse (LPN);
    4. A nurse aide;
    5. An activities staff person; and
    6. A medical records staff person; and
  - (b) Nonpersonnel operating cost including:
    1. Medical supplies; and
    2. Activity supplies.
- (5) The following components shall comprise the noncase-mix adjustable portion of an NF's standard price:
  - (a) Administration to include an allowance to offset a provider assessment;
  - (b) Nondirect care personnel;
  - (c) Food;
  - (d) Professional support; and
  - (e) Consultation.
- (6) The following components shall comprise the facility and capital component of an NF's standard price:
  - (a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NFs; and
  - (b) The NF's capital rate component, which shall be facility specific.
- (7) Excluding capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the 2024~~[2008]~~ level:

CBSA Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price Without Capital Component	Total Standard Price Excluding Capital Rate Components
Urban	\$160.14 <del>[\$88.05]</del>	\$101.81 <del>[\$62.80]</del>	\$261.95 <del>[\$150.85]</del>
Rural	\$135.87 <del>[\$74.62]</del>	\$89.68 <del>[\$55.63]</del>	\$225.55 <del>[\$130.25]</del>

(8) A price-based NF's standard price may be:

(a) Adjusted for inflation every July 1 using the version of the CMS Nursing Home without Capital Market Basket that was effective on the July 1 that the inflation adjustment occurred; and

(b) Rebased:

1. Effective July 1, 2024; and
2. At least once every four (4) years thereafter.

(9) ~~Effective July 1, 2004, an NF shall not receive a rate less than its standard price.~~

~~[(10)] [Effective July 1, 2022:]~~

~~[(a)] [A nursing home relief reimbursement increase of twenty-nine (29) dollars shall be included in the noncase-mix adjustable portion of the per diem rate.]~~

~~[(b)] [The nursing home relief reimbursement increase shall be included in the administration line of the calculation and shall not receive annual inflationary adjustments.]~~

~~[(c)] [The nursing home relief reimbursement increase of twenty-nine (29) dollars shall continue until the standard price is rebased.]~~

~~[(11)] The department shall adjust an NF's standard price if:~~

~~(a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the inflation adjustment; or~~

~~(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.~~

## Section 6. Standard Price Calculation.

(1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase-mix adjustable portion of the NF's standard price, which shall include~~[-:]~~

~~[1:] an allowance to offset a provider assessment;[-and]~~

~~[2:] [The nursing home relief reimbursement increase of twenty-nine (29) dollars;]~~

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value, which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, adjusted every July 1 using the RS Means Construction Cost Indexes, and applying the total weighted average annual change of the Kentucky cities by the NF's total licensed NF beds; and

b. Not exceed ~~\$79,775~~~~[\$56,003]~~ effective July 1, ~~2023~~~~[2016]~~, which shall be adjusted every July 1 thereafter by the same factor applied to the NF's depreciated replacement cost;

2. A value for land, which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1. of this paragraph; and

3. A value for equipment, which shall be \$2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor, which shall:

1. Be equal to the sum of:

- a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and
- b. A risk factor of two (2) percent; and
- 2. Not be less than nine (9) percent nor exceed twelve (12) percent;
- (c) The department shall determine the NF's capital cost-per-bed day by:
  - 1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;
  - 2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and
  - 3. If the NF's occupancy percentage exceeds ninety (90) percent, multiplying the NF's occupancy percentage by 365 days; and
- (d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF's capital cost-per-bed day established in paragraph (c) of this subsection to determine an NF's capital rate component.
- (3) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:
  - (a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and
  - (b) File an updated provider application with the Medicaid program pursuant to 907 KAR 1:672, Section 3(4).
- (4) A new facility shall be:
  - (a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;
  - (b) Determined to be urban or rural; and
  - (c) Reimbursed at its standard price, which shall:
    - 1. Be based on a case-mix of 1.0;
    - 2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 3.0 data following the facility's Medicaid certification;
    - 3. Utilize ~~\$79,775~~[\$56,003] effective July 1, ~~2023~~[2016], as adjusted through the current state fiscal year as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and
    - 4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than ~~\$79,775~~[\$56,003] effective July 1, ~~2023~~[2016], as adjusted through the current state fiscal year.
- (5) The amounts calculated pursuant to subsection (4)(c)3. and 4. of this section shall be adjusted annually consistent with the adjustments made to the depreciated replacement cost, as described in subsection (2)(a)1.b. of this section for the capital component calculation.

Section 7. PDPM Adapted Minimum Data Set (MDS) 3.0[, ~~Resource Utilization Group (RUG) III~~], and Validation.

- (1) A price-based NF's Medicaid MDS data shall be utilized to determine its case-mix index each quarter.
- (2) A price-based NF's case-mix index shall be applied to its case-mix adjustable portion of its standard price.
- (3) To determine a price-based NF's case-mix index, the department shall:
  - (a) Calculate case-mix on a time-weighted basis using MDS data:
    - 1. Extracted on the last date of each calendar quarter from the NF's MDS item sets:
      - a. Included in the PDPM Adapted Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening; and
      - b. Transmitted by the NF to the Centers for Medicare and Medicaid Services; and
    - 2. Which, if revised, shall be revised no later than the last date of the quarter following the date on which MDS data was extracted. For example, MDS data submitted after September 30, ~~2023~~[2016], for the purpose of revision to MDS data extracted June 30, ~~2023~~[2016], shall not be utilized;

(b) Classify the data cited in paragraph (a) of this subsection through the Patient Driven Payment Model (PDPM)~~[RUG III, (M3 p1), version five point twenty (5.20) thirty-four (34) group or equivalent model]~~ resident classification system, nursing component; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a stratified random sample of thirty (30)~~[twenty-five (25)]~~ percent of the Medicaid residents in a price-based NF;

2. The department shall review one (1) MDS assessment from each resident in the sample referenced in subparagraph 1. of this paragraph; and

3. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraphs 1. and 2. of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents~~[-; and]~~

~~[4.] [If a review of records cited in subparagraph 3. of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall determine if the NF fails to meet the minimum accuracy threshold by reviewing 100 percent of the price-based NF's Medicaid MDS assessments:]~~

~~[a.] [Extracted in accordance with paragraph (a) of this subsection; and]~~

~~[b.] [Selecting one (1) MDS assessment per resident].~~

(4) If the department's review, in accordance with subsection (3)(c)3. ~~[and 4.]~~ of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a reconsideration within ten (10) business days of being notified of the findings of the review ~~[cited in subsection (3)(c)4. of this section].~~

(5) Only MDS data extracted in accordance with subsection (3)(a)2. of this section shall be allowed during a review or reconsideration.

(6) If a reconsideration of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the reconsideration; and

(b) Send the final results of the reconsideration to the NF within ten (10) business days of the conference.

(7) In performing validation reviews on MDS data, the department shall:

(a) Notify the NF at the time of the MDS assessment review of any assessment that is not validated and allow the NF to provide supporting documentation that had been utilized to support the assessment;

(b) Consider all MDS supporting documentation provided by the NF prior to the exit conference; and

(c) Not consider MDS supporting documentation provided by the NF after the exit conference has occurred.

(8)

(a) Reconsideration of a price-based NF's MDS assessment data validation shall be provided if the NF:

1. Requests a reconsideration and clearly identifies each specific resident's review and MDS elements that are being disputed;

2. States the basis on which the department's decision on each issue is believed to be erroneous; and

3. Provides a summary supporting the NF's position.

(b) After a reconsideration of a price-based NF's MDS assessment data has been completed, the NF may appeal the department decision regarding the data in accordance with 907 KAR 1:671, Section 9.

(9)

(a) The department shall refer any suspected intentional alteration of clinical documentation or creation of documentation after an MDS assessment has been transmitted to the Office of Inspector General (OIG) for investigation of possible fraud.

(b) A fraud investigation may result in a felony or misdemeanor criminal conviction.



- (10) An NF's rate shall be effective beginning on the first date of the second quarter following the MDS extraction date.
- (11) An MDS validation review, if conducted, shall be initiated in the month containing the corresponding rate effective date.
- (12) A rate sanction shall be applied on the rate effective date following the validation review initiation date.
- (13) MDS assessment accuracy thresholds and corresponding rate sanctions shall be established in accordance with this subsection.
- (a) If a price-based NF's percentage of accurate MDS assessments is between sixty-five (65) and seventy-nine (79) percent, the price-based NF's rate shall be sanctioned by fifty (50) cents per patient day.
- (b) If a price-based NF's percentage of accurate MDS assessments is between forty (40) and sixty-four (64) percent, the price-based NF's rate shall be sanctioned by sixty (60) cents per patient day.
- (c) If a price-based NF's percentage of accurate MDS assessments is below forty (40) percent, the price-based NF's rate shall be sanctioned by seventy (70) cents per patient day.
- (d) Rate sanctions shall not be applied:
1. Until the rates effective July 1, 2025 are in effect; and
  2. Except for those rates that are effective on and after July 1, 2025 as specified in subsection (14) of this section.
- (14) Beginning with rates effective July 1, 2025, upon conclusion of a departmental review of MDS data, in accordance with this section of this administrative regulation:
- (a) The department shall recalculate the facility's case mix index based on the review's findings; and
  - (b) If a recalculated case mix index results in a change to the NF's established rate or rates, the rate or rates shall be recalculated and any payment adjustment shall be made.
- (15) For rates effective April 1, 2024, through June 30, 2024, the rate shall be equal to the rate effective January 1, 2024.
- (16) Beginning July 1, 2024, the PDPM case-mix index shall be phased in using the following schedule:
- (a) For rates effective July 1, 2024 through September 30, 2024, the case-mix index shall be comprised of twenty-five (25) percent of the PDPM CMI and seventy-five (75) percent of the RUG-III CMI that was in effect prior to the transition.
  - (b) For rates effective October 1, 2024 through December 31, 2024, the case-mix index shall be comprised of fifty (50) percent of the PDPM CMI and fifty (50) percent of the RUG-III CMI that was in effect prior to the transition.
  - (c) For rates effective January 1, 2025 through March 31, 2025, the case-mix index shall be comprised of seventy-five (75) percent of the PDPM CMI and twenty-five (25) percent of the RUG-III CMI that was in effect prior to the transition.
  - (d) Beginning April 1, 2025, the case-mix index shall be comprised of one-hundred (100) percent of the PDPM CMI and zero (0) percent of the RUG-III CMI that was in effect prior to the transition.

#### Section 8. Limitation on Charges to Residents.

- (1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.
- (2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10(f)(11)(ii) if:
- (a) The item is requested by the resident;
  - (b) The NF informs the resident in writing that there will be a charge; and
  - (c) Medicare, Medicaid, or another third party does not pay for the item.
- (3) An NF shall:
- (a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and
  - (b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

- (4) Reserved bed days, per resident, for an NF or an NF-W shall be:
- (a) Reimbursed for a maximum of thirty (30)~~fourteen (14)~~ days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to relocation;
  - (b) Reimbursed for a maximum of ten (10) days during a calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;
  - (c) Reimbursed at seventy-five (75) percent of a facility's rate~~[if the facility's occupancy percent is ninety-five (95) percent or greater for the calendar quarter preceding the bed reserve day; and]~~
  - ~~[(d)] [Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent for the calendar quarter preceding the bed reserve day].~~
- (5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:
- (a) Be furnished by an NF; and
  - (b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).
- (6) Except as otherwise covered pursuant to Title 907 KAR, dentures, lenses, frames, or hearing aids shall be paid for through the resident's patient liability or spend down amounts and limited to one (1) replacement per item per calendar year.

**Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR).**

- (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.
- (2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.
- (3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

**Section 10. Price-Based NF Protection Period and Budget Constraints.**

- (1) A county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.
- (2) For each year of the biennium, a price-based NF shall:
  - (a) Receive an adjustment pursuant to Section 5(8) and 9~~11~~ of this administrative regulation; or
  - (b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

**Section 11. Cost Report.**

- (1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the CMS Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2) Sections 102, 102.1, 102.3, and 104, using the Instructions for Completing the Medicaid Supplemental Schedules.
- (2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

**Section 12. Ancillary Services.**

- (1) Except for oxygen therapy and for ancillary services provided to an individual in a critical access hospital swing bed, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing a per diem component to the rates, updated every July 1. Prior year utilization based on claims and the corresponding outpatient procedure code rate listed in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, Section 1~~17~~3 shall be divided by the number of the provider's paid Medicaid days for the same time period.
- (2) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479.

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

(4) Reimbursement for ancillary services provided to an individual in a critical access hospital swing bed shall be included in the critical access hospital swing bed reimbursement established in Section 3(2) of this administrative regulation.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities.

(1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

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. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2), Sections 102, 102.1, 102.3, and 104", October 2007;

(b) The "Instructions for Completing the Medicaid Supplemental Schedules", April 2015;

(c) The "Supplemental Medicaid Schedules", April 2015; and

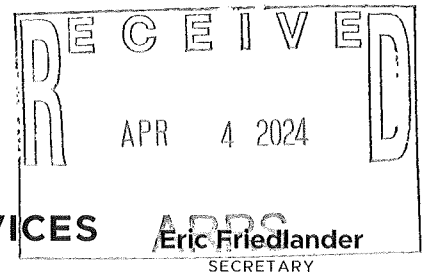
(d) "PDPM Adapted Minimum Data Set (MDS)", October 1, 2023["~~Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening", 10/1/2016~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the:

(a) Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; and

(b) Following location on the department's Web site:  
<https://chfs.ky.gov/agencies/dms/dafm/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



Andy Beshear  
GOVERNOR

**CABINET FOR HEALTH AND FAMILY SERVICES**

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April 4, 2024

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 3:066. Nonemergency medical transportation waiver services and payments.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 3:066, the Department for Medicaid Services proposes the attached suggested substitutes to 907 KAR 3:066.

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

Final: 4/3/24

## SUGGESTED SUBSTITUTE

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Health Care Policy

#### 907 KAR 3:066. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS 96A.095, 205.520, 281.010, 281.605(9), 281.635(5), 281.872, 281.875, 42 C.F.R. 431.53, 440.170, 42 U.S.C. 1396n(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 42 C.F.R. 431.53, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the Cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

#### Section 1. Definitions.

- (1) "Capitated rate" means one (1) amount paid each month:
  - (a) For each Medicaid recipient covered under authority of the waiver; and
  - (b) That is:
    1. Not a statewide rate; and
    2. Set individually for each human service transportation delivery region as established in 603 KAR 7:080.
- (2) "Department" means the Department for Medicaid Services or its designee.
- (3) "Human service transportation" means provision of mass transportation and taxi services to transport an individual who is eligible to receive Medicaid transportation services.
- (4) "Nonemergency medical transportation" or "NEMT" means medical transportation not of an emergency nature, excluding ambulance stretcher services, provided to an eligible Medicaid recipient by the Transportation Cabinet pursuant to an agreement between the Transportation Cabinet and the department.
- (5) "Waiver authority" means the provisions contained in 42 U.S.C. 1396n(b).

Section 2. Interagency Agreement. Pursuant to waiver authority granted by the Centers for Medicare and Medicaid Services, the Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient.

#### Section 3. Coverage.

- (1) The coverage provisions established in 603 KAR 7:080 shall comply with this administrative regulation.
- (2) ~~(a)~~ A Medicaid-eligible recipient may receive a nonemergency medical transportation services if the recipient meets the following conditions:
  - ~~1. (a)~~ The recipient is traveling to or from a Medicaid-covered service;
  - ~~2. (b)~~ The service is determined to be of medical necessity; and
  - ~~3. (c)~~
    - ~~a. (1.)~~ The recipient does not own a vehicle; ~~or;~~
    - ~~b. (2.)~~ The recipient owns a vehicle, but a clinician, employer, school, mechanic, or transportation authority issues a note that is submitted by the recipient that states the vehicle is not:
      - ~~(i) (a.)~~ Operable; or

(ii)(b.) Usable for the recipient.

(b)(3.)

(a.) A recipient who is under the age of eighteen (18) shall have the same vehicle ownership status as the custodial parent or legal guardian.

(c)(b.) A parent or guardian may request a two (2) week exemption to ~~f-subparagraph a. of this~~ paragraph (b) of this subsection in order to allow a child recipient to attend medically necessary services.

(3)

(a) A transportation provider shall not self-refer or solicit a recipient or a recipient's parent or guardian to use NEMT if the recipient or recipient's parent or guardian owns or has access to appropriate transportation pursuant to this section.

(b) A transportation provider that self-refers or solicits a recipient or a recipient's parent or guardian pursuant to paragraph (a) of this subsection may be excluded from offering NEMT on a permanent or temporary basis. ~~Free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available.~~

#### Section 4. Reimbursement.

(1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient receiving services pursuant to this administrative regulation.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing nonemergency medical transportation services to the covered group of recipients.

#### Section 5. Appeal Rights.

(1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

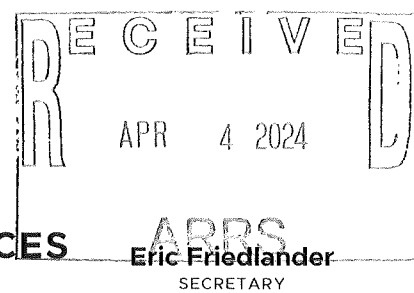
Section 6. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided in accordance with KRS Chapter 45A and Section 2 of this administrative regulation.

Section 7. Federal Approval and Federal Financial Participation. The ~~department's~~**(cabinet's)** coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.



Andy Beshear  
GOVERNOR

## CABINET FOR HEALTH AND FAMILY SERVICES

275 East Main Street, 5W-A  
Frankfort, Kentucky 40621  
Phone: (502) 564-7042  
Fax: (502) 564-7091

April 3, 2024

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 13:010

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 13:010, the Cabinet for Health and Family Services proposes the attached amendments to 907 KAR 13:010.

Sincerely,

A handwritten signature in black ink that reads "Krista Quarles".

Krista Quarles  
Policy Specialist  
Office of Legislative and Regulatory Affairs

Attachments



Final, 4-2-2024

**STAFF-SUGGESTED AMENDMENT**

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Health Policy**

**907 KAR 13:010. Private duty nursing service coverage provisions and requirements.**

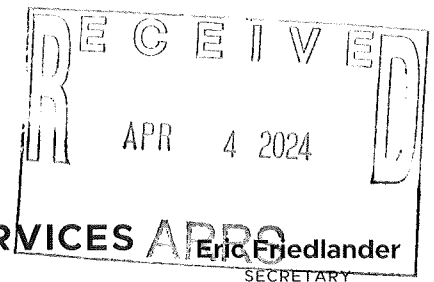
**Page 1**

**RELATES TO**

**Line 6**

After "KRS 205.520", insert the following:

, 205.622, 369.101-369.120, 42 C.F.R. 431.17, 45 C.F.R. Part 164



Andy Beshear  
GOVERNOR

**CABINET FOR HEALTH AND FAMILY SERVICES**

275 East Main Street, 5W-A  
Frankfort, Kentucky 40621  
Phone: (502) 564-7042  
Fax: (502) 564-7091

April 4, 2024

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: 908 KAR 1:410

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 908 KAR 1:410, the Cabinet for Health and Family Services proposes the attached amendments to 908 KAR 1:410.

Sincerely,

Stacy Carey  
Executive Staff Advisor  
Office of Legislative and Regulatory Affairs

Attachments

**Staff-suggested Amendment  
Final Version**

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Behavioral Health, Development and Intellectual Disabilities  
Division of Substance Use Disorder  
(Amended After Comments)**

**908 KAR 1:410. Recovery housing.**

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY paragraph**

**Line 11**

After "KRS 222.504(3)", insert the following:

authorizes the cabinet to promulgate

Delete the following:

allows for the promulgation of

**Page 2**

**Section 2(1)(a), (b), and (c)**

**Lines 13, 15, and 16**

Delete the quotation marks from:

"Recovery Housing Certification Application".

"Recovery Housing Assurances".

"Recovery Housing Code of Ethics".

**Page 3**

**Section 2(1)(g)1.**

**Line 5**

After "related to", insert "residents".

Delete "a residents".

**Page 3**

**Section 2(1)(g)2. and 3.**

**Lines 8 and 10**

After "the collection of", insert "the".

Delete "such".

After "the return of", insert "the".

Delete "such".

**Page 3**

**Section 2(1)(i)**

**Line 19**

After "recovery plan", insert "₁".  
Delete ";".

**Page 4**

**Section 2(4)**

**Lines 5, 6, and 8**

After "Required entities", insert "₂".  
After "KRS 222.502", insert "₂".

After "submit a", delete the quotation marks from "Kentucky Recovery Housing Application".

After "Program", insert "by".  
Delete "via".

**Page 4**

**Section 3(2)**

**Line 19**

After "compliance with the", delete the quotation marks from "NARR standards".

After "standards" insert "₃".  
Delete "; or".

**Page 4**

**Section 3(3)**

**Line 21**

After "recovery residence", insert "if".  
Delete "in the following circumstances".

**Page 5**

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

**Line 2**

After "of a resident", insert "₄".  
Delete "; or".

**Page 5**

**Section 3(4)**

**Line 4**

After "residence", insert "if".  
Delete "in the following circumstances".

**Page 5**

**Section 3(4)(b)**

**Line 6**

After "One", insert "(1)".

**Page 5**

**Section 3(4)(c)**

**Line 9**

After "were granted", insert "₁".

Delete "; or".

**Page 6**

**Section 3(9)**

**Line 12**

After "new owner", insert "shall".

Delete "must".

**Page 7**

**Section 4(3)(b)**

**Line 2**

After "remediated", insert "₁".

Delete "₁".

**Page 7**

**Section 4(4)(b)**

**Line 8**

After "resident", insert "₁".

Delete "; or".

**Page 7**

**Section 4(7)**

**Line 13**

After "be denied", insert "if".

Delete "in the following circumstances".

**Page 7**

**Section 4(7)(b)**

**Line 15**

After "One", insert "(1)".

**Page 9**

**Section 6**

**Line 2**

After "shall ensure", delete "the following".

**Page 9**

**Section 6(1) and (2)**

**Lines 4 and 7**

After "The residence", insert "develops".  
Delete "shall develop".

After "and", insert "adheres".  
Delete "adhere".

After "interaction with residents;", insert "and".

**Page 9**

**Section 6(3)**

**Lines 8, 9, and 10**

After "owner or operator", insert "submits".  
Delete "shall submit".

After "plan that includes", delete "the following information".

**Page 9**

**Section 7**

**Line 14**

After "Background", insert "Checks".  
Delete "checks".

**Page 10**

**Section 8(1)**

**Line 3**

After "agency", insert "t".

After "reconsideration", delete "by submitting".

**Page 10**

**Section 8(2)(a) and (b)**

**Lines 7 and 8**

After "(a)", insert "The".  
Lowercase "Application".

After "addresses the reasons", insert "the".  
Delete "an".