Andy Beshear
GOVERNOR

JUSTICE AND PUBLIC SAFETY CABINET

Keith L. Jackson
SECRETARY

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

February 4, 2026

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

RE: 505 KAR 1:140. Department of Juvenile Justice Policies and Procedures Manual: detention services; and
505 KAR 1:410. Isolation and protective custody

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 505 KAR 1:140 and 505 KAR 1:410, the Justice and Public Safety Cabinet, Department of Juvenile Justice proposes the attached substitutes to 505 KAR 1:140 and 505 KAR 1:410.

Sincerely,

Nathan Goens
Assistant General Counsel
Justice and Public Safety Cabinet

Subcommittee Substitute

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amendment)

505 KAR 1:140. Department of Juvenile Justice Policies and Procedures Manual: detention services.

RELATES TO: KRS 15A.065, 15A.067, 15A.200-***15A.240[~~15A.245~~]***, 15A.305, 200.080-200.120, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250
CERTIFICATION STATEMENT:
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference policies and procedures concerning detention services for the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference.
(1) The "Department of Juvenile Justice Policy and Procedures Manual: Detention Services", June 13, 2023, is incorporated by reference and includes the following:

700	Definitions (Amended 06/13/23)
700.1	Detention Services Delivery System (Amended 06/13/23)
701	Criteria for Admissions (Amended 03/30/18)
702	Intake, Reception and Orientation (Amended 07/10/18)
703	Detention Risk Assessment (Amended 03/30/18)
704	Alternatives to Secure Detention (Amended 01/13/23)
704.1	Supervision of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
704.2	Revocation of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
704.3	Juvenile Justice and Delinquency Prevention Act (Added 03/30/18)
705	Individual Client Records (Amended 03/30/18)
705.2	Progress Notes (Amended 03/30/18)
706	Grievance Procedure (Amended 03/30/18)
707	Bed Capacities and Staffing of Juvenile Detention Centers (Amended 01/13/23)
708	Classification of Juveniles for Housing and Program Assignment (Amended 01/13/23)
709	Security and Control (Amended 03/30/18)
710	Shift and Log Reports (Amended 03/30/18)
712	Escape/AWOL (Amended 06/13/23)

714 Searches (Amended 03/30/18)
715 Incident Reports (Amended 03/30/18)
716 Behavior Management (Amended 03/30/18)
[~~717~~] [~~Discipline and Special Behavior Management (Amended 06/13/23)~~]
718 Disciplinary Review (Amended 07/10/18)
720 Programs and Services (Amended 03/30/18)
720.1 Library Services (Amended 01/13/23)
720.2 Recreation and Structured Activities (Amended 01/13/23)
720.3 Religious Programs (Amended 03/30/18)
720.4 Juveniles Work Details (Amended 03/30/18)
720.5 Social Services (Amended 07/10/18)
720.6 Family and Community Contact (Amended 07/10/18)
725 Educational Programming and Assessment (Amended 07/10/18)
725.1 Instructional Staffing (Amended 03/30/18)
725.2 Education Records (Amended 07/10/18)
726 Leaves (Amended 03/30/18)
729 Release From Detention (Amended 03/30/18)
730 Inspections of Secure Juvenile Detention Facilities (Amended 01/13/23)
731 Complaint Investigations of Secure Juvenile Detention Centers and Juvenile Holding Facilities (Amended 03/30/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Juvenile Justice Web site at https://djj.ky.gov***[/About%20DJJ/Pages/lrcfilings.aspx]***.

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

Subcommittee Substitute

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)

505 KAR 1:410. Restrictive housing[~~Isolation~~] and protective custody.

RELATES TO: KRS 15A.065, 15A.0652,[~~-200.080-200.120,~~] Chapters 600-645
STATUTORY AUTHORITY: KRS [~~15A.065(1),~~]15A.0652, [~~15A.160,~~]605.150, 635.095[~~, 635.100(7)~~], 640.120[~~, 645.250~~]
CERTIFICATION STATEMENT:
NECESSITY, FUNCTION, AND CONFORMITY: KRS [~~15A.065(1),~~]15A.0652,[~~ 15A.160,~~] 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes procedures for restrictive housing[~~isolation~~] and protective custody in juvenile detention centers and youth development centers.

Section 1. General Provisions[~~Isolation~~].

(1) Restrictive housing[~~Isolation~~] **means the removal of a juvenile from the general population and placement in a room with the door closed and secured due to a direct and clear threat to the safety or security of the facility, staff, the juvenile, or other juveniles. The juvenile's personal items may be removed, including the mattress and bed linen. A mattress and bed linen shall be returned to the juvenile during normal sleeping hours unless the juvenile uses the mattress or linen to obstruct the view into the room or to obstruct the view of the in-room camera, attempts to destroy the mattress or linen, is on suicide watch pursuant to 505 KAR 1:120, or otherwise uses the mattress or linen in a manner that creates a safety risk to the juvenile, other juveniles, or facility.**

(2) Any reference to *[~~"~~]*isolation*[~~"~~]* in 505 KAR Chapter 1 or any DJJPP shall be interpreted to be a reference to *[~~"~~]*restrictive housing. *[~~"~~]*

(3) Restrictive Housing shall only apply to juveniles in juvenile detention centers and youth development centers.

(4) Restrictive housing shall only be used for behavior management. Restrictive housing shall not be used for punishment, staff convenience, or minor rule violations.

(5)[**~~(2)~~**] Restrictive housing shall only be used for a direct and clear [~~A juvenile may be placed in isolation if the juvenile constitutes a~~] threat to the safety or security of the facility, staff,[~~ or a~~]juvenile, or other juveniles ***[~~(hereinafter "direct and clear threat")~~]*, and only where less restrictive interventions have failed or cannot be safely implemented. Direct and clear threats include**[~~ including, but not limited to~~]:

[~~(3)~~] [~~The following situations may constitute a threat to the safety or security of the facility, staff, or a juvenile and may result in an isolation placement:~~]

(a) Assault or attempted assault;

(b) Sexual assault or attempted sexual assault;

(c) Attempted escape[~~ or attempted absent without leave~~];
(d) Escape;
(e) Participating in a riot;
(f) Planning a riot;
(g) Possessing dangerous contraband as defined by **KRS 520.010(3)**[**~~KRS 120.0103~~**];[~~ or~~]
(h) Causing extensive property damage; or
(i) Any other serious or violent behavior that compromises the safety and security of residents or staff.

(6)[**~~(3)~~**] [**~~The time periods in which action is necessitated by this regulation~~**] **The authorizations and visits in Section 2 and administrative reviews in Section 3(6) of this administrative regulation *shall be[are]*** suspended [**~~during resident sleeping hours~~**]from 8:00 p.m. to 6:00 a.m., and any delayed **action**[**~~assessment~~**] shall occur within two (2) hours of 6:00 a.m. **If the juvenile is asleep, he or she *shall[~~should~~]*not be disturbed for those purposes.**

(7)[**~~(4)~~**] Prior to going into restrictive housing, the **direct and clear threat**[**~~reason~~**] shall be explained to the juvenile and an opportunity provided for the juvenile to explain the behavior. The juvenile's statement shall be contemporaneously documented on the incident report. The release criteria in the plan shall state the behavioral expectations required for release, be explained to the juvenile, and be signed by the juvenile. If the juvenile is at the time **unwilling or unable to sign**[**~~presenting a danger to himself or others, or is being non-compliant~~**], the juvenile's signature is not required, and staff shall indicate in writing such **unwillingness or inability.**[**~~danger or non-compliance~~**]

(8)[**~~(5)~~**] Staff shall make direct visual contact with the juvenile at staggered intervals not to exceed fifteen (15) minutes**, and if the juvenile is awake, staff shall**[~~ to~~] determine **if** the **juvenile is in** [**~~juvenile's~~**]compliance with the plan for release. These checks shall be contemporaneously documented on an observation log.

(9)[**~~(6)~~**] If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the shift supervisor or above shall return the juvenile to the general population **as soon as practicable**. The time of release and the identity of the person releasing shall be documented contemporaneously on an observation log.

(10)[**~~(7)~~**]

(a) If the juvenile continues to demonstrate negative or concerning behaviors and does not respond to reasonable redirection and guidance from staff, or the juvenile's behavior escalates or is beyond control, a qualified mental health professional (QMHP) shall be contacted as soon as possible by the administrative duty officer (ADO), youth services program specialist (YSPS), or superintendent but in no event not more than one (1) hour after the conduct occurs.

(b) The QMHP shall assess the juvenile to determine if acute psychiatric symptoms are contributing to the juvenile's behavior. Acute psychiatric symptoms include suicidal ideation, homicidal ideation, plan ***or[/]***intent to engage in self-injurious behaviors, mood disturbance, psychosis, thought-disordered thinking, symptoms associated with previous trauma or other signs of severe psychological distress.

(c) Based on the outcome of the assessment, the QMHP shall make recommendations for appropriate intervention.

(11)[~~**(8)**~~] If at any time a juvenile exhibits deterioration in mental status during a restrictive housing placement, including by failing to respond, by their statements, by their refusal to eat, or by their refusal to perform personal hygiene as observed by staff during the fifteen (15) minute checks, a QMHP shall be contacted immediately to determine the most appropriate action based on the treatment needs of the juvenile. The contact and the person making the contact shall be contemporaneously documented in an observation log.

(12)[~~**(9)**~~] The juvenile shall be afforded living conditions and privileges approximating those available to the general population including modified access to recreation, educational, and treatment services, taking into consideration the safety and security of the juvenile and the facility. All services shall be contemporaneously documented on a services log. Any adjustments shall be documented, including the reason for the change.

(13)[~~**(10)**~~] The juvenile shall be responsible for keeping their room clean while in restrictive housing.

Section 2. Authorizations.

(1) Initial authorization shall be obtained from the facility superintendent, YSPS, ADO, or shift supervisor prior to placing a juvenile in restrictive housing placement and documented. If prior authorization cannot be obtained without jeopardizing the safety or security of the facility, staff, or juvenile, authorization shall be obtained immediately following the safe securing of the juvenile, but in no event not more than one (1) hour.

(2) An initial restrictive housing placement shall not exceed four (4) hours.

(3) An extension beyond an initial four (4) hour period, not to exceed eight (8) hours, shall only be granted after the superintendent or the ADO has visited with the juvenile to determine if the juvenile can comply with the plan for release. These visits and the specific behaviors noted shall be contemporaneously documented on an observation log. If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released. If not, the extension shall be approved and shall be contemporaneously documented on an observation log with the reason for the extension.

(4) An extension of a restrictive housing placement beyond eight (8) hours, and for each four (4) hour extension up to twenty-four (24) hours, shall require approval of the executive director. The decision shall only be made after the superintendent or the ADO has visited with the juvenile to determine if the juvenile can comply with the plan for release. These visits and the specific behaviors noted shall be documented contemporaneously on an observation log. If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released. If not, the extension shall be approved and shall be contemporaneously documented on an observation log with the reason for the extension, and additional approval shall be obtained every four (4) hours.

(5) An extension of a restrictive housing placement beyond twenty-four (24) hours, and for each four (4) hour extension up to forty-eight (48) hours, shall require the approval of the Commissioner after consulting with the mental health authority or designee only after review and approval of the executive director. The executive director shall decide only after the superintendent or the ADO has visited with the juvenile to determine if the juvenile can comply with the plan for release and the mental health assessment has been done as set out in Section 3(5) of this administrative regulation. These visits and the specific behaviors noted shall be

documented contemporaneously on an observation log. If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released. If not, the extension shall be approved and shall be contemporaneously documented on an observation log with the reason for the extension, and additional approval shall be obtained every four (4) hours.

(6) An extension of a restrictive housing placement beyond forty-eight (48) hours, and for each four (4) hour extension up to seventy-two (72) hours, shall require the approval of the cabinet secretary or designee after consulting with the mental health authority only after review and approval of the commissioner and the executive director. The commissioner and executive director shall ***[~~only~~]***decide only after the superintendent or ADO has visited with the juvenile to determine if the juvenile can comply with the plan for release and the mental health assessment has been done as set out in Section 3(5) of this administrative regulation. These visits and the specific behaviors noted shall be contemporaneously documented on an observation log. If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released. If not, the extension shall be approved and shall be contemporaneously documented on an observation log with the reason for the extension, additional approval shall be obtained every four (4) hours, and appropriate mental health treatment shall be provided.

(7) A restrictive housing placement shall not exceed seventy-two (72) hours or three (3) days. If grounds meriting restrictive housing placement are present after three (3) days, a special management plan **modifying any treatment plan authorized by 505 KAR 1:120 to account for the placement status** shall be **created by a QMHP. The**[~~**implemented and the**~~] mental health authority and the commissioner shall evaluate whether a mental health hospitalization of the juvenile should be pursued.

Section 3. Visits and Assessments.

(1) The facility nurse shall be consulted as soon as possible, or within one ***(1)*** hour of placement, to determine if there are medical contraindications for the juvenile being placed in restrictive housing and this consultation shall be documented on an observation log.

(2) The facility nurse shall assess juveniles placed in restrictive housing as soon as possible, but in no event later than one (1) hour.

(3) Injuries, bruises or scratches, and observations shall be noted by a minimum of two (2) staff and photographed by staff who were not involved in the incident. The nurse shall document the date, time, and results of the assessment.

(4) The juvenile shall receive a visit from the facility nurse every twenty-four (24) hours unless medical attention is needed more frequently. The visit shall be documented contemporaneously in an observation log.

(5) If a juvenile's **direct and clear threat**[~~**problem**~~]behavior lasts twenty-four (24) hours[~~**and there appears to be a need for continued intervention**~~], a QMHP shall assess the juvenile **no less than** every twelve (12) hours. Any treatment provided shall be documented contemporaneously in the juvenile's medical record.

(6) An administrative review shall be conducted and documented by a facility superintendent, ADO, YSPS, counselor**,** or shift supervisor***[,]*** within four (4) hours of placement in restrictive housing, and a reassessment shall be done at each shift change or a minimum of eight (8) hours,

thereafter, to determine the juvenile's readiness for release. The reviews shall be completed by a staff member not involved in the incident. ***If [~~In instances where~~]*** a prior room restriction, intensive room supervision, or room confinement placement was not successful and a restrictive housing placement was started, this review shall take place as soon as the restrictive housing protocol has started.

(7) Juveniles in restrictive housing shall be visited at least once every twenty-four (24) hours by the superintendent or ADO, medical staff, and clinical or social work staff. A juvenile may request a visit from a member of the clergy, if available. All visits with the juvenile during placement on restrictive housing shall be documented contemporaneously on an observation log and services log.

Section 4. Documentation.

(1) All documentation shall be legible.

(2) When a juvenile is removed from the general population and placed on restrictive housing, a restrictive housing packet shall be started and shall include:

(a) An incident report;

(b) A services log;

(c) A medical checklist;

(d) An observation log and addendum***[~~(s)~~]***;

(e) A plan for release; and

(f) Any professional ***or[~~/~~]***administrative reviews.

(3) An incident report shall include:

(a) ***That*** restrictive housing ***[~~shall~~]*** be indicated on the incident report***;[~~.~~]***

(b) The juvenile's explanation of the juvenile's behavior or statement ***[~~should be included~~]***, if any.

(c) The name and title of the staff requesting and authorizing the initial placement and the transition to restrictive housing or extension, and the time approval was requested and received;

(d) The reason for the placement with specific detail about how the juvenile presents a risk to safety and security or orderly facility operations;

(e) The duration of the placement; and

(f) The reason for each extension request, the reason the request was granted or denied, and the duration of the extension.

(4) A plan for release shall:

(a) Be authored by the staff in conjunction with the shift supervisor***;[~~:~~]***

(b) State the behavior expectation for release from the room placement;

(c) Be explained to the juvenile by staff;

(d) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a noninvolved staff member and witnessed by a third party***;[~~.~~]***

(e) Include specific behaviors related to the incident necessary for the juvenile to obtain release such as:

1. ***Regaining [~~Regain~~]***control of their behavior;

[~~2.~~] [**~~Willingness to participate in required activities;~~**]

2.[~~3.~~] ***The ability [~~Able~~]*** to interact in a calm manner; and

3.[~~4.~~] ***[~~Is~~]*** No longer ***being*** a direct and clear threat to the security, safety, or orderly management of the facility.

(f) Not include generalized attitude without specific behaviors listed. Failure to clean the room shall not be the sole grounds to deny release.

(5) Observation log.

(a) Behavioral observations shall be documented in an observation log and the shift supervisor shall be notified of any medical or behavioral health issues that would warrant immediate attention for follow-up.

(b) The observations shall include the youth's comments and any credible threats as observed by staff familiar with the youth's behavior.

(c) The fifteen (15) minute checks shall be documented on an observation log.

(d) The time of the release and the person releasing shall be contemporaneously documented in an observation log.

(6) A services log shall document all services provided to the juvenile while in room restriction including recreation, education, meals, and counseling.

(7) The documentation shall be placed in the juvenile's individual client record.

[~~(4)~~] [~~Authorization shall be obtained from the facility manager, youth services program supervisor, administrative duty officer, or shift supervisor prior to placing a juvenile into isolation. If prior authorization cannot be obtained without jeopardizing the safety and security of the facility, staff, or other juveniles, authorization shall be obtained immediately following the safe securing of the juvenile. An isolation placement shall not exceed four (4) hours without further action as stated in subsections (5) through (7) of this section.~~]

[~~(5)~~] [~~Isolation in a detention center.~~]

[~~(a)~~] [~~The facility manager may authorize a juvenile to remain in isolation beyond an initial four (4) hour period, not to exceed twenty-four (24) hours.~~]

[~~(b)~~] [~~An extension of an isolation placement beyond twenty-four (24) hours and up to thirty-six (36) hours shall require the approval of the division director. The division director shall consider whether the juvenile:~~]

[~~1.~~] [~~Has regained control of their behavior; and~~]

[~~2.~~] [~~Is no longer a threat to the security, safety, or orderly management of the facility.~~]

[~~(c)~~] [~~An extension of an isolation placement beyond thirty-six (36) hours and up to a maximum of forty-eight (48) hours shall require the approval of the division director and the chief of mental health services. For the extension decision, they shall consider:~~]

[~~1.~~] [~~Whether the juvenile has regained control of their behavior; and~~]

[~~2.~~] [~~Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and~~]

[~~3.~~] [~~The mental health issues of the juvenile.~~]

[~~(d)~~] [~~If a highly assaultive juvenile requires isolation for more than forty-eight (48) hours, an extension of an isolation placement beyond forty-eight (48) hours shall require the approval of the respective division director and the chief of mental health services. Any extension made shall be reviewed every twenty-four (24) hours and shall not exceed five (5) days. For the extension decision, they shall consider:~~]

[~~1.~~] [~~Whether the juvenile has regained control of their behavior; and~~]

[2.] [~~Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and~~]

[3.] [~~The mental health issues of the juvenile.~~]

[~~(6)~~] [~~Isolation in youth development centers and group homes.~~]

[~~(a)~~] [~~The facility manager may authorize a juvenile to remain in isolation beyond an initial four (4) hour period, not to exceed twenty-four (24) hours.~~]

[~~(b)~~] [~~An extension of an isolation placement beyond twenty-four (24) hours and up to thirty-six (36) hours shall require the approval of the facilities regional administrator. For the extension decision, the FRA shall consider whether the juvenile:~~]

[1.] [~~Has regained control of their behavior; and~~]

[2.] [~~Is no longer a threat to the security, safety, or orderly management of the facility.~~]

[3.] [~~An extension of an isolation placement beyond thirty-six (36) hours and up to a maximum of forty-eight (48) hours shall require the approval of the respective division director and the regional psychologist. For the extension decision, they shall consider:~~]

[a.] [~~Whether the juvenile has regained control of their behavior; and~~]

[b.] [~~Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and~~]

[c.] [~~The mental health issues of the juvenile.~~]

[~~(c)~~] [~~If a highly assaultive juvenile requires isolation for more than forty-eight (48) hours, an extension of an isolation placement beyond forty-eight (48) hours shall require the approval of the respective division director, the regional psychologist, and the chief of mental health services. Any extension made shall be reviewed every twenty-four (24) hours and shall not exceed five (5) days. For the extension decision, they shall consider:~~]

[1.] [~~Whether the juvenile has regained control of their behavior; and~~]

[2.] [~~Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and~~]

[3.] [~~The mental health issues of the juvenile.~~]

[~~(7)~~] [~~The nurse shift program supervisor or on call nurse designee shall be notified as soon as feasible to determine if there are contra-indications for the juvenile being placed in isolation.~~]

[~~(a)~~] [~~The facility nurse or health services protocol trained staff shall assess a juvenile placed in isolation as soon as it is safe to do so, as dictated by the director of medical services.~~]

[~~(b)~~] [~~Injuries, bruises, scratches, and other observations shall be noted by a minimum of two (2) staff. The nurse or designee shall document the date, time, and results of the assessment.~~]

[~~(8)~~] [~~Isolation may be used if requested by a juvenile and staff concur that the placement is in the best interest of the juvenile.~~]

[~~(9)~~] [~~An assessment of a juvenile in isolation shall not be required to occur within the deadlines established in subsections (5) through (7) of this section, if the deadline falls within the normal sleep time for the facility. A delayed assessment shall occur within two hours of the normal awake time for the facility.~~]

[~~(10)~~] [~~A juvenile in isolation shall be visited at least once a day by the facility manager or designee, medical or medically trained staff, and clinical or social work staff or designee. A juvenile may request a visit from clergy or other religious representative. All interactions with the juvenile during placement on isolation shall be documented.~~]

[~~(11)~~] [~~The regional psychologist or designee shall conduct interviews and assessments for disturbances in mental status, including, for example, depression; suicidal ideation; impaired thought processes, cognition or memory; agitation; paranoia; self-injurious behavior; evidence of bruises or other signs of trauma; and whether the juvenile's behavior has escalated beyond the staff's ability to control the juvenile by counseling or disciplinary measures.~~]
[~~(12)~~] [~~If a juvenile exhibits deterioration in mental status while in isolation, the regional psychologist shall be contacted to determine the most appropriate action based on the treatment needs of the juvenile.~~]
[~~(13)~~] [~~If a juvenile's problem behavior lasts twenty-four (24) hours and there appears to be a need for continued intervention, qualified health personnel shall assess the juvenile daily.~~]
[~~(14)~~] [~~The juvenile in isolation shall be afforded living conditions and privileges approximating those available to the general population, including modified access to recreation and educational and treatment services taking into consideration the juvenile's and facility safety and security needs.~~]
[~~(15)~~] [~~The juvenile shall be responsible for the daily cleaning of their living area in isolation.~~]
[~~(16)~~] [~~Release from isolation may occur based on the juvenile's behavior and state of mind.~~]

Section 5.[~~Section 2.~~] Restrictive housing for[~~Isolation of~~] suicidal juveniles.
(1) Restrictive housing[~~Isolation~~] shall not be used as a suicide precaution.
(2) A juvenile who is suicidal may only be placed in restrictive housing[~~isolation~~] if the juvenile presents an immediate assault risk to staff or other juveniles as evidenced by physical actions and other less restrictive interventions have failed or are not appropriate. All other suicide protocols shall be followed.

Section 6.[~~Section 3.~~] Protective Custody.
(1) Restrictive housing shall not be used for protective custody.
(2) A juvenile requiring protection from others may be placed in protective custody until alternative permanent housing is found within the facility or the juvenile is transferred to another facility.
(3)[~~(2)~~] The superintendent[~~facility manager~~] or designee may order immediate placement in protective custody[~~or isolation~~] if it is necessary to protect the juvenile from harm. This action shall be reviewed every twenty-four (24) hours of placement by the superintendent[~~facility manager~~] or designee. Separation from the general population beyond twenty-four (24) hours shall require approval by the superintendent who[~~facility manager and Treatment Director and~~] shall consider any mental health issues of the juvenile. The [~~chief of~~]mental health authority[~~services~~] and a QMHP[~~regional psychologist~~] shall be consulted by the superintendent. The action shall be reviewed by **a**[~~**the**~~]multidisciplinary[~~treatment~~] team**, composed of at least a DJJ corrections officer or youth worker, the juvenile's counselor, health care staff, and the superintendent or designee,** within seventy-two (72) hours to decide on alternative permanent housing.
(4)[~~(3)~~] A[~~The~~] youth development center treatment team may develop a special management plan to assure the safety of and continuous services and programming for the juvenile.

Section 7. Restrictive Housing for juveniles under 18 U.S.C. § 5043.

(1) If a juvenile is in DJJ custody while being proceeded against in federal district court under 18 U.S.C. § 5043, then a QMHP shall evaluate that juvenile if the juvenile is placed in a restrictive housing placement for three (3) hours.
(2) If the QMHP's evaluation indicates that continued placement in restrictive housing is necessary, then staff shall refer the juvenile to a hospital for admission and treatment.

CONTACT PERSON: Nathan Goens, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, KY 40601, Justice.RegsContact@ky.gov, telephone number (502) 564-8216, facsimile number (502) 564-6686.

Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET
Kentucky Department of Alcoholic Beverage Control
500 Mero Street, 2NE33
Frankfort, KY 40601
Phone: (502) 564-4850
Fax: (502) 564-1442

Ray A. Perry
SECRETARY

DJ Wasson
DEPUTY SECRETARY

Scotty Tracy
COMMISSIONER

February 6, 2026

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

Re: 804 KAR 13:030E. Causes for denial of tobacco, nicotine, or vapor product license.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 804 KAR 13:030E, the Department of Alcoholic Beverage Control proposes the attached amendment to 804 KAR 13:030E.

Sincerely,

Joshua Newton
General Counsel

Final: 2/6/2026

SUGGESTED AMENDMENT

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Emergency Amended After Comments)

804 KAR 13:030E. Causes for denial of tobacco, nicotine, or vapor product license.

Page 1
Section 1(2)
Line 19

After "The applicant has", insert "***knowingly***".

Note: This amendment was included in the Statement of Consideration. However, it appears to have been inadvertently omitted when the Emergency Amended After Comments regulation was filed.

Andy Beshear
GOVERNOR

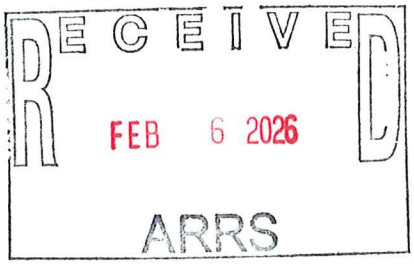
CABINET FOR HEALTH AND FAMILY SERVICES
275 East Main Street, 6W-A
Frankfort, Kentucky 40621

@chfsky | CHFS.KY.GOV

Steven Stack, MD
SECRETARY

Lisa D. Lee
COMMISSIONER

February 6, 2026



Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell
Administrative Regulation Review Subcommittee
Legislative Research Commission
702 Capitol Avenue, Room 83
Frankfort KY 40601

907 KAR 3:320. Beneficiary Advisory Council and modifications to the Advisory Council for Medical Assistance to establish the Kentucky Medicaid Advisory Committee.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 3:320, the Department for Medicaid Services proposes the attached suggested substitutes to 907 KAR 3:320.

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 Estes

Staff Assistant
Office of Legislative and Regulatory Affairs

Final Version: 02/02/26 at 12:11 PM
SUGGESTED SUBSTITUTE – *TO ORDINARY ONLY*

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office

907 KAR 3:320. Beneficiary Advisory Council and modifications to the Advisory Council for Medical Assistance to establish the Kentucky Medicaid Advisory Committee.

RELATES TO: KRS 61.800_-_884, 205.540, 42 C.F.R. 431.12
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)***, 42 C.F.R. 4331.12***
CERTIFICATION STATEMENT:
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required 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. ***KRS 205.540 created the Advisory Council for Medical Assistance in 1960 to meet a federal requirement for an advisory council to assist the state Medicaid program. KRS 205.540 now conflicts with changes to federal regulations that take effect July 9, 2025. Therefore, it is the department's intention that the Advisory Council for Medical Assistance established in KRS 205.540 shall be modified in this administrative regulation to meet the requirements of 42 CFR 431.12 and function as Kentucky's Medicaid Advisory Committee.*** This administrative regulation establishes the Beneficiary Advisory Council and implements additional requirements for the Advisory Council for Medical Assistance, referred to federally as the Medicaid Advisory Committee, following changes to federal law.

Section 1. Beneficiary Advisory Council Membership.

(1) The Department for Medicaid Services shall establish a Beneficiary Advisory Council consistent with 42 C.F.R. 431.12.

(2) Members of the Beneficiary Advisory Council shall be appointed by the commissioner of the Department for Medicaid Services.

(3)***(a)*** The Beneficiary Advisory Council shall consist of fifteen (15) members as follows:

1.~~[(a)]~~ Ten (10) current or former Medicaid beneficiaries; and

2.~~[(b)]~~ Five (5) individuals who are parents, guardians, or paid or unpaid caregivers of a Medicaid beneficiary.

(b) To the extent possible,~~[(c)]~~ the three (3) medical assistance recipients serving as of July 8, 2025 on the Advisory Council for Medical Assistance pursuant to KRS 205.540, shall be appointed for a term that aligns the remainder of their term to a new term in subsection ***(4)[4]*** of this section***~~[, to the extent possible]~~***.

(c)~~[(d)]~~ Appointments shall ensure representation of member experience with Medicaid managed care, the foster care system, 1915(c) home and community based waivers, or maternal, child, or behavioral health services.

(4) Members of the Beneficiary Advisory Council shall hold office for a term of four (4) years, except that the terms for members appointed upon council creation shall be as follows:

(a) One-third (1/3) of the members shall be appointed for two (2) years;

(b) One-third (1/3) of the members shall be appointed for three (3) years;

(c) One-third (1/3) of the members shall be appointed for four (4) years; and

(d) The respective terms of the members first appointed shall be designated by the commissioner of the Department for Medicaid Services at the time of their appointments.

(5) The following requirements shall apply to the terms of members of the Beneficiary Advisory Council:

(a) A member shall not serve a consecutive term but may be reappointed after a period of at least four (4) years following the end of their term;

(b) A vacancy shall be filled for an unexpired term in the same manner as the original appointment; and

(c) Members whose term has expired may serve until their successor is appointed.

(6) The Beneficiary Advisory Council shall elect a chair, vice-chair, and secretary from among its members at its first regular meeting***[,]*** and annually thereafter.

(7)(a) Upon appointment to the Beneficiary Advisory Council ***and to comply with 42 C.F.R. 431.12***, members shall indicate to the commissioner their interest in appointment to the Medicaid Advisory Committee pursuant to Section ***4(3)(c) of this administrative regulation[4(3)(b) and to comply with 42 CFR 431.12]***.

(b) The current chair of the Beneficiary Advisory Council shall serve as one (1) of the appointments to the Medicaid Advisory Committee.

(c) The three (3) medical assistance recipients serving as of July 8, 2025 on the Advisory Council for Medical Assistance pursuant to KRS 205.540 shall be appointed pursuant to subsection (3)***(b) of this section[(c)]***.

(8) ***[To permit meaningful participation,]***Members of the Beneficiary Advisory Council, including members who also serve on the Medicaid Advisory Committee, may receive, if requested:

(a) Compensation for time and ***council or committee-related[appropriate]*** expenses in an amount consistent with similar services reimbursed by Medicaid or as reimbursed by other boards and commissions; and

(b) Reasonable accommodations including language services, personal assistance, communication supports, and any other supports or resources based on the individual member's needs.

Section 2. Confidentiality and Privacy Applicable to Members of the Beneficiary Advisory Council.

(1) To the extent that a conflict exists between 42 C.F.R. 431.12 and the Kentucky Open Meetings and Kentucky Open Records statutes, KRS 61.800_-_884, members of the Beneficiary Advisory Council may participate in the work of the Beneficiary Advisory Council ***if[as]*** consistent with this section.

(2) A member of the Beneficiary Advisory Council shall have the option to exclude their name from documents published or posted by the Department for Medicaid Services that include a list of members of the Beneficiary Advisory Council, the Medicaid Advisory Committee, or the actions of members recorded in publicly published or posted meeting minutes.

(3) Meetings of the Beneficiary Advisory Council are not required to be open to the public unless a majority of the members decide otherwise.

(4) A member of the Beneficiary Advisory Council may opt-in to participate and vote by telephone.

Section 3. Beneficiary Advisory Council Duties and Authority.

(1) The Beneficiary Advisory Council shall advise the Department for Medicaid Services on:

(a) Their experiences with the program;

(b) Matters related to policy development and effective administration of the program; and

(c) Other issues that impact the provision or outcomes of health and medical care services in the program.

(2) The Beneficiary Advisory Council shall:

(a) Be separate from the Medicaid Advisory Committee pursuant to 42 CFR 431.12;

(b) Meet separately from the Medicaid Advisory Committee;

(c) Meet at least once per quarter; and

(d) Meet in advance of each Medicaid Advisory Committee meeting to prepare Beneficiary Advisory Council members.

(3) The Beneficiary Advisory Council shall adhere to bylaws developed and published by the department for governance.

Section 4. Advisory Council for Medical Assistance. Medicaid Advisory Committee.~~*[KRS 205.540 created the Advisory Council for Medical Assistance in 1960 to meet a federal requirement for an advisory council to assist the state Medicaid program. KRS 205.540 now conflicts with changes to federal regulations that take effect July 9, 2025. Therefore, it is the department's intention that the Advisory Council for Medical Assistance established in KRS 205.540 shall be modified in this Section to meet the requirements of 42 CFR 431.12 and function as Kentucky's Medicaid Advisory Committee.]*~~

(1) On or after July 9, 2025, the Medicaid Advisory Committee shall consist of members appointed by the commissioner of the Department for Medicaid Services.

(2) The membership appointed to the Advisory Council for Medical Assistance pursuant to KRS 205.540 as of July 8, 2025 shall be appointed by the commissioner for the Department for Medicaid Services to the new Medicaid Advisory Committee pursuant to 42 CFR 431.12 as follows:

(a) For a member with an unexpired term, for a term that aligns the remainder of the member's term with a new term in subsection (4)(b) of this section, to the extent possible;

(b) For a member serving as a medical assistance recipient, to both the Medicaid Advisory Committee and the Beneficiary Advisory Council for the same term that aligns the remainder of their term with a new term in subsection (4)(b) of this section, to the extent possible;

(c) For a member serving in an expired term, that member's term shall end on July 8, 2025, and appointment shall follow the nomination process of KRS 205.540; and

(d) For a vacancy, appointment shall follow the nomination process of KRS 205.540.

(3) The Medicaid Advisory Committee shall consist of the following members:

(a) Members appointed by the commissioner of the Department for Medicaid Services according to the membership established in KRS 205.540~~*;[.]*~~

(b) Ex-officio, non-voting members as follows:

1. The commissioner of the Department for Medicaid Services, or his or her designee;
2. The commissioner of the Department for Community Based Services, or his or her designee;
3. The commissioner of the Department for Public Health, or his or her designee;***and***
4. The commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities, or his or her designee;

(c) The appointment by the commissioner of the Department for Medicaid Services of a sufficient number of members of the Beneficiary Advisory Council so that at least twenty-five ***(25) percent***~~*[percent (25%)]*~~ of the Medicaid Advisory Committee consists of members serving on the Beneficiary Advisory Council; and

(d) A member appointed by the commissioner for the Department for Medicaid Services from a list of three (3) nominees submitted by the Kentucky Association of Health Plans, or its successor organization, to represent a current contracted Medicaid Managed Care Organization, if beneficiaries are enrolled in managed care.

(4) A member shall have a non-consecutive term of four (4) years except that:

(a) The member appointed pursuant to subsection (3)(d) of this section shall serve a term of one (1) year~~*;[.]*~~

(b) The other members first appointed according to subsections (1), (2), and (3) of this section shall serve as follows:

1. One-third (1/3) of the members shall be appointed for a term of two (2) years;
2. One-third (1/3) of the members shall be appointed for a term of three (3) years; and
3. One-third (1/3) of the members shall be appointed for a term of four (4) years***;[.]***

(c) A member may be reappointed after a period of at least four (4) years following the end of their term***;[.]***

(d) A vacancy shall be filled for an unexpired term in the same manner as the original appointment***; and[.]***

(e) At the first meeting after July 9, 2025, the new Medicaid Advisory Committee shall elect a chair, vice-chair and secretary from among its members***[.]*** and annually thereafter.

(5) The Medicaid Advisory Committee shall adhere to bylaws developed and published by the department for governance.

(6) On or after July 9, 2027, the Medicaid Advisory Committee shall submit an annual report to be published on the Medicaid Advisory Committee's website, with support from the Department for Medicaid Services, as follows:

(a) Describes the activities, topics discussed, and recommendations of the Medicaid Advisory Committee and the Beneficiary Advisory Council;

(b) Includes the department's review and responses to recommended actions; and

(c) Is published to the department's website ***not later than*** thirty (30) days after it is final.

Section 5. Duties of the Department for Medicaid Services. The department shall comply with the requirements in 42 CFR 431.12 as follows:

(1) Provide staff who attend and facilitate meetings and member engagement for the Medicaid Advisory Committee and Beneficiary Advisory Council;

(2) Develop and publish on the department's website a process for Medicaid Advisory Committee and Beneficiary Advisory Council member recruitment and selection;

(3) Develop and publish on the department's website bylaws for the governance of the Medicaid Advisory Committee and Beneficiary Advisory Council;

(4) Develop and publish on the department's website a meeting schedule that maximizes member attendance and an agenda with a ***thirty (30) calendar[~~30 calendar~~]*** day notice of a meeting date, location, and time of each public meeting of the Medicaid Advisory Committee ~~and~~ Beneficiary Advisory Council;

(5) Publish on the department's website past meeting minutes and list of meeting attendees within ***thirty (30)[~~30~~]*** calendar days following a meeting of the Medicaid Advisory Committee and Beneficiary Advisory Council, except that members of the Beneficiary Advisory Council shall have the option to exclude their names;

(6) Offer a variety of meeting options including in-person, virtual, and hybrid (in-person and virtual), and at a minimum a telephone dial-in option for members and the public, if the meeting is open to the public;

(7) Ensure meetings are accessible to people with disabilities and provide financial support and reasonable accommodations to members of the Beneficiary Advisory Council to support participation; and

(8) Support the Medicaid Advisory Committee with the development of an annual report, and publish it on the department's website.

COMPILER'S NOTE: 2025 RS HB 6, enacted by the General Assembly on March 27, 2025, altered the information to be provided at the time an administrative regulation is filed. Aside from formatting changes necessary to upload the regulation into the LRC's publication application, this regulation has been published as submitted by the agency.

Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Steven Stack, MD
SECRETARY

275 East Main Street, 6W-A
Frankfort, Kentucky 40621

@chfsky | CHFS.KY.GOV

Lisa D. Lee
COMMISSIONER

February 5, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell
Administrative Regulation Review Subcommittee
Legislative Research Commission
702 Capitol Avenue, Room 83
Frankfort KY 40601

907 KAR 23:010. Outpatient Pharmacy Program.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 23:010, the Department for Medicaid Services proposes the attached suggested substitutes to 907 KAR 23:010.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estes

Staff Assistant
Office of Legislative and Regulatory Affairs

Subcommittee Substitute

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(Amendment)

907 KAR 23:010. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, [~~205.560, 205.561,~~]205.5631-205.5639, 205.564, 205.6316, 205.8451, 205.8453, 217.015, 217.822, 369.101 to 369.120, 42 C.F.R. 430.10, 431.54, 440.120, 447.512-447.518, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13)
CERTIFICATION STATEMENT:
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the 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. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of outpatient drugs through the Medicaid outpatient pharmacy program for fee-for-service recipients and managed care enrollees.

Section 1. Covered Drugs. A covered drug shall be:
(1) Medically necessary;
(2) Approved by the FDA;
(3) Prescribed for an indication that has been approved by the FDA or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use;
(4) A rebateable drug; and
(5) A covered outpatient drug.

Section 2. Diabetic Supplies. Except if Medicare is the primary payer, the department shall cover the diabetic supplies listed in this section ***through*** ***[~~via~~]*** the department's pharmacy program and not ***through*** ***[~~via~~]*** the department's medical supplies, equipment, and appliances[~~durable medical equipment~~] program established in 907 KAR 1:479:
(1) A syringe with needle (sterile, 1cc or less);
(2) Urine test or reagent strips or tablets;
(3) Blood ketone test or reagent strip;
(4) Blood glucose test or reagent strips;
(5) Calibrating solutions;
(6) Lancet device;
(7) Lancets; or

(8) Home blood glucose monitor.

Section 3. Tamper-Resistant Prescription Pads.

(1) Each covered drug or diabetic supply shall be prescribed on a tamper-resistant prescription pad, except if the prescription is:

(a) An electronic prescription;

(b) A faxed prescription; or

(c) A prescription telephoned by a prescriber or authorized agent.

(2) To qualify as a tamper-resistant prescription, the prescription pad shall contain one (1) or more of each industry-recognized feature designed to prevent:

(a) Unauthorized copying of a completed or blank prescription form;

(b) The erasure or modification of information written by the prescriber on the prescription; and

(c) The use of counterfeit prescription forms.

Section 4. Kentucky Medicaid Fee-for-Service Outpatient Drug List.

(1) The department shall maintain each Outpatient Drug List to include drug coverage and availability information in the following formats:

(a) Kentucky Medicaid Provider Drug Portal Lookup, which shall be an online searchable drug database that functionally affords users the ability to perform a search of the Kentucky specific fee-for-service drug formulary for the purpose of ascertaining formulary status, drug coverage, and other plan limitations (prior authorization, quantity limits, step therapy, and diagnosis) associated with a drug;

(b) Kentucky Preferred Drug Listing (PDL), which shall be a listing of selected drugs available to fee-for-service recipients that have been included based on proven clinical and cost effectiveness and that prescribers are encouraged to prescribe if medically appropriate;

(c) Physician Administered Drug List (PAD), which was formerly known as the Physician Injectable Drug List (PIDL), and which shall indicate the list of physician administered drugs that can be billed to the fee-for-service medical benefit using appropriate Healthcare Common Procedure Coding System codes, National Drug Codes, and appropriate units;

(d) Over-the-Counter (OTC) Drug List, which shall be a list of OTCs that, if prescribed, are eligible for fee-for-service coverage and reimbursement through the pharmacy benefit;

(e) Covered Prescription Cold, Cough, and Vitamin Product List, which shall indicate the legend drugs that, if prescribed and FDA indicated for the intended use, are eligible for fee-for-service coverage and reimbursement through the pharmacy benefit;

(f) Long Term Care Per Diem List, which shall indicate OTC drugs that, if provided to a Medicaid nursing facility service recipient, are included in the nursing facility's standard price or daily per diem rate, and are not otherwise reimbursed by the department;

(g) Maximum Quantity Limits List, which shall indicate covered drugs that have a quantity limit consistent with the maximum dosage that the FDA has approved to be both safe and effective; and

(h) Kentucky Medicaid Diagnosis Drug List, which shall indicate covered drugs that require a diagnosis code or a prerequisite to therapy, or both.

(2) Each Outpatient Drug List shall be updated by the department at least quarterly or otherwise as needed.

(3) Each Outpatient Drug List shall be accessible through the department's pharmacy webpage.

Section 5. Exclusions to Coverage. The following drugs shall be excluded from coverage and shall not be reimbursed:

(1) A drug that the FDA considers, by way of a final determination, to be:

(a) A less-than-effective drug; or

(b) Identical, related, or similar to a less-than-effective drug;

(2) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered by an Outpatient Drug List:

(a) [~~A drug if used for anorexia, weight loss, or weight gain;~~]

[~~(b)~~] A drug if used to promote fertility;

(b)[~~(c)~~] A drug if used for cosmetic purposes or hair growth;

(c)[~~(d)~~] A drug if used for the symptomatic relief of cough and colds;

(d)[~~(e)~~] A vitamin or mineral product other than prenatal vitamins and fluoride preparations;

(e)[~~(f)~~] An OTC drug provided to a Medicaid nursing facility service recipient and included in the nursing facility's standard price or daily per diem rate;

(f)[~~(g)~~] A drug that the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or

(g)[~~(h)~~] A drug utilized for erectile dysfunction therapy unless the drug is used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the FDA;

(3) A drug that is not rebateable, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the drug and federal financial participation is available for the drug;

(4) A drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(5) A drug for which the department requires prior authorization if prior authorization has not been approved;

(6) A drug that shall no longer be dispensed by a pharmacy provider because it has reached the manufacturer's termination date or is 365 days past the manufacturer's obsolete date; and

(7) Investigational drugs or drugs being used for investigational uses or uses not otherwise supported by documentation found in official compendia or peer-reviewed medical literature.

Section 6. Limitations to Coverage.

(1) All dispensing and administration of covered drugs shall comply with applicable federal and state law.

(2) Refills.

(a) A controlled substance in Schedule II shall not be refilled.

(b) If authorized by a prescriber, a prescription for a:

1. Controlled substance in Schedule III, IV, or V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

2. Noncontrolled substance, except as provided in subsection (3)(a) of this section, may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) Days Supply. For each initial fill or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is indicated as a noncontrolled maintenance drug per the department's nationally recognized comprehensive drug data file as a drug exempt from the thirty-two (32) day dispensing limit, in which case the pharmacist shall dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on a Kentucky Medicaid prior authorization request form and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist shall dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater; or

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit, and it is not feasible for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply.

(4) A refill of a prescription shall not be covered unless at least ninety (90) percent of the prescription time period has elapsed.

(5) Compounded Drugs. The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs.

(6) Emergency Fills. In an emergency situation, a pharmacy provider may dispense an emergency supply of a prescribed drug to a recipient in accordance with this subsection.

(a) An emergency situation shall exist if, based on the clinical judgment of the dispensing pharmacist, it would reasonably be expected that a delay in providing the drug to the recipient would place the recipient's health in serious jeopardy or the recipient would experience substantial pain and suffering.

(b) At the time of dispensing the emergency supply, the pharmacist shall:

1. Submit a prior authorization request form to the department using the urgent fax number or the department's pharmacy webpage; or

2. Notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department.

(c) An emergency supply shall not be provided for:

1. An OTC drug;

2. A controlled substance; or

3. A drug excluded from coverage by this administrative regulation.

(d) The quantity of an emergency supply shall be:

1. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

2. The amount prescribed if the drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is not feasible for the pharmacist to dispense in a smaller quantity.

Section 7. Confirming Receipt of Prescription.

(1) A recipient, or a designee of the recipient, shall sign his or her name in a format that allows the signature to be reproduced or preserved by the pharmacy provider confirming that the recipient received the prescription.

(2) A pharmacy provider shall maintain, or be able to produce a copy of, the recipient's signature referenced in subsection (1) of this section for six (6) years.

Section 8. Exemptions to Kentucky Enrolled Prescriber Requirements. The department shall reimburse for a full prescription or an emergency supply of a prescription, prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines it is in the best interest of the recipient to receive the prescription.

Section 9. Utilization Management. Utilization management techniques shall be applied by the department to support medically appropriate and cost effective access to covered drugs and shall include prior authorization, step therapy, quantity limitations, generic substitution, therapeutic substitution protocols, and clinical edits.

(1) Step therapy.

(a) The department may implement step therapy drug treatment protocols by requiring the use of a medically-appropriate drug that is available without prior authorization before the use of a drug that requires prior authorization.

(b) The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from step therapy based on documentation that a drug available without prior authorization:

1. Was used and was not an effective medical treatment or lost its effectiveness;
2. Is reasonably expected to not be an effective medical treatment;
3. Resulted in, or is reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or
4. Is medically contraindicated.

(2) Prior authorization.

(a)

1. If prior authorization is required for a drug, the applicable prior authorization request form shall be completed and submitted to the department by fax, mail service, telephone, or the department's pharmacy web portal.
2. The applicable prior authorization request form shall be the:
   a. Kentucky Medicaid Substance Use Treatment Pharmacy Prior Authorization Form for Buprenorphine Products if prior authorization is being requested for buprenorphine products for substance use treatment; or
   b. Kentucky Medicaid Pharmacy Prior Authorization Form if the prior authorization is being requested for a drug that is not a buprenorphine product for substance use treatment.

(b) If a recipient presents a prescription to a pharmacy provider for a drug that requires prior authorization, the pharmacist shall:

1. Complete and submit a prior authorization request form in accordance with this subsection; or
2. Notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization.

a. If the prescriber indicates that an alternative available without prior authorization is acceptable and provides a new prescription, the pharmacist shall dispense the alternative.

b. If the prescriber indicates that an alternative available without prior authorization has been tried and failed or is clinically inappropriate or if the prescriber is unwilling to consider an alternative, the pharmacist shall request that the prescriber obtain prior authorization from the department.

(c) The department's notification of a decision on a request for prior authorization shall be made in accordance with this paragraph.

1. If the department approves a prior authorization request, notification of the approval shall be provided by telephone, fax, or the department's pharmacy web portal to the party requesting the prior authorization and, if known, to the pharmacist.

2. If the department denies a prior authorization request, the department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or, if notification cannot be made by fax or telephone, by mail to the party who requested the prior authorization.

(d) Prior authorization time limits.

1. The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 calendar days.

2. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

Section 10. Drug Review Process. The drug review process to determine if a drug requires prior authorization or other utilization management, or is otherwise restricted or excluded by the department, shall be in accordance with this section.

(1) Drug review considerations. Drug review shall be based upon available and relevant clinical information to assess appropriate use of medications and include:

(a) A review of clinically-significant adverse side effects, drug interactions and contraindications, and an assessment of the likelihood of significant abuse of the drug; and

(b) An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and if the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of the drug after federal rebate and supplemental rebates have been subtracted.

(2) New drugs. Except as provided by subsections (3) and (4) of this section, upon initial coverage by the Kentucky Medicaid Program, a drug that is newly approved for marketing by the FDA under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity and not otherwise excluded shall be subject to prior authorization in accordance with KRS 205.5632.

(3) Product line. If a drug, which has been determined to require prior authorization, becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug, the new strength, package size, or other form shall require prior authorization.

(4) Generic equivalency for prescribed brands. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to cover the drug without prior authorization.

(5) Advisory recommendation. Drugs subject to review by the Pharmacy and Therapeutics Advisory Committee (P&T Committee) shall be reviewed in accordance with KRS 205.564 and this administrative regulation. Upon review, the P&T Committee shall make a recommendation to the department regarding utilization management of the drug including prior authorization and the recommendation shall be advisory to the commissioner in making the final determination.

(6) The department may exclude from coverage or require prior authorization for a drug that is subject to coverage limitations in accordance with 42 U.S.C. 1396r-8(d).

Section 11. Pharmacy and Therapeutics Advisory Committee (P&T Committee) Meeting Procedures. P&T Committee meetings, processes, and procedures shall be in accordance with KRS 205.564 and this administrative regulation.

(1) Drug review considerations. The P&T Committee shall consider the drug review information specified in Section 10(1) of this administrative regulation when developing recommendations.

(2) Meeting processes and procedures.

(a) Public presentations. A public presentation at a P&T Committee meeting shall comply with this paragraph.

1. A presentation shall be limited to an agenda item.

2. A verbal presentation by pharmaceutical industry representatives shall not exceed three (3) minutes in aggregate per drug per drug manufacturer with two (2) additional minutes allowed for questions from the P&T Committee. Pharmaceutical industry representatives shall be limited to presenting:

a. Information on a new product; or

b. New information on a previously reviewed current agenda topic (package insert changes, new indications, or peer-reviewed journal articles).

3. A verbal presentation by an individual other than a pharmaceutical industry representative shall not exceed five (5) minutes.

4. A request to make a verbal presentation shall be submitted in writing ***by*** ***[~~via~~]*** fax or e-mail to the department no later than five (5) business days in advance of the P&T Committee meeting date.

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indications, or peer reviewed journal articles) shall be e-mailed to the department in a Microsoft compatible format or mailed to the department as a package including twenty-five (25) printed copies. All materials shall be received by the department no later than seven (7) business days prior to the P&T Committee meeting date.

(3) Postings. P&T Committee meeting documents shall be published in accordance with KRS 205.564(6), and shall include the:

(a) Meeting agenda;

(b) Options, including any department recommendations, for drug review and drug review placements,
(c) P&T Committee recommendations; and
(d) Commissioner's final determination.

Section 12. Exceptions to P&T Committee Recommendations.
(1)
(a) An interested party who is adversely affected by a recommendation of the P&T Committee may submit a written exception to the commissioner.
(b) The written exception shall be received by the commissioner within seven (7) calendar days of the date of the P&T Committee meeting at which the recommendation was made.
(c) Only information that was not available to be presented at the time of the P&T Committee meeting shall be included in the written exception.
(2) After the time for filing written exceptions has expired, the commissioner shall consider each recommendation of the P&T Committee and all exceptions that were filed in a timely manner prior to making a final determination.

Section 13. Final Determination. The commissioner shall issue and post a final determination in accordance with KRS 205.564(9) and (11).
(1) A decision of the commissioner to remand any recommendation to the P&T Committee shall not constitute a final decision or final determination for purposes of an appeal pursuant to KRS Chapter 13B.
(2) If any recommendation of the P&T Committee is not accepted, the commissioner or commissioner's designee shall inform the P&T Committee of the basis for the final determination in accordance with KRS 205.564(9).

Section 14. Appeals. An appeal request shall:
(1) Be in writing;
(2) Be sent by mail, messenger, carrier service, or express-delivery service to the commissioner in a manner that safeguards the information;
(3) State the specific reasons the final determination of the commissioner is alleged to be erroneous or not based on the facts and law available to the P&T Committee and the commissioner at the time of the decision;
(4) Be received by the commissioner within the deadline established by KRS 205.564(12); and
(5) Be forwarded by the commissioner to the Office of Administrative Hearings within the Department of Law[~~Division of Administrative Hearings of the Cabinet for Health and Family Services~~] for processing in accordance with the provisions of KRS Chapter 13B.

Section 15. Drug Management Review Advisory Board (DMRAB) Meeting Procedures and Appeals.
(1) A person may address the DMRAB if:
(a) The presentation is directly related to an agenda item; and
(b) The person gives notice to the department by fax or email at least five (5) business days prior to the meeting.
(2) A verbal presentation:

(a) In aggregate per drug per drug manufacturer shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required; or

(b) By an individual on a subject shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required.

(3) The proposed agenda shall be posted on the department's pharmacy webpage, located at: https://www.chfs.ky.gov/agencies/dms/dpo/ppb/Pages/p-tac.aspx at least fourteen (14) calendar days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) calendar days of the manufacturer's actual notice of the final decision.

Section 16. Medicaid Program Participation Compliance.

(1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)

(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

Section 17. Use of Electronic Signatures.

(1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and

3. The original filed signature.

Section 18. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 19. 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 20. Appeal Rights.

(1) An appeal of an adverse action taken by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 21. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Medicaid Substance Use Treatment Pharmacy Prior Authorization Form for Buprenorphine Products", 1-3-17; and

(b) "Kentucky Medicaid Pharmacy Prior Authorization Form", 1-3-17.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's website at https://www.chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx[~~Web site at http://www.chfs.ky.gov/dms/incorporated.htm~~].

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.